



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provide dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

ANALYSIS OF THE LOOPHOLES UNDER SECTION 116 OF BHARATIYA SAKSHYA ADHINIYAM, 2023

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Abstract.

This study examines the legal presumption of legitimacy under Section 112 of the Indian Evidence Act, 1872 (now Section 116 of the Bharatiya Sakshya Adhiniyam, 2023), in light of advancements in DNA testing, constitutional rights under Article 21, and evolving social family structures. The paper traces the historical origins of the conclusive presumption in Section 112, early judicial reluctance to order biological tests, shifting jurisprudence including *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik* that recognized DNA evidence as capable of rebutting the presumption of legitimacy, and recent decisions such as *Dipanwita Roy v. Ronobroto Roy* and *Ivan Rathinam v. Milan Joseph* which reaffirm the strength of the presumption and the limits on its disturbance. The analysis highlights a central tension: the need to balance societal values of legitimacy, marriage, and the child's welfare against individual rights of privacy, dignity, identity, and the truth of biological parentage. The study critiques the present "conclusive proof" standard under Section 116 as overly rigid, potentially conflicting with constitutional protections, and disconnected from scientific reality. It proposes reforms, including transforming the presumption into a rebuttable one through reliable scientific evidence, defining "non-access" more precisely, procedural safeguards before ordering DNA tests, time-limits for challenge, and recognition of diverse family forms. These reforms seek to reconcile legal certainty with fairness, to ensure the law protects both social fabrics and individual rights in the age of genetic and forensic science.

Keywords

Bharatiya Sakshya Adhiniyam (2023), Right to identity, DNA paternity testing, Genetic identity in law, Child legitimacy.

Introduction.

DNA is the hereditary material in humans and almost all other organisms¹.

A DNA paternity test can accurately determine a child's biological father. It can be performed during pregnancy or after the baby is born. Most tests involve cheek swabs to collect genetic material for legal purposes.²

The Bharatiya Sakshya Adhiniyam, 2023 (is referred to as BSA, 2023), the Indian Evidence Act, 1872 (is referred to as IEA, 1872). The IEA was passed in 1872. Since then, section 112 has not been amended. At that time, there was little understanding of forensic techniques, and the concept of DNA had not yet been discovered. Furthermore, lawmakers could not predict the development of scientific methods, such as DNA testing. So, section 112 was a reasonable provision that protected a woman's dignity and ensured that legitimate children would not be labelled as bastards. However, both science and morality have undergone significant changes since then. Today, section 112 is outdated. It needs to be revised to permit DNA testing when there is a clear case to challenge paternity. The main change is the renumbering of the section: Section 112 of the Indian Evidence Act, 1872, has now become Section 116 of the BSA.

Section 116 of the BSA, 2023, addresses the legitimacy of a child born during a marriage. The law assumes that if a child is born during a valid marriage between the mother and a man, or within 280 days after the marriage ends, while the mother is still unmarried, this serves as conclusive proof of the child's legitimacy. This holds unless it can be demonstrated that the couple had no contact with each other. The reasoning behind this section is to confirm that any child born during a valid marriage is considered legitimate. The law does not assume dishonourable or immoral behaviour unless there is clear proof of such actions. Thus, section 116 relies on the idea of public morality and public policy.³⁴ But not on an individual.

Section 2 of the Act outlines three levels of presumption: 'May presume', 'Shall presume', and 'Conclusive proof'. It is important to note that section 116 of the Act uses the term 'conclusive proof'. Therefore, section 2(2) and section 116 must be read together. If both requirements of section 116 are met, it will be treated as conclusive proof of legitimacy. This means that no

¹ medlineplus.gov.

² my.clevelandclinic.org.

³ *Shyam Lal @ Kuldeep v. Sanjeev Kumar & Ors.*, (2009) 12 S.C.C. 454 (India).

⁴ Bharatiya Sakshya Adhiniyam, 2023 Section 116.

further evidence can be provided to challenge this fact. The legitimacy of the child cannot be disputed unless non-access is established. This creates difficulties for the party questioning the child's paternity.⁵

Evolution of DNA (Blood Test) in the Justice System.

