

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019



Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

"TOWARDS INCLUSIVE SUCCESSION LAWS: ADDRESSING INHERITANCE RIGHTS OF SAME- SEX COUPLES IN INDIA"

AUTHORED BY - NIDA GHAFAR,
PAWAN GOYAL, AKSHITA & SAUMYA RASHI
Op Jindal Global University

1. Introduction

The demand for parity is increasing in many social institutions, but in India, same-sex marriage is not officially recognized, and this is indicative of a lacuna in the rights for and protection of the LGBTQ+ community pertaining to inheritance, adoption, and family law issues. Gay and lesbian people won a major victory when the Supreme Court decriminalised homosexuality last year, but same-sex couples still have no legal grounds to get married. The ruling in *Navtej Singh Johar v. Union of India*¹ Was a significant game changer in terms of legal jurisprudence and the public attitude, yet it was not enough for the court to recognize the right of marriage of same-sex couples. The court rejected follow-up petitions for marriage equality under the Special Marriage Act (SMA), ordering Parliament to move forward legislatively.² The existing legal ambiguity denies same-sex couples' statutory entitlements that accompany marriage, including inheritance benefits and joint adoption, and co-ownership of property. The legal framework grounds inheritance rights in marital status to define how survivors can inherit common assets and living arrangements, and family wealth.³ Lack of legal marriage of same-sex couples causes inherent weaknesses in the mechanisms that impact such couples. The surviving partners risk losing their right to inheritance, being excluded from co-ownership of property, and being subjected to legal contests over who should be the guardian of their children. Besides causing a deterioration in economic security, this compromises emotional and psychological security that is guaranteed by legal marriage. The current Indian laws of inheritance that prefer legally married spouses in intestate succession and estate distribution are only exacerbating the issue for same-sex couples who are not admitted to marriage.

¹ *Navtej Singh Johar & Ors. v. Union of India*, 10 SCC 1 (India).

² Same-sex marriage: Key points from Supreme Court verdict, *TIMES OF INDIA* (Oct. 17, 2023)

³ *Inheritance Rights of Transgender Persons in India*, VIDHI CENTRE FOR LEGAL POLICY (2021)

The implication of inheritance rights is not necessarily financial; they are also very much entwined with issues of identity, dignity, and equality. In a society where membership in one's family and property are commonly linked to status and economic well-being, denying inheritance rights to same-sex partners could have significant implications. It may lead to social isolation, economic insecurity, and diminishing membership within family systems. The lack of legal protection also discourages same-sex couples from officially announcing their relationships or making long-term plans for each other in fear of facing legal action or rejection from their families. This paper aims to discuss how the current laws are not fair regarding diverse couples. The study will examine legislative possibilities that can bring marriage equality into line with India's evolving constitutional jurisprudence of dignity and non-discrimination. LGBTQ+ rights in India stand at the very heart of social, legal, and economic reality. Inheritance rights, marriage equality, and broader social justice concerns are all inextricably connected. Creating a more balanced and representative legal system that honours every individual's identity, gender, or sexual orientation, notwithstanding, calls for an awareness of such relationships. It aims to point out areas in need of change and make a substantial input towards the ongoing battle for equality by examining both the theory of law and pragmatic considerations.

2. Challenges under the existing laws for equitable inheritance rights to same-sex couples:

2.1 Various terms under the existing provisions are based on Heteronormative and gendered assumptions, which excludes the same-sex couples from legal recognition:

The terms under the Indian Succession Act or other personal laws, such as widow, husband, heirs, etc demonstrates a rooted biasness towards heteronormative approach and specifically excluding any other person. As a result, they exclude same-sex couples from getting recognition under the said laws and oust them from inheriting any shares in their partner's property. As the question raises, who is the spouse? Who is the wife or husband? Further, looking at the current situation, same-sex marriage has not been legalized in India, which makes it further difficult to be considered as a legal spouse of your partner to inherit their property. These issues and gaps cannot be regarded as simple oversight, but a systematic issue rooted in the so-called heteronormative language of the statute and not just in the personal laws and an amalgamation of various judicial pronouncement and legislative stagnation.

INDIAN SUCCESSION ACT:

The terms such as 'heirs,' 'widower,' and 'widow' in ISA reflect an idea of gendered assumptions based on male and female, while excluding the rest of the community who do not conform to either gender. This bias can be seen in several key sections, such as Section 36⁴. It has structured the distribution of an intestate's property around the widow and lineal descendants, terms inherently biased towards males, females, and kinship. The provision mentioned the deduction of a widow's share before distributing the remainder shows that only a legally wedded wife of the deceased will be considered during succession, and it can only be a female. Further, Section 35 of the Act,⁵ Which talks about the right of the husband, reinforces the heteronormative idea while excluding other couples. So, unless the person has a legally wedded wife or husband, the other partner cannot inherit any of their partner's property, and they will be excluded by their family members, who will claim the share in the property.

