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GENERAL PROPERTY RIGHTS OF INDIA'S TRANSGENDER COMMUNITY

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ABSTRACT

The transgender community in India has historically faced systemic marginalization, including the denial of basic human rights such as property ownership and inheritance. Despite constitutional guarantees of equality and the landmark *NALSA v. Union of India* (2014) judgment, which recognized transgender persons as the third gender, significant legal and social challenges persist. While the Transgender Persons (Protection of Rights) Act, 2019 prohibits discrimination in property-related matters, And do not explicitly address the rights of third-gender individuals. As a result, transgender persons often struggle with exclusion from family inheritance, denial of housing, and difficulty accessing financial services. This paper explores the legal framework, judicial developments, and socio-economic barriers that shape the property rights of India's transgender community, while also suggesting reforms for a more inclusive and equitable legal system.

KEYWORDS: transgender-property rights--gender-legal system-constitution

INTRODUCTION

Transgender is a phrase used to refer to persons whose sexuality, sexual identity, or behaviors differ from the gender they have been given at birth. Sexual orientations refer to the inner sense that a person is male, female, or other, and gender refers to how an individual communicates a person's identity with another person through behavior and attitude, attire, hairdos, utterance, and physical attributes. "Trans" is a common abbreviation of "transperson."

India has been one of the world's most ethnically and religiously diverse countries. It has a rich

history of its own, embodying the norms and utilizations of the time, and the exciting aspect is that those practices and rituals are still practiced in the twenty-first century. For generations, transgender people have been an integral part of Indian society. In ancient India's early literature, verifiable events of acknowledgment of "third sex" or those who could not be classified as men or women.¹The notion of "tritiyaprakriti" or "napumsaka" is found in Indian mythology, folklore, sagas, and ancient Vedic, as well as Puranic writings. The name "napumsaka" was used to describe the lack of procreative potential, evidenced by the absence of masculine and female Antha Chettia, "Problems Fared by Hijras (Male to Female Transgenders) in Mumbai and Harassment by the Police 51554 752 (Sept. 2015), asatable at: <http://www.josh.org/papers/553-W10007.pdf> visted on May 28, 2012.characteristics.

EVOLUTION OF TRANSGENDER COMMUNITY IN INDIA

There are over two million transgender persons in India. Hijra is a terminology used in India to allude to transgender people, transvestites, cross-dressers, and transsexuals. Activist groups claim they live on the outskirts of society, are frequently in poverty, and are marginalized due to their gender identity. The majority of them make a living through sing-alongs, soliciting, and prostitution.

Figures from the Hijra play crucial parts in Hinduism's most famous books, such as the Mahabharata and the Ramayana. Shiva, a primary Hindu divinity, takes on numerous forms, including combining with his wife, Parvati, to create the ambiguous Ardhanari, who is revered by many in the Hijra community. During the Mughal era in India, from the 16th to the 19th century, Hijras held vital positions in the Court and many aspects of governance. They were also seen as religious leaders who have been looked out for blessings, especially during religious rites.[3]

However, in Indian law, transgender people, particularly Hijras, are acknowledged as a third gender. Even though the LGBT community faces major legal hurdles and that same-sex sexual contacts are illegal in the country, this is the case. While the Hijra community is still adored by the broader public and honored during religious or spiritual events, they are regularly the

¹ Antha Chettia, "Problems Fared by Hijras (Male to Female Transgenders) in Mumbai and Harassment by the Police 51554 752 (Sept. 2015), asatable at: <http://www.josh.org/papers/553-W10007.pdf> visted on May 28, 2012. National Legal Service Authority vs. Unson of india. The Transgender Person Protection of Rights) Act, 2019 Office of the Registrar General & Census Comevasioner 2011 Census Data (2011)

victims of violence and bigotry. Discrimination in housing and other areas and racism and hate crimes against the community are all too widespread. The government has tried to address this by enacting legislation to protect transgender persons, including prison sentences and other punishments for those who break the law.

While drafting the Indian Constitution, the founders envisioned a future India to foster a society free of discrimination based on ethnicity, language, race, sex, territory, and other factors. They envisioned India's future as free of caste, religious, gender, regional, and other inequities, with an egalitarian society in place. To claim that perhaps the Constitution of India purports to give each citizen equal opportunities and rights.