1.1 Early Judicial Acceptance of DNA Evidence (1900s).

Courts initially favored social legitimacy over DNA evidence because the technology was new and not fully understood or widely accepted. Judges and juries relied more on eyewitness testimony, alibis, and other traditional forms of evidence that fit established legal practices. There were also worries about the reliability, interpretation, and possible contamination of DNA samples. Additionally, legal systems tend to be careful and slow in adopting new scientific methods. They want to make sure these methods meet strict standards before affecting verdicts. Over time, as DNA testing became more accurate and its value was proven, courts increasingly accepted it as strong evidence. In *Vasu v. Santha*⁶. It has been held that the Court cannot compel a party to undergo a medical examination. The learned single Judge doubted the correctness of the above decision in view of the present-day scientific developments and the position in the USA as disclosed in *Armado Shamarban v. State of California*.⁷ And the provisions of the Family Reforms Act, 1969. Reference was also made to *Venkateswarlu v. Venkatanarayana*⁸ and to *Kunhiraman v. Manoj*⁹¹⁰.

1.2 Shift Towards Scientific Truth (2000s Onwards).

The Supreme Court has set limits on the use of DNA evidence under Section 112, emphasizing the requirement of proving that the husband had no access. The ruling establishes the necessity for clear and convincing evidence in paternity disputes, thereby ensuring that the legal system safeguards the rights of all parties involved. In the case of *Banarsi Dass v. Teeku Dutta*¹¹ The Supreme Court upheld the High Court's ruling, stating that DNA tests should not be ordered as a matter of routine in succession certificate proceedings. Following the judgment referenced earlier, precedent *Goutam Kundu v. State of W.B.*¹² The DNA or blood tests cannot be ordered

⁵ Bharatiya Sakshya Adhiniyam, 2023 Section 2 (2).

⁶ *Vasu v. Santha*, (1975) K.L.T. 533 (Ker. H.C.).

⁷ *Armado Shamarban v. State of California*, 384 U.S. 757 (1966).

⁸ *Chilukuri Venkateswarlu v. Chilukuri Venkatanarayana*, AIR 1954 S.C. 176 (India).

⁹ *Kunhiraman v. Manoj*, 1991 (2) K.L.T. 190 (Ker.).

¹⁰ indiankanoon.org.

¹¹ *Shri Banarsi Dass v. Mrs. Teeku Dutta*, (2005) 4 S.C.C. 449 (India).

¹² *Goutam Kundu v. State of West Bengal*, (1993) 3 S.C.C. 418 (India).

indiscriminately. A strong prima facie case demonstrating non-access is required, and courts should consider how such tests may stigmatize the child or mother. Same as in the case of *Kamti Devi v. Poshi Ram*.¹³

1.3 Landmark Case – *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik (2014)*.¹⁴

The Supreme Court dealt with a maintenance dispute where the husband questioned his paternity and requested DNA tests. The main legal issue was the conflict between scientific evidence and the legal presumption of legitimacy under Section 112 of the Evidence Act. This section states that a child born within marriage is considered the husband's unless it can be proven that he did not have access to the wife. The Court ordered two DNA tests: one in Nagpur and a retest in Hyderabad. Both tests definitively ruled out the husband as the biological father. The Court confirmed that while Section 112 establishes a strong presumption of legitimacy, this presumption can be challenged, especially when scientific evidence contradicts it. It noted that courts should not order DNA tests all the time, but emphasized that when such evidence is available and goes against legal presumptions, the truth should take precedence over legal fiction. Since the DNA tests clearly showed that the husband was not the biological father, and no lower court found evidence of non-access, the Supreme Court decided that he cannot be held responsible for paternity or required to pay maintenance for the child. As a result, the maintenance order for the daughter was overturned.¹⁵

1.4 Current Position (2014–Present).

Courts emphasized that DNA tests should not be ordered regularly, but only when there is a clear, legitimate need. They must balance privacy rights under Article 21 with the quest for factual truth, considering issues of bodily autonomy and personal dignity. In the case of *Dipanwita Roy v. Ronobroto Roy*,¹⁶ the Supreme Court described DNA testing as the most legitimate scientific method for establishing paternity. It affirmed that refusal to undergo such testing could lead to adverse inference under Section 114(h) of the Evidence Act. In *Navtej Singh Johar & Ors. v. Union of India, W. P.*¹⁷ Justice A.M. Khanwilkar recently said that “Social morality cannot violate the rights of even one single individual.” The Indian Evidence

¹³ *Kamti Devi & Anr. v. Poshi Ram (India)*, (2001) 5 S.C.C. 311.

