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

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ABSTRACT

Transgender individuals in India remain one of the most marginalized groups in society, facing various forms of discrimination and exclusion. One critical area where this marginalization is particularly evident is in succession rights the legal entitlement to inherit property and assets after a person's death. Although recent legislative developments have aimed to improve their status, transgender persons still face considerable challenges in accessing their rightful inheritance. While the Indian Constitution prohibits discrimination based on sex or gender, inheritance laws fail to explicitly recognize transgender identities or gender transitions. These laws largely operate within a binary framework of male and female, excluding those who do not fit neatly into either category. In India, inheritance is governed by personal laws tied to specific religions and cultures, many of which have a long history of gender bias. Due to the gender-specific language of these laws, transgender individuals must often conform to a binary gender identity either male or female in order to claim inheritance rights. This creates a conflict between affirming one's true gender identity and securing legal entitlements. Further, practical challenges such as lack of official documentation, inability to legally marry, or absence of formal adoption recognition complicate the identification of legal heirs. While courts have occasionally intervened to uphold transgender rights, such decisions are inconsistent and discretionary. These significant issues underline the urgent need for legal reforms. This research paper aims to analyze the social and legal challenges transgender people face in asserting their succession rights, while also exploring possible solutions to address these systemic barriers.

INTRODUCTION

In recent years, more people have started talking about the rights of transgender individuals¹. Transgender people are those whose gender identity is different from the sex they were given at birth². For a long time, they have faced unfair treatment, bullying, and even violence in many parts of the world³. Even though more people are becoming aware and supportive, transgender people still face problems when trying to get healthcare, find jobs, go to school, or be legally recognized for who they are⁴. Fighting for transgender rights is not just about changing laws, it's about making sure everyone is treated with respect and fairness⁵. As the world becomes more accepting, it's important that we all work together to support transgender people and make society equal for everyone⁶.

1.1 Understanding Transgender Identity

A transgender person is someone whose gender identity does not align with the sex assigned at birth. In India, the term "transgender" encompasses a broad spectrum of gender identities, including hijras, kinnars, jogappas, shiv-shaktis, and others⁷. Many transgender persons do not conform to the binary gender roles of male and female, and some identify as third gender. Historically, communities such as the hijras have held a unique cultural position in Indian society, yet have been marginalized both socially and legally.

2. HISTORICAL POSITION OF TRANSGENDER PERSONS IN INDIA:

In pre-colonial India, transgender persons were accorded certain recognition, especially in royal courts and religious rituals. However, under British colonial rule, transgender communities were criminalized through laws such as the Criminal Tribes Act, 1871, which labeled them as inherently criminal. This contributed to their legal and social marginalization.

Even after independence, transgender persons remained excluded from most legal

¹ <https://www.hrc.org/resources/understanding-the-transgender-community.n>

² <https://www.apa.org/practice/guidelines/transgender.pdf>

³ <https://www.unfe.org/wp-content/uploads/2017/05/UNFE-Trans-Report.pdf>

⁴ https://transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf

⁵ <https://www.amnesty.org/en/what-we-do/discrimination/lgbt-rights/trans-rights/>

⁶ <https://www.who.int/health-topics/gender>

⁷ Gayatri Reddy, *With Respect to Sex: Negotiating Hijra Identity in South India*, University of Chicago Press, 2005, Chapter 1: "The Hijra Community and the Cultural Politics of Gender," pp. 23–45.

rights available to binary genders, including the right to inherit property.⁸ The NALSA judgment in 2014 was thus a significant step in affirming their identity and rights under the Constitution.

NALSA v. Union of India (2014) A Watershed Moment In the NALSA judgment, the Supreme Court recognized transgender persons as a distinct third gender under the Indian Constitution. The Court held that: The right to self-identify as male, female, or third gender is a fundamental right under Articles 14, 15, 19, and 21. Transgender persons should be provided the same legal protections as other citizens, including equal treatment in public and private spheres. They are entitled to affirmative action and must be treated as socially and educationally backward classes.⁹ While the judgment addressed discrimination, identity recognition, and social rights, it did not explicitly address succession rights. However, it laid the groundwork for challenging gender-based discrimination in inheritance laws¹⁰.

3. TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019:

Following the landmark *NALSA v. Union of India* (2014) ruling, which affirmed the constitutional rights of transgender persons and recognized them as a third gender under Articles 14, 15, 19, and 21 of the Indian Constitution, the Indian Parliament enacted the *Transgender Persons (Protection of Rights) Act, 2019*¹¹. The Act was a significant legislative step aimed at prohibiting discrimination against transgender individuals in various domains including employment, education, healthcare, housing, and access to public services¹². It mandates that transgender persons be treated equally and with dignity and calls on both Central and State governments to create welfare schemes tailored to their needs.

However, despite these progressive provisions, the Act has notable gaps, especially in its silence on personal law matters such as **succession, inheritance, adoption, and marriage**. The legislation does not include any explicit provisions that secure transgender persons' rights to inherit family property or recognize their identity within the framework of existing personal

⁸ Ramasubramanian, C.S. *Transgender Rights in India: History, Politics and Law*. Oxford University Press, 2021. Chapter 4: "Legal Exclusion and Property Rights," pp. 91–98.

⁹ Ramasubramanian, C.S. *Transgender Rights in India: History, Politics and Law*. Oxford University Press, 2021. Chapter 5: "The NALSA Judgment and Its Impact," pp. 102–115.

¹⁰ Ramasubramanian, C.S. *Transgender Rights in India: History, Politics and Law*. Oxford University Press, 2021. Chapter 6: "Post-NALSA Legal Developments," pp. 120–125.

¹¹ *National Legal Services Authority v. Union of India*, AIR 2014 SC 1863.

¹² Transgender Persons (Protection of Rights) Act, 2019, Sections 3–9.

laws, which largely remain binary and gendered¹³. In India, personal laws, whether Hindu, Muslim, Christian, or Parsi, govern matters like inheritance and family rights and are typically based on a binary understanding of gender (i.e., male or female)¹⁴. Consequently, transgender persons often find themselves excluded from these rights due to the lack of legal recognition of their gender within those frameworks. The ambiguity leaves them vulnerable to denial of property rights, familial recognition, and equitable treatment in succession-related matters¹⁵.

In essence, while the 2019 Act marks progress in anti-discrimination and welfare-based legal protection, it does not yet harmonize with broader legal systems governing family and property rights. This creates a legal vacuum, undermining the very spirit of equality and dignity that the *NALSA* judgment envisioned.

3.1 SUCCESSION LAWS IN INDIA:

India does not have one law that applies to everyone for inheritance and property rights. Instead, different religious groups follow their own personal laws. For example, the Hindu Succession Act, 1956 applies to Hindus, Buddhists, Jains, and Sikhs; the Muslim Personal Law (Shariat) Application Act, 1937 applies to Muslims; and the Indian Succession Act, 1925 applies mostly to Christians, Parsis, and some others. These laws use traditional ideas about gender, with words like “son,” “daughter,” “widow,” and “brother” to decide who inherits property. Since these laws do not mention transgender or non-binary people, it is not clear if they have the legal right to inherit property. Because of this, transgender people often face problems and unfair treatment when it comes to inheritance, especially if family members disagree. This confusion continues even after the Supreme Court’s *NALSA* judgment in 2014, which recognized transgender people’s rights, and the 2019 law protecting transgender persons. However, neither of these laws changes the personal laws about inheritance. So, transgender people are still left out in these traditional laws, which creates unfair barriers for them to get equal property rights. This shows that India’s laws still need to be improved to protect

¹³ Narrain, Arvind. “Gender Identity and the Law: The *NALSA* Judgment and Indian Transgender Rights.” *Indian Journal of Constitutional Law*, vol. 8, 2014, pp. 21–24.

¹⁴ Kothari, Jayna. “The Inadequacies of the Transgender Persons Bill.” *Economic and Political Weekly*, Vol. 54, No. 1, 2019.

