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PROPERTY RIGHTS FOR TRANSGENDERS **COMMUNITY IN INDIA**

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ABSTRACT

Property rights are fundamental to the socio-economic empowerment and well-being of individuals, yet for transgender communities in India, securing these rights remains a formidable challenge. In India, the transgender community faces significant socio-economic challenges, including discrimination, marginalization, and limited access to basic rights. Among these rights, property ownership and inheritance remain crucial yet often overlooked aspects of transgender individuals' lives.

This research paper delves into the intricate landscape of property rights for transgender individuals in India, exploring the legal, social, and cultural dimensions that shape their access to and ownership of property. This research paper aims to explore the complexities surrounding property rights for the transgender community in India, shedding light on the legal framework, societal attitudes, and practical obstacles they encounter.

The paper begins by providing a comprehensive overview of the legal landscape pertaining to property rights for transgender persons in India, analysing relevant statutes, case law, and policy frameworks. It delves into the historical context and evolution of laws concerning transgender rights, highlighting both progress and persisting gaps in legal recognition and Furthermore, the paper explores advocacy efforts, grassroots initiatives, and policy recommendations aimed at advancing property rights for the transgender community in India. It underscores the importance of legal reforms, awareness campaigns, and community empowerment in fostering inclusive and equitable access to property rights.

KEYWORDS: Transgender, Transgender Rights, Inheritance Rights & Property Rights

¹ The author is a student of First year.

INTRODUCTION

Transgender people are the people who are very different from the gender norms. It is the community which is most marginalised community in the country. It means it is the term which means the individual whose gender identity is not same as male and female. They do not fall under stereotypical categories of gender binary.² They have faced discrimination, social oppression and physical violence as society has failed to accept their gender identity. Their inborn perseverance of gender turns out to be different from their bodily features. They identified as Transgender, transsexual and Hijra. Since the beginning of human civilisation, the existence of transgenders people has been acknowledged but they have lacking subsequent approval from ordinary society. Even in 21st Century these individuals are seen as taboo and they are subjected to harassment. They are characterised as shame and stigma in both public and private sector.³

But now they have recognised as third gender and permitted to legal shield under law. The Govt. has enacted Transgender Person (protection of right) Act, 2019 to protect from the discrimination and provide them equal rights in area of education, employment, and health services.

And if we talk about the term “Property”, it may be defined as movable or immovable property that is owned by a person or individual or group of person or group of individuals. And in the context of transgender, they are not accepted as family member in their own family therefore, they are not even having coparcener right in their joint Hindu Family with their gender identity nor as a legal heir of their parent’s separate family.

PROPERTY RIGHTS OF TRANSGENDER COMMUNITY IN INDIA

In India, there are many properties rights issue that is faced by transgenders. Even they are not allowed to own a property on rent. They do have ownership rights based on equality as they treated as third gender but are they have any right to protect their property because their legal right is not much stronger as compare to other gender binary. It is nowhere mention under Transgender Person (protection of right) Act, 2019 nor is it mentioned in Transfer Property Act 2019. In the Transgender Person (protection of right) Act 2019 enacted to made a decent effort to protect their rights and to promoted their welfare as they are facing discrimination on the

² <https://www.legalserviceindia.com/legal/article-7179-property-rights-of-transgender-community-in-india.html>

³ <https://lexpeeps.in/transgender-property-rights/>

grounds of education, medical facilities, healthcare, movement, access to good and services, choice of profession etc. Basically, the act has enacted to get rid of unfair treatment regarding the right to reside, purchase or rent or otherwise owned any property.

Under section 4(2) of the act provides the right to self-perceived gender identity. Section 5 of the act that a transgender person could be perceived as third gender (transgender) by making an application to the District Magistrate for issuing a certificated of identity as a transgender person. But there is a big loophole in this act that it is not dealing with any property rights of transgenders.⁴

TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILLS, 2016

In the judgement of National Legal Service Authority Versus Union of India⁵ it is held that the transgender community treated unequal in the society therefore, it introduced with legal protection for the transgender community as they recognised as third gender but the ongoing violation of rights of transgenders persons under Article 14, 15, 16, 19 and 21 of the Constitution of India and also laid down several guidelines for state and central government to provide them actualisation of rights to transgender persons.

