Chapter 3

RIGHTS OF AN ILLEGITIMATE CHILD UNDER PRECODIFICATION LAW

Summary of the Chapter

0.0. Introduction
0.1. Opinion of Justice Ritchie

1.0. Jewish Law
1.1. Incapacities of a Mamzer
1.2. Civil Rights of a Mamzer

2.0. Roman Law
2.0.1. Principle of Agnation
2.0.2. Principle of Cognition
2.0.3. Suppression of Concubine

2.1. Position of Illegitimate Child after Constantine

2.2. Incapacities of Illegitimate Child under Civil Law
2.2.1. Strict View
2.2.2. Liberal View

3.0. English Law
3.0.1. English Common Law
3.0.2. Law of the Perish

3.1. Rights and Incapacities of Bastard
3.1.1. Sir William Blackstone

3.2. Reflections of English Bastardy Law in India
3.2.1. Indian Divorce Act. 1869
3.2.1.1. Part-4, Section-21
3.2.1.2. Part-9, Section-41 to 43
3.2.2. Indian Succession Act. 1925
3.2.2.1. Section-8,
3.2.2.1.1. Observations by Lord Westbury
3.2.2.2. Section-37,
3.2.2.2.1. Observations by Justice Panckridge
3.2.2.3. Section-100
3.2.2.3.1. Exceptions (1) and (2),
3.2.2.3.2. Legal Interpretations
3.2.3. Summing Up

4.0. **Muslim Law**

4.0.1. **Hedaya**
4.0.2. **Darul Mukhtar**
4.0.3. **Fatwa-E-Alamgiri**

4.1. **Maintenance Under Hedaya, CrP.C. and Indian Contract Act**

4.1.1. Section 125 of CrP.C.
4.1.1.1. Judicial Interpretations
4.1.1.2. Interpretations under Shia and Hanafi Law

4.1.2. Section 488 of CrP.C.
4.1.2.1. Judicial Interpretations
4.1.3. Section 23 of Indian Contract Act.
4.1.3.1. Judicial Interpretations

4.1.4. Summing Up

4.2. **Muslim Law of Succession**

4.2.1. Provision of Shia and Hanafi Laws
4.2.1.2. Judicial Interpretations
4.2.2. Summing Up

5.0. **Hindu Law**

5.0.1. **Manu**
5.0.1.1. Interpretations of Manu
5.0.2. **Apastambha**
5.0.3. **Vasistha**
5.0.4. **Baudhyana**
5.0.5. Summing Up

5.1. **Judicial Issues**

5.2. **Provision of Maintenance**

5.2.1. **Manu**
5.2.2. **Yajnavalkaya**
5.2.3. **Brihaspati**

5.3. **Provision of Inheritance**

5.3.1. **Brihaspati**
5.3.2. Manu
5.3.2.1. Interpretations of Manu
5.3.3. Yajnavalkaya
5.3.3.1. Interpretations of Yajnavalkaya
5.3.4. Jimutvahana

5.4. Interpretations of Text and Terms
5.4.1. H.H.Wilson
5.4.2. Professor Monier Williams
5.4.3. Mr.Burnell
5.4.4. Devenda Bhatt
5.4.5. Colebrook
5.4.6. Vachaspati Mishra
5.4.7. R.N.Sarkar
5.4.8. Judicial Interpretations
5.4.9. Summing Up
5.4.9.1. Supreme Court of India
5.4.9.2. Privy Council
5.4.9.3. Summing Up
**0.0. INTRODUCTION**

An illegitimate child not only suffered from a social stigma in every legal order but he was put to unfortunate positions as regards his rights of inheritance and support are concerned. Its sufferings or deprivation are based on the maxim, "Peter est quem nuptiae demonstrant."

**0.1. Opinion of Justice Ritchie**

He has given a legal interpretation thus:

"In my opinion the title of "legitimacy" or "illegitimacy" when attached to the status of an individual in any jurisdiction reflects the capacity or lack of capacity which the law of that jurisdiction recognizes in the case of the individual concerned. Just a legitimate when used in relation to a child is only a symbol employed to designate the legal rights and obligations which flow from being born in wedlock, so the word "illegitimate" is used to denote the limitations of capacity which attach to being born out of wedlock and the word "legitimation" is descriptive of the legal effects incident to being relieved of these limitations."

So the illegitimate child suffers from disabilities. Somewhere these are not so markedly pronounced and in some legal systems they are dominantly prevailing due to differing marital institutions and sex mores, differently integrated with economic, moral and religious practices.

**1.0. Jewish Law:**

**1.1. Incapacities of a Mamzer**

Basically speaking, Jewish law is legally inclined towards legitimacy having concepts like "kasher" and "pasul" but there is also a conception of "Mamzer" which it is said that to be something worse than a bastard in English law. He was the offspring of father and a mother between whom there could be, in law, no binding betrothal, the issue of either an adulterous connection between a married woman and a man not her husband or of an incestuous union within the forbidden degrees and those forbidden degrees are stated in the Holy Bible, *Leviticus chapter 18 and 20.*

---

1 Montano v Sandoz (1964) S.C.R. 317 (Canadian Law).
In spite of the fact that moral and ethical values as enshrined in the religious scriptures, are mandatory, the restrictions imposed on the illegitimate child are mild in nature not so derogatory. The restriction imposed on a mamzer is as ordained in the Holy Bible thus:-

"An Ammonite on Moabite shall not enter into the congregation of the Lord; even to their tenth generation shall they not enter into the congregation of the Lord for ever."

It means that a mamzer is not to marry an Israelite and this restriction extends up to the tenth generation which included also the female mamzer.

Finding these Commands so harsh the Rabbies gradually narrowed their scope that if a Gentile embraced Judaism, incest or adultery in his direct time of descent was ignored and he was permitted to intermarry. Thereby it means "to enter the congregation." If a mamzer married a slave woman, their children acquired her status. Thus if she or they were later manumitted, they were free of their father's disability and could "enter the congregation."

Since the descendants of a mamzer were disqualified "into the tenth generation," a man's own admission alone that he was a mamzer was not permitted to stigmatize his grand children. His own admission was accepted to disqualify only himself and his child and even with respect to a child, it was not admissible if that child already had children of his own. In any event, the strict proof required rendered the exclusion for ten generation's a dead letter. In the absence of conclusive evidence to the contrary even Jew or Jewess was a "Kasher."