¹⁵ Raj, V. “Critique of the Transgender Persons Act.” *Indian Journal of Gender Studies*, 2020, Vol. 27(1), pp. 112–117.

transgender people properly¹⁶

3.1.1. HINDU SUCCESSION ACT, 1956:

Under the **Hindu Succession Act, 1956 (HSA)**, property is passed on mainly to close family members called Class I heirs, which includes the **son, daughter, widow, and mother**¹⁷. However, the law does **not mention transgender persons** anywhere, which creates confusion about their legal rights to inherit property¹⁸. For example, if a transgender person has legally changed their gender, courts may find it difficult to decide whether they should be treated as a “son” or “daughter” under the Act¹⁹. This problem becomes even bigger if a transgender person identifies as a “third gender,” because the Act does not have a category for this identity⁴.

The HSA also assumes only two genders in other areas like **adoption rights** and **coparcenary rights** (shared family property rights under Hindu law), meaning these laws are made with only “male” and “female” in mind⁵. Although the Supreme Court’s *NALSA* judgment in 2014 said that transgender persons should be recognized based on their self-identified gender, there has been **no change or update in the law** to reflect this yet⁶. Therefore, transgender individuals still face legal uncertainty and possible discrimination when claiming inheritance or family property under the HSA.

3.1.2. MUSLIM PERSONAL LAWS:

Muslim inheritance laws come from the **Quran** (the holy book of Islam) and are explained by **Islamic scholars** through a system called **fiqh** (Islamic jurisprudence)²⁰. These laws clearly state how much each family member should receive after someone passes away. For example, sons usually receive more than daughters, and close relatives like parents, children, and spouses are given fixed shares²¹.

However, these rules were made a long time ago and do not directly mention transgender people as we understand them today. In the past, some Islamic scholars did talk

¹⁶ Ramasubramanian, C.S. *Transgender Rights in India: History, Politics and Law*. Oxford University Press, 2021. Chapter 6: “Transgender Persons and Personal Laws,” pp. 134–140.

¹⁷ Hindu Succession Act, 1956, Section 8.

¹⁸ Ramasubramanian, C.S. *Transgender Rights in India: History, Politics and Law*, Oxford University Press, 2021, Chapter 6, p. 137.

¹⁹ Ibid.

²⁰ *Fiqh* means understanding or interpretation of Islamic law by scholars.

²¹ In Islamic law, a son typically receives twice the share of a daughter.

about people who are born with both male and female physical features called **intersex** or **khunsa** in Arabic²². But transgender people, who may feel or live as a different gender than the one they were assigned at birth, were not discussed in detail.

In India, Muslim personal laws are **not written down in one single law book** (they are not codified)²³. This means that how inheritance is handled often depends on the family's views and the local religious leaders' interpretations. If a transgender person is accepted by their family as male or female, they may get inheritance like any other male or female heir. But if their identity is not accepted, they might be left out or face legal and social challenges when claiming their share. Because of this, inheritance for transgender Muslims in India can be **uncertain and unfair**, and depends a lot on whether their gender identity is respected by their community and family.

3.1.3. INDIAN SUCCESSION ACT, 1925

In India, there is a special law that applies to the inheritance rights of **Christians and Parsis** (a small religious community)²⁴. This law decides how the property of a person who dies should be shared among their family members. However, like many older laws, it uses words like "male" and "female" to describe heirs²⁵. It does **not mention or include transgender people** at all.

This means that if a transgender person belongs to a Christian or Parsi family, the law does not clearly say whether they can inherit or how they should be treated. Because of this **lack of clarity**, transgender persons might face difficulties when trying to claim their rightful share.

Sometimes, **courts** (judges) try to interpret the law in a way that respects the Indian Constitution, which promises **equality for all**²⁶. So, in some cases, courts might decide in favor of a transgender person. But this is **not always guaranteed**, because the law itself has not been

²² *Khunsa* refers to intersex individuals, who have both male and female biological characteristics.

²³ "Not codified" means there is no official government law that clearly writes out Muslim inheritance rules in one place in India—they are followed through tradition and interpretation.

²⁴ *Parsis* are followers of the Zoroastrian religion, mainly living in India.

