



DISSERTATION

ON

AN ANALYSIS OF ILLEGITIMATE CHILDREN'S RIGHT WITHIN HUMAN

RIGHTS LAW FRAMEWORK:

A GLOBAL PERSPECTIVE

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CONSENT FORM

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.....
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DECLARATION

I, Tasnim Binte Munir, declare that the research work has been done by me and that all the works, citations, review of the literature etc are genuine and bear no resemblance to other works of thesis or secondary research. I, therefore, confirm that the research paper has been composed and authored solely by myself as a part of the fulfillment of the LLB degree at East West University.

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LIST OF ABBREVIATION

UNIVERSAL DECLARATION OF HUMAN RIGHTS	UDHR
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS	ICCPR
UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD	UNCRC
EUROPEAN CONVENTION ON HUMAN RIGHTS	ECHR
CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS	CPHRFF
HIGH COURT DIVISION	HCD
PUBLIC INTEREST	PI
BANGLADESH LEGAL AID AND SERVICES TRUST	BLAST

**AN ANALYSIS OF ILLEGITIMATE CHILDREN'S RIGHT
WITHIN HUMAN RIGHTS LAW FRAMEWORK:
A GLOBAL PERSPECTIVE**

ABSTRACT

The study analyzes the unclear area of rights for illegitimate children based on the international human rights laws. Children who are born outside of the marriage of their biological parents frequently confront a variety of complex issues including discrimination of law, social stigmatization, and elimination of rights and protections of an individual, rights of inheritance and other social basic amenities. The study shows *AN ANALYSIS OF ILLEGITIMATE CHILDREN'S RIGHT WITHIN HUMAN RIGHTS LAW FRAMEWORK: A GLOBAL PERSPECTIVE*. Starting with the historical foundation of discrimination against illegitimate children, the research follows the development of legal structures and social beliefs that have defined their status in society. It examines the interactions in human rights standards, legal framework, social custom in various countries, illuminating both area differences and similarities in execution of the rights of illegitimate children. The study depends on the fundamental international human rights instruments such as the Universal Declaration of Human Rights, the Convention on the Rights of the Child and other regional human rights conventions. This study assesses legislative reforms, case studies and judicial precedent that have attempted to address the illegitimate children's rights. The analysis also takes into account the obstacles and chances for improving the protection and acknowledgement of these rights for children accorse international legal framework. The purpose of the research is to provide comprehensive understanding and specific recommendation into the status and rights of illegitimate children by combining legal, social, and human rights viewpoints and to promote inclusive legal modifications and cultural transformations that are in line with the principle of equality and intrinsic value of all individuals, irrespective of their birth status.

CHAPTER 1

1.1 INTRODUCTION

The treatment of illegitimate children has raised concerns under human rights legislation. ‘All are equal before the law and are entitled without any discrimination to equal protection of the law,’ reads with Article 1, 2, and 7 of the Universal Declaration of Human Rights (UDHR). The International Covenant on Civil and Political Rights (ICCPR), Article 2, which emphasizes rights to equal protection and non-discrimination, reflects this idea.

Due to their birth status, illegitimate children have historically been the object of unlawful discrimination. The International Human Rights Instruments, however, work to safeguard children who are vulnerable to prejudice like this. The United Nations Convention on the Rights of the Child (UNCRC) stated that every child has the right to have their best interests taken into consideration and expressly acknowledges the rights of all children without discrimination.

1.2 RESEARCH QUESTIONS

- Does human rights law apply to the protection of illegitimate children's rights under the Constitution of Bangladesh?
- Are there specific provisions within Bangladeshi laws designed to address and alleviate the social stigmatization faced by illegitimate children?

1.3 RESEARCH OBJECTIVE

- To analyze legal definitions and status of illegitimate children within the human rights law framework.
- To assess rights to identity and recognition of illegitimate children in accordance with social, legal and human rights laws.
- To analyze the extent of discrimination and stigmatization faced by illegitimate children within societies worldwide and exploring the violations of their human rights under international human rights laws.
- To compare and contrast national legislation with International Standards about illegitimate children's rights.
- To find out the laws and flaws, legal remedies and enforcement mechanisms available for protecting and upholding illegitimate children's rights globally throughout the human rights law framework.
- To recommend policy and legal reforms may provide assurance of the rights and protections of illegitimate children in alignment with universally accepted human rights principles.

1.4 METHODOLOGY

This study adopts a qualitative approach of research methodology, researching and assessing the rights of illegitimate children on a global scale within the framework of human rights laws. The main sources of this paper are Statutes, books, international treaties, legal instruments, case laws, scholarly articles and reports concerning illegitimate children's rights. The study focuses on illegitimate children worldwide, without discrimination based on geographical, cultural, or socio-economic aspects and Identifying common themes and patterns within legal frameworks, exploring how illegitimate children's rights are treated throughout different countries and legal systems. Findings are presented in accordance with academic standards. References are referred to in OSCOLA referencing style.

