

Inheritance Rights of Transgender Persons in India

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Abstract

Trans people in India have their own set of struggles, societal norms being one of them. They have to face marginalization, discrimination, and various other social challenges for not being a part of binary gender norms. It is important to understand the complex behavior of transgender identities so that effective strategies can be developed for their protection. In 2014, the Hon'ble Supreme Court of India legally recognized transgenders as the third gender which gave them rights to be socially included and get access to healthcare, employment, education, and other welfare schemes. The literature reveals the urgent need for legislation to improve the inheritance rights of transgender persons in India to protect them from social exclusion and provide them with equitable treatment. The NALSA judgment and the Transgender Persons (Protection of Rights) Act, 2019 have been implemented to include transgenders in society by reducing the challenges faced by them. The inheritance rights for transgender persons in India reflect the challenges faced by them to get legal recognition for property succession along with the right to marriage and the right to adopt a child. Even after legal recognition and various provisions in favor of transgender persons, there is still a need for reforms to improve their overall well-being and include them socially.

Introduction

Transgender persons are part of the most marginalized section of our Indian society. As they do not fit into the binary gender norms, they are often discriminated against, and forced to leave their homes and live in shelter homes. They face multiple issues like unemployment, lack of education, homelessness, lack of medical facilities, depression, hygiene issues, and problems related to marriage, adoption, and property.

1. Who are Transgenders?

A person with a different identity from the identity assigned to them at birth is known as a transgender. They are either a person currently living as a woman but assigned a male sex at birth or a person currently living as a man but assigned a female sex at birth. It also includes people with intersex variations and genderqueer. They are termed kinner, hijra, aravani, and jogta.

There are different categories of transgenders in India based on social and biological differences which are as follows¹-

¹ Kumar, Pradeep. Rights of Transgender in India Legal Issues and Challenges. Shodhganga (2021).

- a. Androgyne - They are the people who do not fit into any one gender role of their society. They might identify as completely genderless, beyond gender, or shift between the roles of a male or a female.
- b. Bigender - They are someone who shifts between roles of a man or a woman or shows both, depending on the situation, and adopts different personalities.
- c. Drag performers - They are the people who are either male or female, or who are in transition. They dress exaggeratedly and show a gender that is different from their biological sex on stage. A drag queen is a person who performs on stage in a hyper-feminine manner, while a drag king is a person who was born as a female and dresses hypermasculine.
- d. Gender Queer - These people encompass gender experiences that do not fit within binary gender norms.
- e. Hijra - These individuals wear women's clothes and assume other feminine roles. They are born with a male body with a female identity. Depending on the area in which they reside, the hijras in India are called by different names such as Jogappas, Jogtas, Shiv-shaktis, and Aravanis.
- f. Kothis - They are the people who adopt a feminine role during sexual relations with men.

2. Recognition of Transgenders by Law

Laxmi Narayan Tripathi, a transgender activist in 2012 came forward and demanded equal rights for the community of transgenders. On Tuesday, April 15, 2014, the Hon'ble Supreme Court passed a judgment to legally recognize transgenders as the third gender in India. "Recognition of transgenders as a third gender is not a social or medical issue but a human rights issue," Justice K.S. Radhakrishnan said when he announced the ruling.²

The local governments were asked to recognize transgenders as the third gender and provide them access to social welfare schemes. They were asked to be treated in line with other minorities, that is, socially and economically backward communities, as it would provide them quotas in jobs and education. The legal recognition provided them with access to healthcare facilities such as separate wards in hospitals, separate toilets, employment opportunities, and education.

² [India court recognises transgender people as third gender](#). BBC News. April 15, 2014.

3. Inheritance Rights

In general, inheritance rights are the legal rights held by individuals for property, assets, or other commodities after the death of the owner. In India, there are two different ways of dealing with inheritance-

- a. Succession without a will: When there is no will, then there is a role of personal laws, that is, the Hindu Succession Act, 1956, Indian Succession Act, 1925, and Muslim Personal Laws (Shariat) Application Act.
- b. Succession with will: The owner of the property can transfer his/ her property to whomever they want by preparing a will. It is defined under the Indian Succession Act, of 1925 and the Muslim Personal Laws (Shariat) Application Act.

India has diverse religions, from Hindus to Muslims, Christians, and Parsis. Every religion has its law for inheritance rights.

