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Gender Equality in Succession Laws: Hindu Succession Act 1956

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ABSTRACT

Succession laws determine how property is passed down through generations playing a pivotal role in shaping socio-economic hierarchies and reinforcing—or challenging—existing social norms. Despite that, they have long mirrored patriarchal structures, often marginalizing women and entirely excluding transgender individuals which is profoundly problematic as a fair and inclusive inheritance law can promote social justice and gender equality, while a biased one can perpetuate discrimination and inequality. The Hindu Succession Act, 1956 was a significant step toward codifying inheritance rights for Hindus, but it initially favoured male heirs, restricting women's rights to some extent. Over time, legal reforms, particularly the 2005 amendment, have attempted to bridge these gaps by granting daughters equal coparcenary rights. However, data and judicial interpretation reveal that the practical implementation of these rights remains inconsistent, especially in rural areas where agricultural land—often excluded from the Act's purview—is a primary asset.

The paper also explores the largely unaddressed issue of inheritance rights for transgender individuals, who remain legally and socially invisible within existing succession laws. Despite progressive judicial recognition in cases like NALSA v. Union of India, the Hindu Succession Act and other personal laws continue to operate within a binary gender framework, leaving transgender persons in a legal vacuum vulnerable to exclusion and discrimination.

Through an analysis of legal provisions and case laws, this paper highlights the progress made and the challenges that remain in ensuring truly inclusive and equitable succession laws. It argues that while the Hindu Succession Act has evolved, further reforms and judicial interpretations are needed to guarantee equal inheritance rights for all genders, ensuring that legal protections extend beyond just men and women to include the transgender community as well.

Keywords: Succession, gender equality, societal barriers, transgender, legal gaps

I. INTRODUCTION

Inheritance laws are crucial as they determine how property and assets are passed down

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through generations, significantly influencing the socio-economic structure of a society. These laws not only ensure the orderly transfer of wealth but also reflect and reinforce societal values and norms. A fair and inclusive inheritance law can promote social justice and gender equality, while a biased one can perpetuate discrimination and inequality. In the context of succession, a legal framework that ensures fairness and inclusivity can contribute to social justice and gender equality. However, historically, inheritance laws have often been structured in ways that perpetuate discrimination, particularly against women.

However, the Hindu Succession Act of 1956 was a landmark legislation aimed at codifying the inheritance rights of Hindus in India. Despite its progressive intent, the act was marred by gender biases. It favoured male heirs, significantly limiting the rights of women. Traditionally, inheritance customs in India were patriarchal, with property predominantly passing through the male lineage. The act sought to formalize these customs into a legal framework, inadvertently perpetuating existing gender inequalities. Daughters and widows were often left with minimal or no share of the property, reflecting deep-seated societal norms that devalued women's roles².

The 2005 amendment to the Hindu Succession Act marked a significant milestone in the quest for gender equality in inheritance laws. This amendment granted daughters equal coparcenary rights, allowing them to inherit property in the same manner as sons. This change aimed to rectify the gender disparity that had long existed in inheritance laws. However, despite this progressive legal reform, challenges in its implementation persist. Widows often face familial and societal resistance that hampers their ability to assert their inheritance rights. Married daughters encounter complexities due to perceptions of their loyalty to their husband's family, complicating their claims. Social attitudes and family dynamics continue to act as barriers to women asserting their inheritance rights³.

Transgender individuals face an even more precarious situation. The absence of explicit legal recognition of their inheritance rights leaves them vulnerable to exclusion and discrimination. Unlike women, whose rights have been increasingly acknowledged through legal reforms, transgender individuals remain largely invisible in the legal landscape. This lack of recognition leaves them susceptible to exclusion in inheritance matters, highlighting a significant gap in the existing legal framework.

This research paper explores the evolution of gender equality in succession laws, with a

² Basu and Srimati, "She Comes to Take Her Rights: Indian Women, Property, and Propriety", SUNY Press, 2007.

³ Saxena and Poonam Pradhan, "Succession Laws and Gender Justice in India", Oxford University Press, 2012.

particular focus on the Hindu Succession Act and its amendments. It examines how historical norms, legislative changes, and judicial interpretations have shaped the current legal landscape. By analysing legal provisions, key case laws, and real-life implications, the paper highlights the progress made and the ongoing challenges in achieving truly inclusive and equitable succession laws.

