
PROPERTY RIGHTS OF LGBTQ+: LEGAL DEVELOPMENTS AND CHALLENGES

Shanmuga Priya R, LLM Postgraduate Department of Property Law, The Tamilnadu Dr. Ambedkar Law University, Chennai

Dr. Brinda P, H.O.D, Postgraduate Department of Property Law, The Tamilnadu Dr. Ambedkar Law University, Chennai

ABSTRACT

Inheritance rights are a fundamental aspect of legal and social recognition, ensuring financial security and validating personal relationships after death. However, for individuals identifying as LGBTQ+, these rights are often restricted or denied due to the limitations embedded in succession laws. Most legal frameworks, particularly in India, are based on traditional understandings of family and kinship. As a result, Queer individuals—especially those in non-recognized partnerships or chosen families—frequently face exclusion from the inheritance process.

This article critically examines how existing succession laws, which govern both Intestate and testamentary inheritance, fails to accommodate the lived realities of LGBTQ+ persons. In jurisdictions where same-sex marriage is not legally recognized, queer partners are often not considered legal heirs, leaving them vulnerable in the society. Even where wills are made, legal and societal barriers may lead to disputes, invalidation or denial of inheritance rights. The lack of inclusive definitions within succession statutes further marginalizes queer individuals and denies them equal treatment under the law.

Adopting a doctrinal and Comparative approach, this study focuses exclusively on the Intersection of Inheritance and queer identity, highlighting how existing laws systematically overlook non-traditional family structures. It argues for a reimagining of succession laws to ensure that all individuals, regardless of sexual orientation or gender identity, are treated equally in matters of Inheritance. By Focusing on LGBTQ+ experiences in the context of succession, this research aims to bring attention to a neglected area of legal reform and advocate for a more inclusive and equitable Inheritance system.

Keywords: LGBTQ+ Inheritance, property rights, succession law, legal recognition, Inheritance, gender Identity

INTRODUCTION

Inheritance rights and succession rights form a crucial aspect of legal systems, serving not just as a mechanism for distributing property after death, but also as a reflection of societal recognition of personal relationships and family structures. For individuals identifying as LGBTQ+, these rights are often compromised due to the traditional foundations upon which most succession laws, particularly in India, are built. In a legal framework that primarily acknowledges relationships within the confines of heterosexual marriage and biological family ties, LGBTQ+ individuals especially those in non-recognized partnerships, live-in relationships, or chosen families often find themselves excluded from legal entitlements to property.

India's 2011 Census marked a historic step by including a separate category for individuals identifying as "transgender" under the gender column¹. Although landmark judgments such as *NALSA v. Union of India*², which recognized the right to self-identify one's gender, and *Navtej Singh Johar v. Union of India*³, which decriminalized homosexuality, have marked significant progress for the queer community, they have not yet translated into equal rights in civil matters such as inheritance and succession. The lack of legal recognition for same-sex marriage and queer relationships leaves partners vulnerable, particularly in cases of intestate succession, where statutory laws fail to acknowledge their relationship altogether. Even when wills are made, social stigma and family opposition may result in disputes, challenges to the validity of the will, or complete denial of the testator's intentions.

LEGAL FRAMEWORK OF SUCCESSION AND INHERITANCE IN INDIA

The legal framework of succession and inheritance in India is primarily governed by personal laws, which are often based on religious doctrines and do not adequately recognize the rights of LGBTQ+ individuals. Despite constitutional provisions against discrimination, the

¹This census estimated that 4.8 million Indians identified as transgender. However, this figure only reflects those who chose the "other" option in a binary male or female, thereby excluding a vast majority of the LGBTQ+ community. Thus, there remains a critical absence of reliable national data on the broader LGBTQ+ population in India.

² *National Legal Services Authority v Union of India* (2014) 5 SCC 438. The Supreme Court in this case, upheld the right of individuals to self-identify their gender as male, female, or third gender, and directed the government to treat transgender persons as socially and educationally backward classes for reservation purposes.

³ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1. Supreme Court in this judgment declared Section 377 of the Indian Penal Code unconstitutional to the extent that it criminalized consensual sexual conduct between adults of the same sex, thereby affirming the fundamental rights of LGBTQ+ individuals to dignity and privacy.

inheritance laws remain largely binary, failing to accommodate non-binary and transgender individuals, same-sex couples. This lack of recognition extends to the broader LGBTQ+ community, where systemic barriers persist in areas such as marriage and adoption, further complicating Property rights.