1.2. Civil Rights of Mamzer

Other than the disqualifications to marry within the "household of Israel" the mamzer had full civil rights. He or she could inherit from either parent, but from the father only if he acknowledged the child. The mamzer was a relative within the rules of evidence and of

---

2 Holy Bible, Deuteronomy 23.3
4 Ibid,E.H.4.21
5 Ibid Kiddushin 78b.
family law generally. Males were competent to be witnesses and they could even become Rabbis\(^7\) or Judges.

As we have seen, Jewish Law is not divorce from religion; it does take into consideration the human aspect of the creation of God but still keeps the distinction alive. Though some restrictions are imposed, there are provisos to set aside the impositions, but some distinctive feature remained in the law books and the Jewish Society in Ancient period accepted that sex moors have to be respected.

2.0. Roman Law:

In Roman law the position of an illegitimate child in the early period was pitiable. Because of the peculiar structure of the early Roman family,

2.0.1. Principle of Agnation

The concept is based on the **principle of agnation**; the illegitimate child had no family, no country, no name, no ancestor and no god. He had neither a father nor a mother. However, he was not made a non entity because of any idea of sin was involved in procreating such children but the Roman family, the Roman Society and the Roman State were constituted in such a manner that he did not fit in any-where. In an agnatic Roman family such a child could not be related to the father, and, legally speaking, a woman under Roman law could not have any descendants and therefore could not be related to the mother\(^8\).

2.0.2. Principle of Cognition

But with the development of the **principle of cognation** the illegitimate child came to have rights of support and succession with regard to his mother. The attachment of the child to his mother's family was due to the rise of the "**Jus naturale**" under which the principle of cognation came to be regarded as the basis of kinship.

2.0.3. Suppression of Concubine

Constantine, the Christian Roman Emperor discouraged the concept of Concubine and suppressed all rights of illegitimate children against their mother except in the case of those born in concubine, which had become a recognized institution. Before the advent of Christian influence, obligation of the putative father to provide for the aliment was also recognized and the putative father could make gifts to his illegitimate children. But

---

\(^7\) Rabbi means a Jew qualified to expound and apply the halakah and other Jewish Law

Constantine, the Christian Roman Emperor discouraged concubine and pursuant to that task he forbade all gifts to illegitimate children by the putative father. The rights of aliment and of succession of illegitimate children were also done away with. Thus the illegitimate children born of concubine were given the status of the mother. This continued to be the position till the end of the Roman Empire. We find this position in the Institute\(^9\) of Gaius and Rules of Ulpian. Gaius I, 83-85 wherein the maxim of "ius gentium" has been ordained. The Lex Minicia modified this rule by laying down that if one parent was a peregrine and the other a citizen, the issue would have an inferior status. But this was in turn modified by a Senatus Consultum of the Emperor Hadrian which again lay down that in such a case the child will have the status of the mother\(^10\).

2.1. Position of Illegitimate after Constantine

After Constantine, we find that only two categories of illegitimate children-adulterine and incestuous were denied all rights, while others were granted several rights against the putative father. This right of aliment was recognized. The putative father could also make some gift of his property. He could give 1/12 of his property and in case no legitimate child, up to 1/4 of his property. In the times of Justinian we find that the position of illegitimate children i.e. "liberi naturals" have the rights of support against both parents, right of succession in the mother's property and right of partial succession in the property of the father. Such child could inherit up to 1/6 and in case of failure of legitimate child, the father could give up to 1/2.

Thus we find two types of situations:-

2.2.1. Strict View

An illegitimate child has no lawful father and therefore no rights of succession "ex parte paterna" but partial succession in the form of gift of property at the option of the putative father but the right of aliment is there for the illegitimate child.

2.2.2. Liberal View

The\(^{11}\) illegitimate child succeeds to the mother and her blood relations on the maxim, "eene moeder maakt geen bastard." This was the opinion also of Grotius\(^{12}\) However;

---

9 James Muirhead- The institute of Gaius and Rules of ulpian (1895 Ed.) page 115,118
10 Ibid I, 84
11 Code of Justinian, Digest 38.8.2;
12 Grotius 2.27.28
Justice Vaner Lindep takes a contrary view. In Mogamat Jassiem v The Master and In re Russo his Cape Court took a very liberal view.

2.2.3. Summing Up

Leaving behind this minor controversy, it is clear that whatever rights are given and in whatever shape they are given to the illegitimate children born as a consequence of concubine are derogatory in nature and are given by way of mere sustenance and not as a heir.

3.0. English Law:

3.0.1. English Common Law

The common law of England was ruthless in its denial of rights to children born out of wedlock. The bastard was in every sense of the term "filius Nullius." At common law the illegitimate child was completely isolated from his parents, even through he was born to unfree parents but he was free himself. At the outset neither parent had any right to the custody or guardianship of the child. The law recognized no legal relationship between the mother and the child, far less between the father and the child. In no way could the child born out of wedlock inherit from his father or even from his mother. He had no heirs but those of his own body. If he died without lawful issue, any real or personal property might escheat to the crown. He had no rights of support against either of his parents.

3.0.2. Law of the Perish

From early times the illegitimate child was cast upon the Parish for support and was cared for like any other vagrant or poor person. However, when the Parish showed its unwillingness and reluctance to care for such children then the poor Paw act of 1576 put the duty of the maintenance on both parents. However, later legislation shifted the burden to the father. Nevertheless the bastard was under none of the harsh disabilities of civic degradation to which he was subjected elsewhere.

3.1. Rights and Incapacities of Bastard

3.1.1. Sir William Blackstone

13 Van der Linden J., 110.3. in re-Russo(1986) 13.Cape Count.185.
14 Mogamat Jassiem v/the Master (1891) 8 Cape Count 259.
15 Case of Russo (1986) 13 S.C. 185
16 Encyclopedia of Social Sciences, page 583
17 Poor Law Act of 1809, 1844 and 1872
In commentaries on the Laws of England has spoken about the rights and capabilities of bastards. According to him the rights are very few, being only such as he can acquire; for he can inherit nothing, being looked upon as the son of nobody; and sometimes called "filius Nullius," sometimes "filius popule." Yet he may gain a surname by reputation, though he has none by inheritance. All other children have their primary settlement in their father's parish; but a bastard in the parish where born, for he hath no father. The incapacity of a bastard consists principality in this, that he cannot be heir to anyone, neither can he have heirs but of his own body; for, being nullius filius, he is therefore of kin to no body and he has no ancestor from whom any inheritable blood can be derived. A bastard was also, in strictness; incapable of holy orders; and though that were dispensed with, yet he was utterly disqualified from holding any dignity in the church but this doctrine seems now obsolete and in all other aspects there is no distinction between a bastard and another man. And really any other distinction but that of not inheriting, which civil policy renders necessary; would, with regard to the innocent offspring of his parent's crimes, be odious, unjust and cruel to the last degree, and yet the civil law, so boasted of for its equitable decisions, made bastards in some cases incapable even of a gift from their parents.

