
IMPACT OF CHANGING FAMILY STRUCTURES ON INHERITANCE LAWS IN INDIA

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ABSTRACT

The domain of family as an institution has undergone huge transformation especially in the previous few decades. From the traditional joint family system to the current prevailing system of nuclear families, and now to more diverse forms, which include recognition given to live-in relationships, decriminalising same-sex relations and the recognition of transgenders as the 'Third' gender. Despite all these changes in the traditional notion of family, the Inheritance Laws have continued to remain constant, resting largely on the conventional notions.

This essay tends to examine the manner in which the law defines "family" and how statutory provisions and judicial precedents have responded to the shift in the traditional understanding of family structures. It also captures the beautiful ways in which the socio-cultural factors including globalisation, rising divorce rates, inter-continental marriages, adoption practices, and the increasing acceptance of LGBTQ+ identities have contributed in shaping the changing landscape of 'Family' arrangements in India. This analysis particularly focuses on three crucial areas, firstly, the inheritance rights of children born from a live-in relation set-up, secondly, the possible recognition of same-sex couples in the Succession law, thirdly, the urgent need for explicit legal framework protecting the rights of transgender persons.

By engaging with the statutory lacunae, precedent and comparative practices, this essay advocates for Indian Inheritance laws to evolve towards inclusivity by recognising modern family structure such as live-in partnerships, same-sex couples, and transgender identities given place well within the framework of succession. The reforms in the said area are not mere a question of keeping the statutes updated, but a matter of ensuing justice, equality and non-discrimination, values that also lie at the core of the Indian Constitution. Inheritance is not just a matter of property but also of familial bonds and identities. By denying this very recognition to certain communities is to perpetuate exclusion, whereas reforms in the said area can serve as a means of social progress.

Keywords: Succession, Live-in relationships, Transgender rights, Same-sex couples, inclusivity.

INTRODUCTION

Most Hindu families were based on Joint Family system, however, today we see a large number of nuclear families, even though Inheritance Laws don't explicitly discuss about them. Likewise, over time, family structures have changed and the Laws must be at par with such changes so as to ensure inclusivity of new types of families. In this project, the researcher will firstly discuss about what exactly is the meaning or understanding of 'family' as per the Laws. Secondly, the researcher will tap into the causes that have resulted in the change of such family structures and the result of the same for example, the acceptance of same-sex couples have resulted in families being started by such persons. Finally, the researcher will discuss the possible changes that can be made in the Inheritance Laws to bring in such communities.

PART I: TYPES OF FAMILIES

FAMILY:

The word 'family' is derived from the Latin word, 'familia', denoting a household or family¹. There are no statutes that actively define the term 'family', however, there are certain other authorised sources that have defined family. A recent UNESCO report defined 'family' as a kinship unit and even in the absence of a common household, the unit continues to exist as a social reality².

Section 37(b) of The Orissa Land Reforms Act, 1960³, states that, 'family' when referring to an individual, "family" refers to that individual, their spouse, if applicable, and any major or minor children they may have. However, a major married son who had previously experienced a separation by partition or other methods is not included in this definition. This can be used to understand the meaning of family however, this statute applies mainly to Orissa and not other states, thus, it cannot be used as a general,

¹ "Familia, N." Oxford English Dictionary, Oxford UP, July 2023.

² UNESCO, Mullatti L. "The changing family in Asia: Bangladesh, India, Japan, Philippines, and Thailand." Bangkok: Principal Regional Office for Asia and the Pacific (1992).

³ The Orissa Land Reforms Act. 1960. Odisha Legislative Assembly, § 37(b).

accepted definition of family.

CLASSIFICATION OF FAMILIES:

Families can be classified based on different dimensions⁴:

1. MARRIAGE:

- i. Monogamous marriages: Single spouse present.
- ii. Polygamous marriages: Multiple spouses present.

2. LOCATION:

- i. Patrilocal family: The couple resides with the husband's family.
- ii. Matrilocal family: The couple resides with the wife's family.
- iii. Avunculocal family: The couple resides with the husband's mother's eldest brother family⁵.