Name of the Act/ Personal Law	Remarks
Hindu Succession Act, 1956 ³	<ol style="list-style-type: none">a. The Hindu Succession Act is applied to Hindus, Sikhs, Jains, and Buddhists.b. The son and daughter have equal rights on the property of their parents.c. The wife of a deceased person also has an equal right on the property of her husband.
Muslim Personal Law (Shariat) Application Act ⁴	<ol style="list-style-type: none">a. If the wife of the deceased person is childless then she gets 1/4th share of the property, however, if they have children, then she gets 1/8th of the property.b. The son gets double the share of the daughters.c. However, if there is no son and only one daughter, then she gets 1/2 of

³ The Hindu Succession Act, 1956. iPleaders. November 19, 2022.

⁴ Muslim Law of Inheritance. iPleaders. July 5, 2023.

Name of the Act/ Personal Law	Remarks
	the property.
The Indian Succession Act, 1925 ⁵	<p>a. The act applies to Christians, Parsis, Jews, and any community other than Hindus, Muslims, Sikhs, Buddhists and Jains.</p> <p>b. When there is a will, it leads to testamentary succession but in case of no will, the property of the deceased is to be distributed as per religious laws, that is, there is intestate succession.</p> <p>Under Christian Succession-</p> <p>a. $\frac{1}{3}^{\text{rd}}$ property of the deceased person is given to the widow and the rest, that is, $\frac{2}{3}^{\text{rd}}$ of the property is equally distributed among the children and grandchildren (lineal descendants).</p> <p>b. If there are no lineal descendants but there are some people kindred to the deceased person, the $\frac{1}{2}$ property is left for the widow and $\frac{1}{2}$ to be shared by the kindred.</p> <p>c. In case there are no lineal descendants and no kindred, the entire property will devolve on the widow.</p> <p>Under Parsi Succession-</p> <p>a. The property of the deceased person is distributed among widow or widower, and children in equal shares.</p> <p>b. If there is no widow or widower of the deceased person, then the property of the deceased is equally distributed among the children.</p>

⁵ Introduction to The Indian Succession Act, 1925. The Legal Quotient. August 18, 2022.

Name of the Act/ Personal Law	Remarks
	c. If there is one or both parents of the deceased, then both parents shall receive a share equal to half the share of each child.

Literature review

A paper titled ‘The Inheritance Rights of Transgenders in India’ by Rajlakshmi and Gouri S. Nalawade puts light on the inheritance rights of the transgenders. In 2011, it was India’s first attempt to gather data on people recognizing themselves as non-binary. The results concluded the number of transgender people in India is 487,803. Since the time there has been a third sex, those who belong to this group have not been respected as normal human beings. The transgender youth were forced to drop out of school because of abuse and harassment. The people of the community were discriminated against and were unable to access the healthcare facilities. When NALSA filed a case with the Supreme Court in 2012 against the discrimination against transgender persons, various guidelines were made in 2014 to protect transgender persons but they did not address the inheritance and property rights of the transgender persons. As transgenders have limited income, savings, and housing options, there is a need to add the right to inheritance to their rights otherwise they would remain a part of the marginalized section always.

A paper titled ‘Unveiling Marginalization: Analyzing India's Third Gender in Light of the Transgender Persons (Protection of Rights) Act, 2019’ by Das, Bidisha, and Ananya Saikia analyzes the status of transgenders in Indian society. The statistics reflect the vulnerable situation of these people along with the financial instability further exaggerating the issue. They are denied shelter, employment, access to essential healthcare, public toilets, and education. They have to beg to live and also face violence and discrimination. In India, various reforms have been implemented focusing on the rights of the third gender. The Indian government began referring to the transgender population as "third gender" and included the option to select "other gender/sex" on several forms and documents. The historical NALSA ruling and the decriminalization of Section 377 of the Indian Penal Code have changed the way the third gender was treated in Indian society. The Ministry of Social Justice and Empowerment provides them with a transgender identity card and certificate which lets them access all public facilities. National welfare programs like Support for Marginalized Individuals for Livelihood and Enterprise (SMILE) are designed to give transgender people who engage in begging a better life so they can live with respect and dignity. However, the paper does not cover the current status of the

protection rights for transgenders and does not study whether inheritance rights are a part of these laws or not.