While the Hindu Succession Act has made significant strides towards gender equality, there remains a pressing need for further legal reforms and judicial interpretations. A more comprehensive approach to inheritance laws is essential, recognizing and protecting the rights of all individuals, regardless of gender. This includes extending legal protections beyond just men and women to include the transgender community, ensuring that all individuals can exercise their inheritance rights equally.

Ultimately, this paper aims to shed light on the gaps in the law and advocate for a more just and inclusive inheritance framework in India. By addressing existing disparities and ensuring equal rights for all genders, the Hindu Succession Act can evolve into a legal instrument that truly embodies the principles of equality and justice.

II. GENDER BIAS IN HINDU PROPERTY SUCCESSION PRIOR TO THE HINDU SUCCESSION ACT, 1956

The evolution of property rights among Hindus prior to the codification of the Hindu Succession Act (HSA), 1956, was shaped by deeply entrenched patriarchal norms rooted in religious texts such as the *Manusmriti* and the *Dharmashastras*. These texts conceptualized women as dependents, subordinate to male authority, and systematically excluded them from property ownership. Ancient Hindu law significantly restricted women's sexual and economic freedom. Manu, the first lawgiver, explicitly stated “*A women must be dependent upon her father in childhood, upon her husband in youth and upon her sons in old age. She should never be free*”. Women were consistently regarded as inferior to men, not only within their households and society but also in terms of rights and privileges. Under the *Mitakshara* school of law, which governed most Hindu communities, ancestral property was held jointly by a coparcenary comprising male descendants up to four generations. Women were denied coparcenary status, rendering them incapable of demanding partition or inheriting ancestral property. Their rights were confined to *stridhan*—movable gifts like jewellery or clothing received at marriage—which they held as absolute owners but lacked control over immovable

property⁴. Even as widows, their claims were precarious. One of the most significant Smritis of the Vedic period is the Manusmriti, which outlines the laws prevailing during that time. According to Manusmriti (IX 106), upon the birth of a first son, a man is freed from his debt to his ancestors, making the son entitled to inherit the entire estate⁵. This establishes a link between ancestral worship and inheritance law. A son was considered responsible for offering oblations to the spirits of deceased ancestors, ensuring their salvation, which justified his right to inherit their estate. The duty of ancestral worship extended to the son, grandson, and great-grandson. In the absence of a son, a brother's son was regarded as a suitable substitute for performing these rituals⁶.

Daughters and female descendants were largely excluded from property rights because they were not responsible for offering funeral oblations. Women generally had only the right to maintenance within the family, without inheritance or ownership rights⁷. Like Manu, Narada and other Smritis also imposed restrictions on women's legal rights, particularly in matters of property and inheritance.

The *Dayabhaga* school, prevalent in Bengal and Assam, granted widows a limited right to their husband's estate, but only as a life interest, contingent on their chastity and moral conduct⁸.

Colonial rule introduced partial reforms but failed to dismantle systemic gender bias. The Hindu Women's Rights to Property Act, 1937, marked a tentative shift by granting widows a share in their husband's separate property, though not in ancestral holdings. However, daughters remained excluded, and widows' rights were restricted to a "limited estate," preventing them from alienating property (Section 3, Hindu Women's Rights to Property Act, 1937). The colonial administration's reluctance to interfere in "personal laws" perpetuated regional disparities; for instance, matrilineal communities in Kerala recognized women's inheritance rights, but these were exceptions rather than norms⁹. By the mid-20th century, the need for codification became evident as fragmented customs created legal confusion, particularly for women whose rights varied by region and community.

⁴ Agarwal, B, "A Field of One's Own: Gender and Land Rights in South Asia". Cambridge: Cambridge University Press, 1994.

⁵ Manu Chapter IX verse 106: 'Immediately on the birth of his first son, a man is freed from the debt to the manes. That son therefore is worthy to receive the whole estate'.

⁶ Manu Chapter IX, verse 137.

⁷ Mandagadde Rama Jois, "Legal and Constitutional History of India: Ancient legal", judicial Book, Chapter 14.

⁸ Parashar, "Women and Family Law Reform in India: Uniform Civil Code and Gender Equality". Sage Publications, 1992.

⁹ Supra n. 4.