¹⁴ *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik*, AIR 2014 SC 932 (India).

¹⁵ indiankanoon.org.

¹⁶ *Dipanwita Roy v. Ronobroto Roy*, AIR 2015 SC 418 (India).

¹⁷ *Navtej Singh Johar & Ors. v. Union of India*, WP (Criminal) No. 76 of 2016 (Supreme Court of India Sept. 6, 2018).

Act was passed in 1872. Since then, section 112 has not been changed or updated. At that time, there was limited knowledge of forensic techniques, and DNA had not yet been discovered. Legislators could not anticipate the advent of scientific methods like DNA testing. Therefore, section 112 was relevant then as it protected a woman's chastity and ensured that legitimate children were not labelled as 'bastards.' However, both science and morality have evolved since that time. In today's world, Section 112 is no longer relevant. It needs to be revised to permit DNA testing when there is enough evidence to challenge paternity.¹⁸

In the case of *Ivan Rathinam v. Milan Joseph*¹⁹ The Supreme Court, made up of Justices Surya Kant and Ujjal Bhuyan, looked at two main issues:

- a) **Presumption of Legitimacy and Paternity:** The Court stated that under Section 112, a child born during a valid marriage is conclusively seen as the legitimate child of the husband. This assumption includes paternity unless it is conclusively proven that there was non-access. The Court noted that simple claims or DNA evidence are not enough to challenge this presumption.
- b) **Jurisdiction of Courts and Res Judicata:** The Court decided that the Family Court made a mistake by reopening the maintenance petition after the civil courts had already determined Milan Joseph's legitimacy. The principle of res judicata prevented the same issue from being litigated again.

On DNA testing, the Court acknowledged that it could violate a person's fundamental rights to privacy and dignity. It warned against ordering DNA tests without strong reasons, as these tests could affect personal autonomy and might harm someone's reputation and family stability.

The Supreme Court accepted Ivan Rathinam's appeal, set aside the Kerala High Court's judgment and the Family Court's order that revived the maintenance petition, and confirmed that Milan Joseph is legally presumed to be the legitimate son of Raju Kurian. The Court highlighted the need for finality in legal cases and the safeguard of fundamental rights in family law.²⁰

¹⁸ ijert.org.

¹⁹ *Ivan Rathinam v. Milan Joseph*, (2025) INSC 115 (S.C. India).

²⁰ indiankanoon.org.

Sir James Fitzjames Stephen.

Sir James Fitzjames Stephen, an English lawyer, judge, and philosopher, is widely regarded as the principal architect of the IEA, 1872. Appointed as the legal member of the Viceroy's Executive Council in India in 1869, Stephen played a pivotal role in organizing Indian law. During his tenure, he drafted several key pieces of legislation, including the IEA. This Act aimed to standardize the rules of evidence throughout British India, ensuring uniformity regardless of caste, religion, or social status. Stephen's approach to the IEA was meticulous and grounded in his legal philosophy. He emphasized clarity and practicality, seeking to simplify the complex and inconsistent rules of evidence under common law. His work laid the foundation for a legal framework that continues to influence the justice system in India today. Section 112 of the IEA, which presumes a child born during a valid marriage to be legitimate, reflects Stephen's commitment to providing clear and fair legal standards. This section has played a key role in shaping legal views on legitimacy and paternity in Indian law.²¹

Criticize: Section 112 of the Indian Evidence Act, 1872, according to Sir J.F. Stephen, establishes a conclusive presumption of legitimacy for children born during a valid marriage, which can only be rebutted by proving "non-access" between the spouses at the time of conception. While Stephen intended to provide legal certainty and protect the legitimacy of children, this provision has faced criticism for several reasons. The reliance on the "non-access" exception has become increasingly ineffective in modern times, with the advent of scientific advancements like DNA testing, which can conclusively determine biological parentage. However, the rigid application of Section 112 has often disregarded such scientific evidence, leading to outcomes that may not reflect biological truths.