3. AUTHORITY:

- i. Patrilineal family: Male dominance is present.
- ii. Matrilineal family: Female dominance is present.

4. KIN COMPOSITION:

- i. Nuclear Family: The name "nuclear" was chosen because, according to current family structure classifications, a married couple forms the "nucleus" of a family.

⁴ Sharma, Rahul. "The Family and Family Structure Classification Redefined for the Current Times." *Journal of family medicine and primary care* vol. 2,4 (2013).

⁵ Britannica, The Editors of Encyclopaedia. "avunculate". *Encyclopedia Britannica*, 15 Jul. 2008.

- ii. Joint Family: Resources are shared by more than one couple⁶.

Families can be further broken into many dimensions; however, these are the broadest and commonly used and known divisions and understanding of family types.

PART II: CAUSES OF CHANGING FAMILY STRUCTURES

This chapter explores the reasons behind shifting family arrangements and how they affect India's inheritance laws. The landscape of familial ties is changing due to factors like rising divorce rates, marriages between people from different continents, and acceptance of different family structures including live-in partnerships and acceptance of third-gender people. These changes put the current legal systems to the test, making it necessary to critically assess inheritance rules to make sure they are inclusive and represent modern family dynamics.

PREFERENCE OF NUCLEAR FAMILY:

Traditionally, the concept of joint family system has been followed. Hindu Laws are prescribed for the governance of Hindu Joint Families which are represented by a Karta⁷. Though, in practice nuclear families are more prevalent than ever today, Laws don't explicitly govern or talk about them. The younger generations prefer having a nuclear family because of various advantages such as financial stability, greater privacy, less management, conflicts, ease of movement etc. Another prominent reason for the pursuance of nuclear families is industrialisation. As a consequence of having nuclear families, children miss out on sharing their issues (apart from spouse) with a mature and understanding being whom they are close and connected to which has led to more depression and suicide rates.

DIVORCES:

Due to technologization, there are unhealthy expectations placed on couples by each other. Often times when couples don't obtain the type of relationships seen on movies

⁶ Elliott, S., A. Gray. Immigration Research Programme: Family Structures. New Zealand Immigration Service (2000).

⁷ Hindu Succession Act, 1956, Act No. XXXVIII of 1956, Government of India, Ministry of Law and Justice, 1956.

and social media, they blame their partners and divorce them instead of trying to adjust with them. Divorces are often looked down by society as different religions today don't recognise them. However, various ideologies such as 'self-worth' preached by social media have developed different interpretations and reached different people. This has resulted in people looking out for 'better' partners instead of trying to adjust with the ones they are married to. While divorces may seem necessary today in cases of domestic abuse, irretrievable breakdown etc., the courts have acted in a smart way by making divorces extremely hard and a last-resort for couples to obtain today.

INTER-CONTINENTAL MARRIAGES:

Inter-continental marriages have propagated the idea of families in the West, where divorces are common as it is easier to get there which has further diluted the traditional concept of 'family' which often means adjusting of spouses for the betterment of the children.

ADOPTION:

Though under Hindu Laws, adoption is allowed, various religions even today do not recognise adoption. Adoption is more of a modern and recent concept. Traditionally, the only child a couple would bare would be of their own. However, today, Hindu Laws recognise adoption which has demanded the change of succession Laws and creation of a new act governing the requirements and nature of adoption.

THIRD GENDER AND OTHERS:

The Law recognises third genders and others as it is covered in Article 21⁸, as a part of personal autonomy and self-determination⁹. However, this inclusion of such persons are very recent in nature and much more on paper than in reality. For instance, marriage rights of same sex people is still denied today¹⁰. However, many countries such as the U.S have accepted the LGBTQ+++ and due to globalisation, westernisation and technologization, today there is much more tolerance to these communities in India and it is not uncommon for couples of same sex to move in together. Though, they are yet

⁸ The Constitution of India, 1950, Art. 21.

