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# **TRANSGENDER PERSONS AND THEIR SUCCESSION RIGHTS IN INDIA: AN ANALYSIS OF THE SOCIAL AND LEGAL IMPLICATIONS**

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## **ABSTRACT**

Transgender people in India are a marginalized group who encounter many forms of bigotry and marginalization. This is particularly acute in the area of succession rights, which determine who gets to inherit a person's property and assets when they pass away. Despite recent legislative improvements, transgender people in India still face substantial barriers to receiving their rightful inheritance. The Indian Constitution forbids discrimination based on sex or gender, but inheritance laws do not take transgender individuals or a change in gender identification into consideration. The Constitution, at its heart, only has a binary view of gender. This is because the inheritance of property in India is governed by separate laws that are unique to each religion and civilization, and these rules have a dismal history when it comes to gendered inheritance. Transgender people must identify as either male or female in order to be subject to inheritance laws because of the gendered phrasing in these regulations. Therefore, if transgender people are included, it is problematic and unknown how they will inherit property. They are forced to either embrace one's gender identity or give up one's rights. Finding successors can also be difficult since some persons lack the necessary documents, cannot get married, or cannot show adoption proof. While trying to resolve these challenges, courts reserve the right to decide when to uphold the rights of transgender people. These are serious issues that warrant modifying the law. This study paper seeks to analyse the social and legal implications of this matter while also looking at the numerous challenges that transgender persons have in exercising their right to succession and potential solutions to these issues.

## INTRODUCTION

Transgender people in India have faced discrimination and stigma for a very long time, which has made it difficult for them to exercise their legal rights in many areas of their lives, including succession. The term "transgender" refers to people whose gender identity differs from the sex they were assigned at birth. In 1965, John F. Oliven, a psychiatrist at Columbia University, replaced the term "transgenderism" with "transsexualism". Transgender people have a long history in India. According to the National Human Rights Commission's report on transgender people, there were 4.8 lakh trans people in the country as of the 2011 census, only 30,000 of whom are registered to vote. There are an estimated 50–60 lakh transgender people in India, but most of them keep their gender identity a secret to escape prejudice, according to a study on the Human Rights of Transgender People in India<sup>1</sup>. The Supreme Court recognized the rights of transgender people as the third gender in the historic decision *NALSA v. Union of India* (2014)<sup>2</sup>. The Court ordered the Center and State governments to treat them as socially and educationally backward classes and to extend all types of reservations for their employment and education while resolving their difficulties.

The Court acknowledged the inadequate property rights granted to transgender people but chose not to act for two key reasons; India's gendered inheritance laws have a dismal past, with laws specific to each religion and society governing the inheritance of property. The gendered terminology in these regulations requires transgender people to identify as either male or female in order to be subject to inheritance rules. As a result, it becomes difficult and unclear how transgender people will inherit property if they are included. The Consultation Paper on Reform of Family Law, the 174th Law Commission of India Report, and the 207th Law Commission of India Report all brought up the subject of gender discrimination, but nothing has been spoken about how to integrate transgender people in inheritance laws yet.<sup>3</sup> Secondly, most transgender people lack official identification, which also impacts their right to inherit by depriving them of the protections often afforded to citizens<sup>4</sup>. The Supreme Court ruled in favor of legal recognition for transgender people in April 2014, however getting an identity card with their preferred name and gender is still difficult. Before taking ownership of the property or

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<sup>1</sup> <https://www.census2011.co.in/transgender.php>

<sup>2</sup> (2014) 5 SCC 438

<sup>3</sup> <https://blog.ipleaders.in/status-inheritance-rights-transgenders-under-indian-law/>

<sup>4</sup> Dipika Jain and others, "Bureaucratisation of transgender rights: Perspectives from the ground" (2018) 14 Socio-Legal Rev 98.

asset, any party must provide identification documents proving their identity, relationship to the deceased person, and place of residence for both parties. Nonetheless, a person cannot establish a legal relationship without a lawful marriage or adoption. Although transgender people's rights have recently seen some legislative advancements, there is still much to be done to ensure that they have equal access to inheritance and property rights.

## **LEGAL FRAMEWORK FOR TRANSGENDER SUCCESSION RIGHTS IN INDIA**

Over time, India's legal framework for transgender succession rights has changed to acknowledge that transgender people have the same legal rights to inherit assets. Nonetheless, despite certain legal developments, transgender people in India continue to encounter severe barriers and discrimination while trying to access their legitimate inheritance. Laws that are gendered have a long history in India. This is not just applicable to laws governing property. It penetrates both labor and criminal legislation, such as the Workmen's Compensation Act and the Factories Act (for example, the Indian Penal Code and the Code of Criminal Procedure). The laws that govern personal rights, such as the Hindu Succession Act and the Hindu Marriage Act, may be where this is most obvious.<sup>5</sup>

### **3.1 Hindu Succession Act 1956**

A codified legislation governing intestate succession among Hindus is the Hindu Succession Act, of 1956. Also, it controls Sikhs, Jain, and Buddhists. Yet, the Act makes no mention of transgender people in its framework and stipulates that heirs must only be male or female people. In a definition clause based on a binary conception of gender, the Act establishes agnates and cognates rights. If two people are connected by blood or adoption but not exclusively via males, they are said to be "agnates" of one another.<sup>6</sup> If they are related by blood or adoption but not exclusively through males, they are said to be "cognates" of one another.<sup>7</sup> According to the Act, an "heir" is any male or female who is qualified to receive an intestate's property. Sons and daughters are given rights, however transgender people or people who change their gender identity are not included.