Furthermore, the presumption under Section 112 can lead to situations where individuals are legally recognized as parents despite not being the biological progenitors, potentially affecting inheritance rights and personal identities. This conclusive presumption has also been criticized for potentially infringing upon children's rights to know their biological parentage, which is vital for identity and medical history. The application of Section 112 may inadvertently favour certain parties in legal disputes, potentially leading to gender biases and inequalities in legal recognition and responsibilities. The provision's rigid approach may not effectively address contemporary family dynamics, such as remarriages and assisted reproductive technologies,

²¹ library.smu.edu.

leading to legal uncertainties and challenges in establishing parentage.

Research Methodology

The research relies on both primary and secondary sources. The primary sources include the *Bharatiya Sakshya Adhinyam, 2023*, particularly Section 116, which governs evidentiary presumptions in matters such as paternity and legitimacy, and the *Constitution of India, 1950*, with emphasis on Article 21 that safeguards the rights to life, privacy, and dignity. Judicial precedents such as *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik (2014)*,²² *Dipanwita Roy (2015)*,²³ and the recent *Ivan Rathinam v. Milan Joseph (2025)*,²⁴ among others, are also central, as they illustrate the evolving approach of courts towards DNA evidence, legitimacy presumptions, and family rights. Secondary sources consist of scholarly writings and commentaries that critically engage with evidence law, legitimacy doctrines, and reproductive rights, along with credible online legal platforms such as Indiankanoon, Bar and Bench, Legalservice India, Verdictum, and Latest Laws, which were used to access judgments and stay updated on legal developments. Additionally, research articles and expert opinions on contemporary family law and constitutional interpretation have been consulted to contextualize these issues within broader debates on diverse family structures and the scope of privacy rights.

Discussion & Analysis

4.1 Conflicts Between Article 21 and Section 116 of the BSA, 2023.

4.1.1 Right to Know Biological Identity vs. Conclusive Presumption.

Article 21 guarantees the fundamental right to life and personal liberty, which courts have interpreted to include a person's right to know their biological identity. However, Section 116 of the law establishes a conclusive presumption that a child born during a marriage is legitimate, regardless of scientific evidence to the contrary. This legal presumption prevents children from accessing the truth about their biological parentage, creating a direct conflict with the rights protected under Article 21. The tension between these provisions raises important questions about balancing social legitimacy with individual rights to biological identity and personal truth^{25,26}. In the case of *Karnataka High Court – Case of Harish Kumar*

²² *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik*, AIR 2014 SC 932 (India).

²³ *Dipanwita Roy v. Ronobroto Roy*, AIR 2015 SC 418 (India).

²⁴ *Ivan Rathinam v. Milan Joseph*, (2025) INSC 115 (S.C. India).

²⁵ *Bharatiya Sakshya Adhinyam, 2023* Section 116.

²⁶ *Constitution of India, 1950* Article 21.

DNA test order quashed (2025)²⁷ The High Court held that a DNA test should not be ordered merely on demand. The court emphasized that the presumption of legitimacy is rooted in public morality and social order, and that courts must ensure *pleading and proving of non-access* before allowing DNA tests. It also held that ordering DNA tests in absence of those can violate rights to privacy and dignity under Article 21.

4.1.2 Personal Autonomy vs. Legal Fiction.

Article 21 safeguards individual autonomy, personal dignity, and the right to make informed choices, allowing people to live with self-determination and align their actions with their values. In contrast, Section 116 introduces a legal fiction by presuming the legitimacy of paternity, preventing parents and children from contesting it even when biological evidence may suggest otherwise. This rigid rule prioritizes the appearance of legitimacy over factual truth, restricting individuals' ability to seek justice and understand their familial relationships. By enforcing such a presumption, Section 116 can undermine personal autonomy, disregard the complexities of human relationships, and cause emotional distress or a sense of powerlessness. The tension between the protective intent of Article 21 and the restrictive effect of Section 116 underscores the broader conflict between individual rights and rigid legal conventions.