“We, therefore, hold that values of privacy, self-identity, autonomy and personal integrity are fundamental rights guaranteed to members of the transgender community under Article 19(1)(a) of the Constitution of India and the State is bound to protect and recognize those rights.”⁶

After the judgement of this case the Transgender Persons (Protection of Right) Bill was introduced in Lok Sabha in the year 2016. And in this bill, there are various chapters that are dealing with rights of transgenders. In some sections, it is mentioned that transgender person should not be separated from their family and immediate family on the ground of their gender identity. It is also provided that they can enjoy the rights of household and use all the facilities available in the house. In this bill Lok Sabha talks about the transgender right to residence but

⁴ <https://lexpeeps.in/transgender-property-rights/>

⁵ <https://privacylibrary.ccgnlud.org/case/national-legal-services-authority-vs-union-of-india#:~:text=The%20Court%20held%20that%20in,the%20rights%20of%20the%20community.>

⁶ <https://privacylibrary.ccgnlud.org/case/national-legal-services-authority-vs-union-of-india#:~:text=The%20Court%20held%20that%20in,the%20rights%20of%20the%20community.>

does not talk about their inheritance rights. This bill needs many amendments as transgenders are the citizen of India and should be concerned with their Human and Legal Rights as third gender. The court also held that State and Centre Government must varied social Schemes for third gender community and run public awareness campaign to erase social stigma. The state must construct special toilets and departments to investigate their special medical issues.

In the famous case *Navtej Singh Johar Versus Union of India*⁷ 2018 in this case Supreme Court said that Transgenders are having history. History owns an apology to the member of this community and their families for delay in providing redressal for ostracism.

The member of this community must claim to live a life full of fear of reprisal and persecution. This war an account of the ignorance of the majority to recognise that homosexuality is a completely natural condition part of a range of human sexuality. As fundamental rights are equal for all citizen no matter who we are male, female or third gender.

THE CONSTITUTION OF INDIA

It talks about fundamental rights of every Individual. The Constitution of India is "Sex Blind". It means that the basic premise of equality before law and equal protection of law is based on a Constitutional mandate that the sex of a person is irrelevant Article 14 of the Constitution of India states that the State shall not deny "to any person" equality before the law or equal protection of the law within the territory of India. The term "all persons" includes transgender persons. And Article 15 prohibits gender discrimination against all citizens. Not recognizing the identity of transgender/hijra people leads to a systematic denial of equal rights and equal legal protection. Article 19 (1) (a) of the Constitution of India describes that all citizens have the right to freedom of speech and expression. It guarantees one of the most basic human rights. Thus, expressing and conforming to one's gender is an obvious derivative of Article 19(1)(a). Denying the right to express one's gender identity through speech and to choose a romantic/sexual partner would lead to a violation of Article 19.

Interestingly, the Births and Deaths Registration Act 1969 says nothing about the 'sex' of the person being registered at the time of birth or death. The law is gender neutral. The obligation to indicate gender on the birth or death certificate in the case of birth or death does not appear to

⁷ *Navtej Singh Johar v. Union of India* (2018)

arise from the provisions of this law per se. Such requirements can be included in the format of the certificate provided for in the legal regulations adopted by each country.

INHERITANCE RIGHTS

Property rights are a crucial component of respectful rights laws. Still, these rights have regularly avoided the transgender community due to the property legacy law in India being established in twofold sexual orientation classifications. For occurrence, the Hindu Progression Act of 2005 entirely recognizes male and female beneficiaries and their arrange of progression.

Indeed, the Indian Progression Act of 1925, with its gender-neutral wording, shows gender-based disparities within the arrange of progression. Transgender people, despite experiencing gender-reassignment surgery and upgrading their documentation, frequently confront deterrents in securing in Inheritance property due to bias and the failure to find reasonable successors.

Whereas Uttar Pradesh took a step towards advance in 2020 by giving Inheritance rights to transgender people for rural property, a broader redesign of property laws is fundamental to guarantee full uniformity in Inheritance property.

THE GURU CHELA SYSTEM

The court recognized inheritance rights within the Guru Chela system and recognized the Guru Chela as a customary group. However, property rights within this system are entirely at the discretion of the guru. Government-supported housing programs and priority housing allocation for transgender people are urgently needed to address this issue. Madhya Pradesh was the only state to recommend appropriate housing for transgender people as part of its state policy in 2020.

THE ROLE OF NALSA AND INTERNATIONAL LAW

The Incomparable Court's NALSA judgment recognized that transgender persons' avoidance from legacy and progression laws damages sacred standards of balance. The Transgender People (Security of Rights) Act of 2019 forbids segregation against transgender people with respect to their lodging rights.

Be that as it may, not one or the other the NALSA judgment⁸ nor the 2019 Act unequivocally addresses legacy rights or gives lodging concessions. Hence, India must adjust its approach with worldwide law. As stipulated in Article 11(1) of the ICESCR, satisfactory lodging offices ought to be open to all, notwithstanding of sex personality. The Incomparable Court ruled in NALSA v. Union of India⁹ that sex personality is decided by an individual's choice. In any case, a government survey carried out in Kerala uncovered that 76% of transgender individuals were incapable to enlist their seen sexual orientation characters. 81% of individuals yearned to alter their sexual orientation character but needed arrange of bolster. Transgender individuals will not be able to state lawful rights like legacy get to unless they are allowed to recognize agreeing to their inclinations and get distinguishing proof in line with those inclinations.

