

Exploring the Legal and Social Challenges Faced by Illegitimate Children: An In - Dept Analysis of International Perspectives and Rights Neglect

Shruti Tomar

Prestige Institute of Management and Research, Department Of Law

Abstract: *The word legitimate designates to one or something to legal, acceptable or allowed. Illegitimate is designated to something or a person who's opposite to a legal i. e., illegal or unacceptable. In real the world these two spheres are widely apart in terms of rights of a child and gap was widened by the laws which derogated the status of an illegitimate child who herself or himself cannot alter his or her legal position, them deprived of rights and many times finding illegal means to either achieve them or learn to live without them. The concept of illegitimacy varies from state to state and is prevalent over the international conventions. The world hasn't done enough to uplift the status of an illegitimate child and as repercussion the rights and legal status are deprived for an illegitimate. The major economies that hold quantitative authority over manipulation of world's legal policies at the international organizations have though taken steps but have way lacked behind in terms of behind effective and efficient and more precisely accurate. Sometimes the laws itself are unhinged it affirms at one place to not discriminate and on the other place discriminates the child's social, legal, and correlated to their economical lives. An analysis to the laws of different nations in reference to illegitimacy and the process of legitimation (which itself is questionable on certain grounds) is brought to you. . This research paper is aimed at reflecting the rights guaranteed and neglecting of the rights of an illegitimate or commonly referred to as bastards the economic and social backdrop faced by them.*

Keywords: Child Rights, Convention on the Rights of the Child, Filiation, Illegitimacy, Legitimation, Valid Marriages.

1. Introduction

The concept of filius and nullius that prevailed in the England associates to illegitimate child. But before jumping into the concept and whole idealization of illegitimacy, one must be acquainted with what and how the concept of legitimacy came to existence. The legitimacy was much more with the reference to the succession of the estate or ruler and demand for an authoritative stricture for their governance. “Marx Weber said legitimacy a co - existence of the rule and external moral standard”. In the churches the child out of a putative or valid marriage were considered legitimate. But current need of the society has expanded onto non - discriminative society. “Allen Buchanan propounded as legitimacy in the terms of the state is that which looks onto the adherence to individual human rights”. A place where of legitimacy shall be the one were no such stagnant norms or customary beliefs that hinders the idea of justice, where as the continuance of old century's idea of illegitimacy questions the concept and status quo of legitimacy of a state as well. The rights guaranteed by the United Nations in the United Declaration of Human Rights are clearly curtailed for a child whose bifurcation made since his or her birth. The state parties to UN when adhere either by the way direct implications or modifications in their respective statues of imbibing the principles and norms of the UDHR and other correlated conventions and treaties but such discrimination of child is a clear violation of UN verified conventions. The major issue that pertains is the private laws of every sovereign nation, whenever inter - nation relations between different citizens exist which law shall have supremacy is always in question. Lex domicili is determinative of which laws shall the child be subjected to but in situations where one nations abolishes the concept of legitimacy and the another upholds the same whose exercise of jurisdiction shall be just and

equitable in the realization of rights of a child. For unanimous acceptance for abolition of the concept of illegitimacy at international is required, for UN shall require to amend and revisit the volitative laws and enforce the most just and equitable ones. The understanding of these laws directs how nations have progressively understood to need to acknowledge the rights of illegitimate alike to legitimate children. The nations and international agencies shall work simultaneously for identification abandonments caused due illegitimacy status of child and implementation of mechanisms for their proper foster care. There is shall be no way where any nation exalt the irrational laws for the illegitimate child.

2. Research Objectives

This research paper proposes to highlight the concept of concept of society which curtails the establishment of modern society. To the world which carries its binary image of protecting agency and simultaneously discriminative. This research paper is determinative:

- 1) To analysis of the different states differently deals with the mechanisms for addressing the issues of legitimacy, illegitimacy and legitimation process.
- 2) To determine even though being the signatories of the Convention of the Rights of the Child and the Optional Protocols do not uniformly adhere to their principles.