A paper titled 'Inheritance rights of transgender persons in India' by Gulati, Karan, and Tushar Anand analyzes the legal framework of transgender persons in India. In India, a majority of property is acquired through inheritance. Transgenders Persons (Protection of Rights) Act 2019, grants provisions for discrimination faced by transgender persons in India, though it is silent about their inheritance rights. As these people lack documents, it is difficult to recognize their successors. The Central and the State government after the recognition of transgenders as a third gender were directed to provide transgenders with healthcare facilities, education, access to welfare schemes, and respectful cultural and social life. There exist gendered laws which consider only males and females as the gender. Hindu Succession Act protects the rights of Hindus, Sikhs, Jains, and Buddhists, and does not consider transgenders. Muslim Personal Law (Shariat) Application Act has different provisions regarding inheritance but there is little assistance regarding transgender persons who would be treated under personal laws or have different provisions. Various countries have not recognized the inheritance rights of transgenders, however, Norway provides the same inheritance rights to transgenders. The paper does not cover the inheritance rights of transgenders in Christians, Jews, and Parsis who are not a part of the Hindu Succession Act.

A paper titled 'Transgender in India: New Developments and Enactments' by Mittal, Kunjana, and Seema Garg focuses on the legal recognition of transgenders as a third gender. The people in India make fun of the transgender community and mistreat them. They are also considered marginalized and treated untouchable in public settings like bus stops, train stations, schools, workplaces, malls, theatres, and hospitals. The Constitution's provision of equality before the law and equal protection under the law is violated for transgender people since they are denied social and cultural engagement and, as a result, have limited access to public spaces, healthcare, and education. Though Indian law recognizes transgenders as a third gender, there is still no law for them related to marriage, adoption, and inheritance rights. They struggle and face discrimination in various fields.

In a paper titled 'Contradictory tendencies: the Supreme Court's NALSA judgment on transgender recognition and rights' by Dutta, Aniruddha puts light on how transgenders got legal recognition. In 2009, "Transgender" was also defined as an "umbrella" term during the first regional consultation on transgender and Hijra issues in India. It was by both Western norms and the unique Indian and South Asian reality of many communities and identities of people who are marginalized for their gender identity, including but not limited to the well-known hijra community. Justice Radhakrishnan provides constitutional provisions to the transgenders with Articles 14, 15, 16, 19, and 21 along with

the right to education, employment, and healthcare. However, Justice Sikri's scope was narrow and he considered only transgenders and left gays, lesbians, and bisexuals out of the provisions.

A paper titled 'Transgender Property Right in India' by Shankar Banerjee and Vishwa Bhatnagar highlights the need for property ownership by transgenders to safeguard them from facing discrimination. The Hindu Succession Act, Muslim Personal Laws, and the Indian Succession Act do not show any provision of inheritance rights of the transgenders. It is believed that even if the rights are granted to them, then how will it be performed, will they be considered as a male or female while granting the rights of the deceased's property?

The literature revealed the situation of transgender persons in India and no provisions for inheritance rights for them. This paper aims to analyze the inheritance rights of transgender persons in India based on various religious acts. Further, there will be an analysis of the inheritance rights of transgenders beyond India and the reality of their situation.

National Legal Service Authority (NALSA) v. Union of India

Laxmi Narayan Tripathy, a member of the Hijra community, said that the community was denied equality and equal protection by law. The highlight of Tripathy's words- "That the Applicant has born as a male. Growing up as a child, she felt different from the boys of her age and was feminine in her ways. On account of her femininity, from an early age, she faced repeated sexual harassment, molestation, and sexual abuse, both within and outside the family."⁶

The Indian courts attempted to give recognition to transgender persons and provide them with basic fundamental rights. The NALSA judgment made it possible for the transgenders to be recognized under Indian Constitution and have access to fundamental rights.

Not being recognized as a male or a female is not a social or medical problem, so every person has a right to be treated equally. The Supreme Court mentioned that having the freedom to express one's gender identification is a necessary component to be able to live a life of dignity and it is protected by Articles 14 and 21.

The Supreme Court suggested that similar to males and females in our society, the third gender which is transgenders will also be protected and they will have access to basic fundamental rights. They should not be forced to undergo sex reassignment surgery or sterilization to gain recognition under the law. The court mentioned that transgenders should have basic fundamental rights considering Articles 15, 16, and 21 of the Constitution.

⁶ Writ Petition (Civil) No. 400 of 2012

Article 15 prohibits discrimination on the grounds of caste, religion, race, sex, and birthplace, and it is an extension of Article 14 which states the principle of equality. Article 16 provides the right to equal opportunity and employment to all the citizens of the nation. Article 21 states the right to life and personal liberty. Article 21-A provides the right to education and the NALSA judgment cleared that all transgenders have the right to education. The directions were laid down for the educational institutions to incorporate gender-neutral facilities in their premises, however on the ground level, the implementation has been weak.

