

THE EVOLVING LEGACIES: HOW MODERN FAMILY STRUCTURES ARE RESHAPING INHERITANCE LAW FOR STEPCHILDREN, COHABITING PARTNERS, AND SAME-SEX COUPLES

by

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ABSTRACT

This paper will explore how modern families nowadays impacts inheritance laws in India and by the meaning of 'modern family' we mean stepfamilies, cohabitating partners and same sex couples, these modern families are wholly impacting the lives of modern families and also plays a crucial role in their reshaping new or changed laws in India as they are also reshaping the new old norms and that's why we are experiences gaps in between. In the older times inheritance laws were made around nuclear or joint family setup where there were always married spouses and biological children but families are diverse where there are stepfamilies without and inheritance in case of intestacy and on the other hand we nowadays we have live-in couples also called cohabitating partners which share lives and assets like married couples may have less legal recognition in inheritance matters if one partner dies without the will especially in places and jurisdictions that don't recognize common law relationships. On the other side we have same sex couples as well and we will also cover their matters in this paper we have a detailed elucidation of how these new modern families are impacted in different ways. We will talk about how inheritance laws work in different jurisdictions where same sex couples lack recognition and how many challenges they face to have their rights of inheritance from their deceased partner; through this paper we will also look into the legal gaps we have in between and we will also see how we can acknowledge diverse family forms and would also ensure fair treatment of such modern families so that we need new legal reforms for that and how we can do that we will learn about that through this paper. This paper will also focus on how current laws are unable to meet the requirements of realties of modern structure and how many other foreign jurisdictions are dealing with this situation and they have made changes in the inheritance laws.

KEYWORDS- Inheritance law, live-in relations, same sex couples, cohabitation, blended families and stepchildren.

SOCIAL AND ETHICAL IMPLICATIONS-

Modern inheritance laws give rise to many more things such as social and ethical questions and mainly focuses on points like wealth distribution, autonomy and implications of the inheritance, inheritance rights give rights and freedom to people to choose to whom their assets will be given and distribution will be proper, this setup focuses on social welfare to donate effectively. According to Mark Glover¹ the social welfare theory of inheritance is one of the most important theories of inheritance. Which gives rights to people to choose their next successor Restatement ²of property states that the main purpose of inheritance is to facilitate and not to regulate.

ETHICAL IMPLICATIONS-

According to the ethics of inheritance by Caroline Guibert Lafaye inheritance is the main source of wealth concentration among the rich people. Exploring the ethical aspects of inheritance. The discussion on ethics related to inheritance frequently focuses on the reasons behind the bequests. Supporters argue that bequests arise from altruistic motives and deep family bonds, while sceptics point out that they may also underscore coercive relationships within families. For instance, parents might place expectations on their children when it comes to their inheritance, resulting in strained family dynamics and the risk of manipulation. Furthermore, an increasing number of voices are advocating for changes in inheritance regulations to tackle concerns such as gender disparities and wealth accumulation. Numerous individuals contend that the existing systems tend to benefit male heirs or affluent families more than others, highlighting the need for adjustments to enhance equal opportunities. Proposals for reform commonly suggest implementing a system of progressive taxation on inherited wealth or setting thresholds on the value that can be passed on without being taxed. This aims to create a more balanced distribution of resources across society.

¹© 2018 Mark Glover. Associate Professor of Law, University of Wyoming College of Law; LL.M., Harvard Law School, 2011; J.D., magna cum laude, Boston University School of Law, 2008. Thanks to Kevin Bennardo for helpful comments and to the Carl M. Williams Faculty Research Fund and the University of Wyoming College of Law for research support.

² RESTATEMENT (THIRD) OF PROP.: WILLS AND OTHER DONATIVE TRANSFERS § 10.1 cmt. c (AM. LAW INST. 2003).

