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INHERITANCE RIGHTS OF SAME-SEX COUPLES IN INDIA: LEGAL CHALLENGES IN THE ABSENCE OF MARRIAGE RECOGNITION

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ABSTRACT

Constitutional adjudication has been relevant in the development of recognition of same-sex relationships in India, especially with regard to equality, dignity, privacy, autonomy and individual identity. Nonetheless, legal status is not satisfactory since gay couples are not currently granted any statutory benefits of a married partner. There are other implications of the lack of marriage recognition beyond the social status of the relationship, and has a direct impact on property and inheritance rights. The Indian succession laws are highly arranged based on the family relationship based on law including spouse, children, parents and any other specified heirs. This means that, in case either partner of a same-sex relationship passes away not leaving a will, the other partner would have no automatic claim on the property of the deceased partner. Like challenges can be brought to bear with regard to insurance, pension, gratuity, nomination, jointly acquired assets and other financial gains. The paper is a critical critique of the rights of same-sex couples to inheritance in India within the backdrop of the current statutory provisions in India. It examines the connection of marriage and succession, restrictions of intestate, testamentary succession, the practical difficulties surviving partners face, as well as the constitutional and institutional

aspects of the problem. The judicial review of the formation of Indian constitutional law on queer relationships involves all significant judicial rulings and analyses of their convergence to review the development of this issue. In this paper, the author presents the argument that although judicial rulings have created a substantial constitutional safeguarding of LGBTQ+ individuals, judicial acknowledgment cannot offer a framework of succession that is holistic. The action of legislation is thus needed. The paper suggests the establishment of civil partnerships or registered unions, gender-neutral provisions of succession, ability to recognize partners to receive financial and employment benefits, and improved mechanisms of estate-planning. It concludes that equality of meaning means expanding the scope of legal protection of intimate relationships, to take in the area of economic and proprietary impacts as well.

Keywords: Same-sex couples, inheritance rights, succession, LGBTQ+, marriage recognition, queer relationships, property rights, constitutional law, civil partnership, India.

1. INTRODUCTION

Central to the Indian family law is the institution of marriage. Though marriage is generally construed as an intimate affair between two, the legal implications are much more “extensive. Marriage determines a recognised family relationship and thereby, rights and duties in relation to property ownership, maintenance, succession, insurance, pension, taxes, job benefits and many other aspects of law.¹

Lack of legal recognition of same-sex marriage thus has repercussions that go way beyond the failure of same-sex couples to characterize themselves as married. It brings ambiguity in regards to the position of one partner at the death of the other, especially on the cases where the deceased will forge bequeath left behind properties, which he/she obtained or upheld throughout the liaison.

¹ Paras Diwan, *Modern Hindu Law: Codified and Uncodified* 1–5 (Allahabad Law Agency, 20th edn., 2019).



The current Indian law lacks a statutory definition of inheritance by same sex partners. Succession legislation in place tends to work by legal heirs which are categorized. The Hindu Succession Act, 1956, by way of example, refers to the widow, son, daughter, mother and other designated heirs as Class I heirs, when a Hindu male dies intestate. Other succession provisions have similar terminology, which relies on spouses. A same-sex partner that has not obtained legally recognised spousal status is automatically not in such categories.²

This establishes a significant difference between recognition and consequences of relations. A homosexual couple can cohabit over a lifetime, share financial burdens, purchase property and act a family socially. However, the surviving partner will not be guaranteed the legal protection which is normally vitally linked with marriage.

The problem is especially serious since heritage preparation is usually initiated at the time when a partner who survived may be weak economically. In case the deceased was a major owner or income-earner, the partner that survived might lose his or her residence, financial resources as well as access to benefits. In situations where the relationship is not recognized by the biological family of the deceased, there might be conflicts over property and other properties.³

The issue is therefore not confined on whether same-sex couples should be allowed to get married. It deals with the more general question of whether the economic and proprietary interests that emerge in the course long-term intimate relationships, ought to be safeguarded by the law.

