

Beyond Binary Laws Recognizing the Inheritance Rights of Transgender Individuals in India

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Abstract— This research examines the inheritance rights of the transgender community in India, a subject that lies at the intersection of law, social justice, and human rights. The objective is to analyze the existing legal framework governing inheritance laws in India, with particular reference to personal laws and the gaps in recognizing transgender persons' rights. The study adopts a doctrinal research methodology, reviewing constitutional provisions, statutory enactments, and landmark judicial pronouncements, including the *NALSA v. Union of India* (2014) and *Navtej Singh Johar v. Union of India* (2018) cases. Additionally, comparative perspectives from other jurisdictions and secondary data from government and NGO reports are used to contextualize the issue. The findings reveal that despite the legal recognition of transgender persons as a 'third gender,' inheritance rights remain ambiguous and inconsistently applied under personal laws, often leaving transgender individuals vulnerable to exclusion, discrimination, and denial of property rights. The research concludes that comprehensive reforms are required to harmonize inheritance laws with constitutional guarantees of equality, dignity, and non-discrimination. Strengthening legal literacy, sensitizing judiciary and society, and enacting gender-neutral inheritance provisions are recommended as essential steps toward ensuring justice for the transgender community in India.

Index Terms—Transgender rights, Inheritance laws, Gender justice, Property rights, Indian legal system, Human rights.

I. INTRODUCTION

India is a captivating country, which consists of a rich culture and heritage and is one of the most religiously and traditionally diverse nation in the entire world. The very concept of Transgender in India is not a new concept; the history of transgender in India is ancient. Transgender community are called by different local

names such as Hijras, kinnar, eunuchs, bakala, jogtas, Kothis, Aravanis, Jogappas, Shiv-Shakthis etc., depends on area. Transgender persons had been a part and parcel of Indian society for many years ago. There was historical evidence of recognition of "third sex" or persons not confirm to male or female gender in near the beginning writings of ancient Indian. Recently, Indian Government has taken many effective steps to recognize them as equal citizens. Supreme Court also recognized the third gender as neither female nor male. In the year 2009, India agreed to differentiate them as others different from males and females in voting identity cards and voting rights. But, even though transgender people are struggling in current times in 20th century where everyone thinks that they are living in open minded society. That means reality is often different from what we actually see around us. We can see social platform awareness everywhere but how many of us are actually able to experience it in real life that transgender is living freely or not? Whether they get their inheritance and/or property rights properly? Actually, they are facing physical assault, sexual violence, discrimination etc. at every turn of their life. I am writing this article on the basis of my personal experience and what I have observed around me and also hoping that someone somewhere will read this piece of article and it might change their mentality towards transgender or if any transgender reading this article might become aware of their rights, especially inheritance or property rights.

II. METHODS

This study adopts a doctrinal legal research methodology, relying on primary sources (constitutional provisions, personal laws, statutes, and case law) and secondary sources (commentaries, scholarly articles, reports of the National Human

Rights Commission, and census data). Comparative analysis has been incorporated by referencing inheritance laws in South Asian jurisdictions such as Pakistan and Nepal. The aim is to identify legislative gaps, judicial interventions, and areas requiring reform.

III. RESULTS

Findings from doctrinal and comparative analysis indicate:

- Transgender inheritance rights in India remain uncodified and inadequately protected.
- Existing statutes force transgender individuals to compromise their identity for property claims.
- Jurisdictions like Nepal (recognizing third gender in citizenship) and Pakistan (Transgender Persons Act, 2018) provide stronger statutory backing compared to India.

Tables and Figures: Inheritance Rights of Transgender Community in India

Table 1: Comparative Analysis of Inheritance Rights in South Asia

Country	Legal Recognition of Third Gender	Inheritance Rights Explicitly Protected	Current Challenges
India	Yes (NALSA, 2014)	No (personal laws binary)	No explicit statutory inclusion in succession laws
Pakistan	Yes (Transgender Persons Act, 2018)	Yes (explicit provision)	Implementation gaps, social stigma
Nepal	Yes (Citizenship recognition, 2007)	Indirectly (via gender recognition in citizenship)	Administrative hurdles in enforcement

Table 2: Legal Milestones Affecting Transgender Rights in India

Year	Event
1852	Bombay Rent Free Estates Act restricts property ownership
1860	Section 377 IPC criminalizes same-sex relations
2009	Voter ID includes 'Others' as a category
2011	Census recognizes 'Others' category (4.88 lakh recorded)
2014	NALSA judgment recognizes transgender as 'third gender'
2019	Transgender Persons (Protection of Rights) Act enacted

Figure 1: Growth of Transgender Legal Recognition in India (2009–2019)

