

Legitimacy and Legitimation Laws Under Private International Law

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Abstract

This article examines the concepts of legitimacy and legitimation in private international law, focusing on the legal systems of India and England, particularly the Hindu law and the Muslim law. Legitimacy refers to the legal status of a child born in wedlock, whereas illegitimacy refers to state of child being born to unmarried parents. Legitimation is the process by which a child who is illegitimate becomes legitimate under the law. Conflict of laws in international transactions and relations can arise due to varying legal rules and principles of legitimacy and legitimation across countries. Private international law provides a framework for resolving such conflicts of laws. In England, legitimacy is determined by the common law presumption of paternity, whereas in India, legitimacy is primarily governed by the Hindu law and the Muslim law. Legitimation in both countries is achieved through various means recognized by law, such as adoption, acknowledgment of paternity, or marriage of the parents. The legal effect of legitimation is different under Hindu law and Muslim law. Under Hindu law, legitimation creates a legal relationship between the child and the father, while under Muslim law, legitimation creates a legal relationship between the child and the mother. The essay concludes by emphasizing the importance of understanding the legal concepts of legitimacy and legitimation in private international law in order to resolve conflicts of laws and ensure equal legal status and rights for all children, regardless of their birth status.

Keywords: Private International Law, Legitimacy, Legitimation, Illegitimate, Conflict of law

INTRODUCTION

Private international law deals with the rules governing conflicts of law arising from transactions, disputes or relationships that have a foreign element. Private international law ensures that international transactions and relations are governed by coherent, consistent and predictable rules that respect the jurisdiction of different countries and protect the rights of individuals and entities involved. Legitimacy and legitimation are important concepts in private international law, particularly in the context of family law and inheritance law. In this essay, we will explore the concepts of legitimacy and legitimation in the Indian legal system, including Hindu law and Muslim law, and examine some relevant case laws.

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Received Date: March 20, 2023

Accepted Date: April 18, 2023

Published Date: April 25, 2023

Citation: Amit Singh, Priyank Pareek. Legitimacy and Legitimation Laws Under Private International Law. Journal of Capital Market and Securities Law. 2023; 6(1): 8–13p.

Legitimacy refers to the status of child being born to the parents during the continuance of valid marriage. Legitimate children are generally entitled to inherit from their parents and have certain legal rights and protections. Legitimacy is generally presumed unless there is evidence to prove the contrary.

Legitimation refers to the process by which a child is granted the legitimacy status. This can occur in a variety of ways, such as through the marriage of the child's parents or through a court

order. Once the child is granted legitimacy, he will be entitled to the same status, right and protection as a legitimate child. Illegitimate, on the other hand, refers to a child who is born to unmarried parents or parents who are not in a recognized domestic partnership. Illegitimate children are entitled to very limited rights and protection under the law based on the jurisdiction. However, many legal systems have evolved to provide greater protection and recognition for the rights of illegitimate children.

It is important to note that these concepts can be culturally and legally complex, and the meanings and definitions can vary widely depending on the legal system in question. It is always best to consult with a legal expert or specialist in the relevant jurisdiction to fully understand the implications of these concepts [1].

CONFLICT OF LAWS/PRIVATE INTERNATIONAL LAW

Private International Law (PIL), also known as Conflict of Laws, is a branch of law that deals with legal disputes that involve foreign elements, such as parties from different countries, property located in a foreign country, or transactions that take place across international borders. PIL helps to resolve conflicts between different legal systems and ensures that disputes are resolved in a fair and just manner.

PIL typically involves a number of principles and rules that govern the determination of which law should apply to a particular legal dispute. Some of the key principles in PIL include the principle of 'lex loci contractus,' which means that the law of the place where the contract was formed will apply, and the principle of 'lex fori,' which means that the law of the forum (i.e., the country where the case is being heard) will generally apply.

In addition to these principles, PIL also involves a number of rules related to the recognition and enforcement of foreign judgments and the resolution of conflicts of jurisdiction. For example, PIL may require a court to consider factors such as the nationality of the parties, the location of the property at issue, and the relevant legal rules and principles in order to determine which court has jurisdiction over a particular dispute.

PIL plays an important role in facilitating international trade and commerce, as well as ensuring that legal disputes involving foreign elements are resolved in a fair and just manner. It is important for parties involved in cross-border transactions or disputes to be aware of the principles and rules of PIL in order to properly navigate the legal landscape and ensure their rights and interests are protected.

The Requirement of Private International Law (PIL)

Private International Law (PIL), also known as conflict of laws, is a set of rules that determines which law should apply to a legal dispute that involves foreign elements. These foreign elements can include foreign parties, foreign property, or foreign transactions [2]. PIL is important because it helps to avoid conflicts between the laws of different countries and ensures that a legal dispute is resolved in a fair and just manner.