This is not limited to these sections, but the whole act consistently uses such terms that ousted the other couples from claiming any rights under this so-called uniform law. The provision could have used terms such as spouse or partners, which may allow the courts to do a wide interpretation and include same-sex couples even without having a legal marriage. Consequently, the Act does not extend legal recognition or protection to varied family forms and relationships beyond the male-female model, rendering many without access to inheritance rights or legal heirship. This exclusion underlines the imperative of legislative reform to embrace inclusive language and acknowledge the changing realities of Indian society.

HINDU LAW:

Due to the heteronormative nature of the institute of marriage under Hindu law, other related legal frameworks such as inheritance and adoption are also based around this ideal model of bond of man and a woman. Same sex couples tend to be perceived as anomalies within society, challenging the basic tenets of the classical law, which is deeply rooted in the patriarchal setup and binary gender roles. Thus, there exists no legal provision to preserve and safeguard the interests of the people engaged in such a union. Although same sex relationships have been decriminalized owing to the judgment in *Navtej Singh Johar v. UOI*⁶ Decriminalization does not equate to either societal or legal acceptance, which only arises through formal recognition,

⁴ The Indian Succession Act, 1925, §36.

⁵ The Indian Succession Act, 1925, §35.

⁶ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

and same-sex unions are yet to be legalized.

The language of the statute 'Hindu Succession Act, 1956' not only excludes homosexual couples from its ambit, but does so through the deliberate usage of very definitive and gendered terms. For instance, references to the terms such as 'husband' and 'heirs of husband' in section 15⁷ HSA identifies the legal heirs of a deceased female Hindu, while the term 'wife' is embodied in the instance of male Hindus. These terms are neither open to interpretation nor are gender neutral; rather, they reflect a heteronormative understanding of marriage as a sacred institute, excluding the surviving homosexual partner from its ambit.

Under classical Hindu law, if the husband were to die, leaving behind a widow, the widow would be entitled to maintenance.⁸ From the joint family property- a right which, under section 14⁹ HSA, now constitutes her absolute property. The widow receives a share equal to that of her son¹⁰, and, following the 2005 amendment, her daughter as well. However, if a homosexual couple were placed in an analogous situation, then the surviving partner would not be recognized as a widow or legal heir at all, even if they sought any recourse in the court. Thus, homosexual couples are at a massive disadvantage owing to the lack of legal recognition of same sex marriages in India. Even in situations where a widow might otherwise claim maintenance/share in her husband's estate through notional partition, no such right exists for a surviving homosexual partner, as that union itself is not recognized by the law.

Further, these exclusions are not limited to the couple only, but their children will also suffer. In India, marriages between same-sex couples are not recognised, and thus, such couples are not entitled to jointly adopt children.¹¹ As there will be only one legal parent of the child, this will restrict the child to only inheriting from that parent. Unless there is a formal adoption, the other partner is a legal stranger to the child, and the child has no right to inherit from the nonbiological parent. As the law stands, the ability to become a legal parent is limited to

⁷ The Hindu Succession Act, 1956 (Act 30 of 1956), § 15.

⁸ *Women's Right to Succession and Inheritance in Hindu Law*, Law Centre-II, University of Delhi, <https://lc2.du.ac.in/DATA/Women,s%20Right%20to%20succession%20and%20Inheritance%20in%20Hindu%20Law.pdf> (last visited Apr. 27, 2025).

⁹ *The Hindu Succession Act, 1956 (Act No. 30 of 1956)*, § 14.

¹⁰ Fatima, Tausif & Tousif Fatima, *WOMEN'S RIGHTS AND HINDU LAW OF INHERITANCE: THE APPROACH OF RAMMOHUN ROY*, 70 *Indian History Congress*, 643 (2009), <http://www.jstor.org/stable/44147711>.

¹¹ Shraddha Vemula, *Legal status of adoption by same sex couples in India and around the world: a critical analysis*, 3 *IJALR* (2022).

biological and adoptive parents.¹² Also, under the Hindu Adoption and Maintenance Act, adoption¹³ is either restricted to married couples or an individual Hindu female or male. Therefore, if the homosexual couple wishes to have children, they will have to circumvent the law by deciding that one of them will adopt the child as a single parent. The law deprives the child of any chance to inherit from the non-adoptive parent as it does not recognize that relationship nor permits the inclusion of the child in their joint family, despite them having fulfilled the role of a parent in every sense of the word. Such a legal framework not only undermines the rights of a same sex couple but actively works against the best interests of the child.