INTRODUCTION-

Background of Inheritance law

Inheritance laws in India were traditional from very start and are mostly around nuclear families where there are married couples with biological children³ and inheritance rights were given mainly to those children only and people were not that much open about modern family system that is prevailing nowadays in globalization and the influence of the western culture to our traditional society, inheritance laws are a mix of religions, cultures, customs and statutory principles and laws and clearly focus on the transferring of assets and properties to their desired person from generation to generation which also makes a typical Indian family structure and one more act known as Hindu succession act of 1956 according to which inheritance laws in India are given importance to real or direct family successors and the legally wedded spouses and they often don't recognize other indirect people which were not a part of the deceased's life in other roles. This shows the other societal norms that placed importance in blood relations and the relationships that are legally formed and don't really recognize other forms of family structures. On the other side, many other acts such as Muslim personal law also known as Shariat, application act of 1937 these laws also mainly focus on direct successors which gives importance to real children that are biological in nature and does not really entertain modern family structure and do a trustworthy wealth transfer. For example, according to Hindu succession act, India mainly focuses on legal spouses and biological children only because of societal norms other forms of family were neglected so there is a need for law reforms to address these changing modern family dynamics.

MODERN FAMILY STRUCTURES AND THEIR LEGAL CHALLENGES-

Let's have a look at a structure of a modern family dynamics and according to⁴ (wright) around 50 percent more children are disadvantaged by the old era of inheritance laws that only gives importance only biological children as nowadays many are living in their mix family like single parent families, gays, lesbians and bisexuals are living with relatives and there are less scope that they can get inherited property from the person acting as their parent or guardian, they can

⁴ Article on Hien online on gender equity on inheritance

never have a 'fresh start' for themselves, there should always a scope of change in the society as it is rightly said by Winston Churchill⁵ "to improve is to change; to perfect is to change often" modern family mainly consist of stepchildren and nowadays LGBTQ families and there are many changes that took place in the society that completely changed the dynamics of inheritance law, as there many step families, cohabitation couples unlike traditional setup. On the other side same sex couples also faces problems as their relationships are still not recognized in the Indian subcontinent or under any other law In India which mainly excludes them from inheritance rights. All the modern family setups are facing problems due to current laws. As according to article on walker foster same sex couples faces problems as they and their child don't have a direct right to inherit the property. And the concept of 'common law marriage' is a myth and if same sex couple is having a child with some other opposite, sex then the same sex partner is not the parent of that child in the eyes of law so the child will not have the right to inherit the property from both the partners unless this is clearly mentioned in the will. And a person in a same sex relationship can't really automatically inherit the property unless mentioned in the will. Another concept called dead money⁷ it refers to the assets which are mainly frozen or unusable because of legal complications in the inheritance process which leads to property disputes in the family.

COHABITING PARTNERS AND INHERITANCE RIGHTS

WHAT EXACTLY IS THE CONCEPT COHABITING PARTNERS?

The idea of cohabiting partners represents a fresh approach to modern relationships that has developed and changed over time within our society. The idea of Cohabiting Partners, as viewed by a layperson, pertains to the practice of living together in a committed relationship, often referred to as a de facto marriage. In this kind of relationship, two people choose to live together in a typical husband-wife dynamic without a formal marriage commitment, with the shared goal of deepening their mutual understanding. The Cohabit partners may find themselves in a committed relationship, regardless of whether they are an opposite-sex or same-sex couple. This also provides an opportunity for Same-Sex couples in the country to navigate their rights and obligations under inheritance laws. Living together as an unmarried

⁵ Prime minister of UK

⁶ is a marriage that results from the parties' agreement to consider themselves married, followed by cohabitation, rather than through a statutorily defined process.

⁷ refers to the potential for the division, reduction, and misallocation of family firm assets during generational wealth transfers in India.

couple, also known as cohabitation, is seen as a relationship similar to marriage by the courts. However, the unclear inheritance rights for cohabitating partners are not ideal. As per a legal review article by Ritu Bhatia and Manas Agarwal, Kerala High Court affirmed that children of unmarried couples should be given rightful status. It was also established that women in live-in relationships have the right to inherit their partner's property. "As societal norms evolve, the perception of what is considered legitimate in our society, and others, may shift over time, allowing what was once deemed illegitimate to now be viewed as acceptable," as articulated by Justice AK Ganguly.

