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# **"GENDER IDENTITY AND LAND RIGHTS: EXAMINING BARRIERS FOR TRANSGENDER PERSONS IN ACCESSING IMMOVABLE PROPERTY"**

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## **Abstract**

Transgender individuals encounter major obstacles in accessing immovable property because of the intersection of gender identity and limiting legal structures. In spite of constitutional protections against gender-based discrimination, Indian inheritance and property laws are predominantly framed in terms of binary gender categories, frequently excluding transgender individuals from explicit recognition as legal heirs. The obligation to strictly be male or female in succession laws compels transgender individuals to sacrifice their identity or forfeit inheritance rights. In addition, bureaucratic barriers-including the necessity of gender certificates and resident proof-add to these obstacles, particularly for individuals without official documents or permanent residences. While the Transgender Persons (Protection of Rights) Act, 2019 gives some recognition and welfare provisions, it says nothing about specific property and inheritance rights, leaving transgender people open to discrimination and social exclusion. State-level reforms in Uttar Pradesh and Madhya Pradesh have taken steps to close these loopholes, but at a national level, legal uncertainty still exists. This study investigates the legal and social obstacles confronting transgender individuals in attaining property rights and emphasizes the critical necessity of inclusive legal reforms to provide equal access to immovable property for every gender identity.

**KEY WORDS:** Transgender, Immovable property Rights, Gender Based Discrimination, social Exclusion.

## INTRODUCTION

Transgender persons globally face systemic barriers in accessing immovable property due to legal ambiguities, discriminatory inheritance frameworks, and institutionalized bias. This issue intersects with gender identity recognition, property laws, and socio-cultural exclusion, creating multilayered challenges documented across jurisdictions. Personal laws governing property devolution in India (e.g., Hindu Succession Act 1956) lack provisions for non-binary identities. Transgender individuals often face exclusion from ancestral property claims due to binary gender classifications in inheritance rules, lack of legal clarity on whether transgender persons inherit as male/female/separate category, family rejection leading to forced displacement from parental homes. Despite advancements in transgender rights through constitutional and statutory protections, significant ambiguity persists in succession and inheritance laws. Using doctrinal and case law analysis, this study critiques the binary language of existing inheritance laws and examines how courts have approached the rights of transgender persons in claiming familial or ancestral property. The paper seeks to identify legal gaps and propose inclusive reform for equitable property access.

## RESEARCH OBJECTIVES

1. To analyze the statutory inheritance laws and how they apply (or fail to apply) to transgender individuals.
2. To evaluate judicial trends in recognizing transgender persons' rights in family property disputes.
3. To identify the interaction gender identity, customary family norms, and inheritance claims.
4. To propose legal and policy reforms for inclusive and non-discriminatory inheritance laws.

## RESEARCH QUESTIONS

1. How do existing succession and inheritance laws define gender and kinship in relation to property rights?
2. Do transgender persons face legal or social barriers when asserting inheritance claims in courts?
3. How have Indian (and select foreign) courts interpreted inheritance claims involving transgender individuals?

4. What reforms are necessary to ensure equal property rights for transgender persons?

## LITERATURE REVIEW

### Introduction to Transgender Rights and Legal Recognition

- Evolution of legal identity and gender recognition (e.g., NALSA v. Union of India, 2014)
- The Transgender Persons (Protection of Rights) Act, 2019

### Overview of Inheritance Law in India

- Hindu Succession Act, 1956
- Indian Succession Act, 1925
- Muslim personal laws and customary inheritance practices
- Role of gender in legal heirs and coparcenary

### Judicial Trends and Case Law Review

- Key judgments involving transgender individuals and family property
- Legal ambiguities and interpretation of ‘son’, ‘daughter’, or ‘heir’
- Comparison with foreign case law (e.g., USA, Pakistan, Nepal)

### Socio-Legal Challenges and Discrimination

- Family rejection and denial of inheritance
- Community stigma and lack of documentation
- Challenges in proving legal kinship or identity

### Reform Perspectives

- Gender-neutral succession laws
- Policy interventions and legal literacy
- International best practices and models for reform

## 1. Legal Recognition of Transgender Identity in India

The landmark judgment of NALSA v. Union of India (2014) laid the constitutional foundation for transgender rights in India, affirming the right to self-identify one's gender and declaring that non-recognition amounted to a violation of Article 14 (equality), Article 15 (non-discrimination), and Article 21 (right to life and dignity). This ruling was further codified in the Transgender Persons (Protection of Rights) Act, 2019, which recognized the identity of transgender persons and prohibited discrimination in areas like education, employment, and property. However, the Act lacks specificity on inheritance and succession rights, creating ambiguity on how such rights are legally protected.