MUSLIM LAW:

Under Muslim law, the rules of succession¹⁴ are governed by a set of predetermined lists of legal heirs, rooted deeply in the conventional model of family, which does not accommodate homosexual relationships. The legal heirs are neatly boxed under the list of 'sharers' and 'residuary', reflecting a heteronormative framework derived directly from Quranic principles. As a result, the inheritance rights of the surviving partner in homosexual relationships are left entirely outside the purview of Muslim law. While Muslim law does not give recognition to the system of joint property ownership, there is nevertheless a definitive list of legal heirs, such as children, parents, husband, and wife, who are entitled to inherit the property of the deceased. The above-mentioned list is not open-ended and does not leave any room for the recognition of the rights of same sex couples.

Moreover, Muslim law only bestows upon an individual the right to will away 1/3¹⁵ of their property, while the remainder is strictly governed by the established rules of succession. This legal framework ties the hands of the individuals engaged in homosexual relationships, legally barring them from transferring more than 1/3 of their assets to their partner upon death, a limit inconsistent with the rights and freedom of the individuals involved. In addition, wills are vulnerable to contestation by the legal heirs on the grounds of coercion, fraud, or undue

¹² Carissa R. Trast, *You Cannot Choose Your Parents: Why Children Raised by Same-Sex Couples Are Entitled to Inheritance Rights from Both Their Parents*, 35:857 HLR, 857, 859-860 (2006).

¹³ Adoption under Hindu Law, Drishti Judiciary, <https://www.drishtijudiciary.com/to-the-point/tp-hindu-law/adoption-under-hindu-law> (last visited Apr. 27, 2025).

¹⁴ Law of Succession in Muslim Law, Legal Service India, <https://www.legalserviceindia.com/legal/article-2915-law-of-succession-in-muslim-law.html> (last visited Apr. 27, 2025).

¹⁵ Will (Wasiyat) Under Muslim Law, Legal Service India, <https://www.legalserviceindia.com/legal/article-14199-will-wasiyat-under-muslim-law.html> (last visited Apr. 27, 2025).

influence. Contestation can be raised on simple claims of a forged signature or challenging the testator's capacity to make the will. This leaves significant leverage in the hands of a disapproving family, creating further trouble for the surviving partner. This all necessitates.

The need to legalize homosexual couples and recognize their rights.

Another pertinent point is the inheritance rights of the children raised by a homosexual couple. As previously discussed, biological conception is not an option for same-sex couples. Under Muslim law¹⁶, formal adoption is not recognized either. The perseverance of the biological lineage is pertinent to the core of the Muslim law, alongside the notion that an individual's original identity must be maintained and not allowed to be substituted with a 'fake' lineage. Consequently, children raised by homosexual Muslim couples do not get the right to inherit their parents' legacy- a right which comes so readily available to children in heterosexual families.

This lexical choice is not innocuous; it serves as the very basis for determining legal spousal status and subsequent inheritance rights. As of now, the legal landscape does not recognize same sex marriages, and therefore, makes same sex couples de facto ineligible as valid heirs to the property of their partners and leaves them out of the succession, while the deceased family members will get the preference. Though the court has started recognizing a live-in relationship as a marriage and giving the same benefits to the couple as a married couple after fulfilling some of the conditions, they are also not considered when discussing inheriting the properties of their partner. However, the court¹⁷ held that a couple living together for a reasonable period can inherit property from either partner, but only through will or gift. But this does not provide a solution for same-sex couples because even in live-in relationships, the couple includes 'MAN' and 'WOMAN,' thus again excluding same-sex couples. Also, the right here is just through will or gift. In the absence of a legally sound will, the surviving partner is rendered legally invisible, dispossessed of a home, denied assets, and left with no recourse. The courts have further cemented on this heteronormative biasness through its ruling in *Supriyo @ Supriya Chakraborty & Anr v Union of India (2023)*¹⁸. The Supreme Court explicitly stated its inability to read the Special Marriage Act (SMA) through a gender-neutral lens. The rationale behind this reasoning is that such a progressive interpretation would require

¹⁶ Garikina Yamini, *Adoption and Muslim Law*, 7 Int'l J. Novel Research & Dev. 839 (Dec. 2022), <https://www.ijnrd.org/papers/IJNRD2212192.pdf>.

¹⁷ *Vidhyadhari v. Sukhrana Bai*, 2008 (2) SCC 238 (India).

¹⁸ *Supriyo @ Supriya Chakraborty & Anr v. Union of India*, 2023 INSC 920 (India).

legislative action and not come under judicial reach. The court acknowledges that the existing laws rooted in the heteronormative bias and therefore altering those laws to include will require the legislative interruption to rewrite the language of the laws.

Though the court has moved ahead from interpreting the terms very rigidly, for instance, in the case of *Arun Kumar v. Inspector General of Registration (2019)*¹⁹. The court interpreted the term 'bride' in the Hindu Succession Act, 1955, as including transgender individuals who recognize themselves as female. It affirmed the inclusion of intersex/transgender persons who identify as women within the definition of 'bride.' But the problem persists as the court's reasoning did not go beyond the inclusion of those individuals who doesn't recognizes themselves as either of the gender and the heteronormative reasoning that the marriage is a union between male and female and if one identifies themselves as female, then only a valid marriage can take place. All of these reasons and interpretations clearly show that the terms present in the Family laws, either personal or ISA, are based on gender bias and exclude same-sex couples from claiming the benefits under these existing provisions. Thus, the heteronormative conceptions of central terms in Indian succession laws serve as a legal barrier, systematically excluding gay couples from inheritance rights.