⁸Western jurisdictions have adopted remarkably diverging legal approaches to address unmarried cohabitation, ranging between contractual approaches, registered partnerships, and default regimes. ⁹There is an extensive literature on the general profile of cohabitants in the United Kingdom which is discussed in detail in the next chapter. Cohabiting couples tend to be younger than married couples, their relationships are, on average, of shorter duration, they are less likely to have children and less likely to be owner-occupiers.

Even if we see the time of the World War 2 there can be seen some traces of the Cohabitation, though it was in a very minuscule numbers, as during that time marriage was considered as one of the essential parts of the life, as the people, intended to find a home and place to come back to during that stressful time of war.

CHALLENGES AND IMPLICATIONS OF INHERETANCE LAWS FOR COHABITATIONS-

Cohabiting partners in long-lasting relationships encounter notable legal and financial obstacles because of the lack of inheritance rights. Examining various themes can shed light on these issues and their outcomes.

LEGAL OBSTELES-

In many locations, cohabiting partners are generally not regarded as having equal status to spouses in terms of being acknowledged as next of kin. This means that assets are not passed down automatically unless specified in a will. In the unfortunate event of one partner passing away without a will, there is a possibility that the surviving partner could be excluded from the

inheritance process, as assets may go to blood relatives instead. Under the Dependents Relief Act, your dependents spouses and children have the option to make a claim if the Will has not sufficiently catered for their needs. The court has the authority to assess your estate in order to evaluate whether a dependent is in need of assistance. If needed, the court has the authority to reallocate your assets in order to adequately support your loved ones. The other aspect which presents a challenge which is Costly Legislation. If the legislation is turned out to be a costly affair the particular government will clearly avoid to implement the rule or law as it can turn out to be inefficient as well. And as the real outcome of that law is always uncertain outcome and cannot be determined easily and hence is as obstacle as well.

Financial Obstacles

When we look at Cohabitation Partners, we see that they share a home, live together, and share nearly everything in their lives as a married couple would. However, there may be legal and financial challenges for a partner if the property they reside in is in the name of the deceased, leading to potential uncertainties. This situation may pose an issue for the other partner, potentially resulting in eviction amidst a difficult situation. Furthermore, we should also take into account the mortgage obligations, which could pose additional challenges for the Cohabitation Partners. The Cohabitation Partners also face limited Pensions and must navigate the difficult issue of intimate violence as a challenge. Intimate partner violence, as defined by the World Health Organization, is one of the most prevalent forms of violence against women. It encompasses physical, sexual, and emotional abuse, as well as controlling behaviors exhibited by an intimate partner. This type of violence transcends all settings and affects individuals across various socioeconomic, religious, and cultural backgrounds. Women carry the major burden of IPV worldwide.

COMPARATIVE APPROACHES BETWEEN DIFFERENT COUNTRIES IN TERMS OF COHABITION PARTNERS

United Kingdom: Cohabitation under Intestate Succession

The rules state that married couples and civil partners who die without having children will receive the entire estate of their deceased spouse or civil partner. If they die leaving children (and their estate is more than £270,000 in value), their spouse will automatically inherit the first £270,000 and any personal chattels held. The remainder of the estate will be divided in half; between the said spouse and any surviving children equally. It is important to note at this

stage that there are still no rights for unmarried or unregistered couples under the Intestacy Rules, however long they have been in a relationship.¹⁰ It is important that all couples have wills in place to ensure their estate passes in accordance with their wishes.