The Transgender Persons (Protection of Rights) Act 2019

The Ministry of Social Justice and Empowerment in 2016 introduced ‘The Transgender Persons (Protection of Rights) Bill’ that prohibits discrimination faced by transgenders regarding education, employment, movement, healthcare, residence, rent, or occupying a property, access to goods, facilities, and opportunities available to the public, and the opportunity to hold a public or private office. The bill ensures inclusion of the transgender persons in society and safeguards them from physical, sexual, verbal, emotional, and economic abuse.

In 2019, the Parliament of India passed The Transgender Persons (Protection of Rights) Act 2019 to protect transgender persons from any kind of discrimination and it came into effect from January 10, 2020.

The act passed ensured the various provisions like every transgender person has a right to reside and be included in their household, have equal employment rights, access to education and recreational activities, provided with healthcare facilities, can apply for a certificate of identity by indicating their gender as "transgender", have a right to access public spaces.

Overall, the act ensured the protection of the transgender community in India. There was the setup of the National Council for Transgender Persons which includes representatives from the transgenders community and various other ministries/ departments. A National Portal for Transgender Persons was set up so that transgender persons could avail of an identity card without being physically present at the office wherein more than 11,000 cards are issued in 32 states. To give transgender people access to basic amenities including food, medical treatment, and recreational opportunities, the ministry established 12 pilot shelter houses in 9 states (Maharashtra, Gujarat, Delhi, West Bengal, Rajasthan, Bihar, Chattisgarh, Odisha, and Tamil Nadu) under the name Garima Greh: Shelter Home for Transgender Persons. A helpline was set up during the COVID-19 pandemic to support distressed transgenders during lockdown.⁷

⁷ Improving Status of Transgender Population. PIB Delhi. November 30, 2021.

Inheritance rights of transgenders in India

Transgender persons in India face difficulty in inheriting a property due to difficulty in identification of the successor and also due to the inheritance laws that are based on binary norms of gender, that is, male and female. In 2005, a case related to Aparna Mafatlal, now recognized as Ajay Mafatlal came forward. He was India's first sex reassignment surgery patient. The surgery and the issue raised numerous controversies and he was accused of having undergone a transition to claim ownership of his father's property as females then were excluded from inheriting their fathers' property.⁸

1. Hindu Succession Act, 1956

Hindu Succession Act, of 1956, holds legal significance for creating a framework for the inheritance of Hindu, Buddhist, Jain, and Sikh communities. The act was introduced on June 17, 1956, to have a standard legal framework for distributing property among the Hindus in the absence of a will.⁹ It is institutionalized with a motive to eradicate gender inequality and prevent women from getting harmed in the transfer of property. Section 4 of the Hindu Succession Act, 1956 nullifies all the previous laws, rules, and guidelines that applied to Hindus. However, this act does not govern those under the Special Marriage Act, of 1954.

Before the enactment of the act, only male heirs were considered by the rule of survivorship for distribution of property but the act now grants the right to inherit to female heirs. The act provides the right of inheritance to a male, female, child in the mother's womb, full-blood relations over half-blood relations, son, and daughter.¹⁰

The act doesn't define transgenders and considers only males and females as the heirs. Section 8 of the act has general rules in the case of deceased males where the priority of inheritance rights is given to the Class I heirs (son, daughter, male instates mother and lineal descendants) and then to Class II heirs (father, sibling, lineage of sibling). Section 15 defines general rules in the case of deceased females where priority is given to sons, daughters, husbands, and husband heirs. Overall, the act discusses males and females and does not mention transgenders.

Transgender persons mostly recognize themselves as female and claim their right of inheritance against Article 15 (prohibit gender-based discrimination) of the Indian Constitution. Sections 24 and 26 of the act mention the condition that must be met

⁸ Status of inheritance rights of transgenders under the Indian Law. iPleaders. October 16, 2021.

⁹ The Hindu Succession Act, 1956. Legal Vidhiya. September 1, 2023.

¹⁰ The Hindu Succession Act, 1956. iPleaders. November 19, 2022.

to consider someone as disqualified from inheriting and it does not say anything about transgenders.¹¹

2. Muslim Personal Law (Shariat) Application Act, 1937

The law of Muslim inheritance is based on rules mentioned in the Holy Quran, the Sunnah, the Ijma, and the Qiyas. The Muslims are divided into Shias and Sunnis, both of which have their principles of inheritance. Under the act, the inheritance is not guaranteed to every child in the family. It considers that females have fewer responsibilities in comparison to men so, property's half of the share of men is given to females.

The act was passed in 1937 with various exceptions that need to be followed by every Muslim. One of the exceptions included the property of females that they inherit through marriage, divorce, gift, contract, and any other legal dissolution.