⁹ National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

¹⁰ Supriyo @ Supriya Chakraborty vs Union Of India, W.P.(C) No. 1011/2022.

to get many rights in India, they live and act as families independent of their sexualities. This is apart from what is traditionally expected to compose of a family i.e. couples of opposite sex, yet is starting to increase over time and may one day be legally recognised in India as well under a family set up.

LIVE-IN RELATIONSHIPS:

Live-in relationships too are not traditionally followed and appreciated by religions, the only kind of union respected and encouraged by religion is through marriages which establishes family. However, the Law has given some recognition to Live-in relationships which can help get maintenance rights etc. yet, there are no succession Laws, divorce rights given to such relationships in order to discourage them¹¹. This is again because religions in general only recognise marriage as a union between couples. However, today, live-in relationships are present as couples try to work their relationships out before finalising in the form of marriages which can reduce divorces. However, non-marital relationships in general are dangerous as it doesn't force commitment on people and they often are left at the liberty of walking out of relationships however, the same is not true in case of marriages as families are involved and it is solemnised and divorces are hard to obtain.

PART III: INHERITANCE LAWS FOR LIVE-IN RELATIONSHIPS

Society is ever-evolving and so is the Law. Certain changes have been made by the courts and the legislature in view of the same. A person can get married under the Special marriages act¹² independent of their religion, caste etc. as long as one of the persons is an Indian Citizen. Upon marrying, rules of the Indian Succession act¹³ follow. While certain orders of the court such as making the obtainment of divorces incredibly hard and last resorted, recognition of live-in relationships to protect the dignity and rights of the women is commendable, there is always a scope to expand certain laws in a way that brings in the inclusion of more communities as an outcome of such changing family structures, in the view of the same, following are some ways by which

¹¹ S. Khushboo v. Kanniammal & Anr., (2010) 5 SCC 600 (2010).

¹² Special Marriage Act, 1954. Government of India, Ministry of Law and Justice, 1954.

¹³ Indian Succession Act, 1925. Government of India, Ministry of Law and Justice, 1925.

inheritance laws can be considered and constructed for certain communities:

LIVE-IN RELATIONSHIPS: Live-in relationships have now been recognised by the courts. Usually, under inheritance Laws spouses can not claim any inheritance rights. Further, the children born out of such relationships are treated and inherit property as adopted children. This was held in *Payal Sharma v. N. Talwar*¹⁴. In *Vidyadhari v Sukhrana Bai*, the court for the first time recognised and gave inheritance and the status of "legal heirs" to the children born from the live-in relationship in question¹⁵. Section 16 of the Hindu Marriage Act¹⁶, recognises children born out of such void or voidable marriages as the legal heirs of the parents' property. However, they are not entitled to ancestral property of the parents as they are not coparceners¹⁷. The definition of 'property' in Section 16(3), Hindu Marriage Act has not clarified if it is the ancestral or self-acquired property, thus, in most cases courts only grant the child self-acquired property of the parents. The children born out of any relationship are always legitimate as held in *Balasubramanyam v. Suruttayan*¹⁸. However, denying ancestral property to such children is not very appreciated since, the child would firstly grow up in the stigma of not having married set of mothers at the time of its birth and secondly it would be denied property rights, for something he never caused, he would have to reap. The court in *Indra Sarma vs. V.K.V. Sarma*¹⁹, emphasised that living jointly without a marriage is neither a sin nor unlawful. While traditional concept of families are based on marriages, the state should not interfere when a couple wishes to pursue live-in relationships. As long as it does not affect the public, they should be left alone. There are cases where the courts have allowed a long term live-in relationship to be deemed as a marriage where inheritance rights may follow. This was held in *Lalita Toppo v. State of Jharkhand*²⁰.

Under Muslim Law, live-in relationships are illegal and the children too are illegitimate. In *Kiran Rawat v. State of U.P*²¹, hon. Allahabad H.C. observed that in light of

¹⁴ AIR 2001 All 254.

¹⁵ AIR 2014 SC 309.