1.5 LIMITATIONS

There could possibly be data availability issues when examining illegitimate children's rights under international laws regarding human rights. International points of view require extensive information from many countries, yet many countries might not have particular data on the rights and protection of illegitimate children, resulting in evaluation gaps. Cultural differences and varying legal systems among countries might make establishing a uniform global viewpoint within a single research paper difficult. Additionally, I do not have enough resources such books, articles, journals etc. this study will show the current situations, legal work, and examples about the rights of illegitimate children. I cannot sufficiently cover all the laws but this paper will show a comprehensive analysis about the rights and protection of illegitimate children. there may be some errors, so pardon my mistake.

1.6 CHAPTER OUTLINE

This paper is divided into multiple chapters, each of which aims to provide a detailed analysis of the rights of illegitimate children within the light of international human rights laws. First chapter contains the Introduction, methodology, Research question, Research objective, chapter outline and Literature review. Second chapter explains and tries to clarify a conceptual view of an illegitimate child from a socio legal perspective. This chapter has an introduction where historical background of the status of illegitimate children, social behavior towards illegitimate children. The third chapter covers the protection of rights regarding illegitimate children from a national perspective, as well as the current situation of the socio-legal context, through a recent, significant example set in Bangladesh. The Fourth chapter focuses on international perspective with relevant laws and case references. The final chapter is about conclusions where findings, recommendations have been drawn. Lastly, bibliography contains the relevant laws, Acts, statutes, cases books, journal, articles and reports which are the main sources of this paper.

1.7 LITERATURE REVIEW

Numerous books and Journals about the rights of illegitimate children within human rights law framework compose but none of them contain enough information about what recites necessary to know briefly on the topic of “Laws and Flaws of analysis of illegitimate children’s right within human rights framework: a global perspective”. Following are some of the important research works:

Francesco Benigno, *Illegitimacy in Renaissance Florence*¹ This book focuses on the social and legal aspects of illegitimate children in Renaissance Florence, shedding light on their lives within the context of a specific historical period.

According to the book of **Helen Lefkowitz Horowitz, *Family, Law, and Inheritance in America: A Social and Legal History of Illegitimacy in Early Vermont***², a socio-legal view into the challenges faced by illegitimate children in early America concerning inheritance and societal recognition. By examining the legal history alongside social norms, it provides insights into how the socio-legal landscape affected the rights of these children. It discusses the challenges these children faced in gaining recognition and inheritance from their fathers' estates.

According to the book of **Matthew Gerber, *Bastards: Politics, Family, and Law in Early Modern France***³, the early contemporary French legal and social status of illegitimate children, discussing how social norms, religious doctrine, and the law shaped their ways of life. How legal structures intersected with societal norms and family politics to influence the rights and social standing of illegitimate children.

According to the book of ***Illegitimacy and the Influence of Social Change on the Status of Bastards in Early Modern England***” by **Paul Griffiths**⁴, insights into the changing status of illegitimate children in early modern England, analyzing how social changes impacted their legal rights and societal perceptions. It discusses how shifting societal attitudes led to changes in laws, ultimately improving the legal rights and recognition of these children.

¹Francesco Benigno, *Illegitimacy in Renaissance Florence*

²Helen Lefkowitz Horowitz, *Family, Law, and Inheritance in America: A Social and Legal History of Illegitimacy in Early Vermont*

³Matthew Gerber, *Bastards: politics, family and law in early Modern france*

⁴Paul Griffiths, *Illegitimacy and the Influence of Social Change on the Status of Bastards in Early Modern England*

According to the book of **Samantha Williams, *Illegitimacy in Britain, 1700-1920***⁵, highlight the historical evolution of the legal rights of illegitimate children. It extensively covers how changes in laws and societal attitudes gradually improved the status of these children, granting them increased rights to inherit property and receive financial support from their fathers.

According to the book of **Jane Fortin, *Children's Rights and the Developing Law***⁶, a broader perspective on children's rights, discussing the evolving legal landscape surrounding children's rights, including those of illegitimate children. It explores the implications of legal reforms and international conventions, aiming for equitable treatment regardless of parents' marital status.

In the modern era, many conventions and treaties try to provide the protection and rights towards illegitimate children such as **the Universal Declaration of Human Rights (UDHR)**⁷, **the UNICEF'S Convention on the rights of the Child**⁸, **the Convention on the Rights of the Child, 1989**⁹, **the International Covenant on Civil and Political Rights, 1966**¹⁰, **the European Convention on Human Rights, 1950**¹¹, **the Convention for the Protection of Human Rights and Fundamental Freedoms, 1950**¹² are among the few conventions that attempt to protect and grant rights to illegitimate children.

⁵Samantha Williams, *Illegitimacy in Britain, 1700-1920*

⁶Jane Fortin, *Children's Rights and the Developing Law*

⁷Universal Declaration of Human Rights (UDHR)

⁸UNICEF'S Convention on the rights of the Child

⁹Convention on the Rights of the Child, 1989

¹⁰International Covenant on Civil and Political Rights, 1966

¹¹European Convention on Human Rights, 1950

¹²Convention for the Protection of Human Rights and Fundamental Freedoms, 1950

CHAPTER 2

A CONCEPTUAL VIEW OF AN ILLEGITIMATE CHILD FROM A SOCIO LEGAL PERSPECTIVE

1.1 INTRODUCTION

Throughout history, the status of illegitimate children has been diverse and varied, determined by social and cultural norms, religious beliefs, and systems of law. Descent and inheritance were important in numerous ancient civilizations, and being born to unmarried parents brought social stigma and legal complications towards the illegitimate children. In ancient Rome and Greece, an illegitimate child (or "spurius") suffered inheritance and social restrictions. The illegitimate children had undesirable status, limited rights and deprivation of societal acknowledgment.¹³ In the middle ages in Europe, the Church was influential in establishing notions of illegitimacy. Illegitimate children were stigmatized and marginalized, with rules restricting their ability to inherit property or claim titles. Illegitimate children were called "bastards" and were subjected to stereotypes and limits set by law. The stigma of illegitimacy lingered throughout the era of the Renaissance as well as the early modern periods, affecting society thoughts and legal frameworks.¹⁴