Canada:

According to the rules, married couples and civil partners without children will inherit the complete estate of their deceased spouse or partner. In the event of their passing with dependent children and assets exceeding £270,000, the spouse will inherit £270,000 along with any personal belongings. The remaining estate will be evenly divided between the spouse and any surviving children. It is crucial to highlight that even after a considerable duration of being together, unmarried or unregistered couples still do not have any rights under the Intestacy Rules. It is crucial for every couple to have wills prepared in order to guarantee that their estate is distributed as they desire. Smoothly written Under the Wills, Estates, and Succession Act (WESA), Cohabiting Partners who reside together for a minimum of two years are recognized as legal spouses for intestate succession purposes. It is worth noting that in Canada, Cohabiting Partners have inheritance rights similar to those of legally married couples, enabling them to make claims for their rights.

¹¹Wills, Estates and Succession Act (WESA) treats the Cohabiting Partners who live together for at least two years is considered as normal spouses under intestate succession. This indicates that even in Canada the Cohabiting Partners can have some inheritance rights just like real married couples and can claim the rights

New Zealand:

The application of the rules within the Property (Relationships) Act 1976 to you and your former partner is contingent on the nature of your relationship and its duration. Couples in relationships for a minimum of three years, including those who are married, in civil unions, or living together, are protected by the equal-sharing regulations outlined in the Act. This implies that the family home, car, furniture, and appliances will typically be divided equally between both parties. New Zealand, despite its smaller size, also acknowledges and respects the rights and lives of Cohabiting or De Facto Partners. This country is known for its high level of development and is widely regarded as one of the most progressive nations globally. The

people of New Zealand generally have an open-minded perspective and feel that individuals should have the freedom to live the lifestyle of their choice. There are regulations in place to safeguard against the misuse of anyone's freedom of speech and expression. Additionally, we have a dependable and credible police force that resolves a significant portion of all reported crimes. De facto couples in short-term relationships of less than three years are typically not covered by the Act. This implies that standard property ownership regulations will dictate the entitlements of each individual. However, there are a few exceptions to this rule. To learn more about the definition of "de facto," please refer to the section titled "What is a 'de facto relationship' under the Property (Relationships) Act" below.

SAME SEX COUPLES IN MODERN ERA IMPACTING INHERITANCE WITH THE COMPARISON WITH OTHER JURISDICTIONS-

In the older times inheritance laws always excluded same sex couples and they were not recognised in the Indian facet and inheritance laws mainly covers heterosexuals couples in marriage, jurisdictions which do not recognize same sex couples they lack legal rights in that part of the part and have incomplete inheritance rights and we have seen that assets are distributed among the real relatives. This stigma and taboo made the situation of turmoil for the partner who is left behind and sometimes they also face financial constraints which is a big problem for them if they are not financial stable, later when there was wave of equality in the outside significant legal changes took place. Even in areas where same sex marriage is allowed there are societal stigmas often attached the state in legislative reforms and changes which forces couples to rely on the instruments like bills or trust with still might not fully safeguard against the family disputes same sex unions in many jurisdictions other than India the couples face many problems and are not fully recognised in the eyes of law because of the stigma and taboos

INTERNATIONAL RECOGNITION-

There is also international recognition of same sex couples in inert and sites according to the UK Government there is a robust protections under loss recognising civil partners is partnerships between same sex people since 2004 and in 2014 they also granted the partners the equal inheritance rights surviving for them on the other hand, There is also examples of many other countries like Canada's inclusive laws for the same text marriage couples and common laws same sex partners countries which adopt the similar frameworks and sharing

equality between the respective cultures by harmonizing the standard and promoting inclusivity in the society. Canada is also one of the progressive countries we know which also recognise the heterosexual couples and respective of their marriage bond Canada is federal in nature and their provincial law shows equal inheritance right for the same sex spouses and a marriage or common law relationships

NEW ZEALAND

New Zealand also recognizes this the same sex marriage and according to their act of 1976 in shows that partners in the same sex relationships have right to inheritance and respect heterosexual couples irrespective of the marriage.