ACCEPTANCE AS THIRD GENDER

In India, the law system reigns supreme, and everyone is treated equally in the legal sense. However, the transgender community is constantly at odds with discrimination, abuse, and prejudice from all corners, whether from their relatives or the general public.²

Transgender people's lives are a daily struggle because they are not acknowledged anywhere and are alienated from society and mocked. Nevertheless, the Supreme Court of India accepted the third gender alongside the male and female in *National Legal Services Authority v. Union of India & Ors.*[4] .by a division bench of Justices K.S. Radhakrishnan with A.K. Sikri. The Court has demolished society's binary gender framework of 'man' and 'woman' by recognizing various gender identities.

Articles 14 and 21 of the Indian Constitution guarantee the rights of equality before the law and equal protection under the law. The freedom to choose one's gender identification is an essential aspect of living a dignified life, and it is covered under Article 21. "The gender to which a person belongs is to be determined by the person concerned,"[5] The Court said in determining the right to personal freedom and self-determination. According to the Supreme Court, the Indian people now have the right to choose their gender identity.

² Office of the Registrar General & Census Commissioner 2011 Census Data (2011)
National Legal Service Authority. *Union of India*, AR 2014 SC 1863 1890 par 54
Rajash Kumar State of B 2008 Pat 98, Decision of the Regional Transport Authority restricting the life of Vehicles to be used under any genit to 15 years is held illegal to be depriving the of their property or usage without authority of law, violative of Article 300

In its final verdict, the Supreme Court decided that transgender people, in addition to a binary gender, shall be considered “third gender” to protect their privileges under Part III of the Indian Constitution and laws enacted by the national parliaments. The Court also ordered the state government to implement their third sexual identity as legal. The government was also instructed by the Hon’ble highest Court to reduce social stigma, encourage particular health programs, and provide equal protection to transgender people.

PROPERTY RIGHTS OF TRANSGENDER PEOPLE IN INDIA

All land rules must be enforced on the transgender community as they would to anyone else. They should be fairly treated, with respect, and without prejudice. They ought not to be prejudiced against applying for jobs, going to public places, owning property, or seeking justice. Civil rights, such as the ability to obtain a passport or ration card, write a will, transfer property, and adopt children, must be open to all regardless of gender/sexual identities.

Despite having a third gender identity, Trans persons are marginalized by society. These groups have noticed that they cannot participate fully in social and cultural customs, governance, and decision-making processes. The rationale for these assessments by Trans persons is that they are not accepted into mainstream society, and their third gender status is not recognized. It is a significant stumbling block that frequently hinders individuals from fulfilling fundamental rights. The Transgender Persons (Protection of Rights) Act of 2019 [6] is a piece of legislation that protects transgender people’s rights. The rights of Trans individuals are fully specified in this Act that includes the right of residency, which provides that every transgender individual has the right to live and be integrated into their community without prejudice. If the transgender person’s parents and siblings cannot care for him, a competent authority will order that he be committed to a rehabilitation institution. This section provides a haven for trans persons. However, the Act mentions trans people’s inheritance rights.³

Trans individuals are not considered coparceners or descendants of their father in a Hindu joint household. They can live with a family, but they are not included in the inheritance procedure. The Act requires numerous revisions and amendments because transgender individuals are Indian citizens who all laws should acknowledge as legal and human status as a third gender. Since society is unwilling to embrace trans persons as respected human beings, discrimination

³ Section 31 (where intestate has left widow and lineal descendants, or widow and kindred only, or widow and nasosdred and Section 50 (pemerl principles relating to testate succession), Indian Succession Act.

continues even when they are recognized as the third gender. The third gender is not mentioned in the Hindu succession laws. It clearly defines who is a Hindu, what a Hindu is made up. The statute established a comprehensive and consistent inheritance system, but it was limited to genders, with no third gender. Transgender people and their right to possess ancestral property are not included in the Act. The Act specifies a man's and a woman's rights to inherit property. Every legislation and law should indeed be revised to take into account the third gender. Every field, including school, corporate positions, politics, marriage, adoption, and inheritance, should have equal rights and chances.