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<sup>5</sup> Archana Parashar, "Gender inequality and religious personal laws in India" (2008) 14(2) *The Brown Journal of World Affairs* 103

<sup>6</sup> § 3 (a), Hindu Succession Act.

<sup>7</sup> § 3 (c), *ibid*

The Act clearly distinguishes between how men and women are treated. But it's unclear exactly who falls under either of these definitions. For instance, it is unclear from the Act whether a transgender individual who identifies as a man would qualify for inheritance under Section 8. The General Clauses Act, which fills in the definitions that are missing from specific legislation, does not include the solution to this query either. The following scenario can be used to illustrate this difficulty. After undergoing sex reassignment surgery, a person (P) who was born female desires to identify as a guy. P had two children with a now-deceased husband: a son (S) and a daughter (D) (H). S and D are both single. P passes away intestate. Whether P is viewed as a man or woman will determine the family's inheritance rights (there is no legal situation to identify them as non-binary). Both times, S and D will share equally in the property that P obtained on their own. This is since both sections 8 and 15 leave properties to the deceased's offspring. Yet, the inheritance would be distributed differently if P had not given birth to any offspring. If the sex reassignment surgery is acknowledged, his class I heir, his mother, will inherit the property. The property, on the other hand, will go to H's living heirs if she is still thought of as a female. No inheritance will be given to P's mother or any other living relatives. Thus, any property that is owned by P depending on how he is recognized, will be vulnerable to arbitrary dissolution. As is clear, transgender people are not covered by the law. Transgender people who don't fit either the masculine or female categories would be excluded if they were included. Similar to the 2005 instance of Ajay Mafatlal<sup>8</sup>, it is equally conceivable that complaints about people who change their gender in order to receive benefits under the Act will surface, even though they are false.

### **3.2 Muslim Personal Law (Shariat) Application Act**

In India, Muslim property law is essentially uncodified. Customary laws are used to define inheritance rights. They have their roots in Qur'anic passages and traditional Islamic law. Yet, both colonial and postcolonial practices have also influenced and changed them. As a result, there is a lot of variances in how people inherit property. In order to enhance Muslim women's inheritance rights, the Muslim Personal Law (Shariat) Application Act was passed in 1937<sup>9</sup>. All Muslims should be subject to Muslim personal law, according to, with a few exceptions, including the ownership of women's personal property acquired by marriage, gifting, contracts,

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<sup>8</sup> Sex change not for property: Mafatlal (n 7).

<sup>9</sup> Muslim Personal Law (Shariat) Application Act, 26 of 1937

or divorce<sup>10</sup>. Any hypothetical circumstance would not do credit to the various therapies because there is no consistent mechanism to determine inheritance. However, it is unclear whether transgender people (P in our example) will receive the Act's special protection in matters involving inheritance, etc., or if they will be subject to personal law.

### **3.3 Indian Succession Right**

All those not covered by the laws are governed by the Indian Succession Act. It is generally accepted that it controls Christian and Parsi inheritance. When gendered phrases are used, they try to construct an inheritance path like that. For instance, even though the Act refers to male and female differently, they essentially share the same inheritance rights. Even while the Act claims to be gender-neutral, it is not. The inheritance rights of the deceased's parents are distinguished by 42 and 43, which regulate Christians' inheritance rights (there is a different system for Parsis).<sup>99</sup> In cases where the father of the deceased individual is still alive and there are no lineal offspring, the father receives the property and the mother receives nothing. In contrast to what the father would be entitled to, 43 compels the mother to evenly divide the property with the intestate siblings even in cases when the deceased's father does not survive. With a few modest adjustments to the hypothetical scenario, these difficulties might be proven.

After undergoing sex reassignment surgery, a person (P) who was born a female desire to identify as a guy. P had two children with a now-deceased husband: a son (S) and a daughter (D). S and D are both single. D dies away without a will. Due to the likelihood that P will be recognized as D's mother, his inheritance will be diminished. He and S will be required to split the property evenly. If P were regarded according to his perceived gender, this would not be the case. The same issues that were previously mentioned affect the law. The best way to integrate transgender people into all types of relationships is unclear. If the individuals in the case were not related by blood. In a guru-chela relationship, P and D were followed by a few transsexual people (the hijra community). On how and whether the former could inherit the latter's property, the Act is silent. This strategy is not consistent, even if some sections are gender-neutral and offer a better path than their equivalents in the Hindu Succession Act. There have also been reports of transgender people not being granted any property rights, whether they identify as male or female.