This paper intends to argue the main point of this argument, that the current legal system has a big gap

between constitutional recognition of queer persons and legalization of their family and property connection. Although there is some protection through the use of a private legal mechanism through wills, nomination and joint ownership, they cannot substitute the rights which would have been transferred through a legally recognised marital relationship.

What the paper explores is how Indian law can come up with a different structure of recognising same-sex partnerships or alternatively, change succession and other succession laws to ensure sustenance of a surviving partner.

2. INHERITANCE AND SUCCESSION UNDER THE INDIAN LEGAL FRAMEWORK

Indian law on inheritance comprises a blend of personal and statutory laws. The Hindu Succession Act of 1956 to persons within the section of the act and the Indian Succession Act 1925 gives a greater structure to testamentary and some intestate matters in terms of succession. Their own rules of succession are also found in other personal laws.

Experiencing succession usually takes place in two methods, intestate succession and testamentary succession. Intestate succession is related to the case when a legal person passes away without a valid will. Where the testator has made a valid testamentary disposition, then the succession is functioning by testamentary succession.⁴

In the case of same sex couples, the most challenging is that one encounters under intestacy. The statutory succession laws tend to establish specific family relations that qualify as heirs. Marriage is thus meaningful since it puts a spouse in the statutory family arrangement.

² The Hindu Succession Act, 1956 (Act No. 30 of 1956).

³ Karan Gulati & Tushar Anand, "Inheritance Rights of Transgender Persons in India," 7 *Indian Law Review* 1 (2023).

⁴ Jaideep Singh Lalli, "Silent Histories, Loud Exclusions: Hindu Inheritance and Transgender Personhood from Dharmasāstras to India's Trans Rights Act," 14(2) *Oxford Journal of Law and Religion* 298 (2025).



The idea of the widow is clearly included in the category of Class I heirs of a male Hindu who passes away intestate according to the Hindu Succession Act. Similarly, the husbands also feature in the succession process that deals with a female Hindu. These stipulations reveal the fact that the legal status of marriage directly impacts on succession.⁵

However, a same-sex partner can not claim a statutory role of husband or wife as a matter of course by virtue of the fact that the couple has cohabited in a committed relationship. This lack of recognised marital status hence seems to result in a gap in intestate succession.

The Special marriage act 1954 is specifically applicable since it offers a secular legal system of marriage and sets out several legal implications of marriage. Its provisions regarding succession tie marriages, which have been solemnised under the Act, with the Indian Succession Act provisions and regulations about succession. Because under the current law, solemnisation of same-sex marriage are not available, under the current law, there are no succession implications of marriage that accrue to same-sex couples.

Herein we see that marriage is a legal prerequisite. A broad array of laws will come to apply to the relationship once two individuals have become members of the status of spouses by law. In the absence of such status, the partners have to fall back frequently on separate arrangements with respect to each of those separate assets or benefits.⁶

The difference between the ownership and succession is also crucial. In the event that the two partners own the property together, the right of property may accrue to the surviving partner whether via succession or not. However, when the property is registered in the name of the deceased partner only, the rights of the

surviving partner will arguably be significantly more challenging.

Nomination and succession, on the same note, should not be used interchangeably. Beneficial ownership of an asset is not always determined by nomination whereby a partner may nominate another partner to receive benefits of some financial instruments. Therefore, protection is insufficient with nomination. The legal system is thus still torn apart. No system on a statutory basis exists which by default places a long-term same sex partner in an automatic position to inherit as a spouse.

3. MARRIAGE RECOGNITION AND THE CONSEQUENCES FOR PROPERTY RIGHTS

Following the heritage of marriage and its connections with inheritance is most important in revealing the challenges homosexual couples encounter.

Marriage is a sphere of a legal relationship between two people. This relationship in the Indian law is employed by various statutes to ascertain who has a claim to property in case of death. The husband or wife is usually put in a privileged legal situation over other individuals who are not in a relationship with him or her.