There is no particular mention under the act that transgender persons would be subject to personal laws or there would be a separate provision for them. Due to the same rationale, Section 3 of the act limited the ability of male members of the family to make a declaration based on the provisions provided under the section.¹²

3. Indian Succession Act, 1925

The Indian Succession Act governs all general succession law. In the presence of a will, the succession is testamentary (succession is done according to the will), and if there is no will, then the succession depends on the inheritance laws of respective religions.¹³

Christians and Jews

For Christians and Jews, the provisions found in Sections 31 to Section 49 of the Indian Succession Act, 1925 apply to intestate succession, and regulation of Part VI applies to testamentary disposition.¹⁴ It considers three types of heirs, that is, widow or widower, lineal descendants (children and grandchildren), and kindred (blood relations through lawful marriage).

Under this, there is no difference between maternal and paternal relations and they get an equal share in the property. The adopted child is given similar rights to the natural-born child.

¹¹ Status of the inheritance rights of transgenders under the Indian Law. iPleaders. October 16, 2021.

¹² Status of the inheritance rights of transgenders under the Indian Law. iPleaders. October 16, 2021.

¹³ An Insight of the Indian Succession Act. Getlegal India.

¹⁴ Everything a common man needs to know regarding succession of property across religions. iPleaders. June 9, 2021.

Illegitimate children are not considered as an heir. There is no difference between half blood or full blood or a child still in the womb of the mother. All the heirs have an equal share in the property of the deceased person in case of intestate succession.

The Christian property rights have broader scope as Section 44 includes transgenders when there is an inheritance of ancestral property. But it is only a progressive move by the Indian legislation as there is no such amendment made to the existing laws.¹⁵ Section 44 of Indian Succession Act uses terms like brother or sister or child or children, instead of male or female, which makes it an expansive move, however, there is no proper mention of ‘transgender’ in the inheritance rights.

Parsis

For Parsis, the provisions outlined in Sections 50 to 56 of the Indian Succession Act, 1925 apply to intestate succession, and regulations under Sections 57 to 391 apply to testamentary disposition.¹⁶

A child in the womb of the mother is considered legal as long as he/she is born alive. If a lineal descendant dies during the lifetime of the intestate leaving no widow or children behind, then they should be ignored while distributing the property. If the widow of the lineal descendant dies during the lifetime of the intestate then she won't be entitled to the property of the descendant.

Adoption restrictions have an impact on inheritance and succession as it is not possible for transgender persons to prove legal adoption. As transgender marriage is not legally accepted, inheritance as a spouse also becomes impossible. The religion-specific laws such as Hindu Succession Act, Muslim Personal Laws, and Indian Succession Act, do not have any provisions for succession related to transgenders.¹⁷

However, in August 2020, the Chief Minister of Uttar Pradesh (UP), Aditya Yognath, amended a law to allow transgenders of UP to inherit ancestral agricultural land.¹⁸

¹⁵ Inheritance Rights of Indian Transgender People. Law Times Journal. October 8, 2021.

¹⁶ Everything a common man needs to know regarding succession of property across religions. iPleaders. June 9, 2021.

¹⁷ Adoption, Inheritance Rights of Transgender Persons in India. Outlook India. September 1, 2023.

¹⁸ UP: Yogi Govt Amends Law to Empower Transgender Community With Right to Inheritance of Ancestral Agricultural Land. Swarajya. August 20, 2020.

Identification of the Successors

1. Marriage Rights

Courts have held that marrying a person of choice is the person's fundamental right which is guaranteed to every citizen of India. **In 2019, the Madras High Court stated that the bride was a woman on the day of the marriage under Section 5 and it included transgender persons as well. Even after the judgment, no provisions related to marriage were added under the Transgender Persons (Protection of Rights) Act 2019.**¹⁹

Also, the Special Marriage Act governs marriage between people who belong to different religions and states that for the marriage to be considered valid, the male should be 21 years of age and the female should be 18 years of age. **There is nowhere written that Indian legislation restricts the marriage of transgenders but if they are not permitted to marry, they won't be eligible for inheritance rights as a person cannot claim the property of a deceased person without a valid marriage.**²⁰

Chief Justice of India Dhananjaya Y Chandrachud said, **"Transgender persons in heterosexual relationships have the right to marry under existing law including personal laws which regulate marriage. Intersex persons who identify as either male or female have the right to marry under existing law including personal laws which regulate marriage."**²¹ Justice Chandrachud said that the law will govern the marriage of transgender persons who are in a heterosexual relationship and wish to marry their partner.