2.2 Administrative Exclusion: The Overlooked Barrier in Inheritance Rights for Same-Sex Couples:

Same-sex marriage has revolutionized family law across the world, but many jurisdictions continue to operate with inheritance laws that do not recognize the evolving nature of the family. A key limitation in equal rights for homosexual couples in inheritance: the possibility of disqualification from the position of estate administrator.²⁰ With inheritance cases, same-sex partners can be denied the right to manage their spouse's estate after passing, despite both being named in wills, if state intestate succession laws do not specifically recognize them to be the most preferred administrator. Despite the considerable debate that has surrounded the issue of same-sex partners having the right to inherit the property, much less thought is given to who should handle administering the estate process. This difference is important because executors and administrators have some substantial duties that go well beyond just inheritance, including the right to control the decedent's resources, the discretion to make such distributions

¹⁹ *Arun Kumar v. Inspector General of Registration*, AIR 2019 MADRAS 265 (India).

²⁰ Sunil Tyagi, Five things same-sex couples should know before buying property in India, MONEYCONTROL (Oct. 17, 2023)

to those entitled to a share in the estate and the ability to satisfy claims and taxes, and the discretion to adjust matters pertinent to the ultimate distribution of the resources.²¹.

From here, we address the technical-legal differentiation of inheritance and administration, one that overlooks the interest of the under-represented by focusing on the question of the transfer of rights and not the management of estates. Although decisions such as *Gory v Kolver NO and Others*²² in South Africa have afforded inheritance rights to same-sex partners, this may not necessarily be the case for administrative rights. Some of the inheritance laws themselves refer to administrators by male or female terms, and grantors or insurance policy writers might refer to a person as a "husband" or "wife" when expressing a preference about who can administer the estate, rather than using more gender-neutral language like "spouse" or "partner." In the absence of statute language, courts may interpret provisions of law narrowly to prohibit the homosexual spouse from serving as administrators of an estate even though they are entitled to inherit property. This results in an oddity where the same-sex spouse may have the right to succeed to property but has no legal power to effectuate its distribution. Legal evidence on an international scale emphasizes that we urgently need to have explicit reference to marginalized groups in laws and policies.

*Edgar Ng and Li Yik Ho*²³ In Hong Kong, are an emerging example that highlights the difficulties that homosexual couples have to deal with inheritance provisions. In 2019, Ng sought judicial review of Hong Kong's inheritance laws amid fears that Li, as his same-sex partner, would not be able to inherit his properties in the event he died without a will. The Court of First Instance ruled in Favor of Ng in September 2020, but the Secretary for Justice appealed, contending that homosexual and heterosexual partners formed "two materially different groups" deserving of different rights under inheritance provisions. In the end, the Appeal Court rejected the government's appeal but held that "discrimination against homosexual couples by unequal treatment of heterosexual and homosexual ones" did exist.²⁴. From this case, it is clear that if there is no law to support it, same-sex couples will encounter uncertainties and discrimination, especially in the succession, including the executive right.

²¹ Estate Planning for Same-Sex Couples, Rosenblum Law Offices.

²² *Gory v Kolver NO and Others* (CCT28/06) [2006] ZACC 20; 2007 (4) SA 97 (CC); 2007 (3) BCLR 249 (CC) (23 November 2006).

²³ *Ng Hon Lam Edgar v Secretary for Justice* HCAL 3525/2019; [2020] HKCFI 2412.

²⁴ *Hong Kong Court Rules in Favor of Homosexual Couples' Equal Inheritance Rights*, Jurist (Oct. 25, 2023)

