

Whose Hand Should Rock the Cradle? Recognizing the Rights of the Mother and the Biological Father to Impugn the Legitimacy of a Child

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Philippine laws provide that a child born to a married woman is presumed to be the legitimate child of her husband. This marital presumption of legitimacy can only be impugned by the child's presumed father and in some instances, his heirs. Neither the mother nor the biological father has a similar right. In fact, the presumption holds even if the mother has declared against the legitimacy of her child or has been sentenced as an adulteress. This rule was made to protect the family from unwarranted and baseless actions made by the wife or persons outside the family unit.

This Paper proposes to amend this rule and give the mother and the biological father the right to impugn this marital presumption of legitimacy. The restrictive rule has not only worked against the best interests of the child in certain cases, but it has also become obsolete by reason of the advancement of medical science.

There are situations when the best interests of the child call for the mother or the biological father to question the presumption, as when the presumed father fails or neglects to do so. It is also possible that the presumed father is dead or incapable of initiating such actions. There are also circumstances when it would be better for the child to establish paternity with his biological father such as when the two have already developed a relationship. Advancements in medical science that prove not only non-paternity but also provide sufficient proof of paternity would also prevent baseless and unwarranted attacks on the legitimacy of the child.

In recognizing the right of the mother and the biological father to rebut the legitimacy of the child, statutory precautions are suggested to protect the interests of all concerned. These include a provision for prescription of the action, and requiring a hearing, in case of the biological father, to show that the case would be in the best interests of the child.