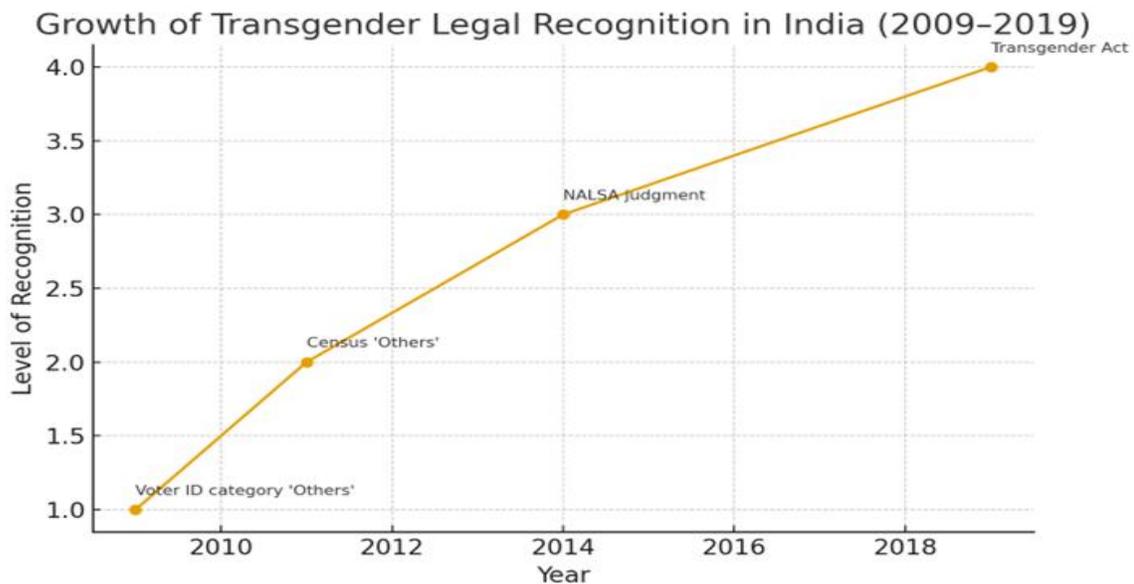
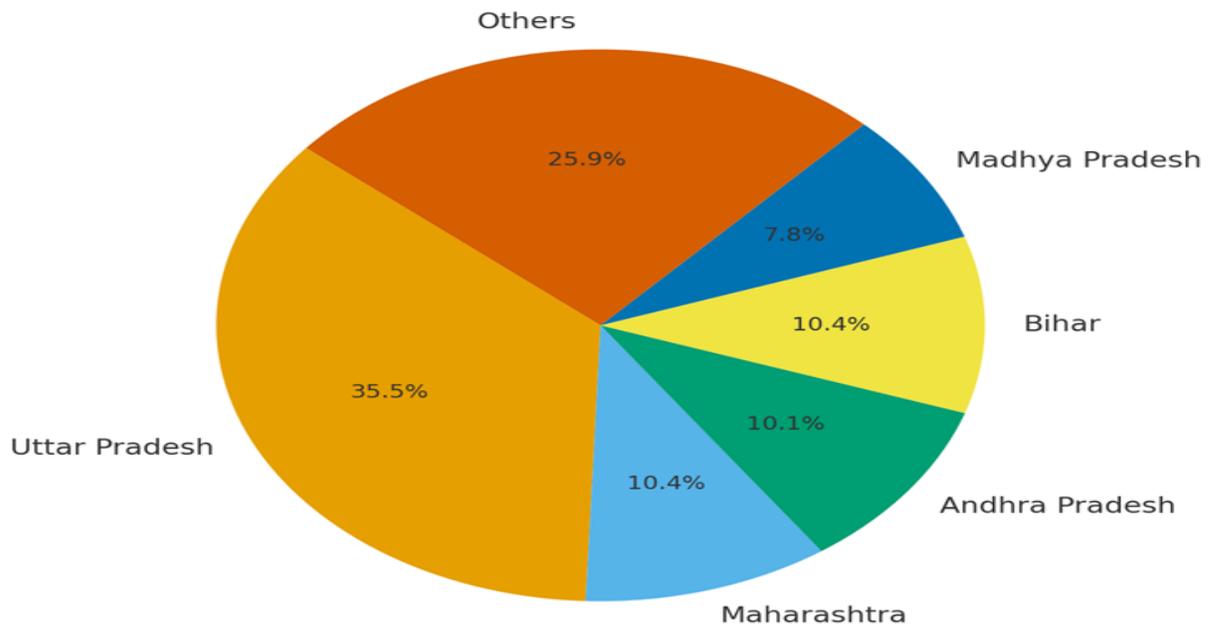


Figure 2: Transgender Population Distribution in India (Census 2011)

Transgender Population Distribution in India (Census 2011)



IV.DISCUSSION

The recognition of transgender persons as the “third gender” in NALSA was a constitutional milestone. However, the lack of amendments to personal inheritance laws undermines this recognition. Scholars argue that equality under Article 14 cannot be realized unless property rights are guaranteed. Furthermore, exclusion from inheritance perpetuates economic marginalization, pushing many transgender individuals towards begging or sex work. Comparatively, Pakistan explicitly includes inheritance rights under its 2018 law, and Nepal ensures gender identity recognition in citizenship documents, enabling property rights. India lags behind in codifying similar protections.