The lack of recognition of marriage thereby brings about a secondary drawback. Although the State may not specifically forbid a same-sex couple to cohabit, it can refuse them a range of statutory benefits that are linked to the marital status.

This has been termed as indirect legal exclusion. Although the law can be silent about the fact that same-sex partners are prohibited to inherit each other, terms of marriage like husband and wife may create this impression in practice.

This is of particular concern in intestate succession. Imagine that two people have lived together since two

⁵ *Ibid.*

⁶ Apurva Mahajan, "Beyond Marriage: Exploring Parenthood Rights for Same-Sex Couples Through

Civil Union in India," 9(3) *Sexuality, Gender & Policy* e70062 (2026).



decades and they have together administered their household. One partner is killed as he is without a will. In the event that the surviving spouse is neither a spouse nor a statutory heir, the deceased property would pass on parents, children or other relatives in accordance with the applicable law of succession. The other partner might have therefore lost the home or assets on which they have built their joint life.⁷

This is one of those aspects that are hard to reconcile with the social reality of the modern days family. Biological relationships are no longer a sole basis of relationships in the family. Long-term partners often support them financially, emotionally and even on domestic labour at the same level that is given in heterosexual marriage.

The law must therefore grapple with the issue of whether succession ought to be done solely on the basis of formal marital status or whether the true nature of the relationship ought to be taken into consideration as well.

Currently Indian succession law is largely based on relationships which are defined in the law. This can offer some degree of certainty and minimize conflicts but at the same time it does not allow other relationships other than traditional classifications. Recognition of marriage would be one of the solutions. But there are wider legislative avenues which might also acknowledge registered partnerships to serve specified purposes. This system would allow the State to offer protection to inheritance without necessarily making all legal consequences necessarily devolve on marriage. It must be seen as a problem which needs to be addressed within a broader family and succession law” reform.⁸

⁷ *Ibid.*

⁸ Apurva Mahajan, “Beyond Marriage: Exploring Parenthood Rights for Same-Sex Couples Through Civil Union in India,” 9(3) *Sexuality, Gender & Policy* e70062 (2026).

4. MAJOR INHERITANCE CHALLENGES FACED BY SAME-SEX COUPLES

4.1 Intestate succession is the greatest challenge. “In the time of the death of a same sex partner, without a will, the other partner may not be considered to be one. The estate is therefore allowed to be inherited by relatives that might have known little or nothing about the life of the deceased.”⁹

4.2 The second challenge is related to immovable property. One partner who owns the house together with his/her spouse of the other partner might get the title in his/her own name due to the schedule of financing the house or due to tax or other feasible reasons. To the extent that the partner dies, the surviving partner might be forced to make an independent legal claim rather than through a statutory spousal right.

4.3 The same-sex couples are also left in doubt as regards the bank deposits, securities and other financial assets. Despite the fact that nomination may offer a process of identifying a recipient, nomination is not always the solution to all questions of beneficial ownership/succession.

4.4 There are difficulties concerning life insurance. Where the policy applicable allows a partner may be nominated as beneficiary or nominee, but questions involving insurance rights may be different and separate contractual and succession.¹⁰

4.5 The benefits of employment may be troublesome. Pension, Gratuity, Provident fund and the family benefits could be designed on the notion of spouse or family member. Where the rules that govern the consideration of such relationships have not been updated to include the same-sex partner, the partner may not automatically be considered.

⁹ *Supra* note 3.

¹⁰ Ruth Vanita, *Love's Rite: Same-Sex Marriage in India and the West* (Palgrave Macmillan, 2005).



4.6 Sixth, conflict might also arise over personal property and resident of the deceased. The remaining spouse might be co-residing in a mutual dwelling but not be a co-owner. After the death, family members can claim the possession.

4.7 Seventh, the surviving partner might even face trouble in regards to the end-of-life and post-death decision-making. The legal status may impact the degree of treatment of the partner as the closest relative of the deceased person.