This descriptive picture of the rights and capabilities of the bastard given by Sir William Blackstone does reveal the inequitable aspect of law then prevailing. In capabilities are numerous and if some rights are there, they are derogatory and negligible.

3.2. Reflections of English Bastardy Law in India

Now we would like to see its reflection in India because Indian Succession Act is the legacy of the English law made applicable to Indian Christians. Along with it we have to also go through the Indian Divorce Act 1869. These two Enactments read together will throw light on the concept of child that wherever the word "child" is used, it means "legitimate child" unless otherwise stated or the context so states.

3.2.1. Indian Divorce Act 1869.

There are two chapters i.e. Part IV Section 21 and Part XI Section 41 to 43 which speak about the child.

3.2.1.1. Part-4, Section 21

It speaks of the annulled marriage:-
"Where a marriage is annulled on the ground that a former husband or wife was having, living spouse and it is adjudged that the subsequent marriage was contracted in good faith and with the full belief of the parties that the former husband or wife was dead, or when the marriage is annulled on the ground of insanity, children begotten before the decree is made shall be specified in the decree and shall be entitled to succeed, in the same manner as legitimate children, to the estate of the parent who at the time of marriage was competent to contract."

This section used the word "children." It is to be read with the other word "marriage." Combining the two to be read together the legislative intention is very clear that it means to say as "Legitimate children." However, this section is there to clear the doubt and to avoid the bastardization of the child. The rule laid down in Russell v Russell was that no evidence can be adduced by spouses that intercourse had not taken place between them if the effect of such evidence would be to bastardize a child. The spirit of the decision lies itself in Section 21 of the Act. This rule conferred legitimacy on many children who were in fact adulterine bastards. Some of the High Courts in India followed the said rule though the said rule appears to be contrary to Sec 118 and Section 12 of the Evidence Act. But however, Section 112 of the Evidence Act allows the presumption of legitimacy of the child during marriage unless it is proved that there was "no access."

3.2.1.2. Sec 41 to 44
They speak of custody, maintenance and education of the minor children, vesting power in the court to pass such a decree in a suit for separation or suit for dissolution or nullity of marriage. Even these sections speak of both "children and marriage." Thus the child has been considered as legitimate child only and it does not include "illegitimate child." To augment it further we have to look to the various provisions of Indian Succession Act 1925.

3.2.2. The Indian Succession Act 1925
This Act is only a consolidating Act and not amending enactment and as such the provisions of the Acts consolidated, prima facie the provisions of this Act have the same

20 Russel v/s Russel, 1924 A.C.687
effect for which it is substituted. The Indian Succession Act 1865 falls within the Indian Succession Act, 1925. There are four provisions, which are to be legally probed.

3.2.2.1. Section 8.
"The domicile of origin of an illegitimate child in the country in which, at the time of his birth, his mother was domiciled."
The section provides that the domicile of origin of an illegitimate child is the country in which at the time of its birth its mother was domiciled.

3.2.2.1.1. Observations of Lord Westbury
Lord Westbury's dictum in Udny v Udny 22 where succession to personality depends upon the legitimacy of the claimant, the status of legitimacy conferred on him by his domicile of origin i.e. the domicile of his parents at birth, will be recognized by the courts of the country and if that legitimacy be established, the validity of the parent's marriage should not be recognized as a relevant subject of investigation. Thus the conclusion follows from it is that the illegitimate child draws its origin from the mother because maternity is always an established fact. Now from here we will go to Section 37 of the Act which speaks of rules of distribution of the interstate’s property.

3.2.2.2 Section 37.
"Where the intestate has left surviving him a child or children but no more remote lineal descendants through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children."

In this section the phrase "child or children" has been used. It refers23 legitimate child or children according to the law of the country in which the intestate had his domicile at the time of his birth. The question arises as to whether "child or children" includes also illegitimate child or children. This issue was agitated in the goods of Sarah Ezra 24 wherein a contention was advanced that the word "child" in Section 37 includes an illegitimate child and this contention was based upon Section 8 of the Act which speaks of an illegitimate child.

3.2.2.2.1. Observations of Panckridge J:-
"In my opinion this is concluded by authority. In Smith v Massey 25 Bachelor, J., held that where there were two sisters born of unmarried parents' the son of one of them was not the nephew of the other for the purposes of Section 105 of Indian Succession Act, 1865 and he observed that he could not conceive that such an Act which defines certain relations simplicities intended any other relations than those flowing from lawful wedlock. If this is correct "child" cannot possibly include an illegitimate child."

He further said that this is a decision of 1906 and the Present Act was passed in 1925, I hold that the ordinary rule for interpretation of Statutes must apply, namely that where words or expressions in a statute are plainly taken from an earlier statute in pari materia and have received judicial interpretation, it must be assumed that the Legislature was aware of such interpretation and intended it to be followed in later enactments. Thus the case has made clear that child or children wherever used means legitimate child or children. So the illegitimate child is not entitled to a share in the property of the deceased intestate.

3.2.2.3. Section 100

"In the absence of any intimation to the contrary in a will, the word "child", the word, "son," the word "daughter," or any word which expresses relationship, is to be understood as denoting only a legitimate relative, or where there is no such legitimate relative, a person who has acquired on the date of the will, the reputation of being such relative."

This Section corresponds to Section 87 of the old Succession Act of 1865. The principle that is laid down in this Section is that a testator must be presumed to intend his legitimate relations unless the will itself contains an intimation to the contrary or when there is no legitimate relative coming within the description of the mentioned legatee, he must have acquired the reputation of being such a relative. It is clear therefore that a relative who is "en ventre sa mere" and not legitimate cannot come within the category of a person who has acquired a reputation.

3.2.2.3.1. Exceptions

There are two situations or exceptions where an illegitimate child can take under the will.

25 Smith v/s Messy (1906) 30 Bom. 500.
(i) Where it is impossible from the circumstances of the party that any legitimate relative can take as in a case where there is no legitimate relatives; and

(ii) Where the testator has used a nomenclature showing on the will itself that he clearly means to include illegitimate children.