In the nineteenth and twentieth centuries, society's beliefs regarding illegitimate children started to develop, depending on transforming social and cultural norms, expanding frameworks of the legal system, and campaigning for the equal rights and protections of illegitimate children. The renaissance era and following social movements influenced society's perceptions about illegitimate children, gradually challenging the biased attitude they went through. The family law reforms tried to eliminate legal disparities between legitimate and illegitimate children, with the objective of providing equal rights and opportunities.¹⁵ Today, in various contemporary societies, there is an increasing emphasis on equality and the abolition of discrimination based on birth status. The laws have been developed in order to ensure that the same legal rights and protections belong to illegitimate

¹³Sarah B Pomeroy, *Families in Classical and Hellenistic Greece* (Oxford University Press, USA 1997)

¹⁴Peter Biller, *Population in Medieval Thought, Chapter 'The Measure of Multitude'* (2000)

¹⁵Lawrence Stone, *The Family, Sex and Marriage in England 1500-2800* (1979)

children as to those born into marriage, showing a more comprehensive and egalitarian approach to family ties and rights for children. Modern family laws in many countries try to dissolve the differentiation between legitimate and illegitimate children, focusing on equal rights and protections for all children regardless of their biological parent's background. This change indicates a more comprehensive and egalitarian approach to family dynamics and children's rights.

2.2 DEFINITION OF ILLEGITIMATE CHILD

An "illegitimate child" historically defined is a child who birthed to biological parents who did not tie the knot when the child was born¹⁶. Identity, rights, and social and legal views of an illegitimate child have all been shaped, which is rooted in the circumstances of its birth.¹⁷

By exploring the socio-legal dynamics surrounding illegitimacy a multidisciplinary approach is used. The study incorporates ideas from legal history, sociology, anthropology, and family law.¹⁸ From a socio-legal point of view, the idea of illegitimacy touches on several areas, such as societal norms, customs, and cultural and socio-economic standards. Socio-cultural customs and the legal system have differed in how illegitimate children have been treated, reflecting the intricate relation between legal frameworks, rights of individuals, and social values.¹⁹

¹⁶Bernard Baumrin and Jenny Teichman, *Illegitimacy: An Examination of Bastardy*, (1985) 19 *Noûs* 453

¹⁷Chris Barton, *Family Law: Text, Cases and Materials*, (2012) 34 *Journal of Social Welfare and Family Law* 395

¹⁸Michael King, 'Classical and Contemporary Perspectives', Roger Cotterrell and Law's Sociology of Law (2015) 42 *Journal of Law and Society* 649

¹⁹ Nigel Goose, Alysa Levene, Thomas Nutt and Samantha Williams, *Illegitimacy in Britain, 1700-1920* (Basingstoke: Palgrave Macmillan, 2005) (2007) 22

2.3 SOCIAL BEHAVIOR TOWARDS ILLEGITIMATE CHILD

Social views have an impact on the psychological well-being of illegitimate offspring. Stigma and discrimination can have a negative impact on their self-esteem and mental health. As a result, efforts to foster inclusive environments and lessen societal criticism are critical to assisting these children.

Communities, support organizations, and awareness campaigns have emerged to provide emotional, financial, and legal assistance to both children and caregivers, with the goal of mitigating the difficulties associated with societal biases. Education and open dialogue also help to build understanding and empathy for children born outside of traditional marital settings.

It is vital to acknowledge that, despite improvements, differences in public acceptance remain globally, affected by cultural, religious, and regional standards. Support for equitable treatment and support from society is essential for ensuring an equal and impartial approach to all children, regardless of parental marital status.

Nowadays, Social attitudes about illegitimate offspring have changed throughout time. Due to cultural conventions regarding family structure and morality, these children have historically experienced stigma and discrimination. However, in many societies, attitudes have moved toward greater acceptance and understanding.²⁰

2.4 CONCLUSION

In the past, legal systems often disadvantaged illegitimate children in inheritance rights, legitimacy, and societal acceptance, reinforcing prejudices against them. Yet, societal progress and evolving legal frameworks have propelled a reevaluation of these biases. Modern socio-legal perspectives now increasingly advocate for equality, protection, and recognition of the rights of illegitimate children, aiming to eliminate discrimination based on their parentage.