III. THE HINDU SUCCESSION ACT, 1956: A PROGRESSIVE YET INCOMPLETE REFORM

The Hindu Succession Act of 1956 was enacted to bring uniformity to Hindu inheritance laws across India. A major reform under the Act was the abolition of the concept of a "limited estate" for women. Section 14 of the Act converted a woman's limited interest in property into absolute ownership, allowing her to sell, gift, or will the property as she wished. This was a crucial step in empowering widows, who had earlier been mere custodians of property without full control over its disposal. The Act also introduced a structured classification of heirs, ensuring a more systematic approach to inheritance. It categorized heirs into different classes, with daughters, widows, and mothers included as Class I heirs¹⁰. This meant that if a man died intestate (without a will), his son and daughter would inherit equally—a significant departure from earlier laws, which prioritized male heirs. However, this equality applied only to the father's self-acquired property, as daughters were still excluded from coparcenary rights in joint family property.

However, the Act brought modifications to the coparcenary nature of property. Under the old Shastric law, coparceners held property as joint tenants, meaning there was no automatic division of the estate. With the introduction of the Act, coparceners began holding property as tenants-in-common rather than as joint tenants, altering the traditional concept of undivided ownership¹¹.

Section 6 of the Hindu Succession Act, 1956, recognized two ways in which a male Hindu's undivided coparcenary interest could be inherited—by survivorship or by intestate succession. Under traditional Mitakshara law, property passed automatically to surviving coparceners through survivorship, but the Act introduced an exception. If the deceased left behind a female Class I heir (such as a widow or daughter) or a male heir claiming through her, his share would devolve through intestate succession under Section 8, allowing female heirs an equal right to inheritance¹².

Once the joint family property was distributed under intestate succession, it ceased to be joint family property. Those who inherited it would hold it as tenants-in-common rather than as joint tenants, meaning each heir had a separate, distinct share. However, if a male coparcener inherited property through survivorship, it would still retain its character as coparcenary

¹⁰ Section 8 of Hindu Succession Act, 1956.

¹¹ Section 19(b) of Hindu Succession Act, 1956.

¹² Proviso to Section 6 of Hindu Succession Act, 1956.

property in his hands¹³.

Another significant provision of the Act was the enhancement of widows' rights. Section 9 granted widows equal inheritance rights alongside sons concerning their husband's separate property. However, this did not extend to ancestral property governed by the Mitakshara coparcenary system, where sons remained the primary inheritors. Despite this limitation, the recognition of widows as rightful heirs was a progressive move towards gender justice in inheritance laws.

While the Hindu Succession Act of 1956 was a landmark in reforming property rights, it did not fully establish gender equality. The traditional joint family system continued to favour male members, and daughters were still deprived of coparcenary rights in ancestral property.

IV. DAUGHTERS AS COPARCENERS: THE 2005 AMENDMENT AND THE EVOLUTION OF HINDU SUCCESSION LAWS

The 2005 amendment to the Hindu Succession Act (HSA), 1956, represents a landmark shift in the trajectory of gender equality within Hindu succession laws. By amending Section 6, the legislation granted daughters equal coparcenary rights in ancestral property, placing them on par with sons and dismantling centuries-old patriarchal norms that had systematically excluded women from inheriting family wealth. This amendment was a response to longstanding criticisms of the HSA, which, despite its progressive intent in 1956, had perpetuated gender disparities by denying daughters coparcenary status and limiting their inheritance rights. However, the amendment's implementation and interpretation have been fraught with legal ambiguities and conflicting judicial opinions, particularly regarding its retrospective or prospective application.

The 2005 amendment introduced two transformative changes to Section 6 of the HSA. First, it recognized daughters as coparceners by birth, granting them the same rights and liabilities as sons in ancestral property. This meant that daughters could now demand partition, claim a share in coparcenary property, and even act as Karta (manager) of the joint family. Second, the amendment abolished the male-exclusive nature of the Mitakshara coparcenary, ensuring that daughters could inherit property even if the father had died before the amendment came into force. These changes were aimed at addressing the systemic exclusion of women from property rights and aligning Hindu succession laws with the constitutional mandate of gender equality under Articles 14 and 15 of the Indian Constitution. However, the amendment's language left room for interpretation, particularly regarding whether it applied retrospectively

¹³ M.Krishnamoorthy vs K.Pondeepankar, (2017) 3 CTC 170.

or prospectively, leading to divergent judicial opinions and legal uncertainty.