3.2.2.3.2. Legal Interpretations

This section lays down the principle recognized under all systems of jurisprudence that where a person refers to his offspring in the course of his will, he must be deemed to mean only his children born in lawful wedlock, and not anyone who is the result of an illegitimate connection.

In Oclesto v Fullalo it was held that an illegitimate child, "en ventre sa mere," cannot be reputed to be the child of a particular man.

In Owen v Bryant a testator bequeathed his property to his four children. Two of them were legitimate and two others were illegitimate. It was held that the legitimate and illegitimate may take together under a "designatio personarum."

In Dorin v Dorin the testator bequeathed his property to three children of A born before her marriage. The forth child of A claimed under the will. It was held that nothing could be claimed for a fourth illegitimate child whose existence the testator had not known.

Thus the above cases show that per se the illegitimate child cannot claim under the will unless particularly stated so.

3.2.2.4. Section 109

"Where a bequest has been made to any child or other lineal descendant of the testator, and the legatee dies in the life time of the testator, but any lineal descendant of his survives the testator, the bequest shall not lapse, but shall take effect as if the death of the legatee had happened immediately after the death of the testator, unless a contrary intention appears by the will"

26 Sec.87 of the old Succession Act 1865, in re Pearce (1914) 1 Ch. 254
27 Oclesto v/s Fullalo, 9 Ch. 147.
28 Owen v/s Bryant,2 DM &G 697
29 Dorin v/s Dorin,7 HL 568
In this section the phrase "any child or other lineal descendant" is used. Again the phrase "any child" became a legal issue. It is well established by authority that illegitimate children are not included in the term "child" in deeds or other documents unless some repugnancy or inconsistency would result from their exclusion.

3.2.2.4.1. Legal Interpretations

In *Swaine v Kennerley* 30 Lord Eldon L.C., said, the will itself must prove that illegitimate children are included. The general rule is that an illegitimate child is included in the term "child" only when there is "designatia personae". It is further held in *Jagdish Chandra v Raipada* 32 that in the absence of any indication in the language of this section it is proper to conclude that the child or other lineal descendant cannot be held to embrace an illegitimate child or descendant.

In *Sophia Blin v Marl David* 33 is said that it is necessary that the descent must be by a lawful marriage and should not be tainted by illegitimacy thus a daughter’s illegitimate son or a son's illegitimate daughter or other illegitimate issue cannot be said to be a lineal descent.

3.2.3. Summing Up

So the statutory provisions and the Judicial decisions are so clear that under Christian law in India, a "child" does not include illegitimate child and that illegitimate child can claim under the will only if he is so mentioned or he has been reputed to be such in the absence of legitimate descendant. So the illegitimate child is deprived by law and is kept on the mercy of the putative father. So an illegitimate child is no doubt, a child, a creation of god, but not a legal child and cannot seek any remedy under law, because there is no warmth or compassion in the cold courts.

4.0. Muslim Law.

The right of an illegitimate child to maintenance and inheritance is well defined in the various authorities on Muslim Law. As regards maintenance it has been defined as follows:-

---

30 Swaine v/s Kennerley (1813) I V & D 469
31 Beachcroft v Beachcroft (1816) 1 Mad. (430)
32 Jagdish Chandra v/s Raipada,AIR 1941 Pat. 458.
33 Sophia Blin v/s Marl David, 41 IC 542
4.0.1. Hedaya\textsuperscript{34} All those things, which are necessary to the support of life such as food, clothes and lodging, many confine it solely to food.

4.0.2. Darul Mukhtar\textsuperscript{35} 'Nafaqa' literally means that which a man spends over his children; in law it means feeding, clothing and lodging; in common use it signifies food.

4.0.3. Fatwa-i-alamgiri\textsuperscript{36} Maintenance comprehends food, raiment and lodging, though in common parlance it is limited to the first.

Though maintenance is clearly defined in authoritative books of Islam, its applicability to an illegitimate child is rather prohibited because of the concept of "\textit{nullis filuis}" and Islamic law is very rigid and static in this regard.


4.1.1. Sec.125 Cr.P.C.

According to various verses of \textit{Quran} cited in Hedaya a father is liable to maintain his children but in Muslim law the father of an illegitimate child is not bound to maintain the illegitimate child. But under Hanafi law, a mother is bound to maintain her illegitimate child. However, under Section 125 Cr.P.C. 1973 a father is bound to maintain his illegitimate child.

4.1.1.1. Judicial Interpretations

In Pavitri v Katheesumma\textsuperscript{37}. A question arose about the maintenance of an illegitimate daughter born of Mohammedan male and Hindu female, as to whether she has a right to claim maintenance against putative father or his assets. The court held that Mohammedan Law appears to impose no burden upon the natural father of an illegitimate child.

4.1.1.2. Shia and Hanafi Law

It would, therefore, be seen that an illegitimate child is not entitled to maintenance from either parent under \textit{Shia Law} and only from mother under \textit{Hanafi law} and thus the appeal is dismissed purely considering the Mohammedan law. It is worth noting that in this case no maintenance was claimed under Section 125 Cr.P.C 1973.

4.1.2. Sec.488 of Cr.P.C.

\textsuperscript{34} Hedaya 140, volume -9, page 140-141
\textsuperscript{35} Darul-Mukhtar, vol.1:316
\textsuperscript{36} Fatwa-i-Alamgiri vol.1:372
\textsuperscript{37} Pavitri v/s Katheesumma, AIR 1959 Ker. 319
In Nafees Ara v Asif Sadat Ali Khan\footnote{Nafees Ara v/s Asif Sadat Ali Khan, AIR 1966 All. 143.} the petition was filed under Section 488 Cr.P.C of 1898 claiming right of maintenance for an illegitimate child. In this case the court referred to various case laws and held that the fact that Mohammedan law makes no specific provision for granting or prohibiting the grant of maintenance to an illegitimate child against the father, does not lead to the inference that the criminal court or civil court has no jurisdiction to grant such maintenance. The provisions of the code of criminal procedure are part of the General Law of the land, which in the absence of any contradictory provision in Mohammedan law is binding on Mohammedans as on other citizens of the country. Therefore apart from Mohammedan law the illegitimate child has a right to grant of maintenance from the father. It is to be noted that this provision is that of an anti vagrancy act and it is to be proved also that father has sufficient means and that the illegitimate child has no means of sustenance. This provision is not automatic.