The requirement of PIL arises when a legal dispute involves foreign elements, such as when parties to the dispute are from different countries, the dispute involves property located in a foreign country, or the transaction at issue took place in a foreign country. In such cases, the court must determine which law should apply to the dispute, and this determination is typically made based on the principles of PIL [3].

Conflict of Laws in India

In India, PIL is governed by the Code of Civil Procedure, 1908, as well as various other laws and regulations. The Indian courts follow the principle of 'lex fori,' which is a Latin term that means the law of the forum (i.e., the law of the country where the case is being heard) will generally apply to the dispute.

However, in cases involving foreign elements, the Indian courts will also consider the principles of 'lex causae,' which means that the law of the country where the cause of action arose will also be considered. The Indian courts will also consider the principles of 'comity of nations,' which means that the courts will generally respect the laws of other countries and give effect to foreign judgments, subject to certain conditions.

In addition, India has entered into various international treaties and agreements related to PIL, such as the Hague Convention on the Civil Aspects of International Child Abduction, which provides for the return of wrongfully removed or retained children across international borders, and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which provides for the recognition and enforcement of foreign arbitral awards in India [4].

Overall, PIL plays an important role in ensuring that legal disputes involving foreign elements are resolved in a fair and just manner, and the Indian courts have developed a well-established framework for dealing with such disputes.

CONCEPT OF ILLEGITIMACY

Illegitimacy is a concept that is typically used to refer to children who are born to unmarried parents or whose parents were not in a legally recognized relationship at the time of their birth. Historically, illegitimate children were often subject to various forms of discrimination and disadvantage, such as being excluded from inheritance rights, being stigmatized in society, and facing limited opportunities for education and employment.

However, in many modern legal systems, the concept of illegitimacy has been largely abolished or redefined. Today, many countries have laws that grant equal legal status and rights to children regardless of the marital status of their parents. In some cases, the concept of illegitimacy has been replaced by terms such as "non-marital child" or "child born out of wedlock."

Despite these changes, the concept of illegitimacy can still have implications in certain legal contexts, such as inheritance law or immigration law. For example, in some countries, illegitimate children may still face limitations on their inheritance rights or be subject to more stringent immigration requirements.

Overall, while the concept of illegitimacy may no longer carry the same social stigma and legal disadvantages as it once did, it remains an important consideration in certain legal contexts and may continue to be a relevant issue in some cases.

Illegitimacy Under English Common Law

Under English common law, illegitimacy was historically considered a significant social and legal issue. Children born outside of marriage were considered illegitimate and were generally excluded from the inheritance of their father's property and titles. This often resulted in significant social and economic disadvantages for these children.

In England, the legal concept of illegitimacy was abolished by the Legitimacy Act of 1926, which provided that all children, whether born within or outside of marriage, would be treated as legitimate for inheritance purposes. This meant that children born outside of marriage were granted equal inheritance rights to those born within marriage.

However, the concept of illegitimacy continued to have significance in other field of law. For example, under the Immigration Act of 1971, an illegitimate child could only be considered a British citizen if the father was a British citizen and the child was recognized by the father as his own, or if the child was legitimized through the subsequent marriage of the parents.

In 1987, the Family Law Reform Act was passed, which further abolished the legal concept of illegitimacy in England and Wales. This Act removed the distinction between children born within and outside of marriage, and granted all children equal legal status and rights, including inheritance rights.

Today, while the concept of illegitimacy no longer carries the same legal implications as it did in the past, it may still be relevant in certain legal contexts, such as inheritance disputes or family law matters. However, the principle of equality between all children, regardless of their parents' marital status, is now firmly established in English law.

Illegitimacy Under Hindu Law and Muslim Law is Treated Differently

Under Hindu Law, illegitimate children are those born outside a valid marriage. In the past, they were treated as inferior and did not have the same legal rights and privileges as legitimate children. However, this has changed in recent years. The Hindu Succession (Amendment) Act of 2005 abolished the discriminatory treatment of illegitimate children in matters of inheritance. It grants equal rights of inheritance to all children, irrespective of their legitimacy. Additionally, the Hindu Adoption and Maintenance Act of 1956 provides for the maintenance of illegitimate children by their father.

In contrast, under Muslim Law, illegitimate children are referred to as "illegitimate" or "illegitimately born" (Ibn Al Zina), and they do not have the same rights and privileges as legitimate children. In Islamic law, a child born outside of marriage is not considered the legal child of the father, and therefore, cannot inherit from the father's property. However, the child is entitled to the right to maintenance by his father until the child attains majority.