2. Adoption Rights

Though the Juvenile Justice Act is gender-neutral, some prerequisites of adoption need to be considered and are mentioned under Section 41(6) of the act. It states that the couple should be legally recognized to adopt a child but it is difficult for transgenders to be recognized as a 'couple' as there is no particular law for their marriage.

¹⁹ Laws governing Transgender Marriages in India. Legal Service India.

²⁰ Gulati, Karan, and Tushar Anand. Inheritance rights of transgender persons in India. NIPFP. August 26, 2021.

²¹ Supreme Court affirms right of transgender persons in heterosexual relationships to marry. Hindustan Times. October 18, 2023.

In June 2023, there was a case of Prithika Yashini who went to court after her application to adopt a child was declined as she was transgender.²² Adoption is the major issue faced by the transgender community.

The Hindu Adoption and Maintenance Act, of 1956, recognizes males and females as the only people who can adopt a child so transgenders can not adopt under this act. The act specifies that a single male can adopt a female child if they have a gap of at least 21 years, while there needs to be a gap of 21 years between a single adoptive mother and a male child. However, Adoption Regulations passed under the Juvenile Justice Act state that a single male can not adopt a female child while there are no restrictions on a single mother from adopting a male child. Both the act and the regulation have a repetitive usage of male and female, and terms are absent such as third gender or gender-neutral. This hampers the process of adoption in the case of transgender persons.

International Comparison of Transgenders and Their Rights

Legal recognition of transgender is crucial to be able to provide them with basic rights and ensure their protection. In line with human rights law, many countries now legally recognize sex reassignment surgeries and allow for a change of gender on a person’s birth certificate. Some of the countries have recognized transgenders and provide them the fundamental rights.

Country	Inheritance	Adoption	Marriage
Australia	Universal rights	Universal rights	Legal since 2017
Nepal	Not recognized	No adoption rights	Not recognised
Spain	Universal rights	Universal rights	Legal since 2005
Pakistan	Specific rules	No adoption rights	Not recognised
United Kingdom (UK)	Universal rights	Universal rights	Legal since 2004

Source: National Institute of Public Finance and Policy, Working Paper²³

²² Adoption, Inheritance Rights of Transgender Persons in India. Outlook India. September 1, 2023.

²³ Gulati, Karan, and Tushar Anand. Inheritance rights of transgender persons in India. NIPFP. August 26, 2021.

- *Australia*- According to Submission 41 of Intersex Inquiry, Article 2 of the International Covenant on Economic, Social, and Cultural Rights prohibits discrimination on any ground, including the sex of a person.²⁴ Each state and territory in Australia has its law on inheritance rights that includes provisions related to gender identity and non-discrimination.
- *Nepal*- Executive director of Blue Diamond Society (LGBT rights organization), Manish Dhakal 2024 stated that the transgender person's community started to ask for their right to dignity in 2001 and 2007, and they received a positive response from the Supreme Court. However, the implementation of the orders has not yet happened. Due to the policy gap, the third gender people still face discrimination and humiliation.²⁵ The judgment in Pant et al. v. Nepal (2007) has been considered a positive example by different courts across the globe such as the Supreme Court of India, the European Court of Human Rights, and courts in the United States. However, the authorities of Nepal lack recognition of gender identity based on self-identification despite the courts' orders.
- *Spain*- Act 3/2007 of March 15 governs the modification of an individual's gender marker in the Civil Registry. By meeting specific requirements, the legislation allows individuals whose gender differs from the one assigned to them at birth to modify and change their name in the Civil Registry.²⁶ By meeting the requirements, the transgenders in Spain have the right to inherit the property.
- *Pakistan*- Transgender Persons (Protection of Rights) Act was passed in Pakistan on May 8, 2018, to allow citizens to self-identify themselves, either as male or female or as a blend of both genders. In 2009, the case of Dr. Muhammad Aslam Khaki and Anr. v. Senior Superintendent of Police Rawalpindi and Ors., gave a landmark judgment to give right to inheritance in addition to right to life and property to the transgenders under Pakistan's constitution.²⁷
- *UK*- Under the Gender Recognition Act (GRA), to gain legal recognition, a transgender individual can change their sex on their birth certificate, from male to female or vice versa according to their acquired gender. There are no provisions made by GRA to recognize the third gender.²⁸ Once the transgenders acquire Gender Recognition Certificate, they are legally

²⁴ Ensuring health and bodily integrity: towards a human rights approach for people born with variations in sex characteristics. Australian Human Rights Commission. October 2021.

²⁵ Nepal: Barriers to Transgender Legal Recognition. Human Rights Watch. February 15, 2021.