4.1.3. Sec.23 of Indian Contract Act

In Sukha v Ninni\footnote{Sukha v/s Ninni, AIR 1966 Raj. 163} the point agitated before the court was whether an illegitimate child can claim maintenance based on the agreement. In this case two points were raised:

4.1.3.1. Issues for Interpretation

(i) That under Muslim Law a Mohammedan is not bound to maintain his illegitimate children.

(ii) Even if there is agreement it is unenforceable as it violates the provisions of Muslim law and thus it is void under section 23 of the Contract Act.

The court held that the terms of agreement for maintenance are to be enforced regardless of the provisions of personal law. An agreement to maintain an illegitimate child, for which the Mohammedan law as such makes no provision, will not have the effect of defeating the provisions of any law. As a matter of fact maintenance of illegitimate children has been statutorily recognized under Section 488 Cr.P.C and it is in consonance with this wholesome public policy that the offspring born under such circumstances are to be provided for and should not be left to the misfortunes of vagrancy and its attendant social consequences.

4.1.3. Summing Up
Thus under Muslim Law putative father is not bound to maintain his illegitimate child though he can commit a sin of illicit relationship with the mother of such child. The illegitimate child can claim maintenance under 125 Cr.P.c. provided the other conditions imposed are satisfied. Claiming of maintenance under 125 Cr.P.c. is not a blank cheque.

4.2. Muslim Law of Succession.

Muslim law is one of those few systems of law of the world which still subscribe to the notion that a child born out of wedlock is "Filius Nullius." According to Muslim law it has no "nasab." Neither parent has any obligation towards him.

4.2.1. Provisions of Shia and Hanafi Laws

Shias still rigidly adhere to abovementioned view though the Hanafis have given some relaxation to the extent that an illegitimate child for its nurture should be left in the care of the mother till it is seven years old. After that age even the mother has no obligation towards it. In Hanafi law an illegitimate child has no right to claim inheritance from his putative father but he inherits from the side of the mother. In Shia law an illegitimate child neither inherits from father nor from mother.

4.2.1.2. Judicial Interpretations

In Bafatune v Bilaiti Khanum 40 A Hanafi woman died leaving a husband and an illegitimate son of her sister. A question arose whether the illegitimate son of her sister is entitled to inherit her property or not. The court held that the illegitimate son of the sister is entitled to inherit as he is related to the deceased through his mother. Though natural relationship is not recognized under Muslim law as affording a right to inherit but the exception is there for natural relationship between sisters.

Rehmatullah v Maqsood Ahmed41. It is a peculiar case. Mst. Qadri produced two sons by Sadat. One illegitimate Rehmatullah, the other legitimate Mohammed Yakub. The issue before the court was whether the illegitimate son born out of the same father is entitled to inherit or not. The court held that they are not related to each other as uterine brothers and as such the illegitimate child can't inherit.

40 Bafatune v/s Bilaiti Khanum (1903) 30 Cal. 683
41 Rehmatullah v/s Maqsood Ahmad, AIR 1952 All 640.
In Pavitri v Katheesumma\textsuperscript{42}, though the question was that of maintenance, the Court discussed the law of inheritance under Muslim Personal Law and said that a child born to a Muslim is only an illegitimate child and such child does not inherit from its putative father. Thus indirectly Law of maintenance was discussed through the law of inheritance.

Sahebzadee Begum v Himmut Bahadur\textsuperscript{43}. It is a case under Shia Law. The court relying upon Baillie II, 305 has said that an illegitimate child does not inherit at all, not even from his mother or her relations nor do they inherit from him.

4.2.2.Summing Up
So in conclusion, the rights of a Muslim illegitimate child are not worth the name except nurturing up to the age of seven years. It has no rights at all. The creation of god is even deprived of sustenance. The only ray of hope lies in Sec 125 Cr. P.c., which is also dim in view of conditions imposed. Such a child is to seek sanctuary on the footpaths and seek sustenance from begging or other unsocial acts undesirable by the society and punishable under law. It is a clear violation of the rights, guaranteed by the constitution, of dignity, equality and humane life.

5.0.Hindu Law.
Under Hindu law an illegitimate child has never been considered as Nullius Filius. In some cases he has been considered to be a member of the family. More appropriately it can be said that in Hindu law the illegitimate child and putative father and natural mother have never been considered strangers to each other.

5.0.1.Manu
Manu has recognized twelve types of sons, six are kinsmen and heirs and six others not heirs (but kinsmen\textsuperscript{44}). In the next two verses IX 159-160 the description of these two categories of sons have been given as heirs and kinsmen and only kinsmen and not heirs\textsuperscript{45}.

5.0.1.1.Interpretations of Manu
The commentators like Kull; Nar; Ragh; and Nand; have described that the first six inherit the family estate and offer the funeral oblations and the last six do not inherit but

\textsuperscript{42} Pavitri v/s Katheesumma,AIR 1959 Ker. 319.
\textsuperscript{43} Anibzaadee Begum v/s Himmat Bahadur,(1869) 8 W.R. 512 On Review (1870) W.R. 125 (vol. 14)
\textsuperscript{44} Manu IX-158.
\textsuperscript{45} Gautama XXVIII 31-33; Vesk. XVII 25,38; Baudhayana II,3,31-32.
offer libations of water. However, there is conflict of opinion about recognizing various types of sons.

5.0.2 Apastambha

Apastamha is against such recognition and says that "If a man approaches a woman who had been married before or was not legally married to him or belongs to a different caste, they both commit a sin". He further says that "through their (sin) their son also becomes sinful".

5.0.3 Vasistha

Vasistha's advocacy of old institutions recognizes the affiliation of eleven kinds of substitute sons as also stated by Gautama and Baudhayana.

5.0.4 Baudhayana

He says that "He who is begotten by an other person on the wife of a deceased person, or on the wives of an eunuch or of one incurably diseased, is called the son begotten on a wife; such a son has two fathers, and belongs to two families; he has a right to present the funeral oblations and to inherit the property of his two fathers." According to Baudhayana, society is bound to recognize the illegitimate sons of wives and to give them the same rank as the sons of the body born in lawful wedlock. He sees no impropriety in the usage and attaches no stigma to such offspring.

5.0.5 Summing Up

Thus there was no social stigma as such. Similarly a son born to a dasi has also been recognized and its rights to maintenance are vividly clear but its rights to inheritance appear to be very clearly derogatory and in many case no rights at all. So the rights of an illegitimate child called "Dasiputra' are put under two categories:-

1. Illegitimate sons of a Hindu belonging to one of the three regenerate classes by a dasi
2. Illegitimate sons of a sudra by a dasi.