3. Theoretical Framework

Law regulating the legitimacy has its origin from the conception of marriage, pro - creational rights, inheritance rights and maintenance. For understanding the concept of illegitimacy the notion behind its governance has to be sought, which states that any child born out of a lawful wedlock i. e., the parents to the child were or were not

married according to the subjected state laws at the time of his or her birth. Illegitimacy is status of children begotten and born outside of wedlock. Many statutes either state, or are interpreted to mean, that usually a child born under a void marriage is not illegitimate if his parents clearly believed that they were legally married. In India, there exist personal laws which determine the legitimacy of a marriage and in correlation defines the status of a child in the society. In the England there were no statutory laws which governed the concept of legitimacy and legitimation but it openly accepted the concept of illegitimacy, the bastard. The absence of legalized actions created violation of rights i. e., the civil right of inheritance, the instances were legitimation led illegitimate enjoy all the rights of father's property and legitimate was deprived of such rights. Later after deliberate steps to regularize this concept was brought through Legitimacy Act, 1926, where children of divorced parents and child born through the process of insemination were to be considered as legitimate and *lex domicilie* to decide the status of legitimacy of a child born to English domicile anywhere in the world. In Philippines the concept legitimacy is broadened yet legitimation process is stigma to the whole statute, likewise situation of Georgia.

Against the backdrop of a changing world order world leaders came together and made a historic commitment to the world's children. They made a promise to every child to protect and fulfill their rights, by adopting an international legal framework – *the United Nations Convention on the Rights of the Child, 1990*.

Convention on the Rights of the Child, 1990: -

- 1) The preamble imbibes the values of personality, harmonious development of child in his or her family. To provide and ensure the protection of legal rights of child before and after birth.
- 2) Article 2 (1) - it states no discrimination on guardian's race, color, sex, language, religion, political or other opinion; national, ethnic or social origin; property, disability, birth or other status. But the idea of illegitimate child which bifurcates a child on the basis of origin, birth and other status. The idea of non-effectiveness of parents' or guardian's legal status exists which violative of rights of child guaranteed by this international convention. Here the overlapping of laws or non-adherence of international conventions and treaties at national level in totality leads to a suffrage of child upon whom the control or authority to determine or derive such distinction from other do not even exists.
- 3) The inherent right of life of every child guaranteed under article 6 (1). Right of life in context of Constitution of India, 1950 *Justice Krishna Iyer declared "human dignity is a clear value of our constitution not be bartered away for mere apprehension by anyone"*. The right of life incorporates right to life with dignity which is clearly violated as the rational nexus behind the need for such bifurcation is still unknown. The illegitimacy is nothing but resultant of old existing primitive idealized values of suppressing the easier.
- 4) Article 32 (1) - deals with protection from exploitation and promote development in all spheres - but an contrary demarcation of status of child upon his or her

birth which determines his or her societal status, standard of life and rights, shifts the idea behind this article and questions the whole implication of Convention on the Rights of the Child articles in real life.

- 5) Article 39 - guarantees psychological recovery and social reintegration of the child. Even states takers measure to legitimize the status of an illegitimate but certainly it is never enough for trauma the child faces since birth, these trauma are one of the reasons were children are forced to indulge crimes like trafficking, begging, drugs consumption etc.

The end result of births out a lawful wedlock has rapidly contributed in the rise abandoned children around the globe. The survey conducted by CARA (Central Adoption Resource Authority) of India gave about 11 million children abandoned since 2011. UNICEF published data that around 100 million orphans are there in the world currently and no doubts the actual figure as given will be much more worsened, as countries in order to maintain its international image do not publish actual or precise data. According to OCED (The Organization for Economic Cooperation and Development) the abandoned child's rate available from 30% of the countries under it, states about 40% rise of children were those who were born out of the lawful wedlock. These conventions and many other state laws yet the rate abandonment are increasing.

4. Analysis

The rights of an illegitimate child under Indian law.