Scholars such as Arvind Narrain (2015) and Danish Sheikh (2016) argue that legal identity recognition without material rights, like property and inheritance, leads to an incomplete realization of transgender equality. These authors emphasize the need to examine how existing laws structurally exclude non-binary and transgender identities through gendered legal language.

## **2. Inheritance Laws and Gendered Norms**

The Hindu Succession Act, 1956, while amended in 2005 to grant daughters equal coparcenary rights, continues to define heirs within a binary gender framework. Terms such as “son,” “daughter,” “widow,” and “brother” are commonly used without acknowledgment of gender diversity. Similarly, the Indian Succession Act, 1925, applicable to Christians and Parsis, and Muslim personal laws, which are uncodified, do not address the legal standing of transgender heirs explicitly. Academic critiques (e.g., Ratna Kapur, 2018; Flavia Agnes, 2007) have noted that inheritance law in India reinforces heteronormative and patriarchal family structures, thereby marginalizing those who do not conform to traditional gender roles. The exclusion of transgender persons—especially those estranged from natal families—demonstrates how law is complicit in structural disenfranchisement.

## **3. Judicial Interpretation and Case Law Trends**

While NALSA provided a constitutional basis for equality, lower courts have inconsistently applied transgender rights in the context of family law. Few documented cases specifically address inheritance disputes involving transgender individuals. However, cases like *Ganga Kumari v. State of Rajasthan* (2017) demonstrate judicial progress in recognizing transgender identity in public service, which can inform broader legal interpretations. Internationally, in Pakistan, the Supreme Court has upheld transgender persons’ inheritance rights in *Miss Aslam Khaki v. SSP Rawalpindi* (2009), setting a precedent that Indian courts have not yet emulated in family law. The lack of clear precedent or binding legal interpretation in Indian inheritance law leaves transgender claimants vulnerable to judicial discretion, family disapproval, or customary exclusion.

## **4. Customary and Social Barriers**

Customary practices, especially in rural or religiously conservative households, frequently override statutory law. Transgender individuals are often disowned or excluded from family property on the grounds of shame, perceived dishonor, or lack of legal recognition at birth.

Studies by NGOs such as Sangama, Humsafar Trust, and Naz Foundation document how trans individuals are coerced into renouncing inheritance claims in exchange for informal settlements or forced evictions. Anthropologists such as Serena Nanda and Gayatri Reddy have explored the social marginalization of Hijra communities, noting that many form alternative kinship networks precisely because of rejection by biological families—a reality with significant property rights implications.

### **5. Need for Gender-Neutral Legal Reform**

Recent legal scholarship advocates for gender-neutral language in inheritance laws to ensure inclusivity. Law Commission of India reports (e.g., Report No. 204 on the Hindu Succession Act) have noted the need for updating terminology to reflect social changes. However, there is minimal mention of transgender persons. Legal theorists (like Upendra Baxi) suggest that real reform requires not just textual changes but also transformative constitutionalism that centers the lived experiences of marginalized groups.

Comparative legal systems—such as in Nepal, which guarantees transgender rights in property through constitutional recognition, or Canada, which employs gender-neutral family law—can serve as models for reform in India.

### **RESEARCH GAP**

- Most inheritance laws do not recognize transgender identities within heir categories. There is a lack of Indian case law directly affirming transgender inheritance rights.
- Social and customary norms often override legal entitlements. Legal language remains binary, reinforcing exclusion. Existing policy frameworks are silent on succession despite broader protections in the 2019 Act.

### **RESEARCH ANALYSIS**

#### **Legal Recognition of Transgender Identity**

The Supreme Court's judgment in *National Legal Services Authority v. Union of India* recognized the right of individuals to self-identify as transgender, affirming their fundamental rights under Articles 14, 15, 19, and 21 of the Constitution of India.<sup>1</sup> This landmark ruling established that transgender persons must not be denied legal recognition or access to rights based on non-conformity to the binary gender system. Following this, the Parliament enacted

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<sup>1</sup> - *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

the Transgender Persons (Protection of Rights) Act, 2019, which prohibits discrimination in education, employment, health care, and access to public goods.<sup>2</sup> However, the Act does not explicitly address inheritance or succession rights, leading to ambiguity about the application of personal and secular inheritance laws to transgender individuals.