4.1.3 Child's Best Interests vs. Social Morality.

The principle enshrined in Article 21 emphasizes that the welfare and best interests of the child must take precedence in all considerations. This legal framework is designed to ensure that children are afforded the protection and support necessary for their healthy development, both psychologically and socially. However, the interpretation and application of this principle can sometimes be overshadowed by other societal values, particularly those outlined in Section 116, which emphasizes the importance of marital sanctity and social morality. This prioritization can inadvertently compromise the psychological well-being and identity rights of the child, leading to situations where the child's needs are not adequately addressed.

The tension between maintaining social order and safeguarding individual rights creates a complex dilemma for policymakers and legal practitioners. On one hand, there is a compelling argument for upholding traditional values and societal norms, which are often seen as

²⁷ Sri Hareesh @ Harishkumar v. A.S. Umesh & Ors., Writ Petition No. 20342 of 2025

foundational to a stable community. On the other hand, this approach can result in the marginalization of children's rights, particularly when their needs conflict with broader social expectations. As a result, it is crucial to strike a balance that respects both the integrity of social structures and the fundamental rights of children, ensuring that their best interests remain at the forefront of any legal or social considerations.

4.1.4 K.S. Puttaswamy v. Union of India.²⁸

Although the Supreme Court's 2017 judgment in Puttaswamy did not directly address legitimacy presumptions, it recognized the right to privacy as a fundamental right under Article 21. This has significantly impacted paternity and legitimacy cases. Lower courts are increasingly viewing DNA and scientific evidence as essential tools to consider, even when a statutory presumption exists. For example, a recent judgment from the Punjab & Haryana High Court prioritized an adult child's right to know their biological parentage over the father's right to privacy. The court ordered a DNA test despite the presence of a conclusive legitimacy presumption.²⁹

This shows a change in the legal approach. Legal presumptions of legitimacy are no longer absolute. They can be challenged by competing interests that are protected by the Constitution, such as the right to identity and biological truth, which is rooted in Article 21.³⁰

4.2 Limitations

4.2.1 False Presumption to Secure Benefits.

A mother may intentionally assert or maintain access to her child during a specific timeframe to ensure that the child is legally recognized as the offspring of her husband, regardless of the biological facts. This approach can be used to influence legal systems, securing benefits like inheritance rights, financial support, or social acceptance. By creating an appearance of legitimacy, the mother may take advantage of the legal system, obscure the true biological relationship, and lead the husband to believe he is the child's biological parent.

These actions can have significant effects, not just for those directly involved but also for society as a whole. The potential for deception raises ethical questions about family

²⁸ K.S. Puttaswamy v. Union of India, (2017) 10 S.C.C. 1 (India).

²⁹ indiankanoon.org.

³⁰ indiatimes.com.

relationships and the legal recognition of parenthood. Additionally, this situation can create disputes over inheritance and financial responsibilities, complicating matters for everyone involved. The consequences extend beyond personal relationships because they can weaken trust in legal institutions meant to protect the rights of children and families. This ultimately raises questions about the legitimacy of legal parentage in cases where biological ties are ignored.³¹ It was said in the case of *Safiya Malik v. State of Kerala (2025)*.³²

4.2.2 Blocking Paternity Claims When Access Can Be Challenged.

Making a false assumption to gain benefits is a serious ethical and legal issue with wide-ranging consequences. This behaviour often involves people or organizations misrepresenting facts or circumstances to gain advantages like financial help, insurance payouts, or other kinds of support that they do not truly deserve. Such actions undermine the integrity of systems meant to provide aid and erode public trust in institutions. Moreover, the fallout for those caught in such deceit can include legal penalties, financial repayment, and harm to their reputation, which can affect personal and professional relationships for a long time. It is important for individuals to recognize the value of honesty and openness in all interactions since seeking benefits through dishonest methods ultimately causes more harm than good. In the case of *Smt. Dukhtar Jahan v. Mohd. Farooq*,³³ the Supreme Court held that a child born during a lawful marriage is presumed legitimate unless non-access is proven. This ruling effectively makes it nearly impossible for a father to rebut legitimacy, even if paternity is questionable.³⁴