In South Africa, the Gory case established that same-sex permanent partners possess rights to intestate succession under section 1(1) of the Intestate Succession Act (ISA)²⁵. However, the Civil Union Act (CUA) was enacted without explicitly amending section 1(1) of the ISA as mandated by the Gory ruling. The South African instance demonstrates that even when judicial rulings expand inheritance rights, legislative voids can continue to exist unless specifically addressed through legal changes. The exclusion of same-sex spouses from estate management results in considerable economic disadvantages. Research from the Williams Institute at UCLA School of Law indicates significant financial inequities in how inheritance laws treat same-sex and heterosexual marriages²⁶. In 2009, the different treatment of same-sex couples and married couples within the estate tax framework impacted around seventy-three same-sex couples, costing each an average of more than \$3.3 million²⁷. While this information focuses on tax matters, it speaks to the broader trend of economic disadvantage experienced by same-sex couples when estate laws do not recognize their relationships as fully as they should. The prohibition on serving as an administrator compounds these economic disadvantages by denying the same-sex spouse decision-making power on financial matters during the probate process. These economic consequences have tangible consequences for families, impacting their stability, security, and long-term well-being. When a gay spouse is prohibited from serving as an administrator, relatives who disapprove of the relationship might get control of the estate property, potentially leading to distributions that were not in line with the intent of the deceased. Personal mementos that are of personal significance but possess little monetary value might be divided without due respect for their meaning to the surviving partner. These pragmatic barriers add to emotional stress within an already trying period of bereavement. The exclusion of same-sex spouses from inheritance decision-making points to a significant shortfall in estate rights that still occurs despite some jurisdictions making same-sex marriage legal. This administrative deficit has significant practical and financial consequences for surviving same-sex spouses, potentially stripping them of inheritance rights by disqualifying them from making decisions.

2.3 Systemic tax inequities due to lack of legal recognition of same sex marriage:

Due to their relationships' lack of legal recognition, same-sex couples in India face substantial

²⁵ Same-Sex Partners & Inheritance, Abrahams & Gross.

²⁶ M.V. Lee Badgett, Unequal Taxes on Equal Benefits: The Taxation of Domestic Partner Benefits, Williams Inst. (Nov. 2009).

²⁷ M.V. Lee Badgett, Unequal Taxes on Equal Benefits: The Taxation of Domestic Partner Benefits, Williams Inst. (Nov. 2009)

tax and inheritance challenges. Only legally married spouses, children, and blood relatives are recognized as "legal heirs" under Indian inheritance laws, such as the Hindu Succession Act, Muslim Personal Law, and the Indian Succession Act. Because of this, same-sex partners are not automatically entitled to inherit property if their partner passes away without a will. A same-sex partner can only inherit if the deceased transferred assets through gifts or specifically named them in a will, both of which may be subject to extra taxes and legal scrutiny. Because same-sex couples are not granted the property rights, joint ownership benefits, and tax advantages enjoyed by heterosexual married couples, this lack of recognition leads to both financial vulnerability and systemic discrimination. In the end, these legal restrictions serve to further the financial instability and inequality experienced by LGBTQ+ people in India.

Capital gains tax on property transfer: Indian tax law offers specific exemptions and advantages when a legally recognized spouse inherits property. If a spouse inherits a residential property and certain requirements are met, capital gains from the transfer of that property are exempt under Section 54 of the Income Tax Act, 1961²⁸. Additionally, property inherited by a spouse is not considered a "transfer" for capital gains purposes, so no immediate tax liability arises at the time of inheritance. However, for same-sex partners, the survivor is not recognized as a spouse. If they inherit property through a will or gift, the transaction is treated as a transfer between unrelated individuals for tax purposes. If the surviving partner later sells the inherited property, long-term capital gains tax (currently 20% with indexation) applies to the profit made on the sale²⁹.

Gift tax implications- Under Section 56(2)(x) of the Income Tax Act³⁰, 1961, gifts exceeding ₹50,000 from non-relatives are taxed as income. While legally married spouses are exempt from this tax regardless of the amount, same-sex partners-since not recognized as spouses-are considered non-relatives³¹. As a result, any gift above ₹50,000 between same-sex partners is fully taxable at the recipient's income tax slab, whether it is cash, movable, or immovable property. The exemption for gifts received on marriage does not apply to same-sex couples, nor do exemptions for inheritance unless the recipient is a legal heir, which same-sex partners

²⁸ Income-tax Act, 1961, § 54 (India).

²⁹ Anagh Pal, *Same Sex Marriages Are Still Not Legal – A Look at the Financial Rights of LGBTQ Couples*, ECON. TIMES (Oct. 24, 2023), <https://economictimes.indiatimes.com/wealth/personal-finance-news/a-look-at-the-financial-rights-of-lgbtq-couples/articleshow/104667992.cms>.

³⁰ Income-tax Act, 1961, § 56(2)(x) (India).

³¹ CA Mohammed S. Chokhawala, *How Are Gifts Taxed?*, CLEAR TAX (Apr. 30, 2025), <https://cleartax.in/s/how-are-gifts-taxed>.

are not. In contrast, heterosexual spouses can transfer assets freely without a tax burden, highlighting a significant financial disadvantage for LGBTQ+ couples.³²

Higher stamp duty and registration costs: Stamp duty and registration fees for property transfers in India are much lower for spouses and close family members, but same-sex couples are treated as unrelated parties due to a lack of legal recognition. This means property transfers between same-sex partners attract higher stamp duty rates-often 5–7% compared to as low as 1% for spouses in states like Maharashtra.³³ The increased costs discourage joint ownership and force many same-sex couples to keep property in one partner's name, increasing their legal and financial vulnerability and complicating succession planning.