The presence of Section 377 within the Indian Penal Code has long been a contentious issue, rooted in colonial-era legislation that fails to align with contemporary societal norms and values. This being a provision under IPC in 1860, reflecting a punitive stance towards acts deemed to contravene the perceived natural order, including consensual homosexual relations. This antiquated provision, while ostensibly aimed at regulating sexual conduct, has instead perpetuated discrimination and marginalization against the LGBTQ (Lesbian, Gay, Bisexual, Transgender, Queer) community. Despite progressive legal developments, such as the landmark *Naz Foundation vs. Govt. of NCR Delhi* case⁴, which decriminalized same-sex relations, systemic barriers still persist. Article 14, 15, and 21 of the Indian Constitution, guaranteeing equality before the law, prohibition of discrimination, and protection of life and personal liberty, respectively⁵, stand in stark contradiction to the continued enforcement of Section 377. Furthermore, the Supreme Court's ruling in 2018, recognizing the rights and dignity of LGBTQ+ individuals, underscored the imperative for legislative reform. However, substantive legal changes are essential to address broader issues facing the LGBTQ+ community, including marriage equality, adoption rights, and inheritance. Despite these challenges, there is growing momentum towards reform, driven by a recognition of the fundamental rights and freedoms that all citizens, regardless of sexual orientation or gender identity, are entitled to. Efforts to dismantle discriminatory laws and foster a more inclusive legal framework are not merely matters of legality, but also of human rights and social justice. Therefore, the imperative lies in fostering legislative and societal change that ensures equal treatment and opportunities for all members of society, irrespective of sexual orientation or gender identity.

HINDU SUCCESSION ACT

The rights of Hindus, Sikhs, Buddhists and Jains are governed under the Hindu Succession Act⁶. Even though details rules are given under the act, it doesn't prescribe about the rights of

⁴ *Naz Foundation v Government of NCT of Delhi* [2009] 160 DLT 277 (Del HC).

⁵ Constitution of India 1950, arts 14, 15, 21

⁶ Hindu Succession Act 1956, S 2

LGBTQ+. This could be evidently seen from the definition clause under the Act which limits that heirs are male and female. Even the Agnates, the persons who are related by blood through males⁷ and cognates who are related by blood or adoption not wholly through males⁸ are also mentioned on the basis of binary notion of gender. In addition, this act also mentions specifically mentions about heir as any person, male or female who is entitled to succeed the property of an intestate under the Act.⁹

The Hindu Succession Act, 1956, continues to follow a binary understanding of gender, granting inheritance rights to “sons” and “daughters” without recognising gender-diverse identities such as transgender, non-binary, or intersex persons. Sections 8 and 15 of the Act lay down distinct rules of succession for males and females, respectively¹⁰. However, the legislation is silent on how to apply these provisions to individuals whose gender identity does not conform to the male-female binary, such as transgender persons who have undergone gender-affirming procedures or who self-identify differently from their assigned sex at birth. This omission creates significant legal ambiguity. For example, it remains unclear whether a transgender man would be entitled to inherit under Section 8, which outlines rules for males dying intestate, or if a transgender woman would be subject to Section 15. Moreover, the Act provides no framework for recognising same-sex partnerships or queer family structures, leaving such partners without inheritance rights. This rigid categorisation creates practical hurdles for LGBTQ+ individuals seeking recognition as legal heirs and opens the door to arbitrary interpretations by courts and authorities.

The absence of legal recognition has also led to social backlash and suspicion. A prominent example is the **Ajay Mafatlal case**¹¹, where a transgender person was accused of changing gender identity for the purpose of accessing property rights under the Hindu Succession Act. Though the claim lacked substantive legal grounding, it revealed a deep-seated societal prejudice and highlighted how the absence of legislative clarity can fuel mistrust and discrimination. The Act’s failure to define who qualifies as a male or female for the purposes of inheritance law reinforces a narrow and outdated conception of family and succession, excluding LGBTQ+ persons from a fundamental aspect of civil rights. In order to uphold the

⁷ Ibid, S 3(a).

⁸ Ibid, S 3(c).

⁹ Ibid, S 3 (f).

¹⁰ Ibid, SS 8,15.

¹¹ Karan Gulati, 'Inheritance Rights of Transgender Persons in India' (2021) *LiveLaw*

constitutional values of equality, dignity, and non-discrimination under Articles 14, 15, and 21 of the Indian Constitution, it is imperative that the Hindu Succession Act be amended to incorporate gender-neutral and inclusive language that reflects the realities of diverse identities in Indian society.