4.8 The vulnerability of dependent partners is another issue. One of the partners would have foregone the opportunity to go to work in order to be with the other partner. At the time of death, a surviving partner might find out that years of no payment or informal contribution does not necessarily confer any rights to inheritance.

The differences between economic contribution and legal entitlement lie in these challenges. An individual might have played a significant role in a common property without obtaining a legal insight ticket. These risks can be minimized by means of private legal planning. Couples may also make wills, have joint ownerships, make nominations and keep documentation records of financial contributions. However, enforcing the same-sex couples to individually build safeguards heterosexual married couples obtain as a matter of course casts doubts on the equal protection of the same in essence.¹¹

5. JUDICIAL APPROACH

The progress of judicial development in the field of LGBTQ + rights in India was slow and constitutional in nature. Equality, dignity, privacy, autonomy and sexual orientation have gradually been considered as key aspects of fundamental rights in the decisions by the Supreme Court. Nevertheless, the Court has made a difference in that constitutional protection over

intimate relations is made and establishing a legal institution of marriage.

The Supreme Court in the *NALSA v. Union of India*¹², case, identified the constitutional rights and dignity of transgender individuals and established that gender association is linked with the enjoyment of fundamental rights. The decision reinforced the greater constitutional norm that one should not be denied selfhood simply because it is not the type that fits into the usual societal norms.

The right to privacy as ensured in the constitution was largely established in the case of *K.S. Puttaswamy (Retd.) v. Union of India*¹³. The nine individuals who constituted the Bench realised the importance of privacy as a right and related privacy to individual autonomy, dignity and decisional freedom. The ruling offered a significant constitutional basis of safeguarding intimate personal decision-making.

In the case of *Navtej Singh Johar v. Union of India*¹⁴, this rule was changed considerably. The Supreme Court declared that homosexual intercourse on a consent basis between adults could not be criminalised on constitutional principles only on the basis that they were not in line with the majoritarian social morality. The Court stressed upon dignity, autonomy, equality and constitutional morality. This arbitration helped to face a significant change in the treatment of homosexuality as a crime or a socially unacceptable disease to the consideration of sexual orientation as a part of constitutional freedom.

The issue of marriage was then directly dealt with in *Supriya Chakraborty v. Union of India*¹⁵. *Supriyo @ Supriya Chakraborty*. The Supreme Court refused to acknowledge a fundamental right to marry and anticipated same sex marriage into the Special Marriage Act, 1954, but declined to read same sex marriage via the courts. The Court argued that this transformation would demand significant changes in

¹¹ *Ibid.*

¹² (2014) 5 SCC 438.

¹³ (2017) 10 SCC 1.

¹⁴ (2018) 10 SCC 1.

¹⁵ (2023) 16 SCC 1209.



legislation, and was an institutional matter of Parliament. Simultaneously, the ruling accepted the rights of queer individuals to form unions, and recognised the practical implication of the lack of marital status. Particular issues that the Court pointed out included succession, maintenance, financial gains, gratuity, family pension and insurance as well as and established a committee to look into the availability of entitlements to the queer couples. Therefore, Supriyo is both a restriction and extension of LGBTQ+ constitutional jurisprudence: differentiating between judicial recognition of same-sex marriage, it must still undocument the legal and economical effects on queer couples. *Supriyo @ Supriya Chakraborty v. Union of India*¹⁶.

The judicial method hence sets a significant difference. Constitutional law safeguards the queer individuals and their intimate decisions, yet the establishment of a holistic succession regime that pertains to same-sex couples needs state legislation. The courts have opened up the constitutional room to recognition but not themselves have invented a statutory inheritance scheme.

This is also an indication of the complexity of the law of succession. Altering the definition of partners as spouse in a single statute may have repercussions in many other statutes that touch upon property, taxation, pension, insurance and social benefits. It follows that there might be a smaller need on discrete judicial interpretation but a holistic enactment of the law might suffice.