²⁰Rebecca Probert, Samantha Williams, *Unmarried Motherhood in the Metropolis, 1700-1850: Pregnancy, the Poor Law and Provision* (London: Palgrave Macmillan, 2018)

There's a growing acknowledgment that Regardless of historical or social prejudices the child's wellbeing and greatest interest should come first. Laws have been enacted to ensure equal inheritance rights, access to education, healthcare, and social benefits for illegitimate children, aligning with international conventions advocating for children's rights. Moreover, societal attitudes have shifted, fostering more inclusive and accepting environments for these children. Education, awareness campaigns, and advocacy have played pivotal roles in challenging stereotypes and fostering empathy and understanding towards the circumstances of illegitimate children. However, despite significant progress, challenges persist. Legal disparities might still exist in some jurisdictions, and social stigma might linger in certain communities. Continued efforts are necessary to ensure the complete integration of socio-legal frameworks that safeguard the rights and well-being of all children, irrespective of their birth status.

CHAPTER 3

NATIONAL PERSPECTIVE

3.1 INTRODUCTION

The Latin origin of the word ‘illegitimacy’ means ‘not in accordance with the law.’ The marital status of biological parents determines the legal status of an illegitimate child, who is born outside of the marriage of his parents. An illegitimate child is regarded as ‘nullius filius,’ signifying that they are not legally connected to their parents. Social behavior towards them is too unpleasant. They are called bastards for their illegitimacy. They are always excluded from exercising their rights as an individual by society.²¹

Factors Determining Legitimacy:

Two basic requirements determine legitimacy:

- **Marital Relationship:** Whether parents of the illegitimate child are married or not.
- **Legal Status:** The legal recognition and status of the parents' marital relationship.

3.2 DEFINING ILLEGITIMACY IN THE CONTEXT OF BANGLADESH

In the Bangladeshi context, the determination of legitimacy often intertwines with specific rules and presumptions, as reflected in legal and cultural norms. One key aspect is the temporal relationship between the birth of the child and the length of the wedding, which significantly influences the credibility of legitimacy. In Bangladesh, whether an infant is considered legitimate or not depends on some clear rules:

- It is considered illegitimate except the biological father certifies differently if an infant comes into existence within six months after marriage.
- As long as the father doesn't object in question, an infant delivered over six months of

²¹Prachi Dutta, ‘Illegitimate’ Children and the Law: A Primer on the Rights of Children Born Out of Wedlock in India, 06 August, 2022
<<https://legiteye.com/illegitimate-children-and-the-law-a-primer-on-the-rights-of-children-born-out-of-wedlock-in-india-by-prachi-dutta/>>

marriage is usually accepted as legitimate.

- Different rules apply in different legal traditions: Ten lunar months in Shia law and Hanafi law lasts for two lunar years, while Shafei or Maliki law lasts for four.

Things get more complex if the woman has remarried after a divorce:

- If she hasn't remarried and the waiting period (iddat) applies, paternity is established if the child is delivered from two years of divorce.
- If the woman declares that iddat has ended, paternity is established if the child is birthed from six months of declaration.
- If iddat doesn't apply (e.g., in cases of unconsummated marriages ending in divorce), descent is only established if the child is delivered from six months of divorce.

These rules, influenced by culture, religion, and law, decide whether a child is considered legitimate or not in Bangladesh.

Societal attitudes often play a pivotal role in determining the legitimacy of a child, with cultural expectations influencing the acceptance or stigmatization of those born out of wedlock. Traditional norms, rooted in cultural and religious values, may impact the social standing and opportunities available to illegitimate children.

The concept of illegitimacy is not static; it evolves with societal shifts, legal reforms, and changing perceptions. Understanding how this term is defined in the Bangladeshi context is essential for unraveling the complexities surrounding the rights and social status of children born outside conventional marital norms.

As we navigate the intricate web of cultural, religious, and legal dimensions, a deeper understanding of how illegitimacy is defined in Bangladesh will pave the way for a more nuanced analysis of the challenges faced by these children and inform potential avenues for legal and societal reform.

3.3 HISTORICAL EVOLUTION OF LAWS RELATED TO ILLEGITIMATE CHILDREN

There are no specific laws in Bangladesh that serve the particular requirements and rights of illegitimate children. This absence contributes to a scenario where these children may not receive adequate protection, leaving them vulnerable to societal prejudices and legal uncertainties.

Islamic inheritance laws present challenges for illegitimate children by typically denying them property rights, creating issues in ensuring equitable treatment, especially concerning inheritance matters. The article explores Islam's perspective, recognizing its profound love and care for humanity. However, Islam deems illegitimate children a grievous sin due to its prohibition of extramarital affairs.

Islamic principles advocate mandatory marriage for those involved in such affairs, but the prevalence of frequent rape adds complexity to the situation. This intersection of religious beliefs and legal implications underscores the multifaceted challenges faced by illegitimate children within the context of Islamic principles. The article highlights the need for careful consideration and potential legal reforms to address the discrepancies between religious doctrine and legal frameworks, ensuring fair treatment for illegitimate children in matters of inheritance and societal recognition.

In Hinduism, according to provision 20 the Hindu Adoption and Maintenance Act, 1956²² underscores equal parental responsibility for maintaining both legitimate and illegitimate children. According to provisions 24 and 25 of the Hindu Marriage Act, 1955²³ extends the right for maintenance towards every child, regardless of their legitimacy. However, challenges persist for rape victims unable to claim fatherhood for their children, because they are not covered by the laws in effect. Garbha Upanishad, citing the entry of 'the soul Jivan' into the seventh month of the human body, complicates matters around abortion, leaving room for debate.