LEGAL IMPLICATIONS-

Now let's have the look on some legal precedents and social implications regarding same sex marriage according to many landmark cases such as Obergefell V. Hodges in the USA and Halphen V. Canada in both these cases there is a recognition of same sex marriage and also giving them rights and these rulings also emphasis on equality catalysing the social acceptance and reduces the marginalization of same sex relationships

CONCLUSION

In conclusion achieving equality in inheritance laws for the same sex couples requires a good amount of legislative reforms and changes that challenges that traditional definitions of marriage still many judges dictionary in this world conditions for the inheritance rights on marital status only leaving behind same sex couples co habitation partners and step children in blended families to address these disparities and legislation must be recognised for these types of modern families in India such recognition and shows that all couples regardless of the relationship structure and status are granted for the same inheritance as the heterosexual couples. There must be legal reforms and the discrimination policies in a state planning and there should be frameworks prohibiting against the basis of LGBT q community and they were also given succession right and the court also have this practice to ensure that same sex couples and such modern families are treated equally in dispute of inheritance public awareness campaigns are also important and play a crucial role in this paper as many individuals of these structure remains and aware of the protections and rights given to them by the government these campaigns could also foster society societal acceptance reducing

stigmas and taboos and encouraging them for the legal recognition of same sex relationships and many other modern family structures.

STEPCHILDREN IN BLENDED FAMILIES IN MODERN ERA IMPACTING INHERITANCE WITH THE COMPARISON WITH OTHER JURISDICTIONS-

From the older times that children always face significant discrimination in inheritance matters as law always prioritizes the biological and real relatives and legally adopted children in many jurisdictions step children also lack standing to claim line head and rice and less than name is in the well for instance under India's traditional personal laws inheritance laws of closely tie to the bloodline leaving behind the step children without any share given to them in the answers property and in the common law of system children the eyes of law always cater less recognition and the always say some kind of difficulties in claiming their rights. However, in the recent times India has somehow recognise the rights of inheritance for the step children in the estate's succession remains uncertain some High court rulings have supported claims based on the familial dependence and also acknowledges the involving dynamics of blended families in India.

INTERNATIONAL RECOGNITION-

When we compare the frameworks of UK New Zealand and Canada in the inheritance laws of step children in blended families, they provide a various degree of legal protection for instance in UK the inheritance laws for the step children and d families they use the app called provision for family and dependent act of 1975 which allows step children to claim the reasonable financial provision from their already died step parent and their also treated as dependents

NEW ZEALAND

And in New Zealand also they use a similar set up which allows step children in blended families to have some kind of inheritance right and also emphasis on the moral duty to provide for step relations. But they are not fully recognised in this duration and also gave some difficulty in exercising their rights in New Zealand.

CANADA

In Canada Ontario succession law reform act is used to recognise the steps children's claims based on dependency and inheritance even without the formal adoption papers they are somehow recognise the inheritance rights of step children in blended families in conclusion these jurisdiction reflect the progressive approach in blended families and also give rights to step children and blended families for their development and empowerment as in the older times only biological children and relatives are entitle to inheritance and always assets are given to biological people only.

LEGAL IMPLICATIONS-

In UK the case of re Coventry of 1980 the court emphasizes the rights of step children in inheritance and claims on the moral implications. And in New Zealand the case of Williams versus orchid of 2000 recognise the broader social recognition of such families and their also give the definition of kinship these decisions by different jurisdiction redirect the inheritance rights of step children in blended families and also challenges the social stigma and Taboo attached to it

CONCLUSION

In conclusion it is essential to ensure the equity of inheritance v for step children and blended families. And it is on sorting things she'll do recognise take children as explicitly legal highs in despicable of marital ordered auction status and losses also ensure and give legal right for same-sex couples and go have dating partners this listing upon the contemporary family realities and modern structures of families and also in this contemporized world and all only promote the in the people but also involved conception of family in modern inclusive society.

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