The child rights are governed by personal laws according to Hindu Marriage Act, 1955 only child's born from a valid marriage according to section 5 shall be deemed to legitimate, and from void or voidable marriages i. e., sections 11 and 12 and illegitimate. Later on after the amendment of 1976 the children born from marriages u/s 11 and 12 were considered as legitimate, which means the granting of legal status and its subsequent rights of property and inheritance. Mohammedan law, there is no such rights of an illegitimate child in the property, but under Hanifi school, such a child can inherit the mother's property. Alike in the Christian law, there are no such rights of an illegitimate child in the property. Apart from the personal law the criminal law i. e., Criminal Procedure Code 1973 section 125 guarantees right to avail maintenance of illegitimate minor and unmarried daughter. The Indian Evidence Act, 1872 recognizes presumption of legitimacy of child born within 280 days of dissolution of a valid marriage.

The legal status of illegitimate child varies from one country, the intentness same to be worldwide. The notion behind eradication of ancient concept of illegitimacy, where societal status and pleasurable groups denominated the lives of underprivileged. The child, who bears no control, is put in front of a society in such a form where only discrimination for him or her can be seen in the eyes of people. As the world is moving ahead the centuries old idea of illegitimacy need to be revoked and which is seen on the advent of the 21st century. The common law

countries like India, U. S. A. have recognized the rights of illegitimate child. In United States the Supreme Court has struck down the concept of ignorance of rights of an illegitimate child sole reason being his or her illegitimacy. Also have adopted many for recognition of parent by the biological father i. e., under uniform probate code.

French laws - the law of filiation

Filiation means the relationship of child to his or her parents. Under French law of filiation of 1972 was brought to determine the legal relationship between the parent and the children, for the per - se children including both be it legitimate and illegitimate. The crux of law is make parents either of them, to with provide maintenance and financial assistance until the children attain stability, obligatory even for children who attains the age of 18 years, this is embodied in section 202 the French civil code. And evolving from this principle the filiation law was brought, prior to establish the legal relationship the law objectifies to determine the relationship between the parents and the children. It classifies the provision as to applicable on determination the legal status, namely applicability on:

- a) Both legitimate and illegitimate
 - b) Legitimate filiation
 - c) Illegitimate filiation
- 1) Provisions similar for both legitimate and illegitimate child: the duration determinable for a pregnancy by medical experts is 180 days at least and 300 days at maximum. For judicial interpretation the time period is taken as 121 days and child conceived after the said period will be denoted as a bastard. Another mechanism to recognize the status of child is the identification of child the social sphere i. e., the possession of the status. This is understood as by which family he or she is recognized in the neighborhood, by administrative authorities and recognition also symbolizes the foster care of child is provided by that family itself. "In Latin denomination this principle is referred with utmost importance and is called as *nomen, tractatus, fama*"
 - 2) The legitimate filiation: the expression of the legal relationship between the child and parents, parents a valid marriage, establishes the basis of that relationship. The foremost act is identification of legitimacy of pregnancy which is by the way of operation of presumption of legitimacy. The expression of presumption of legitimacy is equivalent to the conception of child in the marriage. The presumption is ascertained in the following manner: -
 - a) When a child is born within 179 days of the marriage, then such child is not a legal child born out of the wedlock. However, the husband to the marriage can apply in the court for the acquiring the legal status of the father to the child, but also he has the option of denying paternity. He cannot be at denial if at time of marriage, if he was aware of the pregnancy. If the mother is unmarried, then she can file application in the court for the test of paternity when upon the mother and the husband intends to marry.
 - b) A child born after 180 days of marriage or born before 300 days of days of dissolution of the marriage is the said to the legal child of the parents. The child so born

is said to be legally conceived one. The time period of 300 days when extendable for the situation of petition filed of dissolution marriage filed within such time, or in case of absence of husband the child so born will not be legitimate. The husband meanwhile anytime can file petition for revoking the legitimate or his paternity to the child, within 6 months of the birth of the child.

- c) After passing of 300 days of divorce and within 180 days when the divorcees decide to reconcile the child so born will be legitimate.