Conversely, Christianity does not offer a specific legal remedy for illegitimate children,

²²Hindu Adoption and Maintenance Act, 1956

²³Hindu Marriage Act, 1955

leaving them in an underprivileged position. This highlights a gap in the legal framework concerning their rights. The write-up calls for legislative attention, urging lawmakers to enact new legislation. It also appeals to religious scholars to address these issues, emphasizing the need to ensure equal rights for all children, regardless of their legitimacy. The plea underscores the societal responsibility to care for every child impartially, recognizing that a child has no say in its own birth, and life is a divine gift beyond human discretion.²⁴

3.4 CURRENT LEGAL FRAMEWORK AND PROTECTION

Protection for illegitimate children in Bangladesh requires a comprehensive legal framework that addresses their unique needs and rights. As under the Constitution of Bangladesh, which guarantees fundamental rights to all citizens, the absence of explicit provisions addressing the rights of illegitimate children creates uncertainty. Article 28 of the Constitution of Bangladesh²⁵ serves as a cornerstone by emphasizing the principles of equality before the law and non-discrimination. However, the absence of specific mentions regarding the rights of illegitimate children within this article creates legal ambiguities. This lack of explicit provisions leaves room for uncertainties, making it challenging to ensure adequate protection for illegitimate children and potentially leading to legal gaps and ambiguities in their rights and status.

3.5 CASE STUDIES: REAL LIFE IMPLICATIONS

A crucial decision regarding child parenthood has been handed down recently. Even if the father's identity might be listed as an official guardian, the highest court of Bangladesh's HCD rendered a significant decision directing that the legitimate guardian be recognized as guardians on all pertinent documents, including school records. The mother was named the child's guardian by the HCD following this historic verdict. Everybody deserves the same privileges under the Constitution, according to the interpretation of HCD. Consequently, if the father's initials is the just absent piece of information, it is illegal for an infant to be

²⁴ N. 21

²⁵The constitution of the People's Republic of Bangladesh

incapable to finish a format and receive a passport or visa or others important documents .The HCD stated in the verdict that a parent would only be able to register or fill out any document if they are the identity's bearer, since the proceeding is unlawful and goes against equality principles stated in the constitution.

A Writ petition of PI had been unitedly filed by three human rights organizations, Bangladesh Legal Aid and Services Trust (BLAST), Bangladesh Mahila Parishad, and Nari Pakshad²⁶. The Writ petition demanded that the mother be recognized to be the child's legal guardian. In response to the wirt's interim hearing, HCD required an interpretation explaining the reason for such discriminating regulation which violates the principles of justice and equality under human rights law and prevents individuals from exercising their right to the educational sector shouldn't be deemed illegal or unconstitutional. Afterwards, as a representative of the petitioners, BLAST submitted another affidavit to the court. After the Writ's final hearing, the ruling will be made public on January 24 pronounced by HCD²⁷.

This judgment opens an opportunity for ensuring rights and protection of illegitimate children. Against many social and legal boundaries, it provides an indirect recognition towards the illegitimate children legally.

3.6 CHALLENGES AND SOCIETAL DYNAMICS IN BANGLADESH

Illegitimate children are considered a taboo topic in our society and culture, lots of people are ashamed to even bring up subject matter because of the absence of understanding and awareness amongst the community. Social taboos are the driving force behind opposition to these kinds of public discussions. The legal entitlements of illegitimate children are not adequately protected by our closed culture and religious barriers. Numerous individuals' lives are profoundly impacted by our perceptions. It's as well true that certain children wouldn't be here today if it weren't for their own mistakes. Unfortunately, a large number of children in our society are born against their parents' desires and are not acknowledged by their biological parents.

²⁶*BLAST and Others vs. Bangladesh*, 2009

²⁷Md. Masum, The Mother will be the Guardian of the Illegitimate Child: The Supreme Court, 1 February, 2023, <<https://www.bdlawpost.com/2023/02/the-mother-will-be-guardian-of.html>>

A female can get pregnant after engaging in sexual interactions for romance, prostitution, rape, or other reasons. Regardless of the reason behind the pregnancy, all of society reacts against her, pressuring her to choose cruel options such as abortion or to secretly leave her newborn baby on roadsides, dumpsters, or anywhere else they are left alone. Since having sex without being married is considered immoral and is prohibited by religious law, the vulnerable mother is driven by terror of the stigmas related to being an unmarried mother. Consequently, newborns are found in dumpsters, roadside, manholes, or even in the entrances to buildings are common incidents that we witnessed. Open relationships are treated with flexibility nowadays due to adoption of contemporary cultures. Conversely, an infant who isn't accepted by his biological parents and society, where he will go or which is home as a place of his living.

Illegitimate children continue to be disadvantaged. Most illegitimate children wind up in orphanages and live miserable lives. But, A child does not choose its own birth, society should treat every child equally. Only God has the authority to take and give life.²⁸

3.7 CONCLUSION

The socio-legal view towards illegitimate children has evolved from one of exclusion and discrimination to a more inclusive, rights-based approach. While considerable strides have been made, ongoing efforts are vital to ensure that every child, regardless of their parentage, enjoys equitable treatment, opportunities, and societal acceptance.