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<sup>10</sup> § 2 (application of personal law to Muslims), *ibid*

#### **4. Potential Solutions and Policy Recommendations:**

This section will suggest prospective solutions and policy initiatives based on the examination of the legal and social concerns that need to be addressed in order to promote the equitable inheritance rights of transgender people. This could be offering transgender people legal assistance and support to exercise their legitimate succession rights, collaborating with neighborhood groups to fight for transgender rights, or strengthening existing laws to protect transgender people from stigma and discrimination. Several potential solutions and policy recommendations can be implemented to improve the status of transgender individuals regarding succession rights in India:

1. **Strengthen Legal Protections and Implementation:** The government can strengthen legal protections for transgender persons by enacting measures that explicitly forbid discrimination in inheritance matters based on gender identity. Additionally, the government can enforce existing laws and regulations that ensure transgender persons have equal access to legal remedies and services.
2. **Increase Awareness and Sensitization:** Awareness and education campaigns targeted at the general public and key stakeholders such as families, legal professionals, and administrators can help to sensitize them towards the rights of transgender individuals. This can also help reduce the stigma and discrimination faced by transgender persons in relation to inheritance rights.
3. **Strengthen Outreach by NGOs and Government Agencies:** Government agencies and NGOs can play a significant role in providing legal services and support to transgender individuals, including services that promote their inheritance rights. Establishing legal aid clinics that cater specifically to transgender persons can help ensure they have access to appropriate legal remedies and support asserting their inheritance rights.
4. **Promote Economic Empowerment of the Transgender Community:** Economic empowerment can provide a pathway for transgender persons to gain financial stability and independence, which in turn can help them assert their inheritance rights. The government can offer incentives and support programs for transgender persons to start small businesses or access employment opportunities.

5. Enhance Health and Social Support Programs: Many transgender persons face significant health concerns, including mental health issues such as depression and anxiety. Enhancing health and social support programs that provide counseling, therapy, and medical services that cater specifically to the needs of transgender individuals can provide them with the necessary support to engage in the process of claiming inheritance rights.

6. Strengthen Data Collection and Research: The government can invest in data collection and research initiatives designed to better understand the needs and experiences of transgender persons regarding their inheritance rights. This can help guide policy decisions and program delivery to improve their access to inheritance rights.

In conclusion, implementing a combination of these solutions and policy recommendations can help to improve the status of transgender persons with regard to inheritance rights in India. These efforts will go a long way in creating a more equitable and inclusive society that values the rights of all its citizens. Additionally, it's significant that the law may conceivably be interpreted to defend transgender people's inheritance rights. But, since they cannot exercise their rights and experience particular difficulties, they should be given more protection. As we've demonstrated, gender is conceptualized in binary terms in inheritance laws. They oppose the culture they rule and do not accept transgender people or a change in gender identity. Therefore, finding successors is frequently challenging. That would not be optimal even if courts interpreted inheritance laws to include transmen and transwomen. It would compel them to adhere to binary criteria, however it would be preferable to not grant any inheritance rights. Individuals would have to join a class that has been identified and to which they do not already belong. If they didn't, they would be outside of it, giving the system (like judges in a dispute) the power to omit people from protection<sup>11</sup>. If the legislation does not provide the necessary modifications, it could result in legal recognition turning into a tool of regulation because people would have fewer options for asserting their rights and displaying their identity<sup>12</sup>.

First, while this work tries to identify fundamental laws relating to inheritance that include gendered terminology, its search is not exhaustive. Uniform alterations are not optimal since they necessitate context-specific research without a thorough search. To safeguard the property of women, for instance, the Muslim Personal Law (Shariat) Application Act was passed. So, it

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<sup>11</sup> Jain and Rhoten (n 42).

<sup>12</sup> Wendy Brown, *States of injury: Power and freedom in late modernity* (Princeton University Press 1995).

is anticipated that the legislature will not desire to gender-neutralize the Act. This scenario might occur in other laws that are not yet known. Nonetheless, the law should include definitional provisions for transmen and transwomen and offer care for transgender people who do not identify as either men or women, like other nations. Second, while some pieces of legislation merely require definitional modifications, others call for revisions to many sections. The Hindu Succession Act is an illustration of each of these groups. Although transgender people should be included in the definition of an heir, etc., this may not be sufficient. All people, regardless of gender, should be subject to the provisions of Section 8 of the Act. 173 This would make the law more understandable and reduce room for misunderstanding. In order to attain gender neutrality through minimally disruptive changes, the recommendations should be put into practice.

## **5. Conclusion**

Only the legislature may make changes to the legislation regarding transgender rights because it is such a big and complicated topic. Transgender people are not included in the laws because they are subject to binary gender identity. Since their gender identity is not legally recognized, their rights currently prevent them from getting married or adopting children. Transgender people are deprived of their inheritance rights because it is very difficult to identify their successors due to a lack of documentation. As a result, the Ministry of Social Justice and Empowerment should carry out research to develop programs and interventions for transgender people in the nation that are acceptable conclusion, while the legal framework for transgender succession rights in India has improved in recent years, there is still a long way to go in ensuring that transgender persons have equal access to their inheritance rights. Addressing social stigma, lack of legal recognition, and limited access to legal services and support can go a long way in promoting the equitable inheritance rights of transgender individuals, and contribute to a more just and inclusive society.