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## A CRITICAL STUDY ON TRANSGENDER AND THEIR PROPERTY RIGHTS

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### ABSTARCT

In ancient India, transgender individuals were recognized as “Hijras” and also referred to as the Third gender and held a respected position in the society even sacred texts like the Ramayana and Mahabharata acknowledged and honored them. The respect for transgender individuals has drastically declined over time, particularly in matters of property rights. Nowadays, Many transgender individuals are abandoned and left vulnerable, often becoming “homeless”. This puts them in a critical situation where they face insults and discrimination. Inheritance laws, predominantly shaped by personal laws, frequently overlook transgender rights or outright deny them the entitlement to ancestral property. The personal laws classify individuals strictly as either male or female as a result, transgender individuals must align themselves with one of these categories to be recognized under inheritance laws. Beyond excluding transgender individuals from inheritance laws, the broader property rights framework presents significant challenges. Identifying legal successors is often difficult, as transgender individuals may lack proper documentation, face barriers to marriage, or struggle to prove adoption. These challenges create legal hurdles and undermine their inheritance rights by denying them the protections typically granted to other citizens. The Hindu Succession Act, which governs inheritance for Hindus, Jains, Sikhs, and Buddhists, lacks explicit recognition of transgender individuals, potentially leading to complexities in inheritance disputes. NALSA vs. Union of India<sup>237</sup> considered to be a pivotal case conferred legal recognition upon transgender individuals as a third gender, affirming their rights to property ownership and inheritance. However, persistent social stigma restricts their practical access to these entitlements. Strengthening transgender inheritance rights through clear legal frameworks and ensuring equitable access to housing and land ownership are essential legislative steps toward fostering an inclusive society and upholding respect for transgender individuals. This research paper explores the historical evolution of transgender rights, focusing on property ownership, inheritance, and legal recognition.

**Key Words:** Transgender, ownership, inheritance, property rights, social stigma, legal Recognition



<sup>237</sup> AIR 2014 SC 1863

## **INTRODUCTION:**

The transgender community in India has maintained a historical presence spanning centuries, with formal acknowledgment in Hindu mythology, the courts of the Mughal era, and various cultural traditions. However, colonial-era legislation and post-independence legal frameworks systematically failed to afford transgender individuals equal recognition as citizens, particularly with respect to property rights. Property rights are fundamental to financial autonomy and personal dignity. The Constitution of India consistently protects the rights of every individual, regardless of caste, race, gender, or residence, as stated in Articles 14 and 15. However, transgender individuals in India frequently face discrimination when asserting claims to ancestral or familial property. India's inheritance laws are traditionally rooted in a binary understanding of gender, recognizing individuals strictly as male or female. In modern India, the transgender population is growing compared to ancient times, yet accessing basic rights continues to be socially and legally challenged. This includes the right to own, rent, and inherit property. Based on the question, "What type of person are you?" they are deprived of their full rights. Transgender individuals have had the right to be recognized as a 'third gender' since 2014 and are entitled to legal protections under the law. These rights are equally guaranteed to transgender persons under the Indian Constitution, which ensures justice and equality for every citizen. Most properties are acquired through inheritance from ancestors. To recognize the property rights of women, legislation amended succession laws in 2005. However, as the transgender population increases, the Transgender Persons (Protection of Rights) Act was passed in 2019, which provides protection against discrimination in residence but remains silent on inheritance rights. Therefore, protecting transgender Recognizing individuals' property rights is an essential step toward legal and social progress inclusion. And excluding them from the

inheritance of property rights will perpetuate the marginalization.

## **REVIEW OF LITERATURE:**

From the Article "Inheritance rights of transgender persons in India No. 350 26–August-2021 Karan Gulati and Tushar Anand," the author and co-author of the present paper understands the practical hurdles – such as difficulties in verifying relationships, lack of proper documentation, and constraints in marriage or adoption rights that further complicate inheritance claims. The above article shows that even when transgender individuals are legally recognized, the absence of uniform identification systems and supportive amendments in family law creates significant barriers to the realization of their property rights.

## **LEGAL RIGHTS AND RECOGNITION OF TRANSGENDER PERSONS IN INDIA:**

Transgender persons are systematically marginalized due to pervasive societal prejudice and lack of social acceptance. They are frequently ostracized, resulting in limited access to resources necessary for survival and significantly restricted opportunities for gainful employment. Familial dishonor is often cited as a justification for their abandonment, as parents perceive the presence of a transgender individual within the family as a source of social stigma. Furthermore, the issue of marriage presents additional legal and societal challenges, further exacerbating their exclusion from fundamental civil rights. In the seminal judgment of *National Legal Services Authority v. Union of India & Ors.*<sup>238</sup>, the Supreme Court formally recognized the rights of transgender individuals by conferring upon them the legal status of a "third gender." This ruling established a critical precedent, affirming their right to self-identify their gender and uphold their inherent dignity, thereby laying the foundation for greater legal and social inclusion.