4.2.3 Reducing Scope for Scientific Evidence.

The strong nature of the presumption can overshadow important scientific evidence, like DNA testing. This creates real challenges for the husband or other parties involved, who may find it hard to provide such strong proof, even when it is clearly true. The legal system often prioritizes the presumption, which makes it tough for individuals to challenge accepted views with solid scientific evidence. Consequently, even when strong evidence is available that could change the outcome of a case, the existing presumption may prevent it from being considered. This leaves parties feeling frustrated and powerless in a system that appears to overlook the value of factual data. In the case of *Dipanwita Roy v. Ronobroto Roy & Others*³⁵ The Supreme Court

³¹ Jurisquest.com

³² *Safiya Malik v. State of Kerala*, 2025 Latest Caselaw 1534 (Ker. H.C. July 25, 2025).

³³ *Smt. Dukhtar Jahan v. Mohd. Farooq*, AIR 1987 S.C. 1049 (India).

³⁴ Scribd.

³⁵ *Dipanwita Roy v. Ronobroto Roy*, AIR 2015 S.C. 418 (India).

acknowledged DNA testing as the "*most legitimate and scientifically perfect means*" of proving paternity. Yet, it remained insufficient to rebut the conclusive presumption unless non-access was also established³⁶. Same as in the case of *Goutam Kundu v. State of W.B.*³⁷ The DNA or blood tests cannot be ordered indiscriminately. A strong prima facie case demonstrating non-access is required, and courts should consider how such tests may stigmatize the child or mother.

4.2.4 Coercion or Concealment.

In challenging marital situations, the assumption of paternity can be used in a manipulative way. For example, a mother may decide to withhold a DNA test or misrepresent the circumstances around paternity. This undermines the husband's rights and hides the truth. This manipulation affects the husband's ability to assert his legal and emotional claims. It also complicates the relationship, leading to more mistrust and conflict. Refusing to provide clarity through genetic testing can create a significant power imbalance. One partner's actions can deny the other the chance to make informed decisions about their family responsibilities and rights. These situations show the urgent need for transparency and fairness in paternity matters, especially when emotions and legal rights are at stake. Even in extramarital affairs, the wife can use the assumption of paternity can be used in a manipulative way to safeguard her reputation in society.

4.3 Reform Recommendations.

4.3.1 Introduce a Rebuttable Presumption.

Section 116 of the BSA, 2023, creates a firm presumption of legitimacy. This makes it very hard to challenge paternity, even with strong evidence. A better approach would be to change this to a rebuttable presumption. This change would allow parties to contest legitimacy using credible evidence, such as DNA test results or proof of non-access. This idea has strong support in the Supreme Court's decision in *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik (2014)*.³⁸ In that case, the Court noted that while Section 112 of the Indian Evidence Act (the predecessor to Section 116) aimed to provide conclusive proof, it remains rebuttable when there is contradictory scientific evidence. The Court stated, "*where there is evidence to the contrary, the presumption is rebuttable and must yield to proof.*" Moreover, when legal presumptions

³⁶ indiankanoon.org.

³⁷ *Goutam Kundu v. State of W.B.*, (1993) 3 S.C.C. 418 (India).

³⁸ *Nandlal Wasudeo Badwaik v. Lata Nandlal Badwaik*, AIR 2014 SC 932 (India).

clash with scientifically accepted facts, the latter should take precedence for the sake of justice.

This important ruling shows why Section 116 should be changed. We need to ensure that factual truth, not inflexible legal fiction, shapes decisions, especially in delicate topics like paternity and legitimacy.³⁹

4.3.2 Incorporate Scientific Evidence Explicitly.

To modernize Section 116 of the BSA and improve fairness in paternity and legitimacy cases, the law should be updated to allow DNA, medical, and forensic testing as valid forms of evidence. This change is based on the idea that reliable scientific methods can determine biological parentage with great accuracy. Courts have increasingly supported this approach.