²⁸Md. Asif Mahbub Tanvir, Save Illegitimate Children from Ignominy, 6 January, 2020
<<https://www.daily-sun.com/printversion/details/452286>>

CHAPTER 4

INTERNATIONAL PERSPECTIVES

4.1 INTRODUCTION

Around the world, illegitimate children have different rights and statuses. Many nations have come to acknowledge that all children, regardless of their parents' marital status, have equal rights. In many places, societal attitudes and legal systems around illegitimate children have evolved to promote greater equality. Nonetheless, there are still differences, and viewpoints on legitimacy are still influenced globally by cultural, religious, and legal issues.

4.2 COMPARATIVE ANALYSIS WITH GLOBAL PRACTICES

We examine more closely how different nations handle concerns pertaining to children born out of wedlock. We hope to provide readers a better knowledge of the many strategies employed globally to address these issues by highlighting the variations in laws, societal attitudes, and available support systems. This report offers insightful information on how various nations handle the challenges posed by illegitimate offspring.

Hereditary titles depend on legitimacy because only legitimate children are permitted to follow in the line of succession. However, Elizabeth I, whose parents' canceled marriage made her legally illegitimate, is just one example of a historical case²⁹.

The USA and the Supreme Court affirmed constitutionality in *Nguyen V. INS* in 2001. In the UK, illegitimate children born before July 1, 2006, are not eligible to obtain British citizenship through their father; however, children born after July 1, 2006, may get British citizenship from their mother and father were single at the time of the child's birth^{30 31}.

²⁹Elizabeth I 'The Stuart Successions Project' <<https://stuartsexeter.ac.uk/education/biographies/elizabeth-i/>>

³⁰*Tuan Anh Nguyen vs. INS*, 533 U.S. 53 [2001]

³¹"Global Children's Trends | The Sustainable Demographic Dividend"
<<https://sustaindemographicdividend.org/articles/international-family-indicators/global-childrens-trends>>

The world's greatest rates of single parenthood are found in Latin America, where 55–74% of every child is born outside of the wedlock³².

In Norway and Finland, alimony is due from a guy who shared a home with the mother during a significant time. It is important to note that this obligation is distinct from any paternity assumption.

Legal systems and cultural perspectives impact inherited titles. US and UK legal frameworks shape rights. Latin America's single motherhood stats emphasize the need for complex international policy. Cultural differences in alimony between Finland and Norway reveal varied strategies for addressing issues with illegitimate offspring.

4.3 INTERNATIONAL HUMAN RIGHTS STANDARDS

The way illegitimate children are treated has changed to prioritize equality and nondiscrimination from a human rights standpoint. The rights of these children are being recognised by legal institutions, preventing them from being unduly disadvantaged because of their birth status. Of the 140 million births worldwide in 2016, about 15% (21 million) were unmarried. But this average differs greatly between nations and areas.³³

The position of illegitimate offspring changed significantly in the 20th century. International agreements such as the UN Convention on the Rights of the Child, 1989 and the Universal Declaration of HR, 1948 stressed that all children, regardless of marital status, should have equal protection. The idea of illegitimacy was abolished in certain nations, while further marriages were permitted in others, guaranteeing equal rights to children of both legitimate and illegitimate parents. Some places also saw an increase in the recognition of the father's parental status, while others, such as South Asia, continued to place legal emphasis on the link between the nonmarital kid and the mother (Goonsekere 1998).³⁴

The evolving landscape surrounding illegitimate children within the framework of human rights signifies a commendable shift towards equality and nondiscrimination. As societies

³²The Sustainable Demographic Dividend, *Global Children's Trends*, page 1

³³Joseph Chamie, 'Out-of-Wedlock Births Rise Worldwide' (*Yale Global Online*, 16 March, 2017) <<https://archive-yaleglobal.yale.edu/content/out-wedlock-births-rise-worldwide>>

³⁴J. Roche, *International Encyclopedia of the Social & Behavioral Sciences*, 2001

progress, recognizing and safeguarding the rights of all children, irrespective of their birth circumstances, the principles of HR and the pursuit of a more inclusive and just global society reflects a collective assurance.

4.4 TREATIES AND CONVENTIONS RELEVANT TO ILLEGITIMATE CHILDREN

A woman and her unmarried child are legally regarded as a blood tie under French-style legislation. But the mother must formally recognise the child before any legal claims about this relationship can be filed. Either this relationship is viewed as illegitimate and special, or it is compared to the typical mother-child attachment that is created through marriage. The intricacy of conflict rules in these situations is reflected in the diverse variances in the legal specifics.

In the US and the current Montevideo Treaty, the forum is implemented³⁵. When a kid is born in the UK or overseas, to English parents, Sui generis is the English law, meaning it applies in these circumstances. Under these circumstances, only English law is relevant³⁶.

Following the German conflict laws, if the mother is a German and the father is a Finnish³⁷. This divided outcome comes closer to the American principle³⁸. It is noteworthy that in a French case, the child acquired Polish nationality as a result of the father's acknowledgement, even though the father and the mother were Italian. This resulted in a situation where the mother might act on behalf of the kid under Polish law. But according to Italian law, the father would have had this authority³⁹. The objective of ascertaining the father's obligation to provide assistance. For a while, it was believed that this norm would apply to the entire relationship between a father and kid, and it was reflected in the Polish Law of 1926⁴⁰. For important reasons, the prevailing opinion currently favors interpreting the rule's limitations laterally and reserving all issues other than pertaining to support the paternal law⁴¹.