The Bombay High Court's decision in *Vaishali Satish Ganorkar & Anr. v. Satish Kesharao Ganorkar & Ors*¹⁴ initially created confusion by holding that the amendment applied only prospectively to daughters born after September 9, 2005. This interpretation significantly limited the amendment's reach, excluding daughters born before 2005 from claiming coparcenary rights. However, subsequent judgments provided more nuanced interpretations. In *Pushpalatha N. V. V. Padma*¹⁵, the Supreme Court clarified that the amendment was retroactive, meaning it applied to daughters born before 2005 but whose rights crystallized on September 9, 2005. The court emphasized that the right to coparcenary property is conferred from birth, aligning with the principle that daughters and sons have equal rights by virtue of their birth. This interpretation sought to reconcile the amendment's intent with practical considerations, ensuring that daughters were not unfairly excluded due to arbitrary timelines.

The Bombay High Court's ruling in *Shri Badrinarayan Shankar Bhandari & Ors. v. Omprakash Shankar Bhandari*¹⁶ further elaborated on the retroactive nature of the amendment. The court held that the amendment was neither purely prospective nor retrospective but "retroactive," meaning it operated forward from September 9, 2005, based on the daughter's birth, which occurred before the amendment. This interpretation ensured that all daughters, regardless of their birth date, could claim coparcenary rights as long as they were alive on September 9, 2005. The court reasoned that the amendment's purpose was to rectify historical injustices and promote gender equality, and limiting its application to daughters born after 2005 would undermine this objective. This judgment highlighted the judiciary's role in interpreting legislative intent and ensuring that legal reforms achieve their intended social impact.

The Supreme Court's landmark decision in *Vineeta Sharma v. Rakesh Sharma*¹⁷ resolved much of the ambiguity surrounding the 2005 amendment. The court unequivocally held that the amendment was retroactive, applying to all daughters born before or after 2005, provided they were alive on September 9, 2005. Importantly, the court ruled that the father's death before the amendment did not obstruct a daughter's right to claim coparcenary property. This judgment overruled earlier decisions in *Prakash v. Phulavati*¹⁸ and *Mangammal v. T.B. Raju*¹⁹, which had held that the amendment applied only if the father was alive on September 9, 2005.

¹⁴ AIR 2012 Bom101.

¹⁵ AIR 2010 Kant 124.

¹⁶ AIR 2014 Bom 151.

¹⁷ [2020] 10 S.C.R. 135.

¹⁸ 2015 AIR SCW 6160.

¹⁹ [2018] 6 S.C.R. 776.

The court emphasized that coparcenary rights are conferred by birth, and the amendment merely recognized this inherent right, ensuring that daughters could not be excluded based on arbitrary timelines. The court also clarified that the amendment did not result in the deemed partition of the coparcenary, as this would undermine the continuity of the joint family system. Instead, it preserved the spirit of the joint Hindu family while ensuring that daughters could exercise their rights without disrupting the existing framework.

Despite these progressive judicial interpretations, the 2005 amendment's impact on gender equality has been uneven.

V. FROM LEGAL REFORM TO REAL CHANGE: THE 2005 AMENDMENT AND WOMEN'S LANDOWNERSHIP IN INDIA

The 2005 amendment to the Hindu Succession Act (HSA) was a landmark step toward gender equality, granting daughters equal coparcenary rights in ancestral property. However, its effectiveness in practice has been limited by significant challenges in implementation, particularly due to societal resistance, legal ambiguities, and the exclusion of agricultural land from its purview. Despite the amendment's progressive intent, data from the All-India Debt and Investment Survey (AIDIS) of 2019 reveals stark disparities in female landownership, highlighting the gap between legal rights and their practical realization. For instance, only 18% of rural households and 26% of urban households had at least one female owning land in 2018. When it comes to agricultural land, the figures are even lower, with just 11% of the total land area in rural households owned by women²⁰. These statistics underscore the persistent gender imbalance in property ownership, even 15 years after the amendment was enacted.

One of the major barriers to the amendment's effectiveness is the exclusion of agricultural land from its scope. While the HSA applies to ancestral property, agricultural land is governed by state laws, and many states have been reluctant to align their policies with the 2005 amendment. States like Uttar Pradesh, Delhi, Haryana, Punjab, and Himachal Pradesh continue to prioritize male heirs in agricultural land inheritance, often relegating women's claims to secondary status²¹. This has created a legal loophole, as women in these states are denied equal rights to agricultural land, which constitutes a significant portion of family wealth, especially in rural areas. For example, in states like Bihar and Jharkhand, the proportion of households with at least one female owning agricultural land has declined over

²⁰ All India Debt and Investment Survey (AIDIS), 2019. National Sample Survey Organisation (NSSO).