Legal commentators have also highlighted the problems with relying solely on proving "non-access," which is a weak concept in the age of DNA testing.⁴⁰ They have urged lawmakers to update the law to include such evidence in legitimacy cases. These developments highlight the need to align the law with scientific realities and ensure people receive justice based on facts and fairness.⁴¹

4.3.3 Safeguard Individual Rights.

The *Karnataka High Court* recently issued a significant ruling reaffirming that courts must not order DNA tests simply upon request, especially when such pressure could violate constitutional protections under Article 21, which includes the rights to privacy, dignity, and autonomy. In this case, the court overturned a trial court order that had required a DNA test in a partition dispute. It stated that forcing individuals to provide biological samples without sufficient justification undermines the sanctity of marriage, the legitimacy of the child, and the fundamental rights to privacy and dignity. Emphasizing the legal principle that a child born within a valid marriage is conclusively presumed legitimate, the court stressed that DNA testing should only be allowed if non-access between spouses during the relevant period is both claimed and proven. This approach protects individual rights by ensuring DNA tests are granted only when truly necessary and appropriate.⁴² It balances the state's interest in factual accuracy

³⁹ indiankanoon.org.

⁴⁰ Bar and Bench.

⁴¹ LegalserviceIndia.com.

⁴² Verdictum.com.

with the individual's right to a private and dignified life. This careful consideration in judicial decisions highlights the need for reforms that uphold constitutional values while still allowing for truth-seeking in exceptional cases.⁴³

4.3.4 Recognize Diverse Family Structures.

Section 116 currently operates under a traditional framework that defines legitimacy solely in terms of a married couple. This approach leaves out modern family situations like surrogacy, assisted reproductive technology (ART), single parenthood, live-in relationships, queer partnerships, and blended or “chosen” families. It does not reflect changing social norms or the legal recognition of modern parenthood. The Supreme Court is already broadening the idea of family. In *Deepika Singh v. Central Administrative Tribunal*.⁴⁴ The Court expanded the legal definition of “family” to cover non-traditional households. This change ensures these families get equal protection and social welfare benefits under Article 14 of the Constitution. Likewise, the *Madras High Court* confirmed that “chosen families,” such as queer couples in domestic partnerships outside of marriage, have the constitutional right to life and liberty under Article 21.

At the regulatory level, India’s surrogacy and ART laws, like the ART Act, 2021, and the Surrogacy (Regulation) Act, 2021, restrict access to reproduction based on outdated marital and gender classifications. This exclusion affects many individuals, including LGBTQIA+ persons, single people, and live-in couples, and undermines the reproductive rights guaranteed under Articles 14 and 21. To promote fairness and legal consistency, Section 116 should be amended to acknowledge and support these diverse family structures explicitly. This reform would prevent exclusion, ensure fair results, and align with constitutional values and modern societal realities.⁴⁵

Conclusion.

In conclusion, the analysis demonstrates that while Section 116 of the Bharatiya Sakshya Adhiniyam (formerly Section 112 of the Indian Evidence Act) serves important social and legal purposes—protecting the legitimacy of children born in wedlock, preserving family stability, and avoiding stigmatization—its current formulation as a “conclusive proof” standard imposes

⁴³ Latestlaws.com.

⁴⁴ *Deepika Singh v. Central Administrative Tribunal*, (2022) 5 S.C.C. 1 (India).

⁴⁵ Foresight.com.

serious limitations on justice in cases where scientific evidence strongly suggests a different biological reality. Recent case law reaffirms that unless a party proves non-access, neither allegations of adultery nor even DNA evidence alone can upset the legal presumption of legitimacy. This rigid structure risks infringing fundamental constitutional rights, particularly those to privacy, bodily integrity, dignity, and identity, enshrined under Article 21.

To preserve both legal certainty and fairness, reform is necessary. Key reforms should include making the presumption rebuttable (under strict conditions) by scientifically reliable evidence, clarifying what constitutes non-access, ensuring robust procedural safeguards (for consent, privacy, best interests of the child), possibly instituting time-limits for challenging legitimacy, and adapting the law to recognize contemporary family realities—surrogacy, assisted reproduction, live-in relationships, and diverse parentage. Such amendments would align the law with scientific advances and constitutional values, while still protecting the welfare of children and the legitimacy presumption’s social role. Ultimately, the quest should be not to choose between social morality and factual truth, but to craft a framework where the law respects both.

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