6. TESTAMENTARY SUCCESSION AND ALTERNATIVE LEGAL PROTECTION

When there is no statutory right of inheritance, testamentary succession becomes all the more significant to the same-sex couples.

A will allows a person to specify the person who will inherit the property in case of death. Wills are also a way through which same sex partners can protect each

other. An effective will is able to deal with immovable property, bank accounts, investments, personal property and all other assets. A will is however not a panacea. It should also be adhered to the correct requirements of the law and subject to dispute in reasonable conditions. Also, testamentary succession would be effective only where the deceased has gone the avoidance of making a will. This brings about an effective disparity. Husbands and wives are automatically given statutory succession in the situations where there is no will. Same-sex couples also might require doing complicated estate planning just to prevent disenfranchisement by not being mentioned in a will.

Another of the forms is joint ownership protections. In cases where property is obtained on a joint basis and proper ownership documents have been provided, the surviving partner will have a first-mover advantage. However, not all relationships allow joint ownership and do not extend to assets owned entirely by the deceased.

Nomination can also prove handy, especially in as far as financial accounts and insurance are concerned. Yet to be nominated must not be construed as causing one to be inherited. Nomination has a legal impact which varies with the controlling statute, contract or scheme. Nomination and succession have been distinguished in the past by the Supreme Court. The Court in *Vishin N. Khanchandani v. Vidya Lachmandas Khanchandani* expounded that nomination would not otherwise put the rights of the legal heirs to the test. Therefore, simply declaring a same-sex partner as nominee might not be a full protection¹⁷

Couples will also be able to ensure proper records of financial contribution, conclusively make relevant contracts on property procured jointly and arrange its ownership in a meticulous way. This may form an excellent testimony in later conflicts. However, these mechanisms are nothing more than solutions to a structural legal problem, which are individual. They

¹⁶ (2023) 16 SCC 1209.

¹⁷ (2000) 6 SCC 724.



are capable of making them less vulnerable but never eradicating the overriding lack of recognition enshrined in statute.

7. CONSTITUTIONAL AND HUMAN RIGHTS DIMENSIONS

There are wider constitutional issues of equality and dignity relating to the problem of inheritance. Article 14 of the constitution grants the equality before the law and the equality under the protection of laws. Article 21 safeguards right to life and personal freedom which has been identified by constitutional jurisprudence to encompass dignity, privacy and autonomy. The anti-discrimination guarantee of Article 15 is also part and parcel of the greater constitutional pledge towards equality.¹⁸

The key issue is whether a lack of inheritance rights of same-sex couples is an unconstitutional form of discrimination. The solution is also legally complicated in terms of the laws of succession do not always imply a clear discrimination against same-sex couples. They instead employ classifications like spouse, husband and wife. On the one hand, these classes are formally unbiased since unmarried heterosexual couples can also be subject to exclusion. In another view, same-sex couples are distinctly impacted since the legislation currently does not allow them to acquire the marital status which would place them in those categories. Such a difference renders the matter not one of formal, but substantive equality.

Dignity is applicable as well. A long-term partner can be the primary family socially and emotionally to the person who is deceased. Totally leaving that individual out of the succession process will have a debilitating effect on the official legalization of the life and relationship created by the couple. Meanwhile, succession law has to harmonize differences. Legitimate claims might be made also by biological children, dependent parents and other relatives. Reform must therefore not just go ahead and bypass all the current succession mechanisms and just

transfer all the property rights to a partner. A constitutionally viable solution would aim of protecting the surviving spouse without maximizing favorable security to the other dependents and heirs.

The concept of constitutional morality also promotes the rethinking of customary assumption about family. Stable development and security There must be some predictability and fairness in family law to reflect the developing societal realities. The point therefore ought not to be to favour any specific structure of family but to help people who freely reproduce steady and committed relationships not to be denied basic economic security just because their relationship falls outside of the more traditional categories of marriage.

