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Illegitimate kids to share property: SC

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Does an illegitimate child have rights over his father's ancestral property? The Supreme Court (SC) seems divided on the issue. A two-judge bench of Justice GS Singhvi and Justice AK Ganguly has taken a divergent view from earlier SC judgments holding that an illegitimate child did not have a share in his father's ancestral property.



The bench has called the earlier verdicts a "narrow" interpretation of the Hindu Marriage Act, "a beneficial legislation." As it differed from the existing interpretation of the legislation, the court referred the issue to the Chief Justice of India and requested him to constitute a larger bench for "reconsideration."

It was incumbent upon the court to do so as the SC judgments already delivered on the issue were passed by two-judge benches.

The bench expressed its reluctance in accepting the view laid down by its predecessors and stated the same was not in consonance to the "constitutional values enshrined in the preamble of our

Constitution which focuses on the concept of equality of status and opportunity and also on individual dignity."

"The Court has to remember that relationship between the parents may not be sanctioned by law but the birth of a child in such relationship has to be viewed independently of the relationship of the parents. A child born in such relationship is innocent and is entitled to all the rights which are given to other children born in valid marriage," the bench observed.

The court further felt that the law did not impose any restriction on the property right of such (illegitimate) children. However, their right to limited to their parents' property, it noted.

"Therefore, such children will have a right to whatever becomes the property of their parents whether self acquired or ancestral," the court said. Interestingly, it added, even the legislature has not qualified the word "property" mentioned in the Act. The court held that the law has not explained whether the right of an illegitimate child is restricted to a father's self-acquired or ancestral property.

"With changing social norms of legitimacy in every society, including ours, what was illegitimate in the past may be legitimate today. The concept of legitimacy stems from social consensus, in the shaping of which various social groups play a vital role," the bench said.

POINT NOT TAKEN

- Bench calls earlier verdicts on the issue a "narrow" interpretation of the Hindu Marriage Act
- Referred the issue to Chief Justice of India and requested him to constitute a larger bench for reconsideration
- Expresses reluctance in accepting view laid down by its predecessors and states the same was not in consonance to the 'constitutional values enshrined in the preamble'.

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