MUSLIM PERSONAL LAW (SHARIAT) APPLICATION ACT

Muslim personal law in India governs inheritance through principles derived from Quran and customary practices. These norms, while historically significant, were shaped further during colonial rule and continue in post-colonial legal interpretations. The Muslim Personal Law (Shariat) Application Act 1937, declares that Shariat law shall apply to Muslims in matters including inheritance, with certain exceptions such as personal property acquired through contract or gift. Despite its intention to standardise the application of Islamic law, the Act functions within a strictly binary gender framework. The system largely differentiates inheritance on the basis of gender typically granting males twice the share of females based on an assumption of financial responsibility borne by men, such as Mehr and maintenance.¹²

However, the law remains silent on the status and rights of transgender, intersex, or non-binary persons, as well as same-sex partners. Given that the Act does not account for gender transitions or the existence of legally recognised third genders as upheld in *National Legal Services Authority v Union of India* LGBTQ+ Muslims are left in a legal gap¹³. They face uncertainty in being either included as legal heirs or in passing on property to their partners. The absence of statutory clarity and the binary reading of gender roles not only leads to exclusion but also stands in contradiction with constitutional guarantees of equality and dignity under Articles 14 and 15 of the Indian Constitution¹⁴. Therefore, there is a pressing need to interpret personal laws in harmony with constitutional principles and to initiate reforms that explicitly recognise and protect the inheritance rights of LGBTQ+ individuals within Muslim communities.

INDIAN SUCCESSION ACT

Unlike the personal laws governing Hindus and Muslims, the Indian Succession Act, 1925, provides a secular framework applicable to Christians, Parsis, Jews, and individuals not

¹² *The Muslim Personal Law (Shariat) Application Act 1937*, s 2.

¹³ *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

¹⁴ *The Constitution of India* 1950, arts 14, 15.

governed by any specific personal law. While the Act represents a progressive codification in terms of offering gender-neutral devolution of property, it still operates within a binary gender framework, thereby excluding individuals who identify outside the male-female binary and those in non-heterosexual relationships.

Furthermore, the Act presumes inheritance within the bounds of legally recognised family structures. Given the absence of formal legal recognition of same-sex marriages or partnerships under Indian family law, LGBTQ+ individuals—particularly those in queer relationships—remain outside the ambit of Inheritance rights unless testamentary arrangements are explicitly made. Even, where a will is executed, such testamentary freedom can be challenged by surviving family members, often leaving queer partners vulnerable to litigation and inheriting the property.

THE TRANSGENDER PERSONS ACT, 2019

The **Transgender Persons (Protection of Rights) Act, 2019** is a landmark legislation aimed at securing the fundamental rights of transgender individuals in India, including their right to self-identify and protection against discrimination in various spheres such as education, employment, and healthcare. The Act provides a legal framework for transgender persons to obtain official recognition of their gender identity through a certificate issued by the District Magistrate.

However, despite these advances, the Act **does not address critical issues related to personal laws**, particularly those concerning inheritance and succession rights. Existing succession laws like the Hindu Succession Act and Muslim Personal Law are fundamentally gendered and do not explicitly recognize transgender persons, creating ambiguity regarding their status as heirs.

For instance, questions remain whether a transgender woman is entitled to inherit as a daughter or a transgender man as a son under these statutes. The Supreme Court's 2014 judgment in **NALSA v Union of India** emphasized the right of transgender persons to self-identify their gender and called for equal rights in all legal matters, including inheritance. Yet, the 2019 Act falls short of incorporating these protections within the personal law framework, leaving transgender individuals vulnerable to exclusion from property rights.

This legislative gap highlights the urgent need for reforms that either amend existing

inheritance laws to explicitly include transgender persons or introduce **gender-neutral succession provisions**. Without such changes, transgender individuals remain marginalized in one of the most fundamental aspects of personal rights, the right to inherit property.

CHALLENGES FACED BY LGBTQ+ PERSONS

The foremost obstacle is the **structure** of succession statutes. The Hindu Succession Act, 1956 prescribes separate rules for males and females without indicating where a transgender heir should be placed, or how a non-binary person should be treated.¹⁵ The resulting uncertainty was starkly exposed in the public controversy surrounding **Ajay Mafatlal** Case, where a transgender heir was accused of changing sex for property, illustrating how ambiguity invites litigation as well as social suspicion. Comparable gaps exist in the Muslim Personal Law (Shariat) Application Act, 1937 and the Indian Succession Act, 1925, neither of which recognises queer partners as spouses or accommodates third-gender identities. Consequently, LGBTQ+ heirs are forced to rely on wills which remain open to challenge by biological relatives or risk complete exclusion from intestate shares.