5.1 Judicial Issues

However when such cases were agitated for Judicial interpretation, many other attendant legal issues were raised such as:-

(i) Who is a dasiputra?
(ii) Illegitimate sons of a Hindu by a woman who is not a dasi.

46 Apastamba II 6.4-5.
47 Baudhayana IV.2.
48 Rajkumar Sarvadhitikari-Hindu Law of Inheritance- Tagore Law lecturer 1880, page 155,157,162
49 Mulla's - Principles of Hindu Law Page 552.
(iii) Illegitimate sons of a Hindu by a non-Hindu woman.

Now, before dealing with the rights of an illegitimate child with regard to maintenance and inheritance, we have to see the general concepts in the sastrik law as appear in the scriptures.

**Maintenance under Hindu Law (Shastrik)**

5.2.1. **Manus**

Manu has spoken thus:-

| Ye jāta dṛṣṭamā va ye tāṁ vyaśṭiḥ.  |
| dṛṣṭamā hi nābhānta dṛṣṭimāṇaḥ niyamhit. || मनु: ||

They who are born, and they who are yet un begotten, and they who are actually in the womb, all require means of support; the dissipation (of their hereditary source) of maintenance is highly censured.

Manu again says that

| bhṛṇa pōṣṭvāṃśya pṛṣṭastā svargādān.  |
| nārka pōṣṭa chaśay tasmādavyātāt tān bhṛṅte. || मनु: ||

The support of the group of persons, who should be maintained, is the approved means of attaining heaven, but hell is the man's portion if they suffer: therefore he should carefully maintain them.

**Manu** at another place says that:-

| n mātā n pītā n sūtī n puṣṭa—tāṃgaṃḥ āhūnti.  |
| tāṃgaṃḥ tāntām aṭaṇāḥ rājadharmadanda: śatānti bṛt. || मनु: a.3.6.  |

Neither mother nor father, nor wife, nor son, deserves abandonment; one abandoning these when not degraded (or outcasted for commission of any heinous sin) shall be punished by the king six hundred (panas). The commentators have explained

---

50 Manu cited in Dayabhaga i, 45.
51 Manu cited in Dayabhaga ii, 23.
52 Manu viii, 389.
abandonment to mean refusal to maintain and in the case of parents, also to serve and attend.

5.2.2 Yajnavalkya

He also reiterates that

पितापुत्र-स्वसमान-दमत्त्वाचार्यशिष्यकाः।
एवाम् अपतितान्योन्य-त्यागो च जलदण्डाक्।। याज्ञवल्क्य।। २३७।।

Father and son, sister and brother, wife and husband, and preceptor and pupil; of these one forsaking the other if not outcasted, deserves the punishment of (the fine of) one hundred (panas)

Yajnavalkya at another place says that

पुत्रान् उत्पाद मंसूल्य वृत्तिजैशां प्रकृत्येषां।

"Property other than what is required for the maintenance of the family may be given." In Mitakshra it is said that:-

स्वं कुटुम्बाविभोधेन देयं।। याज्ञवल्क्य।। २९७।।

"A father shall perform the purification ceremonies of his sons, and provide them with a source of maintenance."

We find other citations in Dayabhaga. Narda has cited in Dayabhaga is that

भृते भर्तर्यपुत्रायः। पतिपुजः। प्रभुः। स्वितः। विनियोगेश्रस्कासु मरणे च स ईश्वर।।
पश्चाते पतिकुले निर्मत्वे निराधारे।
तत् सपिष्ठेण चासति। पितृपक्षः। प्रभुः। स्वितः।। नारद।।

53 Yajnavalkya-II-237.
54 Yajnavalkya II, 175.
55 Narda cited in Dayabhara xi, I, 64.
"When the husband is dead the husband's side (kin) is the guardian of his sonless wife; in disposal of property, in protection of the wealth and as regards her maintenance he has full power: if the husband's family be extinct or destitute of male member or helpless, and there be no sapinda of his, then the father's side (kin) is the guardian of the widow."

5.2.3. Brihaspati

He says that

पितृव्युक्तुदीहित्राणं भर्तुः स्वस्योयःगातुलान।
पूजःेत्त कव्यपूर्वव्यायां वृहाणाथायतियोन् स्त्रियः।। वृहस्यपि।।

(A widow inheriting her husband's estate) should honor with food and presents (for their benefit), the husband's paternal uncle, (and the like) venerable elderly relations, daughter's son, sister's son, and maternal uncle, as well as aged and helpless persons, guests and females (of the family).

From these various slokas one thing is very clear that almost every relation is to be maintained with the exception if such relative is outcaste or has committed any heinous sin. From it, it can be easily inferred that even an illegitimate child is to be maintained though not specifically mentioned in the slokas.

5.3. Inheritance under Hindu Law (Shastrik)

But there is another set of slokas, which speak of the maintenance and inheritance of illegitimate child. However, some misconception appears to prevail, when the Hindu Commentators treat the right of an illegitimate child while dealing with the partition of a joint property. They evidently mean that only such an illegitimate son as is a member of his father's family may get maintenance if the father is of a regenerate class; and a share if the father is a Sudra. There are slokas of importance, which speak of the rights of an illegitimate child.

5.3.1. Brihaspati,

He has spoken thus

अनपत्यस्य शुश्रुण्यः गुर्णितान! शूद्रयोगिजः।
लभेताजोवनं शेषं सपिष्ठ्यः समवाप्रयुः।। वृहस्यपि।।

56 Cited in Dayabhaga xi, I, 64.
"The virtuous and obedient son, born by a Sudra woman to a man who has no other offspring, should obtain maintenance, and let the kinsmen take the residue of the estate. Brihaspati further says that" A son begotten with a sudra woman by a twice born man is not entitled to a share of the landed property; one begotten with a woman of equal caste shall take all. Thus has the law been settled.

**5.3.2. Manu**

Manu says:-

दास्याम! वा दासदास्याम् वा ये शूद्रस्य सुतो भवेत्।
सौझातो हरेदं अशाम् इति धर्मं अवस्थित।। मनु: II

"A son (begotten by a sudra or on a female slave or on a female slave of a slave, may take a share (on partition) if permitted (by the father) this is settled law."

Manu further says that "a son who is begotten by a sudra on a female slave or on the female slave of his slave, may if permitted (by his father) take share (of the inheritance), thus the law is settled."