CONCLUSION

They do have ownership rights based on adjustment as they are treated as third sexual introduction, but do they have any right to guarantee their property since their lawful right isn't much more grounded as compared to other sex twofold. It is not indicated underneath Transgender Person (security of right) Act, 2019 nor it's said in Trade Property Act 2019. Inside the Transgender Person (affirmation of right) Act 2019 endorsed to form distant better; a much better; higher; stronger; an improved" a distant better than normal effort to secure their rights and to progress their welfare as they are standing up to isolation on the grounds of instruction, helpful workplaces, healthcare, advancement, get too great and administrations, choice of calling etc. Underneath region 4(2) of the act gives the correct to self-perceived sex character. Section 5 of the act that a transgender person may be seen as a third sexual introduction (transgender) by making an application to the District Judge for issuing a certificate of character as a transgender person. But there's a huge elude clause in this act that it isn't overseeing with any property rights of transgenders. Transgender Individuals (Assurance of Rights) Bills, 2016 Inside the judgment of National True blue Advantage Pro Versus Union of India it is held that the transgender community treated unequal within the society in this way, it displayed with legal affirmation for the transgender community as they seen as third sex but the progressing encroachment of rights of transgenders individuals underneath Article 14, 15, 16, 19 and 21 of the Structure of India

⁸ Navtej Singh Johar v. Union of India (2018): Section 377 provides punishment for unnatural offences, and this impediment was used as an instrument to harass them. Due to their relatively insignificant numbers, they were less noticed. However, the Supreme Court, in this case, decriminalized the so called "unnatural offences" under the Section.

⁹ The Supreme Court ruled that transgender people should be recognized as third gender and must be allowed to enjoy all the Fundamental Rights.

conjointly laid down some rules for state and central government to supply them actualisation of rights to transgender individuals. “We, consequently, hold that values of assurance, self-identity, autonomy and individual judgment are vital rights guaranteed to people of the transgender community underneath Article 19(1)(a) of the Structure of India and the State is bound to guarantee and recognize those rights.” After the judgment of this case the Transgender Individuals (Security of Right) Charge was presented in Lok Sabha inside the year 2016. In several ranges, it is said that person got to not be confined from their family and speedy family on the ground of their sexual introduction character. This charge needs various modifications as transgenders are the citizen of India and must be concerned with their Human and Lawful Rights as third sex. The court as well held that State and Middle Government must move social Plans for third sexual introduction community and run open mindfulness campaign to erase social disgrace. As fundamental rights are broken indeed for all citizens no matter who we are male, female or third sex. The Structure of India It talks nearly basic rights of everyone. It suggests that the basic preface of correspondence a few times as of late law and rise to security of law is based on a Protected command that the sex of a person is insignificant Article 14 of the Structure of India states that the State should not deny "to any person " correspondence a few times as of late the law or rise to affirmation of the law interior the space of India and Article 15 forbids sexual orientation isolation against all citizens. Not recognizing the character of transgender/hijra people leads to an efficient dissent of rise to rights and rise to lawful security. Article 19 (1) (a) of the Structure of India portrays that all citizens have the correct to flexibility of discourse and expression. Denying to the specific one's sexual introduction personality through talk and to select a sexual assistant would lead to an encroachment of Article 19. Still, these rights have routinely maintained a strategic distance from the transgender community due to the property bequest law in India being built up in twofold sexual presentation classifications.

There is an urgency of addressing property rights for transgender individuals as a fundamental aspect of their dignity, autonomy, and social inclusion in Indian society. By advocating for legal reforms and fostering societal acceptance, stakeholders can work towards ensuring that all individuals, regardless of gender identity, enjoy equal rights and opportunities in property ownership and inheritance.

JUDGMENTS RAEFORD

1. NALSA vs. Union of India (2014): The Supreme Court ruled that transgender people should be recognized as third gender and must be allowed to enjoy all the Fundamental Rights.
2. Navtej Singh Johar v. Union of India (2018): Section 377 provides punishment for unnatural offences, and this impediment was used as an instrument to harass them. Due to their relatively insignificant numbers, they were less noticed. However, the Supreme Court, in this case, decriminalized the so called “unnatural offences” under the Section.

Suggestions

All the laws should be the same for them, like for example inherited property rights, voting rights, etc should be there for them as well. Moreover if our education system and more systems like government exams and all happen in a format like in Lok Sabha there are reserved seats for General, SC (Scheduled Castes), ST (scheduled Tribes) and OBC (Other Backward Class) then why can't we have reserved seats for them. in our education system also, we have reserved seats for all the categories then why not for them as they are a part of our society and now Tho we also accept them as third gender then why not give the equal rights and equal reserved seats like us.