The proof of legitimacy filiation clarifies if a child is formally recognized by both the parents by the way of registration made to the official registrar at the time of birth, or by the manner of possession of status. The possession of status of a child is considered to be legitimate if both parent's acknowledges and is referred to belonging to the same family in the eyes of the neighborhood and the administrative authorities. Whenever both proof are fulfilled the legitimacy of child cannot challenged in any except of certain situations where the child questions or challenges the same is scenarios of the child was abandoned, or following either or both of the requisites and then abandoning him or her.

- 3) The illegitimate filiation: The legal relationship between the child and parents who are not married at the time of birth or conception of the child. The principle of presumption of paternity is rendered invalid in such situations, and then establishment of filiation and identification of status remains the mechanisms to resolve the dilemma.
 - a) Establishment of illegitimate filiation: - "voluntary solemn acknowledgement", at the time of birth registration is administered only on the mother's name but subsequently is father determines a filiation document mentioning the mother's name it is said to be acknowledged by the father as well. The absence of father's name itself is the identification of illegitimacy. Such acknowledgement can be done any time after the conception of the child. Such child after attaining majority of 10 years his or her acknowledgment cannot be challenged by acknowledging parent, rest can be questioned or challenged in the court by child or the parent. "Court's action to establish illegitimate filiation", court anytime upon the either or both of the parents can illegitimize an acknowledged child on the grounds of notorious acts of mother, or conceived after rape, or impotency of father etc. .
 - b) Status of illegitimate child: - child even though filiated with one parent's is equally liable for legal maintenance as that of a legitimate child. After the age of 15 the child's consent is necessary in affiliation of parent's name, which can be brought by the way of court's action.
- 4) The legitimation process: the process of legitimizing an illegitimate isn't complex. It states: -
 - a) Either the parents of conceived the child before marriage marries, or remarries after dissolution of marriage in 180 days, or
 - b) The legitimation is obtained through *postnuptias* the by order of the court.

The rigid and reformative steps taken by the different nation's still unclear image of understanding of illegitimacy prevail worldwide. In Russia the principle of illegitimacy went through many ups and downs. The illegitimates had no legal status and lacked the father's rights their right to participate in the military or civil serviced was also curtailed as they were restricted in authoritative posts and were confined to clergy, but after 1917 the illegitimate were equal status as that of a legitimate child also it spoke about the establishment of paternity. Paternity the father's right on the child can established by an application submitted to department of civil status registration by both the parents, or to the court by either of the parent. The revision took place due the changes brought in the statuses of the registered and unregistered marriages. It also recognizes the use of patronymic name of father or his last name by the child if mother do not objects. The laws, for the parents oblige them to maintain and avail inheritance rights alike for both legitimate and illegitimate offspring.

- 5) The end of the need for "the illegitimate" identification of a child is needed which encompasses "What is legitimacy?" Legitimacy is the relationship between parents to a child, which into determines the status or position of the child in the society. The relationship determines:
- Existence of bundle of rights of the child, and
 - Creation of legal status in relation to those rights. Like property rights creates the position or status of inheritance of the heir.

Apart from the above stated states but other states like:

- Arizonian laws of 1921 of Arizona; every child is hereby declared to be the legitimate child of its natural parents and as such is entitled to support and education to the same extent as if it has been born in lawful wedlock. It shall inherit from its natural parents and from their kindred heirs lineal and collateral in the same manner as children born in lawful wedlock. It also identifies the legitimate status of children of divorced parents, or of void or voidable marriages.
- Peoples Republic of China in their Marriage laws article 25 states that, illegitimate child i. e., those are born out of lawful wedlock shall enjoy same rights as that of a legitimate child. No person shall be harmed or discriminated on the grounds of illegitimacy.