**5.3.2.1 Interpretations of Manu**

In sloka IX-155, Manu speaks of a sudra wife of a Brahmaana. According to Medh, Kull & others, the son of a sudra wife receives no share of his father's estate in case the mother was not legally married but according to Kull, Ragh, he will not get share if he is destitute of good qualities. However, Medh. and Nar., "no share means" no larger share (than one tenth) except if the father has himself given more. Dr. Buhler’s view is that the verse is intended to say that a son by a sudra wife cannot claim any fixed portion of the inheritance from his father who divides his estate.

But Manu in sloka 1X-179, has used the word dm (or) repeatedly which means or imply to mean "any other similar woman." These two slokas of Manu thus speak:-

1. Son of a regenerate class by a sudra woman or any other similar woman will get a share if permitted by his father.

2. By inference, he will be entitled to maintenance.

---

58 Ibid XXV-32.
59 Manu IX-155
60 Manu IX-179
5.3.3. **Yajnavalkya**

Yajnavalkya on the subject also says:

"Even a son begotten by a sudra on a female slave may get a share by the father's choice, but if the father be dead the (legitimate) brothers should make him partaker of half a share, one who has no legitimate brother may take the whole in default of (heirs down to) the son of daughters."

In these slokas we find two expressions, "sudra female" and "slave." Manu says, "A son begotten by a man of the servile class on his female slave or on the female slave of his male slave may take a share of the heritage, if permitted (by the other sons).

**5.3.3.1. Interpretations of Yajnavalkya**

"Yajnavalkya has enlarged the rule as follows, "Even a son begotten by a sudra on a female slave (dasiputra) may take a share by the father's choice, but if the father be dead, the brethren should make him partaker of the moiety of a share and one who has no brothers may inherit the whole property in default of daughter's sons. The Mitakshara explaining the latter part says, "However, should there be no sons of the wedded wife the son of the female slave takes, the whole estate, provided there be no daughters of wife, nor sons of daughters. But if there be such, the son of the female slave participates for half a share only."

**5.3.4. Jimutavahana**

He while referring to the text of Manu explains it, "the son of a sudra by a female slave or other unmarried sudra woman, may share, equally with other sons by consent of the father" and he paraphrases the text of Yajnavalkya by the words, "begotten on an unmarried woman and having no brother, he may take the whole property, provided there be not a daughter's son."

**5.4. Interpretations of Text and Terms**

---

61 Yajnavalkya II, 133-134
62 Manu viii, 390.
63 Mit I, xii, 2.
64 Dayabhaga ix, 39, 31.
From these texts we find two words, "slave woman" and "unmarried sudra woman." Thus we have to see, firstly, as to whether these two expressions are synonymous or have different placing.

In Rahi v Govinda, a detailed discussion on the meaning of dasiputra has been made.  

5.4.1. H.H. Wilson  
His Sanskrit and English Dictionary published at Calcutta in 1819 explained the masculine noun "Das" or "Dasa" as a fisherman, a servant, a slave, a sudra, or man of the fourth tribe. He further says that it is added as an affix to the names of sudras. The feminine "Dasi" is described as "a female servant or slave, the wife of a slave or a sudra."

5.4.2. Professor Monier Williams  
He, in his Sanskrit and English Dictionary published at Oxford in 1872 describes "Dasa" as a fisherman, a boatman and "dasi" "as a female servant or slave, servant maid, whore, harlot."

5.4.3. Mr. Burnell  
He in the introduction to his translation of the Daya Vibhaga of Madhaviya says that in Southern India the word. "Dasi" signifies also a female dancer attached to a temple.

5.4.4. Devanda Bhatta  
In the Smriti chandrika IX-I-10, 11, speaking of a wife married in the Asura form, observes, "That woman, who has been purchased for value paid, is not styled a "Patni." she associates neither in rites relating to deities nor in rites relating to the manes. The learned call her a dasi. Manu has shown the affinity between slavery and the condition of a sudra thus.

"A sudra though emancipated by his master, is not released from a state of servitude: for, of a state which is natural to him, by whom can he be divested. Kulluka Bhatta's comment on it is "Emancipated by him to whom he had become a slave by capture in war or the like, a sudra is not released from a state of servitude to Brahmans, since servitude is natural to him, who can divest him of a state of slavery proper to the servile class.

5.4.5. Mr. Colebrook  
He embarks that "issue by a concubine" (By which we understand him to mean dasiputra) is described in the law as a son by a female slave or by a sudra woman.

65 (1875) I Bom. 97.  
66 Colebrooke's Digest Book III, 1.2.36 page 18,19.  
67 Strange- Hindu law Page 68.
"If the father were a sudra, he might have allotted a share to his illegitimate son." The commentator Jagannatha commenting on the translation of Yajnavalkya by Colebrooke referring to Jimutavahana says, "the son of a sudra by a female slave or other sudra woman not lawfully married, shall, with his father’s consent, have an equal share with other sons.

5.4.6. Vachespati Misra

He purporting to quote Yajnavalkya says, "the son of a sudra by an unmarried woman may receive a share by the permission of his father but if the father be dead, he shall receive half of the share of his brothers who are born by married wives. Should he have no brother, he shall take the whole unless there is a daughter's son.

There are many other authorities and if they are all read together, we find that these two expressions are synonymous.

5.4.7. R.N. Sarkar

He says that there does not appear to be any difference on this point between the commentaries of the two schools and that the Sanskrit word "Dasi" does not necessarily mean a female slave but, may also mean a sudra woman and the latter meaning is suggested by the whole context of the Dayabhaga on the subject and the judicial decisions support this and can be referred thus.

5.4.8. Judicial Interpretations

Narain Dhara v Rakhal

In this case the word "sudra woman" is omitted. The Calcutta High Court took a stand that a sudra's illegitimate son not born of a female slave is not entitled to a share where the father had parted with his interest during his life time. It was followed in subsequent cases Kripal v Sukurmany and Ramsaran v Tekchand.

However, on the other hand, the Bombay Madras and Allahbad High Courts arrived at the conclusion that the term "Dasi" is not exclusively applicable to a female slave but includes a sudra woman kept as a concubine.