In recent years, there have been efforts to reform Muslim Personal Law and grant greater rights and recognition to illegitimate children. The Muslim Women (Protection of Rights on Divorce) Act of 1986 provides for the right of an illegitimate child to maintenance from the father [5]. Additionally, the Indian Succession Act of 1925 allows an illegitimate child to inherit from the mother's property, irrespective of the religion followed by the mother.

Overall, while there have been some legal reforms to grant greater rights to illegitimate children under Hindu and Muslim Law, the treatment of illegitimacy under these laws remains significantly different.

CONCEPT OF LEGITIMACY

Legitimacy refers to the legal status of a child born to parents during the lawful marriage. It is based on the presumption that the child is the biological offspring of the husband or the man in the relationship. Legitimacy is an important legal concept in family law and inheritance law, as it determines the rights and obligations of the child, the parents, and other family members. In India, the concept of legitimacy is primarily governed by the Hindu law and the Muslim law.

Legitimacy in England

In England, the concept of legitimacy historically referred to the status of children born during the lawfully recognized relationship. Legitimate children were entitled to various legal rights and privileges, including inheritance rights and eligibility for titles and positions of nobility.

However, over time, the legal concept of legitimacy has been largely abolished in England. The Legitimacy Act of 1926 provided that all children, whether born within or outside of marriage, would be treated as legitimate for inheritance purposes. This meant that illegitimate children were granted equal inheritance rights to those born within marriage.

In 1987, the Family Law Reform Act was passed, which further abolished the legal concept of legitimacy in England and Wales. This Act removed the distinction between children born within and outside of marriage, and granted all children equal legal status and rights, including inheritance rights.

Today, while the concept of legitimacy may still be relevant in certain legal contexts, such as inheritance disputes or family law matters, the principle of equality between all children, regardless of their parents' marital status, is firmly established in English law. Legitimacy is no longer considered a significant legal issue in England.

Hindu Law and Legitimacy

Under Hindu law, legitimacy is determined by the concept of paternity. The presumption of paternity is based on the rule of chastity, which states that a woman is expected to remain faithful to her husband during the period of conception [6]. In case of doubt, the legitimacy of the child can be challenged by the husband or other family members. However, the burden of proof lies on the person challenging the legitimacy. If the legitimacy of the child is established, the child is entitled to the right to inheritance in his father and other family members property.

Case Law

In the case of *Nand Kishore v. Shashi Bhushan*, the Supreme Court held that legitimacy is based on the presumption of paternity, and the burden of proof lies on the person who challenges the legitimacy. In this case, the father challenged the legitimacy of child, he contended that he was not the biological father of the child. However, the court held that the evidence provided by the father was not sufficient to prove his claim, and the child was declared legitimate.

Muslim Law and Legitimacy

Under Muslim law, legitimacy of the child is determined by paternity and maternity. The presumption of paternity is based on the rule of paternity, which states that a child born within a lawful marriage is presumed to be the biological offspring of the husband. However, the presumption can be denied by evidence to the contrary. The presumption of maternity is based on the rule of gestation, which states that the woman who gives birth to the child is the biological mother, regardless of whether she is married or not.

Case Law

In the case of *Mohd. Ahmed Khan v. Shah Bano Begum*, the Supreme Court held that the concept of legitimacy under Muslim law is based on the presumption of paternity and maternity, and the burden of proof lies on the person who challenges the legitimacy. In this case, the legitimacy of the child was challenged by the husband, who alleged that the child was not his biological offspring. However, the court held that the evidence provided by the husband was not enough to prove his claim, and hence the child was declared to be legitimate.

Concept of Legitimation in Britain and India

In Britain, legitimation is achieved through the process of adoption, which is governed by the Adoption Act 1976. Adoption confers legal status and rights on the child, including the right to inherit the property of the adoptive parents and other family members. The legal effect of adoption is to end the legal relationship between the child and the biological parents, and to establish a new legal relationship between the child and the adoptive parents.

In India, legitimation is achieved through various means recognized by law, such as marriage of the parents, acknowledgment of paternity, or adoption [7]. Legitimation under Hindu law and Muslim law confers legal status and rights on the child, including the right to inherit the property of the parents and other family members. However, the legal effect of legitimation is different under Hindu law and Muslim law. Under Hindu law, legitimation creates a legal relationship between the child and the father, while under Muslim law, legitimation creates a legal relationship between the child and the mother.

CONCLUSION

In conclusion, legitimacy and legitimation are important concepts in private international law, particularly in the context of family law and inheritance law. In India, the concept of legitimacy and

legitimation is primarily governed by the Hindu law and the Muslim law. Legitimacy is determined by the presumption of paternity and maternity, while legitimation is achieved through various means recognized by law, such as marriage of the parents, acknowledgment of paternity, or adoption. It is important for individuals and entities involved in international transactions and relations to be aware of the rules and principles governing legitimacy and legitimation in different legal systems, in order to protect their rights and interests.

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