Legal scholars have critiqued this partial framework. Arvind Narrain notes that identity recognition without corresponding material and socio-economic rights creates an “equality gap.”<sup>3</sup> Similarly, Danish Sheikh argues that existing laws’ reliance on gendered categories—such as son, daughter, widow, and wife—reinforces legal invisibility for non-binary individuals.<sup>4</sup>

### **Inheritance Laws and the Gender Binary**

The Hindu Succession Act, 1956, remains one of the central statutes governing inheritance in India. Although the 2005 Amendment recognized equal coparcenary rights for daughters,<sup>5</sup> the statute continues to employ binary gender categories that fail to accommodate transgender persons. The Indian Succession Act, 1925, applicable to Christians and, and various Muslim personal laws, also define heirs based on traditional kinship models that exclude non-cisgender identities.<sup>6</sup> Flavia Agnes critiques these laws as inherently heteropatriarchal, maintaining that despite amendments, the language and structure of inheritance law remain rooted in rigid gender norms.<sup>7</sup> Ratna Kapur has similarly argued that Indian family law constructs citizenship around heteronormative and reproductive roles, marginalizing those whose identities fall outside these models.<sup>8</sup>

### **Judicial Trends and Interpretive Gaps**

While NALSA provides a constitutional anchor for equality, Indian courts have not consistently interpreted inheritance claims involving transgender individuals. Case law in this area is scarce. Notably, in *Ganga Kumari v. State of Rajasthan*, the Rajasthan High Court recognized the petitioner’s right to appointment as a constable despite being a transgender person.<sup>9</sup> Although the case did not deal with property, it affirmed transgender identity as a

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<sup>2</sup> - The Transgender Persons (Protection of Rights) Act, No. 40 of 2019, India Code (2019).

<sup>3</sup> - Arvind Narrain, Gender Identity and the Right to Recognition, Socio-Legal Rev. (2015).

<sup>4</sup> - Danish Sheikh, Over the Rainbow: Queer Legal Theory in India, Indian J. Const. L. (2016).

<sup>5</sup> - The Hindu Succession (Amendment) Act, No. 39 of 2005, India Code (2005).

<sup>6</sup> -Tahir Mahmood, Principles of Hindu Law (2015); Flavia Agnes, Family Law: Volume I (2011).

<sup>7</sup> - Flavia Agnes, supra note 6

<sup>8</sup> - Ratna Kapur, Gender, Alterity and Human Rights: Freedom in a Fishbowl (2018).

<sup>9</sup> - Ganga Kumari v. State of Rajasthan, 2017 SCC OnLine Raj 2551.

protected legal category. There remains, however, no direct jurisprudence on succession disputes involving transgender claimants in India. In contrast, Pakistan's Supreme Court in *Miss Aslam Khaki v. SSP Rawalpindi* (2009) held that transgender persons have full constitutional rights, including the right to inherit family property.<sup>10</sup> This sets a comparative benchmark for inclusive inheritance rights in South Asia, which Indian courts have yet to emulate.

### **Customary and Social Barriers**

Despite formal legal protections, transgender individuals face structural barriers in asserting inheritance rights. Many are disowned or forcibly excluded from family property on grounds of “dishonor” or “shame.” Ethnographic work by Serena Nanda and Gayatri Reddy shows that Hijra communities often form alternative kinship systems in response to rejection by natal families.<sup>11</sup> These social practices intersect with legal exclusion, making it difficult for transgender persons to prove legal kinship or claim rightful inheritance. NGO studies by Humsafar Trust and Sangama document numerous cases of informal coercion, eviction, and denial of access to ancestral homes.<sup>12</sup> These cases often go unreported due to lack of access to legal aid and fear of retribution.

### **Gender-Inclusive Legal Reform**

Legal reformers have called for gender-neutral language in inheritance laws to ensure broader inclusion. The Law Commission of India, while recommending changes in property and succession law over the years, has not directly addressed the status of transgender heirs.<sup>13</sup> Scholars such as Upendra Baxi have argued for a model of transformative constitutionalism that mandates the legal system to evolve in line with the lived experiences of marginalized groups.<sup>14</sup>

Comparative models such as Nepal's Constitution, which explicitly grants transgender persons the right to property and family life, or Canada's gender-neutral family law statutes, offer possible frameworks for reform.<sup>15</sup>

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<sup>10</sup> - *Aslam Khaki v. SSP Rawalpindi*, Constitutional Petition No. 43 of 2009 (Supreme Court of Pakistan).

<sup>11</sup> - Serena Nanda, *Neither Man Nor Woman: The Hijras of India* (1999); Gayatri Reddy, *With Respect to Sex* (2005).

<sup>12</sup> - Serena Nanda, *Neither Man Nor Woman: The Hijras of India* (1999); Gayatri Reddy, *With Respect to Sex* (2005).

<sup>13</sup> - Law Comm'n of India, Report No. 204, *Reform of the Hindu Succession Act* (2008).

<sup>14</sup> - Upendra Baxi, *The Future of Human Rights* (2008).

<sup>15</sup> - Constitution of Nepal, 2015, arts. 12, 18, 42; Canadian Divorce Act, RSC 1985, c 3.