³⁵Treaty of Montevideo in International Civil Law (1889), Art. 18, *Nicaragua: C. C. Tit Prel. Art VI* (10), *Codigo Bustamante* Art. 63

³⁶JH B. and Earl of Halsbury, *The Laws of England. Vol. XIII. Equity to Evidence* (1911) 24 *Harvard Law Review* 589 <<http://dx.doi.org/10.2307/1325155>>

³⁷RAAPE 500

³⁸Supra pp. 601-603

³⁹*Triv. Ci vs. Nice* (2 February, 1903) *Clunet* 1903, 859. Gf. Italian C.C. (1865) Art. 184 par. 2

⁴⁰*Greece: C.C. Art. 20*

⁴¹Illegitimate Power: Bastards in Renaissance Drama” (1995) 32 *Choice Reviews Online* 32 <<https://dx.doi.org/10.5860/choice.32-5502>>

Recognising the wider nature of the problem, more recently, lawmakers have enacted specific provisions in the Finnish Law, 1929. It often controls the maternal personal laws, whereas an illegitimate father's personal law controls his inheritance rights⁴². Despite his possible defense that plurium concubentium was valid under Dutch law but not under Swiss law, the Dutch Hof den Haag accepted a Swiss ruling in 1937 that held a Dutchman liable for alimony. The court struggled to resolve this international legal matter because of its complexity⁴³. When an unmarried mother can sue her biological parent or partner for pregnancy, birth, and support expenses is explicitly outlined under modern legislation. The laws that pertain to the mother are also mentioned⁴⁴.

Chaotic situations would be resolved if the legal system were made simpler and more uniform. It is not appropriate to deny the legitimate family a uniform legal system. Although there have been weak arguments in previous decades, the idea that the head's law should apply to all recent relationships is still a viable one.

4.4 BEST PRACTICES IN OTHER COUNTRIES AND CASE STUDIES

An essential aspect of transforming societal structures is recognizing the rights of illegitimate children. To foster a more inclusive and equitable global approach to the well-being of all children, irrespective of their birth circumstances, it is imperative to understand and address these differences on a global scale.

The Republic of Ireland

In Russell v. Russell Case,

The rule doesn't always apply; if the child was conceived before marriage, that's an exception.⁴⁵ Following their separation, the spouses are in the following situation. Even if the parties are split apart by consent or a court order, the **Russell v. Russell** rule still stands.⁴⁶ As we have shown, in cases when a court order separates the parties and the child's birth timing

⁴²HERNBERG, 7 Z. ausl. PR. (1932)

⁴³Hof Den Haag (16 April, 1937) W.1937, no. 538

⁴⁴German: EG. Art. 21, 1940; MARIDAKIS, Revue Crit. 1938, 347

⁴⁵Poulet Peerage Case, [1903] A.C. 395 (H.L.)

⁴⁶Park vs. Park [1946] N.I. 151 (K.B.D., Andrews L.C.J)

corresponds with the child's conception occurring after the order was signed⁴⁷. Assumption that the spouse is not the parent of the child. If the wife can, she may refute this assumption in this situation, but she will need to do so with proof other than her own⁴⁸. Any declaration made by either [spouse] regarding the existence of the marriage or the legality of the children is acceptable until the marriage has been proven⁴⁹.

If the parents of an illegitimate child were free to marry at the child's birth time, both Roman and Canon Law have provisions granting legitimate status to the child's parents. This principle was rejected⁵⁰.

It should be noted that on the day of the second marriage, the child must be a living individual. After death legitimation is unacceptable. Regarding the status of children born outside of marriage, the Constitution is not entirely clear. The courts have examined whether the mother, father, or child, both parents collectively form a 'family' for the intents of Article 41 of the Constitution, along with if a child born outside of marriage holds constitutional rights and then, if so, what legal foundation regulates these rights. We will deal with each of these concerns individually.⁵¹

Walsh J., speaking for the Supreme Court, made the following statement in the ruling (**Nicolaou**) v. **An Bord Uchtála**⁵². The provisions of Article 41, especially section 3, make it very clear that 'family to which Article refers is the family that is based on the institution of marriage.' In the context of the Article, marriage is defined as a valid marriage as defined by the laws currently in effect. However, it is actually the case that children residing with unmarried parents can often be referred to as a family and have many, but not all, of the outside attributes of a family, and can even be considered such for the purposes of a specific law, Article 41's assures are restricted to families.

⁴⁷*Supra*, p.4

⁴⁸*Ettenfield vs. Ettenfield*, [1940] 1 All E.R. 293, 301, (C.A., per Goddard L.J.)

⁴⁹*Mulhern vs. Cleary*, [1930] I.R. 649, 679 (Sup. Ct., per Fitz Gibbon J)

⁵⁰A. Shatter, *Family Law in the Republic of Ireland*, chapter 11 (2nd ed., 1981)

⁵¹P. Bromley, *Family Law*, 579 (6th ed., 1981)

⁵²I.R., 567, 643-644, [1966]

In Ohio

If the father appears on the birth certificate, if there is a voluntary acknowledgment, if there is an administrative order, or if a court orders a paternity declaration, then illegitimate children are eligible to inherit under intestacy law⁵³.