NEED TO REFORM INHERITANCE RIGHTS OF TRANSGENDER PEOPLE: PRESSING PRIORITY.

In general, Indian law recognizes only the binary sexes of male and female, based on a person's sex assigned at birth, including marriage, adoption, inheritance, succession, etc. Due to the lack of acknowledgment of Hijras/Transgender identification under numerous laws, they are denied equal protection and face widespread discrimination.

The majority of property in India is inherited, particularly in rural regions. The inability of transgender people to inherit property is due to three factors:

Only two sexes are defined under inheritance laws: male and female.

Finding a successor is difficult.

Personal laws of a particular religion and society control property inheritance.

The Hindu Succession Act of 1956[7] is a statute that governs Hindu intestate succession. Hindus, Jains, & Sikhs are all subject to it. The Act, but on the other hand, does not indicate transgender people and requires male or female heirs. The majority of Muslim inheritance law, on the other hand, is founded on Quranic ideas or traditions. In India, Muslim property law is not legislated, and all Muslims inherit according to Shariat Law. However, neither the Hindu Succession Act nor the Muslim Property Law emphasizes trans people's rights to obtain property. However, the Christian property rights under the Indian Succession Act, 1925 have a greater reach than the Muslim and Hindu personal laws. Transgender is included as a subject for inheriting ancestral property under Section 44 of the Act.[8] Despite the fact that no such adjustment to the current legislation has been made, it remains the lone progressive move done

by the Indian legislative and society.⁴

In 2005, Ajay Mafatlal pursued sex reassignment surgery to become a male to receive an equal share of the land under Hindu inheritance law. This incident prompted a debate in India over whether transgender individuals should be granted institutional legitimacy. As a result, for the first time in 2011, the national census allowed respondents to choose 'others' as their gender designation.

LOOPHOLES IN THE 2019 BILL

Following a landmark ruling in 2014 that paved the way for transgender people's rights to be enshrined in law, the Supreme Court directed both the state and federal governments to grant legal recognition to trans individuals, recognize issues of social stigmatization, and provide social welfare schemes for them. In 2016, the Indian Parliament passed a bill to protect the rights of India's transgender community. After the 2016 bill expired, the Transgender Persons (Protection of Rights) Act, 2019, was presented to replace it. Even after several modifications, the 2019 Bill, like existing Indian laws, views gender identification as binary rather than a spectrum. When it concerns the liberties of transgender people in India, there is a considerable gap between how the law wants to achieve and what is done. The fact that transgender people's right to marry appears to be the sole means, other than wardship succession, to construct the foundation for obtaining successorship and inheritance benefits is discriminatory toward the entire community. Sadly, even though the entitlement to marriage is widely regarded as a fundamental right, Hindu, as well as Muslim personal laws, require transgender people to play the role of 'bridegroom' or 'bride,' i.e., to relate to a gender identity with which they do not identify. In good enough condition to have a legally acceptable marriage, deprive them of this fundamental right.

SUGGESTIONS

Despite significant progress, many notable scholars believe that this iterative change is a long-term process that has begun but is still ongoing. The Indian government has dedicated a

⁴⁴⁴ Siddharth Narrain, "Crystallising Queer Politics Nar Foundation Case and its implications for India's Transgender Communities" (2009) 2 NUIS L Rev 455, Paul Horton, Helle Rydstrøm, and Maria Tonini, "Contesting heteronormativity. The fight for lesbian, gay, bisexual and transgender recognition in India and Vietnam (2015) 17(8) Culture, Health & Sexuality 3053; Jennifer Ung Loh, "Transgender gender rights and the tools of the indian state" (2018) 119(1) Feminist Review 19.

Sushant Sahastrabudde and others, "Sexually transmitted infections and risk behaviours among transgender persons (Hijras) of Pune, India" (2012) 59(1) JAIDS journal of Acquired Immune Deficiency Syndromes 72.

nationwide internet portal to the transgender population in India, which will be used for a⁵“simplified identification and certification process” and unique residences to uplift and preserve the community. Living in the twenty-first century, India has undoubtedly made progress, and as the saying goes, “slow development is preferable to no progress.”