¹⁶ The Hindu Marriage Act, 1955, sec. 16., Government of India, 1955.

¹⁷ *Revanasiddappa vs Mallikarjun* 2023 INSC 783 (para 55).

¹⁸ *Balasubramanyam v. Suruttayan*: 1994 AIR 133.

¹⁹ *Indra Sarma vs. V.K.V. Sarma*: 2013 AIR SCW 6783.

²⁰ (2019) 13 SCC 796.

²¹ *Kiran Rawat v. State of U.P*: Writ Petition No. 3310 of 2023.

‘zina’(sexual intercourse out of wet-lock), which is a haram before marriage, may be encouraged through live-in relationships. In countries such as U.S. some states recognise live-in relationships²². New Hampshire, legalises persons cohabiting together and merely acknowledging each other as spouses for three years as married²³.

PART IV: CALL FOR INTRODUCTION OF INHERITANCE LAWS FOR OTHER COMMUNITIES

This chapter is the continuation of the previous chapter that discussed about the various possible changes in Inheritance Laws to bring in the inclusivity of new family structures. This chapter, in particular, will shed light on inclusivity of same-sex couples and transgenders in Inheritance Laws.

SAME-SEX COUPLES: The dispute of same-sex marriages is still very controversial from religion and legal point of view yet, since the courts recognise various other genders, the court must also refrain from interfering in their personal matters. Usually, religions condemn same sex orientations but India on the grounds of being a secular country, has decriminalised consensual sexual relationships under Section 377(2) IPC in *Navtej Singh Johar v. Union of India*²⁴. Yet, same-sex marriages are illegal in India²⁵. The courts at the end of the day have to ensure peace and harmony in the society and when such couples maintain their interests without disturbing the others, the courts may refrain from interfering in their businesses just because, certain individuals find their orientation morally incorrect. Hence, there may be legalisation of such couples which follows with inheritance rights.

As of today, 36 countries in the world such as Australia, the U.K., South Africa, Sweden and Spain have already legalised same-sex marriages²⁶. In Sweden, same-sex marriages are legal. In 2009, the marriage code for all genders were made gender-neutral. There are provisions that support and protect homosexuals and people of other genders²⁷. This means that independent of the gender of the other spouse/homo-sexuality, the marriage

²² Viswanath, Tishya. "India v USA: Legality of Live-in Relationships." Manupatra, 5 July 2024.

²³ "Cohabitation, etc." New Hampshire Revised Statutes Annotated, RSA 457:39. Government of New Hampshire, 2014.

²⁴ *Navtej Singh Johar v. Union of India*: (2018) 10 SCC 1.

²⁵ *Supra* at 15.

²⁶ "Marriage Equality Around the World." Human Rights Campaign.

²⁷ "Chronological Overview of LGBT Persons' Rights in Sweden." Government of Sweden, 2018.

and inheritance laws are uniform for everyone. Likewise, such provisions can also be incorporated in India in bringing in uniform laws of inheritance for homogenous-couples based on their religion just as they are applicable for heterogenous couples.

TRANSGENDERS: The Supreme Court in *National Legal Services Authority v. Union of India*²⁸, recognised transgenders as ‘third gender’. The Indian succession laws governed by personal laws of various religions distinguish the inheritors on the binary notion, as males or females only. No provision talks about transgenders specifically. Sections 24 to 26 Hindu Succession act²⁹ describe disqualifications and transgenders are not disqualified, further the definition of ‘persons’ as mentioned under this act has a broad meaning as per General Clauses Act, 1897³⁰. Further, Transgenders identify themselves as female in order to claim inheritance rights and only the rights of a female follow in such cases. However, being transgender is different from being a male or a female and since they are legally recognised, there must also be changes accordingly for such persons under various succession acts. The Transgender Persons (Protection of Rights) Bill³¹ was presented in the Lok Sabha in 2016 following the case *National Legal Service Authority v. Union of India & Others*. The Bill is broken up into different parts that address different rights that transgender people should have in order to combat the discrimination they now encounter. The transgender identity is acknowledged in Chapter III of the Bill. The Bill's Chapter V grants transgender people privileges at a number of establishments. The right of residency for transgender people is covered in Section 13 of the Chapter. They have the right to enjoy the home and make use of all of its amenities, according to Section 13(2)³². Although the Lok Sabha's law addresses transgender people's right to live in their own country, it makes no mention of their right to inherit. As a legal successor to their parents' separate property, they are not granted the title of coparcener in the Joint Hindu Family due to their gender identification³³.