<sup>238</sup> (2014) 5 SCC 438

Transgender individuals possess the inherent right to self-determine and legally affirm their gender identity as male, female, or a recognized third gender. They are entitled to equal protection under the Constitution, specifically within the ambit of Article 14, which guarantees equality before the law and prohibits discrimination; Article 19, which safeguards the fundamental right to freedom of speech and expression, encompassing gender identity as an essential facet of self-expression; and Article 21, which upholds the right to life, personal liberty, and human dignity.

It is the affirmative duty of the State to implement robust legal, social, and economic safeguards to ensure their full and equitable participation in society, including, but not limited to, the recognition and enforcement of property rights.

#### **LEGAL LACUNA IN THE TRANSGENDER ACT, 2019 – SILENCE ON INHERITANCE RIGHTS :**

Definition – 2 (k) “transgender person” means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.<sup>239</sup>

Section 3<sup>240</sup>: Prohibits discrimination against transgender persons in various domains, including the denial or discontinuation of access to, or enjoyment of, the use of any goods, accommodation, service, facility, benefit, privilege, or opportunity dedicated to the use of the general public or customarily available to the public.

Section 12<sup>241</sup>: Specifically addresses the right of residence, stating that no transgender person

shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court.

However, the Act does not explicitly address inheritance rights, leading to ambiguities regarding the application of existing inheritance laws to transgender individuals. The Transgender Persons (Protection of Rights) Act, 2019, while affirming various rights and protections, remains conspicuously silent on the crucial aspect of inheritance, leaving a legislative void in securing transgender individuals’ property and succession rights. The Act does not mention inheritance or succession rights for transgender persons.

Indian inheritance laws, including the Hindu Succession Act, Muslim Personal Law, and the Indian Succession Act, are predominantly structured around a binary classification of gender, recognizing only “male” and “female” heirs. The Transgender Persons (Protection of Rights) Act, 2019, however, fails to provide any explicit guidance on the applicability of inheritance rights to transgender individuals, particularly those who do not conform to the traditional gender binary. This legislative silence creates a legal lacuna, leading to ambiguity regarding the succession rights of transgender persons under existing personal and secular inheritance frameworks.

#### **PROPERTY RIGHTS OF TRANSGENDER PERSONS IN INDIA:**

The Indian constitution enshrines fundamental rights that safeguard individuals against discrimination. In the landmark judgment of National Legal Services Authority v. Union of India<sup>242</sup>, the Supreme Court recognized transgender persons as a ‘third gender’. It affirmed that the fundamental rights guaranteed under the Constitution are equally applicable to them. The Court emphasized that discrimination based on gender identity violates Articles 14, 15, 19, and 21.

<sup>239</sup> The transgender Persons (protection of rights) Act, 2019 Act No: 40 of 2019

<sup>240</sup> The transgender Persons (protection of rights) Act, 2019 Act No: 40 of 2019

<sup>241</sup> The transgender Persons (protection of rights) Act, 2019 Act No: 40 of 2019

<sup>242</sup> (2014) 5 SCC 438

### **RIGHT TO OWN PROPERTY:**

Article 300A of the Constitution of India, 1950 guarantees property rights irrespective of gender and religion, this states that **“No person shall be deprived of his property save by authority of law”**, this explicitly includes the ‘third gender’. They are not deprived of their property rights. They have the right to hold ownership. However, the application of this provision to transgender individuals encounters challenges due to personal laws. The Transfer of Property Act, of 1882, allows any legal person to buy, sell, or transfer property. However, transgender persons often face discrimination from family members, housing societies, and financial institutions.