²¹ Sircar, A, "Women's Right to Agricultural Land: Removing Legal Barriers for Achieving Gender Equality". Oxfam India Policy Brief, No. 19, 2016.

the years, dropping from 19% in 2014 to 9% in 2018 in Bihar, and from 11% to 9% in Jharkhand during the same period²². This trend reflects the systemic barriers women face in asserting their rights, even when legal frameworks exist to protect them.

Another critical issue is the low awareness and enforcement of the amendment. Many women, particularly in rural areas, are unaware of their legal rights under the 2005 amendment or lack the resources to enforce them. The AIDIS data shows that only 17% of landowners in rural households are women, and this figure drops to 11% when considering the proportion of female landowners relative to the total female population. Even in urban areas, where awareness levels are slightly higher, only 24% of landowners are women²³. This disparity is not just limited to landownership but also extends to the value of land owned by women, which remains significantly lower than that owned by men. These figures highlight the economic and social barriers women face in claiming their inheritance, as patriarchal norms and family pressures often discourage them from asserting their rights.

The legal and procedural complexities of enforcing inheritance rights further exacerbate the problem. While the amendment grants daughters' equal coparcenary rights, its retroactive application has led to disputes over property that was partitioned or alienated before 2005. Women often face resistance from male relatives when attempting to reopen partition proceedings or claim their share of ancestral property. Additionally, the lack of institutional support and gender-sensitive dispute resolution mechanisms means that women are often forced to rely on informal family negotiations, which rarely result in equitable outcomes. For instance, in states like Andhra Pradesh and Telangana, the proportion of households with female landowners has declined significantly, from 29% to 25% in Andhra Pradesh and from 44% to 26% in Telangana between 2014 and 2018²⁴. This decline reflects the challenges women face in navigating legal systems and asserting their rights in the face of societal resistance.

Despite these challenges, there is evidence to suggest that prolonged exposure to reform laws can have a positive impact on female landownership. A study using the Propensity Score Matching technique found that states with prolonged exposure to reform laws, such as the HSA Amendment Act (HSAA) 2005, exhibited a higher probability of female landownership

²² Agarwal, B. et. al. "How Many and Which Women Own Land in India? Inter-gender and Intra-Gender Gaps", *The Journal of Development Studies*, 2021 DOI: 10.1080/00220388.2021.1887478.

²³ *Supra* n. 20.

²⁴ Biswas, S., & Sarkhel, P., "Duration of exposure to inheritance law in India: Examining the heterogeneous effects on empowerment", 2020.

compared to states without such reforms prior to 2005²⁵. This indicates that increased exposure to progressive inheritance laws correlates with a greater likelihood of female landownership, emphasizing the potential benefits of effective implementation and widespread awareness of the HSAA-2005. The findings underscore the importance of not only enacting gender-just laws but also ensuring their consistent application and dissemination across all segments of society.

While the 2005 amendment to the HSA represents a significant step toward gender equality, its effectiveness has been undermined by systemic barriers, including the exclusion of agricultural land, low awareness, and enforcement challenges. The data from AIDIS and other studies reveal persistent gender disparities in landownership, highlighting the need for further reforms and broader societal change. Addressing these challenges requires not only aligning state laws with the HSA but also empowering women through awareness campaigns, legal aid, and economic support. Only then can the promise of gender equality in inheritance rights be fully realized.

VI. BEYOND THE BINARY: ENSURING INHERITANCE RIGHTS FOR TRANSGENDER PERSONS IN INDIA'S SUCCESSION LAWS

Over the past decade, India has made significant strides in recognizing the rights of transgender persons, both through public policy and judicial decisions. The 2011 national census allowed individuals to identify as "others," with nearly half a million people choosing this option, marking a step toward inclusivity. In 2014, the Supreme Court of India, in the landmark *National Legal Services Authority (NALSA) v. Union of India*²⁶ case, recognized transgender persons as a third gender, affirming their constitutional rights to healthcare, employment, and property ownership. Despite these advancements, transgender individuals continue to face systemic discrimination, particularly in accessing inheritance rights. This is largely due to inheritance laws that are rooted in a binary understanding of gender, leaving transgender persons in a legal grey area. The 2019 Transgender Persons (Protection of Rights) Act, while progressive in some aspects, remains silent on inheritance rights, further exacerbating the challenges faced by this marginalized community²⁷.