Reform is needed through:

- Amendment of the Hindu Succession Act, 1956, Muslim Personal Law (Shariat), and Indian Succession Act, 1925 to explicitly recognize transgender heirs.

- Enactment of a Uniform Inheritance Code for Transgender Persons, ensuring clarity across religions.
- Sensitization of judiciary and revenue officials to ensure effective enforcement.

Recognition of Rights of Transgender Persons in India
Ancient and Medieval Periods: Transgender persons held social and religious roles, especially in rituals and royal courts. During the Mughal period, they had the right to acquire and hold property, though succession rights were restricted.

Colonial Era: British legislation systematically eroded these rights. The criminalization of same-sex relations and restrictions on property ownership marginalized the community.

Modern Era

NALSA v. Union of India (2014): Recognized transgender persons as third gender and directed state governments to ensure their rights in education, healthcare, employment, and inheritance.

Transgender Persons (Protection of Rights) Act, 2019: Aimed to safeguard rights but remains silent on inheritance.

Arunkumar & Sreeja v. Inspector General of Registration (Madras HC, 2019): Recognized marriage rights of a transgender woman, indirectly strengthening succession-related claims.

Recognition of rights of transgender persons in India: The recognition and importance of transgender persons can be traced back from the ancient period. They played an important role in Mahabharata and Ramayana. They were enjoyed extremely important roles in Mughal era. During Mughal era, transgender enjoyed their exclusive right to acquire, whether by way of purchase or otherwise and hold properties, however, unlike other kind of genders they lacked the right to inherit property by way of succession from the property left by propositus (deceased person). But with the arrival of British rule in India, their situation got worst and their right to enjoy respectful life, property was abolished. Not only that, they were treated as Criminals with the introduction of Section 377 in the year 1860. In addition, by enacting the Bombay Rent Free Estates Act, 1852, they stated that, transgender people could not acquire, whether by purchase or otherwise, or hold any property that was not inherited from Blood relations (Consanguinity). The rights of Transgender were for the first time considered under the NALSA Judgment, 2014 where the Supreme Court laid emphasis on protecting and safeguarding the rights of the transgender people under the principles of Indian Constitution as laid down in Article 14, 15, 16 and 21. Article 14 of the Indian constitution gives us to enjoy right of equality, wherein everyone can enjoy the right of equality and cannot be discriminated on the ground of religion, caste, creed, color or sexual identity. In the year 2019, The Transgender Persons (Protection of Rights) Act, 2019 was enacted by the Government to protect the rights and welfare of transgender people in line and instructions with the Apex Court's (Supreme Court) decision in National Legal Services Authority (NALSA) v. Union of India¹. In NALSA judgment, 2014 the Apex Court unequivocally mentioned that the non-recognition of transgender rights was violative of Articles 14, 15, 16, 19(1)(a) and 21 of the Indian Constitution. Not only that, the Apex court also

directed the State Government to implement their sexual identity as legal.

Inheritance laws applicable in India:

Inheritance in India is primarily governed by personal laws based on religion, all of which operate on binary gender classifications:

- Hindu Succession Act, 1956: Recognizes heirs only as male or female; does not address transgender heirs explicitly.
- Muslim Personal Law (Shariat): Based on Quranic injunctions, recognizes shares only for male and female heirs; transgender inheritance rights remain undefined.
- Christian Law (Indian Succession Act, 1925): Section 44 allows broader interpretation and has been argued to include transgender heirs, though not explicitly codified.

Thus, transgender persons are compelled to identify themselves in accordance with their assigned sex at birth in official records to claim inheritance, thereby compromising their gender identity.

In India, transfer of Property by operation of law i.e., by way of Inheritance is governed by the Personal Laws of respective religion and/or community and they are based on a binary notion of gender. These laws distinguished gender in two categorized i.e. Male and Female. For example, Hindu Succession Act, 1956 that governs Hindus for the purpose of Succession (Intestate Succession) in connection with Ancestral and self-acquired property only recognizes an 'heir' to be either a male or female. The Act does not deal about the transgender or any other person with the different sexual orientation.