## RESEARCH SUGGESTIONS

Ensuring Transgender Inclusion in Indian Succession Law: Legislative and Institutional Reforms

in light of the constitutional mandate laid down in *NALSA v. Union of India*,<sup>16</sup> and the evolving framework under the Transgender Persons (Protection of Rights) Act, 2019, it is imperative that Indian succession laws—both secular and personal—be urgently reformed to ensure substantive equality for transgender persons. The following are key legal and policy recommendations:

### 1. Adopt Gender-Neutral Terminology in Succession Laws

All succession statutes, including the Hindu Succession Act, 1956, Indian Succession Act, 1925, and applicable customary laws, should be amended to replace binary gendered terms such as “son,” “daughter,” “widow,” and “wife” with inclusive and neutral alternatives like: “child,” “spouse,” “partner,” or “legal heir.”

**Recommended Amendment: Insert definitions of “heir” and “family member” that explicitly include transgender persons, irrespective of sex assigned at birth.**

### 2. Include Transgender Persons as Class I Heirs

An express statutory provision must be introduced in the Hindu Succession Act and similar laws declaring that:

**“A transgender person shall be entitled to the same inheritance rights as any other male or female child or spouse under this Act.”**

This provision would ensure clarity for courts and eliminate ambiguity about transgender individuals’ legal standing as heirs, especially in joint family and coparcenary property disputes.

### 3. Extend Coparcenary Rights to Transgender Persons

- Be granted coparcenary status, provided they are born or adopted into the family.
- Not be disqualified from succession by virtue of transitioning or identifying as transgender.

**Legal Justification: Article 14 guarantees equality before law; exclusion from inheritance due to gender identity is unconstitutional.**

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<sup>16</sup> - National Legal Services Authority v. Union of India, (2014) 5 SCC 438

#### **4. Ensure Legal Recognition of Gender Identity in Inheritance Claims**

A transgender person's self-declared identity or certificate obtained under Section 6 of the Transgender Persons Act, 2019 must be:

- Considered valid for the purpose of establishing heirship, next of kin, or familial relation.
- Immune from challenge by relatives on the grounds of "original sex at birth" or "moral fitness."

#### **5. Protect Against Disinheritance and Coercion**

Legislative safeguards should be introduced to:

- Penalize forced exclusion or disinheritance of transgender persons based solely on gender identity.
- Prevent undue influence, coercion, or emotional blackmail used to compel transgender heirs to renounce their legal claims.

**Suggested Clause: "No person shall be denied their rightful inheritance on the basis of their gender identity or expression."**

#### **6. Amend Testamentary Laws to Prevent Discrimination**

The Indian Succession Act, 1925 and other testamentary laws should include:

- An anti-discrimination clause stating that "No will or testamentary disposition shall be invalidated or challenged solely on the grounds of the beneficiary's gender identity."

This ensures that transgender persons can both bequeath and inherit property without prejudice.

#### **7. Judicial and Bureaucratic Sensitization**

A nationwide training program must be developed for:

- Judges, revenue officers, and registrar authorities, focused on gender diversity, inclusive legal interpretation, and procedural fairness.
- Special emphasis should be placed on recognizing family structures beyond traditional heteronormative models.

#### **8. Promote Legal Literacy and Community Support**

Transgender persons must be educated about their legal rights through:

- Legal aid clinics, awareness campaigns, and partnerships with community-based organizations and law schools.

- Free legal services should be mandated under the Legal Services Authorities Act for transgender inheritance cases.

### **9. Commission a Comprehensive Law Review**

The Law Commission of India should be directed to:

- Undertake a detailed study on the exclusion of transgender persons from existing personal and secular succession frameworks.
- Recommend a Uniform Civil Code (UCC) or personal law reforms that explicitly guarantee inheritance rights for all gender identities.

### **10. Recognize Chosen Family and Alternative Kinship Structures**

- Succession laws must evolve to acknowledge that transgender persons often form chosen families, particularly when rejected by natal families.
- Amend the definition of "family" to include dependents and companions not necessarily related by blood or marriage but proven by cohabitation, caregiving, or support. This aligns with global human rights jurisprudence recognizing the right to family life in diverse forms.

## **CONCLUSION**

Transgender individuals in India remain effectively excluded from inheritance frameworks due to legislative silence, judicial neglect, and entrenched social norms. To ensure constitutional fidelity and social justice, India must undertake a comprehensive reform of its succession laws to reflect gender plurality, non-discrimination, and equal access to family property. This Study reviewed highlights a glaring gap between legal identity recognition and property rights for transgender individuals. While courts have affirmed the right to dignity and non-discrimination, statutory and judicial silence on inheritance law continues to perpetuate exclusion. Reforms must move beyond surface-level recognition toward substantive legal equality, particularly in economic and familial rights.