Probate and legal costs: In India, probate is a legal process that confirms the validity of a will and authorizes the executor to distribute the deceased's assets. For legally married heterosexual couples, inheritance typically passes automatically to the surviving spouse under personal laws or intestate succession rules, often avoiding lengthy probate procedures. However, when a same-sex partner dies, the surviving partner is not automatically entitled to inherit the deceased's property. The surviving partner must rely on a valid will explicitly naming them as the beneficiary to claim inheritance. Even with a will, the surviving partner often faces the probate process, which can be time-consuming, costly, and legally complex.³⁴ Legally married spouses in India enjoy automatic inheritance rights and are often exempt from probate if property is jointly owned with survivorship rights. Same-sex couples, lacking such recognition, face greater legal uncertainty and financial burden. The absence of legal protections in probate and inheritance law reflects broader systemic discrimination against same-sex couples.

No Tax Deductions for Dependents: Same-sex partners in India are excluded from tax deductions and financial benefits that are automatically available to married heterosexual couples. Deductions for medical expenses, education allowances, and dependent care-such as for a spouse's medical insurance or children's tuition-are restricted to those legally recognized

³² Sunainaa Chadha, *When Is Money Gifted Not Taxable? All Your Tax Queries on Gifts Answered*, BUS. STANDARD (June 19, 2023), https://www.business-standard.com/finance/personal-finance/when-is-money-gifted-not-taxable-all-your-tax-queries-on-gifts-answered-123061900221_1.html.

³³ Mayashree Acharya, *Stamp Duty & Registration Charges in Maharashtra 2025*, CLEAR TAX (Apr. 2025), <https://cleartax.in/s/stamp-duty-and-registration-charges-in-maharashtra>.

³⁴ Akash Varadaraj, *Importance of Will Draft and Trusts for Same-Sex Couples in India*, VAKILSEARCH (June 13, 2023), <https://vakilsearch.com/blog/draft-the-will-with-same-sex-couples/>.

as “spouse” or “dependent.”³⁵. Because same-sex marriages lack legal status, partners cannot claim these benefits for each other. This exclusion, as highlighted by tax experts, results in significant financial disadvantage and denies same-sex couples key tax reliefs available to married couples.

Joint Loan Disadvantages: Same-sex couples in India face significant barriers to joint home loan benefits due to the absence of legal recognition for their relationships. Most banks and financial institutions require proof of marriage-typically a marriage certificate process joint home loan applications for couples. Since same-sex marriages are not legally recognized, LGBTQ+ partners are ineligible to apply as co-borrowers, even if they co-own the property.³⁶ This exclusion directly impacts their ability to claim valuable tax deductions available under Section 24³⁷ (up to ₹2 lakh per person for interest paid) and Section 80C³⁸ (up to ₹1.5 lakh per person for principal repayment) of the Income Tax Act, which are otherwise accessible to legally married couples who jointly own and finance a home³⁹. As a result, same-sex partners typically must take out individual loans, which often come with higher interest rates and do not allow for shared repayment capacity, further increasing their financial burden and limiting their access to affordable housing finance.

Though there is some judicial progress as well as increasing consciousness of these shortcomings, the gap in the existing provisions has led to many disadvantages to same-sex couples that too legally, financially, and emotionally. Addressing this complex issue requires investigating how other countries have confronted the same problems and determining how to remedy them so that equal rights and protections are guaranteed.

3. Comparative Analysis and Recommendations for Reform:

3.1 Hawaii's Reciprocal Beneficiary Model:

The current challenges faced by same-sex couples require attention from both the judiciary and the legislature. Many countries are reforming their inheritance laws to eliminate the deep-

³⁵ *Budget 2025: ICAI Proposes Joint Tax Filing, How Married Couples Will Benefit From It*, NDTV (Jan. 25, 2025), <https://www.ndtv.com/india-news/budget-2025-icai-proposes-joint-tax-filing-how-married-couples-will-benefit-from-it-7516790>.

³⁶ *Can Live-in and Same-Sex Couples Get Home Loan?*, ANDROMEDA LOANS (July 15, 2008), <https://www.andromedaloans.com/can-live-in-and-same-sex-couples-get-home-loan/>.

³⁷ Income-tax Act, 1961, § 24 (India).

³⁸ Income-tax Act, 1961, § 80 (India).

³⁹ Mayashree Acharya, *Section 24 of the Income Tax Act*, HDFC LIFE (July 22, 2024), <https://www.hdfclife.com/insurance-knowledge-centre/tax-saving-insurance/section-24-of-the-income-tax-act>.

rooted heteronormative biases and other challenges faced by the community. For instance, in the United States, the Supreme Court⁴⁰ Legalized same-sex marriage and mandated equal inheritance rights for same-sex spouses under their intestacy laws. These laws use gender-neutral terms such as “spouse” and “surviving spouse,” ensuring that inheritance rights do not depend on gender or sexual orientation.