The exclusion of transgender persons from India's inheritance laws stems from the binary framework of existing succession laws, such as the Hindu Succession Act, 1956, which do not

²⁵ Rakesh Kumar Mahato et.al., "Gender Inequality in Land Ownership in India: Evidence from National Sample Survey" 2021.

²⁶ (2014) 5 SCC 438.

²⁷ - Dutta, A, "Contradictions and Challenges: Understanding the Rights of Transgender Persons in India". *Indian Journal of Law and Society*, 5(2), 45–60, 2014.

account for non-binary gender identities. This creates a situation where transgender individuals are forced to conform to binary gender norms to claim their rights, effectively erasing their identities. For example, inheritance laws require proof of marriage, adoption, or familial relationships, which are often difficult for transgender persons to establish due to societal stigma and lack of documentation. According to a 2019 report, only 8% of transgender persons have an Aadhar card or voter ID that reflects their gender identity, making it nearly impossible for them to assert their rights as legal heirs.

Societal stigma and discrimination further compound these challenges. Transgender persons often face rejection from their families, leaving them without the support needed to navigate complex legal processes. In some cases, they are accused of changing their gender identity for financial gain, as seen in the case of Ajay Mafatlal in 2005, who was accused of undergoing sex reassignment surgery to claim inheritance benefits²⁸. Such biases not only discourage transgender individuals from asserting their rights but also highlight the deep-seated misconceptions that perpetuate their marginalization.

The lack of legal recognition and societal acceptance has severe economic consequences for transgender persons. Immovable property is the largest asset class in India²⁹, and access to property is crucial for social and economic empowerment. However, transgender persons, who often face low incomes, limited savings, and housing insecurity, are systematically excluded from inheriting property. This exclusion perpetuates cycles of poverty and marginalization, denying them the opportunity to improve their social standing.

To address these challenges, India's succession laws must be reformed to explicitly recognize the rights of transgender persons. This includes amending personal laws, such as the Hindu Succession Act, to account for non-binary gender identities. Additionally, the government should introduce measures to ensure that transgender individuals have access to official documentation that reflects their gender identity, making it easier for them to assert their rights as legal heirs. By addressing these gaps, India can move closer to achieving true gender equality in succession laws, ensuring that no one is left behind in the pursuit of justice and equity.

²⁸ The accusation was levelled by his brother (Atulya Mafatlal) based on the then differential inheritance rights of brothers and sisters. PTI, Sex change not for property: Mafatlal (Economic Times 8 November 2005).

²⁹ Lahoti, Suchitra et. al, "Not in her name: Women's Property Ownership in India" (2016) 51(5) Economic and Political Weekly 17.

VII. INHERITANCE RIGHTS OF TRANSGENDER PERSONS: LEGAL GAPS AND STATE-LEVEL INITIATIVES IN INDIA

While the Transgender Persons (Protection of Rights) Act, 2019, is a significant step toward recognizing transgender rights, it is not the only law governing their rights in India. Under the Seventh Schedule of the Constitution, subjects like property transfer are divided between the Central and State governments. Property transfer, including inheritance, is a concurrent subject, meaning both Central and State governments can legislate on it. However, agricultural land is exclusively under State jurisdiction, allowing States to enact specific laws. Following the Supreme Court's landmark decision in *NALSA v. Union of India*, several States took measures to secure the rights of transgender persons. For instance, Uttar Pradesh amended its Land Revenue Code in 2020 to include transgender persons in inheritance provisions for agricultural land, ensuring they can acquire property through inheritance³⁰. Similarly, Madhya Pradesh released a transgender policy in 2021, though it primarily focuses on civil rights and does not explicitly address inheritance³¹. Other States like Assam, Karnataka, Kerala, Odisha, and Tamil Nadu have also introduced transgender policies, but these are non-binding and largely silent on property rights, including inheritance.

Despite these efforts, the legal framework remains inadequate. Most State policies do not address how transgender persons should be treated under existing laws, leaving them vulnerable to exclusion. For example, while Uttar Pradesh's amendments are progressive, they are limited to agricultural land and do not cover other forms of property. Similarly, Madhya Pradesh's policy, though well-intentioned, fails to address inheritance rights, focusing instead on the ability to rent property. This lack of uniformity and binding legislation highlights the need for comprehensive reforms to ensure transgender persons can exercise their inheritance rights across all types of property.