In Philippines

In the absence of legitimate descendants or ascendants, illegitimate offspring may inherit from their deceased parent's separate properties. They have a share according to Article 887(4)⁵⁴.

In United Kingdom

The rights of illegitimate children who are born outside of a legal marriage are equal to those of children as legitimate born within marriage. It is forbidden to hurt or treat them unfairly⁵⁵.

Differing cultural, legal, and societal norms significantly influence the treatment of illegitimate offspring worldwide. Despite efforts highlighted in international human rights agreements to prioritize equality and nondiscrimination, existing gaps underscore the ongoing challenges in achieving a universally equitable approach to the rights of these children.

⁵³Drew, 'Illegitimate Children, Legitimate Claims: Understanding Your Inheritance Rights' (*Wood Lamping*, 8 May, 2023) <<https://woodlamping.com/illegitimate-children-legitimate-claims-understanding-your-inheritance-rights/>>.

⁵⁴Atty Harold Respicio, 'Rights of an Illegitimate Child in the Philippines', (*RESPICIO & CO.*, 17 August, 2023) <<https://www.respicio.ph/features/rights-of-an-illegitimate-child-in-the-philippines>>

⁵⁵Hansard, 'Illegitimate Children' (1964) <<https://hansard.parliament.uk/commons/1964-02-07/debates/IllegitimateChildren>>

4.6 CONCLUSION

Internationally, illegitimate children's rights are recognized and safeguarded to ensure their equal treatment and protection under the law in several countries. These rights encompass various aspects such as the right to identity, non-discrimination, access to education, healthcare, inheritance, and social security. International conventions and declarations emphasize the importance of ensuring that illegitimate children are not deprived of their rights based on their birth status. The aim is to create a fair and inclusive society where every child, regardless of their birth circumstances, has the opportunity to grow, thrive, and contribute meaningfully to their communities.

CHAPTER 5

FINDINGS AND RECOMMENDATION

5.1 INTRODUCTION

Under the scope of human rights law, the Bangladeshi Constitutional interpretation contains a core foundation targeted at preserving the rights of illegitimate offspring. Despite this, the lack of express court precedents or direct addressing of illegitimate children's rights might make assuring full protection difficult. Although the Constitution safeguards equality and non-discrimination principles without explicitly distinguishing between legitimate and illegitimate children, the absence of specific judicial precedents focusing on this issue precisely might lead to discrepancies in completely safeguarding the rights and protections of illegitimate children. Regardless of this, fundamental concepts of the Constitution, particularly Article 28(2) focusing on equal rights for all citizens irrespective of birth status and Article 28(3) prohibiting discrimination regarding birth circumstances, form the foundation for securing every child's right, including those who are called illegitimate children.

Social awareness is critical in reducing the societal stigmatization of illegitimate offspring. However, simply raising social awareness may not be enough to entirely shield these youngsters from the negative impacts of bullying, gaslighting, and other types of prejudice. Legal protection is also required to establish a complete framework that protects their rights and mental health. Legal safeguards also provide an explicit structure for dealing with cases of bullying, gaslighting, and other types of maltreatment. They provide options for seeking justice, obtaining assistance, while holding abusers responsible for their crimes.

5.2 FINDINGS

1. The constitution of Bangladesh has no specific provision regarding the right of illegitimate children. But there is a narrow scope of indirectly safeguarding their right under the interpretation of Article 28(2) and 28(3).
2. There is no remedy available against the social stigmatization of the illegitimate children under laws. Only social welfare organizations offer some welfare measures regarding this issue.
3. Though society does not want to accept illegitimate children, no preventive measure has been taken to prevent the birth of illegitimate children. For example, abortion is considered as an offense under the Penal Code 1860. However, in situations where a rape victim or others, abortion may prevent the unwanted child from giving delivery. Which can be considered as a solution in these types of cases.

5.3 RECOMMENDATION

1. More policy, legal protections systems need to be made under the umbrella of universal human rights legislation and based on the interpretation of Bangladesh's constitution.
2. Specific laws or provisions in the constitution need to be incorporated regarding the right of the illegitimate child. Where a provision will include the opinion regarding the priority of the consent of the mother. Because guardianship and custody of illegitimate One continues to be exercised by its mother.
3. Besides the social welfare programs, legal protection must have to be ensured against the social stigmatization of illegitimate children.

5.4 CONCLUSION

Although social awareness campaigns are important in influencing society mindsets and views, legal safeguards are a critical instrument for enforcing and upholding these ideals. Specific legislative measures specifically forbidding discrimination based on birth status might inhibit discriminatory behavior and give victims with redress. Some sort of security is trying to be provided for illegitimate children through the interpretation of these Constitutional laws and the effect of universal human rights laws. Nevertheless, the lack of clear court precedents that specifically address their rights may allow opportunity for additional clarification and special legal safeguards to assure their full protection within the legal system. Incorporating social awareness with strong legal measures will result in a more comprehensive strategy for fighting the stigmatization of illegitimate offspring. This complete plan will create an atmosphere in which children feel acknowledged, safe, and empowered to exercise their rights, alongside increasing society's acceptance and understanding.

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