BLOGS

Inheritance Rights of Children Born out of Void or Voidable Marriages

Indrasish Majumder · 08 Feb 2025

This article explores the legitimacy and inheritance rights of children in void and voidable marriages.

Edit TABLE OF CONTENTS Introduction Void and Voidable Marriages Legitimacy of Children Born Out of Void and Voidable Marriages Inheritance Rights of Children Born Out of Void or Voidable Marriages Inheritance Rights as per Hindu and Muslim Personal Law Conclusion

Introduction

The legal status of children born out of void or voidable marriages has been a subject of much debate in many countries. Void or voidable marriages are those that are considered invalid or annulled for various reasons, such as bigamy, consanguinity, age, or mental incapacity. In such cases, questions often arise as to the legitimacy of the children born out of such marriages and their inheritance rights.

Void and Voidable Marriages

A void marriage is one that is considered invalid from the beginning and, therefore, does not exist in the eyes of the law. A void marriage is void ab initio, meaning it is void from the start. There are various reasons why a marriage may be considered void. For instance, if one of the parties is already married, if the parties are closely related, if one or both of the parties are underage, or if one of the parties is mentally incapacitated, the marriage may be considered void.

On the other hand, a voidable marriage is one that is valid until a court declares it invalid. In other words, until a court annuls a marriage, it is still considered to exist. There are various reasons why a marriage may be considered voidable. For example, if one of the parties was coerced or forced into the marriage, if one of the parties was under the influence of drugs or

alcohol, or if one of the parties was fraudulently induced into the marriage, the marriage may be considered voidable.

Legitimacy of Children Born Out of Void and Voidable Marriages

The legal status of children born out of void **[*Also Read: Void Marriages under Hindu Marriage Act*]** or voidable marriages varies from one country to another. In some countries, children born out of void or voidable **[Also Read: *Voidable Marriages under Hindu Marriage Act*]** marriages are considered illegitimate, while in others, they are considered legitimate. However, in most countries, children born out of such marriages are considered legitimate for various reasons, including the presumption of legitimacy.

The presumption of legitimacy holds that children born within a marriage are presumed to be the biological children of the parties to the marriage, regardless of the validity of the marriage. This presumption is based on the belief that a stable family unit is essential for the upbringing of a child. However, this presumption can be rebutted if there is evidence to the contrary, such as DNA testing or other medical evidence.

Inheritance Rights of Children Born Out of Void or Voidable Marriages

The inheritance rights of children born out of void or voidable marriages also vary from one country to another. In some countries, such children have the same inheritance rights as those born in valid marriages, while in others, their inheritance rights may be limited. In most cases, the inheritance rights of such children depend on the laws of the country in which they reside.

For instance, in the United States, state law governs the question of legitimacy, and a child's inheritance rights depend on the state in which they were born. In general, however, children born out of wedlock are entitled to inheritance rights from their mother, but their rights to the father's property depend on whether the father has acknowledged paternity or whether the child has been legally legitimized.

In the United Kingdom, the inheritance rights of children born out of wedlock depend on whether the parents' relationship was void or voidable. If the relationship was void, the child is considered illegitimate and does not have any inheritance rights. However, if the relationship was voidable

and the parents subsequently married or the father acknowledged paternity, the child is considered legitimate and has the same inheritance rights as a child born within a valid marriage.

With the advent of the 21st century it is seen that, regardless of their parents' marital status, children have equal rights to inherit from their parents' estates. This principle of equality among children means that children born out of void or voidable marriages have the same inheritance rights as those born in valid marriages.

However, there may be exceptions to this principle. For instance, if the deceased parent specifically disinherited the child in their will, the child may not be entitled to any inheritance. Additionally, if the inheritance laws of a particular country require a child to be legitimate to inherit from their parents, children born out of void or voidable marriages may not be entitled to any inheritance.

The length of the marriage can also have an impact on the legal status of children born out of void or voidable marriages and their inheritance rights. In some countries, if the marriage is short-lived, the child may not be entitled to any inheritance.

This is because the courts may consider that the child did not have a meaningful relationship with the deceased parent or that the deceased parent did not have sufficient time to provide for the child.

The timing of the annulment or divorce may also have an impact on the inheritance rights of children born out of void or voidable marriages in some countries, such as the United States. For example, if the marriage is annulled or dissolved before the child is born, the child may not be considered legitimate and may not be entitled to any inheritance.

Inheritance Rights in India

In India, the inheritance rights of children born out of void or voidable marriages are determined by personal laws, which vary depending on the individual's religion. Hindu and Muslim laws, in particular, have their own rules and regulations governing these matters.

Under Hindu law, a child born out of wedlock is considered illegitimate and does not have any inheritance rights over the father's ancestral property. However, the Hindu Succession Act, 1956, has been amended several times to ensure that such children have some inheritance rights in the father's self-acquired property.

The 2005 amendment to the Act states that such children are entitled to a share in the father's property if he dies intestate (without a will). The share of the property is determined based on the number of children the father has, including the illegitimate child. However, the amendment does not apply to the father's ancestral property.

In Muslim law, the issue of legitimacy is determined based on the concept of legitimacy by acknowledgment (known as iqrar, or acknowledgement of paternity). If the father acknowledges the child's paternity, the child is considered legitimate, and they are entitled to inheritance rights. However, if the father does not acknowledge the child's paternity, the child is considered illegitimate, and they do not have any inheritance rights in the father's property.

It is worth noting that the Indian Constitution guarantees the right to equality, and the courts have repeatedly emphasized the importance of treating all children equally, regardless of their legitimacy.

In several landmark judgements, the Supreme Court of India has held that denying inheritance rights to children born out of wedlock is a violation of their fundamental rights. The court has also stated that the law should not discriminate against such children and should ensure that they are not subjected to any stigma or discrimination.

In recent years, there have been calls for reforming personal laws to ensure that children born out of void or voidable marriages have equal inheritance rights. Some experts argue that the laws should be amended to ensure that all children, regardless of their legitimacy, have equal rights to their parents' property. Others suggest that the laws should be reformed to provide for a more nuanced approach to inheritance, taking into account the specific circumstances of each case.

The issue of legitimacy and inheritance rights for children born out of void or voidable marriages is a complex and sensitive one, particularly in the context of personal laws in India. While Hindu and Muslim laws have their own rules and regulations governing these matters, the Indian Constitution guarantees the right to equality, and the courts have emphasized the importance of treating all children equally.

As India continues to evolve and change, it is essential to ensure that personal laws reflect the values of a modern, progressive society and that they protect the rights of all individuals, regardless of their circumstances of birth.

Conclusion

The legal status of children born out of void or voidable marriages and their inheritance rights vary from one country to another. While in most countries, such children are considered legitimate, their inheritance rights may be limited depending on the laws of the country in which they reside.

The presumption of legitimacy, which assumes that children born within a marriage are the biological children of the parties to the marriage, may be rebutted in some cases if there is evidence to the contrary.

Furthermore, it is essential to recognize that the legal status of children born out of void or voidable marriages and their inheritance rights can have significant implications for the child's emotional and psychological well-being. It is essential to recognize that the child's well-being should be the primary consideration in any legal proceedings or decisions.