²⁵ "Gendered language" means the law uses only male and female terms, without including other gender identities.

²⁶ The Constitution of India guarantees equality before the law for all citizens under Article 14.

updated (or amended) to include transgender people clearly. Until the law is changed, there may still be confusion and unfair treatment.

4. JUDICIAL INTERPRETATION AND GAPS:

Although NALSA provided a constitutional foundation for transgender rights, Indian courts have not yet delivered a landmark judgment directly addressing transgender succession rights. In practice: Many transgender persons face exclusion from family property. Wills and gifts may be used to transfer property, but in cases of intestate succession (no will), legal ambiguity often results in denial of rights. Courts may be reluctant to interpret gender-neutral rights without legislative backing. For instance, a transgender woman disowned by her biological family may be denied inheritance unless she has a will or clear legal documentation.

National Legal Services Authority (NALSA) v. Union of India²⁷

Facts:

Two NGOs filed a petition seeking legal recognition and fundamental rights for transgender persons.

Judgment:

The Supreme Court recognized transgender persons as the "third gender." Directed the government to grant them equal rights under Articles 14, 15, 19, and 21 of the Constitution. Affirmed the right to self-identify one's gender (male, female, or third gender).

Relevance to Succession:

Strong foundation for arguing that transgender persons must be treated equally under succession laws. Emphasized equality and non-discrimination core principles for challenging exclusion in inheritance laws.

²⁷ (2014) 5 SCC 438.

Arun Kumar v. The Inspector General of Registration²⁸:

Facts:

A cisgender man married a transgender woman (recognized under Tamil Nadu G.O.). Registrar refused to register the marriage under Hindu Marriage Act, 1955.

Judgment:

The court held that a transgender woman is a "bride" under the Hindu Marriage Act. Recognized her gender identity and marriage rights.

Relevance to Succession:

Set a precedent for recognizing transgender persons under gendered terms in personal laws. Strengthens the argument that a transgender daughter/son/spouse should be included in inheritance.

Ganga Kumari v. State of Rajasthan.²⁹

Facts:

A transgender person was denied appointment in the Rajasthan police despite being the top candidate.

Judgment:

Rajasthan High Court upheld the person's right to employment and recognized her as female based on self-identification.

Relevance:

Reinforces the NALSA principle that self-identification must be respected in legal and administrative processes—relevant for asserting one's status as a legal heir.

²⁸ (2019) 4 Mad LJ 44 (Madras High Court)

²⁹ (2017 SCC OnLine Raj 2640)

Ranjitha v. State of Tamil Nadu (2021)³⁰

Facts:

A transgender woman sought protection from threats by family for marrying a cisgender man.

Judgment:

The Madurai Bench of the Madras High Court granted protection, recognized her gender identity, and emphasized the need for sensitization of law enforcement.

Relevance:

Suggests courts are willing to protect the dignity and personal rights of transgender persons, supporting their claims in property and family disputes.

Justice K.S. Puttaswamy v. Union of India³¹

Facts:

Concerned the constitutional right to privacy.

Judgment:

Held that the right to privacy is a fundamental right under Article 21. Includes the right to gender identity, sexual orientation, and bodily autonomy.

Relevance:

Supports transgender persons' right to legal and private identity, which is essential in succession related disputes (e.g., to prove familial relationship).

³⁰ 2021 SCC OnLine Mad 2231.

³¹(2017) 10 SCC 1 (Right to Privacy Case)

Anil Kumar v. Union of India:³²

Facts:

A transgender woman sought to change her gender and name in official documents.

Judgment:

The court upheld her right to change legal documents in line with her gender identity.

Relevance:

Legal documentation is critical in succession disputes. This judgment supports the procedural rights needed to assert inheritance.

Shafin Jahan v. Asokan K.M.³³

Though not directly about transgender persons, this judgment affirms: The right to choose one's partner and religion as part of personal liberty. Reinforces principles of bodily autonomy and non-interference in personal life.

Relevance:

Broad constitutional protections over identity and personal choices, which support transgender persons' inclusion in family matters like succession.