²⁶ Spain. Cambridge University. November 28, 2017.

²⁷ Status of the inheritance rights of transgenders under the Indian Law. iPleaders. October 16, 2021.

²⁸ Gender Recognition Act Reform. House of Commons. February 17, 2022.

recognized for all purposes, may it be a marriage or inheritance. The Equality Act 2010 enhances GRA by offering legal safety against discrimination based on gender reassignment.

Recommendations

As Justice K.S. Radhakrishnan said that being transgender is not a medical or social issue but a human rights issue, there is a need for reforms to improve the condition of the transgenders in India to ensure the inclusive growth of the country and the overall well-being of its citizens.

1. Right to inheritance

There is a need to provide inheritance rights to transgender persons so that they can secure their future. Lack of recognition and no proper access to rights have already created issues for them where society does not consider them as its part. Reforms in laws are needed to provide transgender persons with inheritance rights irrespective of their gender.

- Amendment to Section 8 of the Hindu Succession Act

Section 8 of the Hindu Succession Act, 1956, provides the rules of succession in case of a deceased male. It details the right of inheritance to class 1 or class 2 heirs in case of death of a male member, wherein class 1 and class 2 heirs include only male and female members. There is a need to include transgender persons in the definition of “heirs”, as a ‘son’ or ‘daughter’, so that they can inherit the ancestral property or any other assets.

- Inclusion in Muslim Personal Law

There is a need to make amendments in Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, to ensure that transgender persons are included in the list of “heirs” to inherit property along with sons, daughters, wives, and other members included in the family.

- Amendment to the Indian Succession Act

Section 2(1)(bb)

Section 2(1)(bb) of the Indian Succession Act, 1925, defines “children” as those who are naturally born or adopted, but it does not include transgender persons in clear terms. There is a need for changes in the particular section to include the transgenders as children in clear terms and ensure that they are recognized as legal heirs and get the inheritance rights.

Section 27

Section 27 of the Indian Succession Act, of 1925 includes the rights of succession to the people who are similarly related to the deceased person. It provides no distinction

between the people who have a relation with the deceased person through father or mother, half blood or full blood, born during the lifetime of the deceased, or born alive after the death of the deceased. There is a need for changes in the particular section as it does not have any mention of 'transgenders' which leads to them being discriminated against by society.

2. Adoption Rights

Hindu Adoption and Maintenance Act, 1956

Section 8 of the Hindu Adoption and Maintenance Act, 1956, includes only the adoption rights of male and female Hindu individuals. There is a need to amend the act to include transgender persons so that they can create families similar to cisgender individuals.

Juvenile Justice (Care and Protection of Children) Act, 2015

Section 57 of the Juvenile Justice (Care and Protection of Children) Act, 2015, includes provisions for adoption by couples or single or divorced people, however, it does not have any clear mention of 'transgender persons'. To provide transgender persons the adoption rights, there is a need to make changes in the act and include transgender persons. It will help to bring inclusivity and improve the well-being of needy children.

3. Social Awareness

Even after the implementation of various reforms to protect the rights of transgender persons and officially recognize them as a third gender, they still face issues in being a part of society. There is a need to raise awareness in society about how being other than male or female does not mean not being a part of society or being able to live as a normal human being. More efforts are required to make people aware and modernize their way of thinking and accepting people.

Conclusion

Starting from the NALSA judgment to the National Council for Transgender Persons, Transgender Persons (Protection of Rights) Act, 2019, Garima Greh, and National Portal for Transgender Persons, the government has made multiple efforts to improve the condition of transgender persons in India. They aimed to legally recognize them, make them a part of society, and protect them from discrimination. However, transgender persons still have to face various challenges, which may be related to education, healthcare facilities, or employment. The inheritance rights in India are based on binary gender norms and still don't recognize transgender persons due to which they have to face

multiple issues to access property. There is a need for reforms to achieve inclusivity in the economy, proper implementation, and regular screening so that actions can be taken as and when required.