Further, inspired by Hawaii's Reciprocal Beneficiaries Law,⁴¹ India could provide same-sex couples with crucial succession and inheritance rights, even without legalizing same-sex marriage. The Hawaiian Model, which was enacted in 1997, provides a practical framework that extends some of the rights and benefits of marriage to couples who cannot legally marry or cannot be recognized as a married couple as per the current framework, hereby focusing on extending specific rights to a broader class of couples. This model allows two people who are neither married nor in a Reciprocal Beneficiary Relationship (RBR) with someone else to enter into RBR, which is a legal relationship created when two consenting adults, who are prohibited from marriage, declare their intent to enter a reciprocal beneficiary relationship. After this, a notarized declaration of the relationship filed with the Department of Health is required, which grants the couple many rights, excluding family court rights (alimony, divorce, child custody resolution) and access to health insurance. These rights include the inheritance under the intestacy laws (where a person dies without a will), workers' compensation, wrongful death claims, etc. This can also be implemented in India to provide the rights to such couples in the absence of any protection from the existing laws. India can implement a Reciprocal Beneficiaries Act (RBA) to recognize the rights of such unions and extend the benefits of marriages and family to them as well. The act will explicitly state its aim of extending certain rights and benefits to individuals in committed relationships who cannot or do not wish to marry under existing laws. Further, it can also amend the existing laws so that those individuals who have registered under the RBA will be governed by that act only, irrespective of their religion. This will ensure that the couples will be protected in the matter of succession and inheritance if their partners die intestate. By recognizing such unions through registration, the couple will also be able to own the property jointly, as compared to earlier⁴², which they will also be able to pass on to their heirs in case of death. Further, to protect the children, the RBA

⁴⁰ Obergefell v. Hodges 576 U.S. 644 (2015) (USA).

⁴¹ AMERICAN BAR ASSOCIATION SECTION OF FAMILY LAW, *A White Paper: An Analysis of the Law Regarding Same-Sex Marriage, Civil Unions, and Domestic Partnerships*, 38 ABA, 339, 385-387 (2004).

⁴² Sunil Tyagi, *Five things same-sex couples should know before buying property in India*, Zeus Law, (May 2, 2025, 14:57), [Five things same-sex couples should know before buying property in India. - Zeus Law Associates.](#)

can provide the guidelines for the automatic transfer of guardianship in case of the death of the legal parent to the surviving partner, provided in the best interest of the children. In this case, the child will also be able to inherit the property from both parents. Also, to avoid immediate controversy and facilitate easier passage, the RBA could initially exclude family law matters such as divorce, alimony, and child custody resolution, similar to the Hawaiian model. The implementation of this model will provide justice, equality, and security to the disadvantaged couple, same as any other couple would have.

3.2 Pacte civil de solidarite Model:

The Pacte civil de solidarite (PACS)⁴³, a model unique to France, recognizes a legal union between two individuals of any sex who live together, conferring upon them certain tax benefits and other legal protections traditionally reserved for heterosexual couples. Under this model, any two individuals may apply for PACS if they are of legal age, not married, and cohabiting. From the moment of entering the union, they share any assets accumulated thereafter on a 50/50 basis and are eligible for tax benefits and housing protection, amongst other benefits.

In the Indian context, a similar model could be introduced whereby two individuals may enter such a union where they are conferred legal protection. These protections would encompass the right of the surviving partner to inherit the deceased's estate in the same capacity as a spouse would under current inheritance laws. Although under PACS, inheritance only comes into play if there was any prior agreement or will, and guardianship preferences are granted where the deceased partner had adopted a child, a tailored model can be adopted in India to suit the needs of the population. Similar to PACS in France, the guardianship preference under the Indian model would be extended to the surviving partner if the deceased had adopted a child. Such a model would be particularly beneficial to the homosexual couples in India, who, although no longer penalized for living their relationship, continue to be deprived of shelter by the law from the discrimination that they face at every corner of the road.

Another crucial amendment that must be made is the recognition of long-term, cohabiting relationships of unmarried couples for inheritance purposes. If two adults, who are otherwise eligible to enter such a union, have lived together continuously for three years and have shared assets and expenses, then they are to be treated as a legally recognized couple for inheritance.

⁴³ The French PACS System: Everything You Need to Know, Selectra, <https://en.selectra.info/moving-to-france/culture/pacs> (last visited Apr. 27, 2025).

This reform will protect the interests of the individuals who, for personal or legal, or social reasons, have not formally registered their relationship to be part of such a union but whose relationship is functionally similar to the institution of marriage. Clauses to this effect must be incorporated into the existing inheritance laws to facilitate these recommendations.