Observations from Case Law Trends:

Recognition of Gender Identity: Courts increasingly accept self-identified gender, laying the foundation for legal recognition in inheritance matters.

No Direct Succession Case Yet: So far, Indian courts haven't squarely decided a transgender succession/inheritance dispute. But NALSA and Arun Kumar create legal grounds to pursue such cases.

³²2020 SCC OnLine Ker 4376

³³(2018) 16 SCC 368 (Hadiya Case)

Judicial Sensitivity Rising: High Courts like Madras and Kerala have shown proactive protection and enforcement of transgender rights.

5. Issues and Challenges:

Lack of Legal Recognition in Personal Laws: The absence of express recognition of transgender persons in succession laws creates a legal vacuum. **Social Stigma and Exclusion:** Even when legal rights exist, transgender individuals are often excluded by families due to stigma.

Dependence on Legal Documentation: Access to inheritance may depend on whether a transgender person has legally changed their gender in government records, which can be a difficult process. **Inconsistent Judicial Approach:** Courts have not developed a uniform approach to interpreting succession laws in light of transgender rights. **Lack of Awareness and Legal Literacy:** Many transgender individuals are unaware of their potential legal remedies and face financial and legal barriers to asserting their rights.

5.1 Need for Legal Reform

To ensure transgender persons can fully exercise their right to inherit property, several steps are needed:

1. **Amendment of Personal Laws** All personal laws should be amended to include transgender persons explicitly. Terms like “son” and “daughter” should be interpreted or redefined to include transgender persons. Alternatively, gender-neutral language like “child” and “heir” should be adopted.
2. **Enactment of a Uniform Civil Code (UCC)** A UCC, if introduced, could provide a gender-neutral legal framework for succession, ensuring equality for all, including transgender individuals.
3. **Judicial Guidelines** Courts should be guided to interpret existing laws in line with constitutional values and the NALSA judgment. Transgender individuals should be allowed to inherit according to their self-identified gender.
4. **Administrative Reforms** Simplify the process of gender identification and legal name change

in official records. Ensure government records reflect the correct gender identity to help assert legal rights.

5. Awareness Campaigns Legal literacy programs should be undertaken to educate transgender communities about their rights.

NGOs and legal aid cells must support transgender individuals in pursuing legal remedies.

6. Conclusion:

The right to inherit property is a fundamental component of social and economic security. While India has made constitutional and legislative strides in recognizing transgender persons, succession laws remain exclusionary and outdated. Without explicit legal recognition and reform, transgender persons will continue to face barriers in exercising their inheritance rights. A combination of judicial interpretation, legislative amendment, and social change is essential. Ensuring equality in succession rights is not merely a matter of legal policy it is a moral and constitutional imperative to uphold.

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1. The Constitution of India, 1950
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4. The Muslim Personal Law (Shariat) Application Act, 1937
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7. Singh, Paramjit. "Legal Recognition of the Third Gender in India: A Step Towards Equality." *Indian Bar Review*, Vol. 42, No. 3, 2015.
8. Banerjee, Poulomi. "Inheritance Rights of Transgender Persons in India: Law and Beyond." *NUJS Law Review*, Vol. 13, No. 2, 2020.
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1. National Legal Services Authority v. Union of India, (2014) 5 SCC 438
2. Arun Kumar v. The Inspector General of Registration, (2019) 4 Mad LJ 44
3. Ganga Kumari v. State of Rajasthan, 2017 SCC OnLine Raj 2640
4. Ranjitha v. State of Tamil Nadu, 2021 SCC OnLine Mad 2231
5. Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1
6. Anil Kumar v. Union of India, 2020 SCC OnLine Ker 4376
7. Shafin Jahan v. Asokan K.M., (2018) 16 SCC 368.

Government and NGO Reports:

Report of the Expert Committee on Issues relating to Transgender Persons, Ministry of Social Justice and Empowerment, Government of India, 2014. Available at: <https://socialjustice.gov.in>

National Human Rights Commission (NHRC) Report on Transgender Rights, 2018.

Law Commission of India, 172nd Report on Review of Rape Laws, 2000 – includes early discussion on gender identity and sexual autonomy.