A second barrier is **documentation and legal identity**. Succession proceedings require proof of gender, kinship and domicile, yet large numbers of transgender persons lack identity papers reflecting their self-identified gender.

A 2015 Kerala government survey found that 76 per cent of transgender respondents could not register their perceived gender, and only 8 per cent possessed Aadhaar or voter cards showing their correct identity.¹⁶ Without such documents they cannot establish heirship, execute adoption, or prove a lawful marriage, all of which directly affect their inheritable status.

Thirdly, the **absence of marital and family recognition** compounds vulnerability. The interplay of gendered statutes and unmet documentary requirements therefore produces a cascading denial of property rights, perpetuating economic marginalisation in a community already characterised by low income, insecure housing and limited savings.

Although *NALSA v Union of India* acknowledged these hurdles and urged inclusive interpretation of fundamental rights, subsequent litigation shows that relief remains case-

¹⁵ Hindu Succession Act 1956, SS 8, 15.

¹⁶ Government of Kerala, *Transgender Survey Report* (Social Justice Dept 2015)

specific and discretionary. Courts have occasionally stretched customary norms to award property to transgenders,¹⁷ but such decisions highlight judicial latitude rather than systemic protection. Until succession laws adopt gender-neutral language and formally recognise queer partnerships and diverse gender identities, LGBTQ+ Indians will continue to face an unpredictable and often hostile inheritance regime.

SUGGESTIONS

To ensure that LGBTQ+ individuals receive equitable inheritance rights, comprehensive legal reforms are urgently needed in India. First and foremost, recognition of same-sex marriages through dedicated legislation would provide a foundational legal basis for inheritance rights, allowing queer partners to be treated on par with heterosexual spouses under succession laws. This would eliminate ambiguity and vulnerability in intestate and testamentary inheritance cases.

Existing personal laws such as the Hindu Succession Act and Indian Succession Act should be amended explicitly to include queer relationships and non-traditional family structures, expanding the definition of family or heirs beyond biological or legally married spouses. This would protect not only married couples but also partners in stable relationships and chosen families, who often face exclusion under current laws.

There is also a pressing need to sensitize and train judiciary, legal professionals, and law enforcement agencies about LGBTQ+ issues, ensuring fair and non-discriminatory application of inheritance laws. Public awareness campaigns can help reduce stigma and promote social acceptance of diverse family forms, which will support the Implementation of Inclusive laws.

Furthermore, the government should consider introducing clear guidelines for will-making and testamentary succession that accommodate LGBTQ+ individuals' unique circumstances, reducing disputes and legal hurdles. Legal aid and counseling services tailored for queer persons regarding inheritance planning would empower them to protect their rights proactively.

Ultimately, these reforms require a multi-stakeholder approach involving lawmakers, activists, legal experts, and the LGBTQ+ community itself. By fostering an inclusive legal environment,

¹⁷ *Illyas v Badshah alias Kamla* 1990 (2) MP LJ 503; *Sweetie v General Public* AIR 2016 HP 148

India can uphold constitutional guarantees of equality and dignity for all its citizens, ensuring that inheritance laws no longer marginalize individuals based on their sexual orientation

CONCLUSION

The struggle for inheritance rights within the LGBTQ+ community highlights a critical intersection of law, social justice, and human dignity. Despite constitutional guarantees of equality and recent progressive judicial pronouncements, existing succession laws in India remain largely rooted in traditional and binary family constructs that exclude queer relationships. This legal gap leaves many LGBTQ+ individuals vulnerable to financial insecurity and social marginalization upon the death of a partner or family member.

Addressing these challenges requires not only legal reforms that recognize same-sex partnerships and broaden the scope of heirs but also a broader societal shift towards acceptance and inclusivity. By adopting comprehensive legislative changes, sensitizing judicial and administrative systems, and empowering LGBTQ+ persons through education and legal aid, India can move closer to realizing true equality in inheritance and succession.

Ultimately, inheritance rights are more than a matter of property or wealth—they are a reflection of the state's commitment to uphold the dignity, identity, and familial bonds of all its citizens, regardless of sexual orientation or gender identity. Ensuring equitable property rights for the LGBTQ+ community is an essential step towards a just and inclusive society.

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