3.3 Towards a more conventional approach:

A more pragmatic solution that Indian legislators can adopt to extend equal inheritance rights to homosexual couples is the reinterpretation of the existing inheritance laws using a gender-neutral approach. That encompasses reading the terms, such as spouses in the inheritance laws, as inclusive of the surviving homosexual partner, or replacing those inequitable terms with a more inclusive term, such as 'spouse.' Various judgements advocate for this approach with their progressive and inclusive approach, reading statutes in the light of values like dignity, autonomy, etc. The SC in *Navtej Singh Johar v. UOI*⁴⁴ decriminalized homosexuality, emphasizing the right to dignity. Autonomy and privacy to the people in the LGBTQ+ community, while privacy was held to be a fundamental right, inclusive of sexual orientation, in *KS Puttaswamy v. UOI*⁴⁵. Moreover, in *Deepika Singh v. CAT*⁴⁶, the SC gave recognition to non-traditional families, extending the meaning of the family beyond marital and biological ties. The Court in *Shafin Jahan v. Ashokan K.M*⁴⁷ held that the right of an individual to choose a life partner was protected under the ambit of Article 19 and 21 of the Constitution. It speaks to the fact that the adults have the right to choose their partner without interference from the State and that expressing this choice is an imperative part of their identity and liberty. Thus, relying on these judicial interpretations that advocate for autonomy and the family right, a gender-neutral reinterpretation of inheritance laws is an essential step towards realizing equality for homosexual couples.

3.4 Beyond Marriage Equality:

Legalizing same-sex marriage would improve civil rights, but it wouldn't immediately address all inheritance disparities. For legal reform to be fully resolved, inheritance and estate administration rights must also be addressed. In addition to requiring homosexual couples to be included in the definition of preferred administrators under intestate succession laws, the administration-related statutory language also needs to be updated to use gender-neutral

⁴⁴ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India).

⁴⁵ *Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors.*, (2017) 10 SCC 1 (India).

⁴⁶ *Deepika Singh v. Central Administrative Tribunal*, 2022 SCC OnLine SC 1088 (India).

⁴⁷ *Shafin Jahan v. Ashokan K.M. & Ors.*, (2018) 16 SCC 368 (India).

language. Furthermore, when cases involving same-sex relationships come up, the court system needs established protocols to decide who gets appointed as an administrator. Additionally, regardless of gender, the law ought to automatically establish preferences for spouse appointments in every situation.

One temporary fix is estate planning. Until comprehensive reforms are implemented, same-sex couples' primary defence against legal challenges is estate planning. The limitations of intestate succession laws can be circumvented by same-sex couples who draft wills designating their spouse as executor. Contrary to heterosexual married couples, who are exempt from these considerations, same-sex couples are required to create additional legal plans.⁴⁸

4. Conclusion

The current analysis has examined the various inheritance rights issues that same-sex couples in India face, emphasizing the systemic injustices present in both secular and personal laws. The lack of legal recognition for same-sex unions prevents LGBTQ+ people from enjoying the same statutory protections and dignity as heterosexual couples, even after the Supreme Court's historic ruling in *Navtej Singh Johar v. Union of India* (2018) decriminalized homosexuality. The study's conclusions highlight several significant issues, including the inability to jointly adopt or inherit property, the exclusion from intestate succession, the lack of recognition under religious personal laws, and the susceptibility of surviving partners and children to both financial and legal instability.

According to the analysis, gendered terms like "husband," "wife," and "spouse" are used in Indian inheritance laws, which are heteronormative. Same-sex partners are routinely left out of the definition of legal heirs by this wording, depriving them of their rights to property, maintenance, and familial recognition. The inability of same-sex couples to adopt children jointly adds to the situation's complexity by depriving children of inheritance rights and escalating their sense of legal invisibility. Economic vulnerability and social marginalization are sustained by the absence of automatic survivorship, the possibility of property disputes with biological families, and the inability to obtain spousal tax and financial benefits.

The continued denial of inheritance rights to same-sex couples reflects larger societal

⁴⁸ Estate Planning for Same-Sex Couples, Rosenblum Law Offices.

prejudices that value traditional family arrangements. The Supreme Court acknowledged in *Supriyo @ Supriya Chakraborty & Anr v Union of India (2023)* that legislative action is necessary for meaningful change, demonstrating the limitations of judicial interventions, despite their importance. It is essential to amend laws like the Indian Succession Act, Hindu Succession Act, and Special Marriage Act to use inclusive and gender-neutral language. Such changes would uphold the constitutional values of dignity, non-discrimination, and the right to family life in addition to guaranteeing equality before the law. The denial of inheritance rights to same-sex couples continues to be a stark injustice that threatens India's constitutional values at a time when the country is undergoing social change. To address these disparities and create a society that is more inclusive and just, legislative changes that acknowledge same-sex unions and update inheritance laws are crucial. India can get closer to fulfilling the promise of dignity, safety, and belonging for all of its citizens by accepting diversity in family structures and establishing equality in the law.