Similarly, Muslims are governed by their own personal law for the purpose of inheritance. The Muslim law on inheritance is majorly based on the rules laid down in the Holy Quran or the traditions of Prophet (P.B.U.H.). Muslim law is uncodified in India and all Muslims are governed by the Shariat Law for the purpose of succession to the property left by Propositus. Two major sects of Muslims i.e. Sunni and Shia School have their own principles of inheritance and both are gender restricted laws. Like Hindu Succession Act, Muslim law also recognizes male and female as the subject to get/inherit property by way of inheritance, which we can found from the

¹ (2014) 5 SCC 438

list of Quranic heirs (sharers), residuary and distant kindred. There are some verses of the Holy Quran dealing with the law of inheritance. The translations of these verses are as follows:

"Allah (thus) directs you as regard to your children's inheritance: to the male, a portion equal to that of two females, if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children and the parents are the only heirs, the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth. (The distribution in all cases is) after the payment of legacies and debts." Whether parents or children are nearest persons are in benefit. These are settled portions ordained by Allah; and Allah is All-Knowing, All-Wise.²

But, Indian Succession Act, 1925 which deals about the inheritance of property amongst Christian community has wider scope and application in comparison with the personal laws of Hindus and Muslims for inheritance of property. Section 44 of that Act recognizes the inheritance rights of transgender over ancestral property.

That means, transgender people because of their sexual identity are deprived to get their property through inheritance as per their own sexual identity. Rather, they enjoy their right of inheritance only by compromising their own gender identity as a transgender by recognizing themselves with their assigned sexual identity in birth certificate.

Challenges in Inheritance Rights for Transgender Persons

- i. Binary Nature of Personal Laws: Hindu, Muslim, and Christian laws categorize heirs strictly as male or female.
- ii. Lack of Legislative Framework: No statute specifically addresses inheritance rights of transgender persons.
- iii. Practical Barriers: Issues of documentation, family rejection, and lack of awareness among transgender individuals regarding their rights.
- iv. Judicial Dependence: Transgender individuals often rely on courts for recognition, which delays justice.

² Al Quran, Sura A Nisa, (4:11)

Inheritance rights of Transgender persons:

The personal laws applicable to Hindus, Muslims and Christians do not unequivocally says about the inheritance rights of transgender, though some Islamic Jurists (Faqihs/ Ulama/ Mujtahids) in different countries incorporate some rules regarding the inheritance rights of transgender with the help of Hadith and Qiyas. But a legal statutory framework needs to established so that transgender can inherit their property without compromising their gender identity.

However, in India in the year 2005, for the first time an issue arises about the inheritance rights of transgender when one Ajay Mafatlal undergo sex gender affirmation surgery and became a man to inherit an equal share of the estate with his brother Atulya Mafatlal under Hindu Succession law. This incident created a question regarding grant of institutional recognition to transgender persons in India. Thereafter, the national census in the year 2011 allowed persons to choose the option 'others' to identify their gender for the first time. In 2011, Census data were collected and according to that, there are 4.88 Lakh transgender in India. Therefore, transgender people have their own difficulties for their rights as a human and a normal being including the right to inherit property from their relatives.

The transgender persons face problems to inherit property due to two main reasons:

- i. Rights under inheritance laws recognized only two kinds of sexes either male or female i.e. rights based on a binary notion of genders; and
- ii. Difficulty in identifying successors in case of inheritance

But, after the landmark judgment of Supreme Court in the case of National Legal Services Authority v. Union of India & Ors.,³ being the first country, India provided legal recognition to transgender and given them the status of 'third gender'. The Court also stated that everyone has the constitutional freedom to identify himself/herself as a man or a woman or a third gender. It also says that they have right to education, treatment, employment and inheritance of property and for that ordered Central or State Governments to provide reservations for transgender in education and employment.

³ AIR 2014 SC 1863

V. CONCLUSION

Like other creations of Almighty, the transgender is also the best creation like all other human beings. However, the laws applicable to India does not determine the specific way to distribute or devolve property among the transgender. But, like all other solutions as to problems created in society, it is necessary to solve the problems of transgender relating to inheritance rights. Because, every child whether male or female or even transgender has the equal right of blessings of Almighty and therefore there is no justification to deal with the transgender in gender-based ill treatment. The researcher has discussed the constitutional rights as well as inheritance rights of transgender but the actual questions is “Are they actually able to enjoy their constitutional rights fully?” Despite significant progress made by the legislative authorities in the recent past in respect of inheritance right of transgender, there remains a big loophole within the law that requires to be filled at the earliest. Therefore, it has become the need of the hour to look into the rights of the transgender community as they are marginalized by society and are not accepted into mainstream society, including the need to bring reforms in the inheritance rights of Transgender people.

Despite constitutional and judicial recognition, inheritance rights of transgender persons in India remain legally uncertain. The absence of clear statutory provisions perpetuates discrimination and economic vulnerability. Reforms must prioritize inclusion in personal succession laws, recognition of gender identity in property rights, and enforcement mechanisms. Addressing these gaps is crucial for ensuring equality, dignity, and social justice for the transgender community in India.

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