When we look around the world, we can come across certain countries that have focused on the inheritance rights of transgender people. Some of India’s neighboring countries, such as Bangladesh and Pakistan, have formulated laws for protecting the rights of property of trans people.

The Bangladesh state chose in November 2020 to draught laws following Islamic Sharia law to protect transgender people’s property rights. Transgender people are currently prohibited from inheriting from their relatives’ estates. In 2013, the government granted 1.5 million transgender people in the country to identify as a different gender. However, the Bill to give them inheritance rights has yet to be introduced in Parliament, but it is expected to pass the legislative body without difficulty once debated.

Whereas, The Transgender Persons (Protection of Rights) Act [9] was enacted by Pakistan’s Parliament on May 8, 2018, allowing residents to self-identify as males, females, or a mix of both genders. In addition to the recognized fundamental rights, Pakistani law allows Trans genders the option to inherit, which is often challenged under some interpretations of Islamic law and the right to property, schooling, and health.

Transgender people encounter various issues, including social marginalization, prejudice, a lack of educational opportunities, and unemployment. According to Article 1 of the Universal Declaration of Human Rights (UDHR), all human beings are born and equal in dignity and rights.

The International Covenants on Civil and Political Rights (ICCPR) recognize that legal rights

⁵Soum Dey, "Being A Koth An Ethnographic Interrogation with A Male Transgender in Kolkata, India (2013) 11(6) 105k Journal of Humanities and Social Science 5.

Prohibition against discrimination), Transgender Persons (Protection of Rights) Act. 40 of 2019

Aniruddha Dutta, "An epistemology of cofilusion: Hijras, kothis and the historical (dis) continuity of gender/sexual identities in eastern India" (2012) 24(1)

Chapter 2 (Eunuchs), Criminal Tribes Act, 27 of 1871

Kunjana Mittal and Seema Garg, "Transgender in India: New developments and enactments" (2015) 2(11) International journal of Multidisciplinary Research and Development 402

of any citizen should be denied. The Yogyakarta Principles on the Application of International Human Rights Laws acknowledge that transgender people have the right to education, work, and property, among other things. Guideline 3A of the Yogyakarta Principles allows states to grant transgender people succession rights, including the right to acquire property through inheritance, without discriminating based on sexual orientation.[10]

Besides inheritance laws that do not include transgender people, the federal property rights regime also poses several difficulties. Transgender people may lack documents, be unable to marry, or verify adoption, making it challenging to identify successors. These are obstacles in and of themselves, but they also impact transgender people's inheritance rights by denying them the protections that citizens enjoy.

In *Ram Krishna Dalmia v Justice SR Tendolkar* [11] Das CJ argued on behalf of the Court that even a single person could form a class and be entitled to constitutional protection. 166 The notion that the law can be understood to protect transgender people's inheritance rights is significant. However, they should be given more protection as long as they cannot exercise their rights and confront specific problems. As we've seen, inheritance rules are founded on a binary gender concept. They are at war with the culture they govern because they do not envision transgender people or perhaps a transformation in gender identity. Furthermore, successors are frequently challenging to locate. The legislation is unlikely to develop a comprehensive inventory of gender identities. This is particularly true given the changing nature of gender. As a result, removing sexuality from the law may be the inevitable next step. Gender-neutral legislation that ensures that everyone has the same rights would limit the extent of who could be excluded from protection.

CONCLUSION

Transgender rights are a big and complicated topic in which only the legislature may intervene by altering legislative statutes to reflect new information. The regulations are based on binary gender identity, which excludes transgender people. Because their gender identity is not legally recognized, they cannot marry or adopt a kid due to the current state of their rights. Transgender people may lack documents, be unable to marry, or verify adoption, making successors challenging to find. This strategy is faulty since it jeopardizes inheritance rights. Contemporary international and local understanding has evolved to acknowledge the rights of every citizen, regardless of gender. To respond to such knowledge, Indian legislation must be amended.

As a result, the Ministry of Social Justice and Empowerment should study to develop appropriate transgender programs and interventions throughout the country.

Hence, it has become the need of the hour to look into the rights of the Trans community, including the need to bring reforms in the property inheritance rights of Transgender people.

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