### **RIGHT TO INHERIT PROPERTY :**

India’s legal framework concerning inheritance remains deeply entrenched in gendered classifications, with succession rights predominantly dictated by personal laws specific to each religion and community. These statutes employ binary gender terminology, compelling transgender individuals to self-identify within the restrictive male-female dichotomy to assert inheritance claims. This inherent legal exclusion creates significant challenges and uncertainties regarding the rightful inclusion of transgender persons within existing inheritance structures. The issue of gender discrimination in succession laws has been highlighted in key legal documents, including the Consultation Paper on Reform of Family Law, the 174th Report of the Law Commission of India, and the 207th Report of the Law Commission of India. However, despite recognizing broader gender inequities, these discussions have failed to address the explicit inclusion of transgender persons within inheritance laws, leaving a legislative lacuna in their property rights. The persistent use of gendered terminology in statutory enactments underscores the inherent biases embedded in legislative drafting. Notably, Section 13 of the General Clauses Act, 1897, stipulates that words importing the masculine gender shall be

deemed to include females—a provision intended to ensure uniformity in statutory interpretation across central legislations. However, this linguistic construct does not explicitly extend to non-binary or transgender identities, thereby reinforcing their systemic marginalization in legal discourse. Similarly, Article 15 of the Indian Constitution, which prohibits discrimination on the grounds of sex, has been judicially interpreted to encompass all gender identities, rather than being confined to a rigid biological male-female binary. Despite this constitutional safeguard, inheritance laws remain devoid of explicit provisions ensuring transgender persons’ equitable access to succession rights. Addressing this legislative deficit necessitates comprehensive statutory reforms to incorporate gender-neutral inheritance provisions, thereby ensuring equal property rights for all individuals, irrespective of gender identity.

### **LACUNAE IN HINDU SUCCESSION ACT, 1956:**

The Hindu Succession Act, 1956, is a codified statute governing intestate succession among Hindus, extending its applicability to Buddhists, Jains, and Sikhs. However, the Act fails to recognize transgender individuals within its legal framework, as it categorically prescribes that heirs must be either male or female. The statutory definitions of agnates and cognates under the Act are firmly grounded in a binary gender construct. According to its provisions:

- A person is considered an **“agnate”** of another if they are related by blood or adoption exclusively through male lineage.<sup>243</sup>
- A person qualifies as a **“cognate”** if the relationship is by blood or adoption but not exclusively through male lineage.<sup>244</sup>

Moreover, the Act defines an **“heir”**<sup>245</sup> as any male or female person entitled to inherit the property of an intestate individual. While it explicitly grants succession rights to sons and daughters, it fails to account for transgender

<sup>243</sup> Section – 3(1)(a) of the Hindu Succession Act, 1956

<sup>244</sup> Section – 3(1)(c) of the Hindu Succession Act, 1956

<sup>245</sup> Section – 3(1)(f) of the Hindu Succession Act, 1956

persons, including those who have undergone gender transition or identify outside the traditional binary framework. This legislative omission creates a significant gap in the legal recognition of transgender inheritance rights, necessitating urgent statutory reforms to ensure equitable and inclusive succession laws.

**Section 8** of the Hindu Succession Act, 1956, establishes the general principles of succession in cases of male intestate succession, delineating the hierarchical order of inheritance through designated classes of heirs. Under this provision:

- Class I heirs comprise the son, daughter, widow, mother, and direct lineal descendants of the intestate male, thereby granting them precedence in inheritance claims.
- Class II heirs predominantly include the father, siblings, and extended lineage of siblings, who are considered for succession only in the absence of Class I heirs.

Similarly, **Section 15** of the Act prescribes the rules governing intestate succession of Hindu females, specifying the priority of heirs entitled to inherit. The primary beneficiaries under this section include sons, daughters, the husband, and the husband's heirs. While the Act distinctly outlines succession rights for males and females, it remains entirely silent on the inheritance rights of transgender individuals, particularly those who identify as either male or female. There is no express provision clarifying whether a transgender person, upon identifying as a particular gender, qualifies as an heir under Sections 8 and 15. Consequently, transgender individuals often find themselves compelled to declare themselves as female to claim inheritance rights, an approach that runs contrary to Article 15 of the Indian Constitution, 1950, which expressly prohibits discrimination on the grounds of sex. Despite this legislative ambiguity, the Act, in its broader interpretation, exhibits gender neutrality, as

evidenced by Sections 24 and 26<sup>246</sup>, which lay down the grounds for disqualification from inheritance. Being transgender is not enumerated as a ground for disqualification, implying that, in principle, transgender individuals should not be deprived of inheritance rights. However, in the absence of explicit statutory recognition, their legal standing in matters of succession remains uncertain and subject to interpretative judicial intervention.

### **DOES MUSLIM LAW RECOGNIZE THIRD GENDER INHERITANCE RIGHT?**

In India, Muslim property law remains uncodified, with matters of succession exclusively governed by Shariat law. The Muslim community is broadly divided into two sects—Shia and Sunni—each adhering to distinct principles of inheritance.