References

1. National Center for Transgender Equality. "Understanding Transgender People: The Basics". Retrieved from [Understanding Transgender People: The Basics | National Center for Transgender Equality \(transequality.org\)](https://transequality.org)
2. Rajlakshmi, Mrs Gouri S. Nalawade Dr. "The Inheritance Rights of Transgenders in India." *RES MILITARIS* 12, no. 6 (2022): 2681-2689.
3. Das, Bidisha, and Ananya Saikia. "UNVEILING MARGINALIZATION: ANALYZING INDIA'S THIRD GENDER IN LIGHT OF THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019." *PANJAB UNIVERSITY LAW MAGAZINE-MAGLAW* 2, no. 1 (2023).
4. Mittal, Kunjana, and Seema Garg. "Transgender in India: New developments and enactments." *International Journal of Multidisciplinary Research and Development* 2, no. 11 (2015): 402-405.
5. Dutta, Aniruddha. "Contradictory tendencies: the Supreme Court's NALSA judgment on transgender recognition and rights." *J. Indian L. & Soc'y* 5 (2014): 225.
6. Kumar, Ashok. "Right of Transgender in India Legal Issues and Challenges."
7. "India court recognises transgender people as third gender". BBC News. April 15, 2014.
8. Gulati, Karan, and Tushar Anand. "Inheritance rights of transgender persons in India." *Indian Law Review* 7, no. 1 (2023): 1-25.
9. Banerjee, Shankar, and Dr Vishwa Deepak Bhatnagar. "Transgender Property Right In India", *International Journal of Emerging Technologies and Innovative Research*, ISSN:2349-5162, Vol.10, Issue 1, page no. ppa311-a317, January-2023.
10. "The Transgender Persons (Protection of Rights) Act 2019". Press Information Bureau.
11. L, Yamini. "Legal Framework For Protection Of Rights Of Transgenders In India". *International Journal of Emerging Technologies and Innovative Research*, ISSN:2349-5162, Vol.8, Issue 12, December 2021.
12. "Improving Status Of Transgender Population". Press Information Bureau. November 30, 2021.
13. LAW, SPORTS, and S. FOUNDER. "THE HINDU SUCCESSION ACT, 1956." (1985).
14. "Understanding Transgender People: The Basics". National Center for Transgender Equality. January 27, 2023.

15. “India court recognises transgender people as third gender”. BBC News. April 15, 2014. Retrieved from [India Court recognises transgender people as third gender - BBC News](#)
16. “Status of the inheritance rights of transgenders under the Indian Law”. iPleaders. October 16, 2021.
17. Writ Petition (Civil) No. 400 of 2012
18. “The Hindu Succession Act, 1956”. iPleaders. November 19, 2022.
19. “An Insight On The Indian Succession Act”. GET LEGAL INDIA
20. “Muslim Law of Inheritance”. iPleaders. July 5, 2023.
21. Ananad, Utkarsh (2023). “Supreme Court affirms the right of transgender persons in heterosexual relationships to marry”. Hindustan Time. Retrieved from [Supreme Court affirms the right of transgender persons in heterosexual relationships to marry | Latest News India - Hindustan Times](#)
22. “Inheritance Rights of Indian Transgender People: A Grey Area in the Personal Laws”. Law Times Journal. October 8, 2021. Retrieved from ['Inheritance Rights of Indian Transgender People' \(lawtimesjournal.in\)](#)
23. “Everything a common man needs to know regarding succession of property across religions”. iPleaders. June 9, 2021. Retrieved from [Everything a common man needs to know regarding succession of property across religions - iPleaders](#)
24. “The Transgender Persons (Protection of Rights) Bill, 2019”. PRS India. Retrieved from [The Transgender Persons \(Protection of Rights\) Bill, 2019 \(prsindia.org\)](#)
25. “Rights of Transgenders in India”. India Law Offices LLP. October 31, 2022. Retrieved from [Rights of Transgenders in India \(indialawoffices.com\)](#)
26. “Introduction to The Indian Succession Act, 1925”. The Legal Quotient. August 18, 2022. Retrieved from [The Indian Succession Act: Historical background and features \(thelegalquotient.com\)](#)
27. “Nepal: Barriers to Transgender Legal Recognition”. Human Rights Watch. February 15, 2024. Retrieved from [Nepal: Barriers to Transgender Legal Recognition | Human Rights Watch \(hrw.org\)](#)
28. “Ensuring health and bodily integrity”. Australian Human Rights Commission. 2021. Retrieved from [Publications | Australian Human Rights Commission](#)
29. Section 27 of the Indian Succession Act, 1925. Indian Kanoon. Retrieved from [Section 27 in The Indian Succession Act, 1925 \(indiankanoon.org\)](#)
30. Section 8 of Hindu Succession Act, 1956. Indian Kanoon. Retrieved from [Section 8 in The Hindu Succession Act, 1956 \(indiankanoon.org\)](#)

31. Section 2 of Muslim Personal Law (Shariat) Application Act, 1937. Indian Kanoon. Retrieved from [Section 2 in The Muslim Personal Law \(Shariat\) Application Act, 1937 \(indiankanoon.org\)](#)