8. LEGISLATIVE REFORM AND THE WAY FORWARD

8. LEGISLATIVE reform and the way forward.

Complete legislative reform will be the best remedy to the inheritance problem.

8.1 The introduction of a civil partnership law or registered partnership law is possible. This type of legislation would give gay individuals a legal status in which their relationships will be officially recognised and the repercussions of such a status defined. Registration might be voluntary and informed-consent based.

8.2 The law needs to provide succession rights to registered partners. A surviving spouse might fall under a specified category of heirs in case of intestate succession, but would still provide suitable remedies to children and other dependent family members.

8.3 pre-existing legislation like the one should gradually change towards the use of gender-neutral words where necessary. Such words as spouse might

¹⁸ The Constitution of India, 1949, Articles 14, 15, 21.



be defined so as to include legally recognised partners, instead of just using the words husband and wife.¹⁹

8.4 Partners of pension and other benefits of gratuity and provident fund along with insurance and employment benefits has to be clearly recognized by the legislation. These fields cannot be left to rely on the unreliable administrative interpretations.

8.5 The partner should be identified in the law system in making medical and end-of-life choices in which the deceased has made it clear that they would prefer this option.

8.6 Reforms ought to reinforce estate planning. Government authorities and financial organisations might offer nomination and beneficiary facilities in standard and allow identification of recognised partners under the law to identify them easily.

8.7 The jointly acquired property should be covered by the inheritance reform. In cases where there is a proven high contribution with the surviving partner, the law may offer relevant means of creating interests, which are beneficial.²⁰

8.8 There should be administrative perceived sensitivity and awareness to the legal recognition. Even the progressive law could stay ineffective, should government officials, financial institutions, and employers stick to their heterosexual assumptions to describe family relationships.

9. CONCLUSION

One other effect of same sex couples in the Indian family and succession law is the inheritance rights, which are not properly addressed. Dignity, privacy, autonomy, equality and liberty to make intimate relationships are the aspects of human rights that have changed the legal status of LGBTQ+ significantly in constitutional jurisprudence. However, lack of legal

acceptance of same sex marriage still has quite a number of effects in property and succession.

The current succession model is mainly on a family law classification of succession. Due to the fact that same-sex couples are currently not legally recognised as spouses, the remaining partner might not be treated as an heir in intestate succession in situations where the relationship is long-lived and the couple is economically dependent on each other. Problems may also be encountered in regard to immovable property, bank accounts, insurance, pension, gratuity, employment benefits and personal possessions.

Even the private schemes of wills, joint ownership and nomination are not sufficient to replace the statutory rights completely, although they may offer significant protection. In addition, enforcing on same-sex couples the burden of comprehensive estate planning, introduces another source of structural inequality.

As evidenced in the judicial rulings presented in this paper, the Supreme Court has greatly enhanced constitutional protection of individuals of queer orientation. Nonetheless, Supriyo clarifies that the wholesale overhaul of the laws touching on marriage and succession is the part of the legislature. The constitutionalization of queer relations must be thus translated into more tangible statutory rights.

India ought to think of providing a legal framework of civil partnership/ registered unions and must articulate on succession, property, pension, insurance, gratuity and other financial entitlement. This reform can be well developed so as to compromise on the interests of the partners, children, parents and other dependants.

The bottom line is that it is not merely whether a same-sex couple ought to be given the right to join a legal term called marriage. The more profound issue is whether the economic life, which two individuals

¹⁹ Apurva Mahajan, "Tracing the Legal Invisibility and Challenges of Same-Sex Couples in India," 9(3) *Sexuality, Gender & Policy* (2026).

²⁰ *Ibid.*



create jointly, should be safeguarded by the law. To experience constitutional equality, in practice, it must not be only that there exists a right to live with dignity, but there must further be a reasonable protection against economic disenfranchisement after death” of a partner.

The momentum of Indian LGBTQ+ law in the future should then shift towards understanding identity, then relationships and then the legal implications of relationships. Part of that constitutional and legislative passage is inheritance reform.