---

68 Digest vol. III Ch. III page 143 of Edition 1801
69 Vivada Chintamani, Lecture, translated by Prosonno Coomer Tagore.
73 Ramsaran v/s Tekchand 28. Cal 194.
74 Rahi v Govinda 1 Bom. 97; Sadu v Baiza 4 Bom. 37.
75 Pandiya v Ramaswami 1 Mad. H.C.R. 478; Inderun v Ramaswami 13 M.I.A. 141 (P.C.) Krishnayan v Muthu Swami 7 Mad. 407; Brindavana v Radhamani 12 Mad 86.
76 Hargovind v Dharam Singh 6 All 329.
However, the Calcutta High Court in Rajani v Nitai\textsuperscript{77} overruled the earlier decisions and made the law uniform throughout India. Naraya Dhara, I cal. I and Kripal v Sukurmoni\textsuperscript{19 cal. 91} were overruled and practically followed the decision in the case of Chatturbhuj v Krishna\textsuperscript{78}. In this case Sri Asutosh Mookerjee, acting C.J., with whom all the other judges except Sri. Nalini Ranjan Chatterjee J. agreed, held that translation of Mr. Justice Mitter of the text in the Dayabhaga, Ch. XX, para 29 given in Narayan v Rakhal and followed by Mr. Justice Ghosh in Kripal v Sukermoni and in Ram v Tekchand is inaccurate, and after analyzing critically the texts on the subject said that according to the Bengal School of Hindu law also" illegitimate son of a sudra by a concubine (in the continuous and exclusive keeping of his father and not being the fruit of an adulterous or an incestuous intercourse) is entitled as Dasiputra to a share of inheritance.

Thus the legal position is now overtly clear that

1. The illegitimate son of a dasi is entitled to a share provided she is a Hindu
2. She is a concubine in the continuous and exclusive keeping of his father at the time of his birth\textsuperscript{79}. And
3. He is not the fruit of an adulterous or incestuous intercourse.

It is worth mentioning that the condition that the connection should not be adulterous or incestuous is not to be found in texts. It seems to have been judicially imposed on grounds of general morality\textsuperscript{80}.

5.4.9.Summing Up

The rights of an illegitimate child, as inferred from the cases referred above may be summarized as follows.

The illegitimate son of a Hindu belonging to one of the regenerate classes by a dasi is entitled only to maintenance and not to any share of the inheritance\textsuperscript{81}. The right of maintenance attaches in the first instance to the separate property of the father\textsuperscript{82}. Where

\textsuperscript{77}Rajni v/s Nitai, 8 Cal. 643.
\textsuperscript{78}Chatturbhuj v/s Krishna, 16 C.I. J. 335.
\textsuperscript{79}Bai Nagubai v Bai Monghibai 48 Hadras 805.
\textsuperscript{80}Soundararajan v Anunachalam AIR (1916_ Mad. 1170.
\textsuperscript{81}Mitakshra Chl S.12, V.3.
\textsuperscript{82}Roshan Singh v Balwant singh (1900) 22 All 191; Chouturya v Purhulad (1857).
the father has left no such property, it attaches to property of the Joint family of which the father was a member. It was held in this case that under the Mitakshara law an illegitimate son is entitled to maintenance as long as he lives, in recognition of his status as a member of his family and by reason of his exclusion from inheritance among the regenerate classes. The maintenance decreed to an illegitimate son may be secured on the family property. This case *Hargovind v Dharamsingh* 6 An 329 and Mitakshra Chapter I Section 12, verse 3 was referred wherein it is said that such illegitimate "son" be docile and then receives simple maintenance. The court also clarified that by docility means nothing more than showing such consideration and rendering such reasonable service as is ordinarily due to the head of the family by its members.

5.4.9.1 Interpretation by Supreme Court

Even the Supreme Court in *A.R. Rajakumar v Narayana Rao* 84 relying upon 17 Mad. 160 held that under the Mitakshara law, an illegitimate son is entitled to maintenance as long as he lives, in recognition of his status as a member of his father's family and by reason of his exclusion from inheritance among the regenerate classes. The illegitimate son does not claim maintenance merely as a compassionate allowance but by virtue of a right.

The illegitimate son of a sudra by a dasi is entitled to a share after his father's death in the separate property of his father where the father has left no separate property but was joint with his collaterals at his death, the illegitimate son is not entitled to demand a partition of the joint family to property in their hands but he is entitled as a member of the family to maintenance from out of that property and such maintenance is payable to the illegitimate son for life. In this case the Privy Council held that illegitimate son of sudra by continuous concubine has status of a son and is member of family. Where the father dies leaving Joint property with collaterals, he is entitled to maintenance for all his life out of that property. His case is analogous to that of widow and disqualified heirs to whom law allows maintenance.

5.4.9.3 Privy Council

---

83 Ananthaya v Vishnu (1893) 17 Mad. 160.
84 AIR 1953. S.C. 433.
85 Mit. Ch. I S.12, V.2.
86 Vellaiyappa Chetty v Natarajan AIR 1931 P.C. 294.
Regarding separate property, the meaning of Mit.Ch. I Section 12, V2 have been well explained in *Kamulammal v Viswanathaswami* 87 in this case the Privy Council interpreted the above text to mean that an illegitimate son takes one-half of what he would have taken if he was legitimate, that is to say, the illegitimate son takes 1/4 and the legitimate son takes 3/4. If a sudra dies leaving behind one legitimate son and six illegitimate. Then if the six illegitimate sons were legitimate, they would each take 1/7 being illegitimate, each of them will take 1/2 of 1/7 = 1/14 and the six together will take 6*1/14=6/14=3/7 and the remaining 4/7 will go to the legitimate son88. This interpretation placed on the relevant text by the Privy council has been accepted by the Supreme Court in *Gur Narain Das v Gur Tahal Das* 89 wherein the Supreme Court held that illegitimate son (of a sudra) does not acquire by birth any interest in his father’s estate and he cannot therefore demand partition against his father during the latter's life time. On his father's death the illegitimate son succeeds as a coparcener to the separate estate of the father along with the legitimate sons with a right of survivorship and is entitled to enforce partition against the legitimate sons. On a partition he will get 1/2 of what the legitimate son gets.

**5.4.9.3. Summing Up**

From the text and the judicial pronouncements, one thing is manifestly clear that an illegitimate son is recognized but with many riders and his rights is discriminatory in nature. But one thing is also very clear that sanctity of marriage is given utmost weight and the some of the body born in wedlock is considered legally the Primary son and many other substitute sons are also recognized. A son born out of wedlock is also accepted and not totally thrown out but he had been given an inferior status ad thus compassing along with discrimination exits.

This is why, now, throughout the world, legal attempts have been made to give weight to compassion and eliminate as far as possible, disparity and discrimination.

---

87 AIR 1923 Privy Council 8.
88 AIR 1925 Mad. 497.