Under Islamic law, the succession framework is inherently gendered, with female heirs receiving half the share of their male counterparts. This differentiation is premised on the perceived lesser financial responsibilities and obligations of women in comparison to men. Furthermore, the terminology employed within the list of sharers in both Shia and Sunni inheritance laws unequivocally reflects a binary classification of heirs as either male or female, thereby failing to account for transgender individuals. The Muslim Personal Law (Shariat) Application Act, 1937, was enacted to ensure the uniform application of Muslim personal law to all Muslims, subject to specific exceptions. Notably, personal property acquired by females through inheritance, gift, contract, marriage, or dissolution of marriage is exempted from its general applicability. However, Section 2 of the Act offers no substantive guidance on whether transgender individuals fall within the purview of Muslim personal law or whether they are entitled to distinct legal protections. Similarly, Section 3 restricts the right to make declarations under specified grounds exclusively to male members of a Muslim family, thereby further entrenching

<sup>246</sup> the Hindu Succession Act, 1956

the gender binary within the statutory framework.

At no point does the Act explicitly acknowledge the existence of transgender individuals or recognize their rights concerning inheritance, leaving a significant legislative void in the application of Muslim personal law to transgender persons.

#### **JUDICIAL INTERVENTION: A NECESSITY FOR SECURING TRANSGENDER INHERITANCE RIGHTS:**

Courts must exercise their interpretative powers to ensure trans-inclusive inheritance laws under the constitutional framework. Judicial pronouncements can catalyze legislative amendments to explicitly incorporate transgender persons within existing succession laws.

Thus far, the judiciary has had limited opportunities to adjudicate upon the inheritance rights of transgender individuals, with only two notable instances where the courts have directly addressed this issue. In such cases, courts have primarily relied on the customary practices observed by the deceased transgender individual when determining the legitimacy of inheritance claims. A significant ruling in this regard was delivered in *Ilayas v. Badshah Alias Kamla*<sup>247</sup>, wherein the appellant approached the Madhya Pradesh High Court, asserting that Munilal, a transgender guru, had executed a will in his favor. Conversely, the respondent argued that he too was a disciple of Munilal and, as such, held an equal right to inherit the property. Upon conducting an inquiry, the court determined that the will presented by the appellant was forged. Moreover, even if the will had been authentic, the court noted that, given that the deceased was a Muslim, they could not have legally bequeathed more than one-third of their estate, following the testamentary restrictions imposed under Muslim law. This case underscores the legal uncertainties and judicial reliance on personal laws in adjudicating transgender inheritance

disputes, highlighting the urgent need for clear statutory recognition of transgender succession rights.

In another significant ruling, the Madras High Court, in *Arun Kumar v. Inspector General of Registration*<sup>248</sup>, held that the term “bride” as defined under the Hindu Marriage Act, 1955, must be interpreted to include transgender women, thereby affirming their legal recognition within the domain of matrimonial rights.

However, in matters of inheritance, courts have predominantly granted relief to transgender litigants based on customary practices, rather than ensuring their equal entitlement to succession rights on par with other citizens. This judicial approach, while offering some measure of recognition, nonetheless fails to accord transgender individuals the full spectrum of inheritance rights ordinarily exercisable under the law. Even if courts were to incorporate trans men and trans women within the existing binary framework of inheritance laws, such an approach would remain inherently inadequate. The compulsory categorization of transgender individuals within the male-female binary as a prerequisite to inheritance claims not only contradicts their self-identified gender but also effectively coerces them into conforming to a rigid legal construct that does not reflect their identity. This exclusionary legal framework necessitates urgent legislative intervention to ensure the recognition of transgender persons as rightful heirs, independent of gender binaries.

#### **MY SUGGESTIONS:**

- 1) The Hindu Succession Act should explicitly recognize transgender persons as legal heirs.
- 2) Muslim personal law boards should issue guidelines for inheritance rights.
- 3) Amend the Indian Succession Act, 1925, to include “persons” instead of “sons/daughters.”

<sup>247</sup> AIR 1990 MADHYA PRADESH 334

<sup>248</sup> AIR 2019 MADRAS 265

- 4) Supreme Court should clarify whether transgender persons can inherit based on self-identified gender.

**CONCLUSION:**

While legal recognition of transgender persons has advanced, inheritance and succession laws remain outdated and gender-restrictive. Courts and legislatures must clarify transgender inheritance rights to ensure equality and justice. Without reforms, transgender persons will continue to face economic and social marginalization in matters of property and succession.