These nations have gone through fundamental changes for giving equal rights to an illegitimate child which make him or her in a position equivalent to that of a legitimate by birth. But the existence of denomination still makes it difficult for the individual to preface himself or herself in the discriminative and suppressive society. Another aspect of illegitimacy is curbing childrens' who are a prostitute mother though they are given and trying for their upliftment with rights including (which constituted from articles 1 to 5 of UDHR): -

- Right to live with human dignity, free from exploitation.
- Right to shelter.
- Right to health and medical assistance.
- Right against inhumane treatment.
- Right against exploitation from forced labor.

- Right to participate in decision making.
- Right to protection any kind of negative element.
- Right to survive i. e., identity, access food and live freely.

All these mechanisms exists but majorly on paper because these conventions have failed to be implemented with a precisely executor mechanisms. Looking onto the rationality of nexus between the right of identification and measures of sustainment by the illegitimate it is rarely positive; also on the other hand giving a chance of legitimation is ratio of illegitimate would never diminish. On the one hand through the medium of international conventions, treaties, laws and byelaws the United Nations and the States guarantees right to life, equal treatment and discriminatory free life, and on the other hand they subsequently bifurcates on the genesis of relationship of the parents determining the status of the child and considerable rights given to one section of society to grant a suppressed status somewhat equivalent to the one which has it since birth. There is an urgent need for eradication of concept illegitimacy and then consequentially on legitimation, a similar position in terms of child rights mandatorily to the parents and not on the option or their discretion.

5. Conclusion

There is no illegitimate birth only illegitimate relationship whose invalidation repercussions has to be borne by a child who isn't vocal or in a position at the time of birth to understand the term with which he or she referred to. It's an ancient tradition to precise, whose rationality has been understood by the economically and fundamentally strengthened nations they as a consequence they have taken deliberate steps to put illegitimate and legitimate in a similar like situation. No amount differentiations in sovereignty could restrict a nation to uniformly try to withdraw the concept of illegitimacy. IDENTIFICATION – to - ERADICATION is the way deal with stagnation situation of illegitimacy. The eradication is no where possible with rigid laws at both national level

In fact we must inhibit from the most progressive forms of laws in the different states. The nations those have progressively addressed and tried to combat situations have found ways to deal with the issue. In up surging number of inter - state or country marriages the legality of such marriages which also vary accordingly and when the legalization is in question the outcome from questionable events is always chaotic, which ends up as questionable wedlock simultaneously resulting in questioning on legitimacy of child. The primary focus of the legitimacy isn't just concerning about the inheritance rights but it has shifted to determine the identification of the child where he or she is subjective to the actions of parents completely or partly of parents and partly of the legal processes of the nations that end up the child being in dilemma or subdued by others. The states who have recognized the rights of illegitimates shall participate in process reframing of laws to be made for upliftment of them otherwise for them to rise up from the suppression is difficult.

6. Suggestions

An easier way for understanding the uprooting of illegitimacy idea is in the United Nation as an agency for keeping up rights adhered. Along with other regional organizations like NATO, SAARC, ASEAN, EU etc. shall make it mandatory for to implement laws on its eradication as directed by UN from time to time basis.

The another understanding the concept of State sovereignty which every State thrives for so any agencies interference would intolerable to them rather a mid - way must be sort for it, the norms of agencies have followed mandatorily but the time, duration, mechanism and proportionality should be left directory to the States. Even though international execution mechanisms are weak and are majorly dependent upon few States who hold power a security council but doesn't mean cannot influence the bilateral and diplomatic treaties is a way to indulge in prohibition of the concept of illegitimacy.

To categorize with the reformative steps for the realization of the status of illegitimates could be:

- a) To recognize and dignify: the duty of every nation and international organizations is to determine and equivalent status of legitimate and illegitimate and allow them to live their lives with dignity conforming to rights under CRC and UDHR without any discrimination.
- b) To protect: the states shall ensure to take deliberate steps to eradicate the discriminative laws and practices against them and ensure the protection their rights at all levels.
- c) To vocalize: the most necessary equipment required to identification of the suppression and determination of the rights of illegitimate is to put in place anyone on behalf or for them put forward their hardships and determine discriminations not identifiable yet. The suppressions by the elite classes shall also be brought to an action.

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