Regarding gender and sexual orientation, the International Human Rights Law was

²⁸ National Legal Services Authority V. Union Of India (2014) 5 SCC 438.

²⁹ Hindu Succession Act, 1956, §24-26.

³⁰ The General Clauses Act, No. 10 of 1897, Section 3(39).

³¹ The Transgender Persons (Protection of Rights) Lok Sabha Bill (2016) 210 .

³² Ibid.

³³ Sharma, Rupal. "Inheritance Rights of Transgender: A Cry of Humanity." IJLMH, vol. 1, no. 3, 2018.

³⁹ Supra at 2.

established under the Yogyakarta principles. According to these principles, transgender people have the right to work, education, property, and the freedom to choose their gender identification. The right to recognition before the law is stated in Principle 3 of the Yogyakarta. By allowing the state to grant property rights, including the ability to inherit, to transgender people without discriminating on the basis of sexual orientation and gender identity, Principle 3A of Yogyakarta protects their inheritance rights³⁹. Even Islamic countries such as Pakistan recognise the rights of transgenders³⁴, however, there is yet to be their recognition under inheritance Laws.

Article 15⁴¹ of the Indian constitution safeguards individuals against discrimination on the grounds of sex. Being transgender is not an offence and the state should not exploit them on unjust grounds such as their gender. Thus, just as in the case of incorporation of daughters as coparceners, there may be provisions explicitly mentioning the rightful and equitable shares of the transgender people.

PART V: CONCLUSION

Family is a kinship unit. There are various types of family that are commonly understood and accepted such as monogamous, polygamous etc. Family structures have evolved over the years. Due to various factors such as technologization, modernisation, westernisation, globalisation and more. These have resulted in higher divorce rates, a greater number of nuclear families, adoption, greater acceptance of LGBTQ+ community, inter-continental marriages etc. As family structures change, Laws must keep pace with them to ensure no one is denied their rights on unjust grounds. While the general Laws have to an extent accepted a large variety of such changes, the Inheritance Laws still remain largely untouched and are discriminatory in nature. The major question in this project, was to analyse what changes could be brought about in Indian Inheritance Laws to increase inclusivity of such more-newer family structures. This research has shed light on largely three major new family structures, namely, live-in relationships, same-sex couples and transgenders.

Live-in relationships are legal in India. The children born out of such marriages are considered legitimate and inherit the self-acquired property of the parents, however,

³⁴ Dr. Mohammad Aslam Khaki & Anr. v. Senior Superintendent of Police Rawalpindi & Ors.:PLD 2013 SC 188.

⁴¹ The Constitution of India, 1950, Art. 15.

they are not entitled to the ancestral properties of their parents as they are not considered at par with coparceners. In the researchers' point of view, children should not be denied any inheritance rights just because of the way in which they were born, they will already be subjected to social stigma and they didn't commit any fault in the first place. Further, spouses do not get any inheritance but there are countries like the U.S where some states recognise under certain conditions as marriages and the inheritance rights follow accordingly. This can be done in India as well as state should not interfere merely because a couple does not want to go through the formalities of marriages.

Further, same-sex marriages may be made legal in India and uniform inheritance laws may follow as in the case of heterogenous marriages. Persons should not be discriminated based on their sexual orientation, neither should state interfere even on moral grounds as India is a secular country. Likewise, transgender persons should have a separate provision mentioning their rights in Inheritance Laws. This would ensure a larger acceptance and inclusion of different family structures in India and bring about justice in assigning their rightful shares in Inheritance of the properties.