The Hindu Succession Act, 1956, which governs inheritance for Hindus, Sikhs, Buddhists, and Jains, is a prime example of how laws are rooted in a binary understanding of gender. The Act defines heirs as either male or female, with no provision for transgender persons. Terms like "agnate" (related through males) and "cognate" (related but not wholly through males) are based on binary gender norms, excluding those who do not conform to traditional male or female identities. For instance, if a transgender person identifies as male after undergoing sex reassignment surgery, it is unclear whether they would inherit property under Section 8

³⁰ https://www.nipfp.org.in/media/medialibrary/2021/08/WP_350_2021.pdf.

³¹ <https://clpr.org.in/blog/realizing-trans-rights-in-india-property-ownership-and-inclusion/>.

(governing male intestates) or Section 15 (governing female intestates). This ambiguity creates arbitrary outcomes, as the inheritance rights of transgender persons depend on how their gender identity is recognized, leading to potential disputes and exclusion.

The exclusion of transgender persons from inheritance laws has far-reaching consequences. For example, if a transgender person dies intestate without children, their property may pass to their mother if they are recognized as male, or to their deceased spouse's heirs if they are recognized as female. This inconsistency not only undermines the rights of transgender persons but also perpetuates cycles of marginalization and poverty. Moreover, the lack of legal recognition often forces transgender individuals to conform to binary gender norms to claim their rights, erasing their identities and reinforcing societal stigma.

India's legal system has a long history of gendered laws, evident in statutes like the Hindu Succession Act and the Hindu Marriage Act. These laws, while progressive in some aspects, are inherently biased, as they are drafted with binary gender terms and do not account for non-binary identities. Even the General Clauses Act, which states that masculine terms include females, does not extend this inclusion to transgender persons. This exclusion is particularly problematic in inheritance laws, where gendered provisions create confusion and discrimination. For instance, the 174th and 207th Reports of the Law Commission of India, as well as the Consultation Paper on Reform of Family Law, have highlighted the challenges posed by gendered inheritance laws, particularly in relation to agricultural property. Despite these recommendations, little has been done to address the exclusion of transgender persons from inheritance rights³².

While States like Uttar Pradesh and Madhya Pradesh have taken steps to recognize the rights of transgender persons, much remains to be done to ensure equitable inheritance rights for all genders. The Hindu Succession Act and other personal laws must be amended to explicitly include transgender persons, ensuring that their rights are not contingent on conforming to binary gender norms. Additionally, States should introduce binding legislation to address the unique challenges faced by transgender individuals, such as difficulties in proving identity and familial relationships. By addressing these gaps, India can move closer to achieving true gender equality in succession laws, ensuring that no one is left behind in the pursuit of justice and equity.

³² Deo, N., & Dubey, A., "Gender and Law in India: An Interdisciplinary Perspective". Oxford University Press, 2019.

VIII. THE ROLE OF INDIAN COURTS IN LEGAL RECOGNITION

The position of Indian courts on transgender rights has been shaped by a range of cases, particularly those involving inheritance, gendered laws, and identification documents. By examining judgments from 1950 onwards, a pattern emerges: while courts have made progressive strides in some areas, significant gaps and inconsistencies remain, especially concerning inheritance rights. This analysis draws on 129 cases, including 8 Supreme Court judgments, 116 High Court rulings, and 5 decisions from other courts and tribunals. These cases broadly fall into four categories: (1) landmark institutional cases like *NALSA v Union of India* and *Navtej Singh Johar v Union of India*, (2) specific disputes over transgender inheritance rights, (3) interpretations of gendered laws, and (4) claims related to identification documents. The focus here is on the latter three categories, which reveal both the progress and limitations of judicial interventions in transgender rights.

Inheritance rights for transgender individuals have rarely been addressed by Indian courts, with only two significant cases standing out. The first, *Illyas v Badshah Alias Kamla*³³, involved a dispute over the property of Munilal, a transgender guru. The appellant claimed that Munilal had executed a Will in his favour, while the respondent, who identified as Munilal's chela (disciple), argued that the property should pass to him as per community customs. The respondent also contended that property inherited from a guru could not be transferred outside the transgender community. The Madhya Pradesh High Court ruled that the Will in favour of the appellant was forged. However, it also made an important observation: even if the Will were valid, Munilal, being Muslim, could not bequeath more than one-third of the property due to Islamic inheritance laws. The remaining two-thirds would automatically go to the chela as per customary practices. This case highlighted the tension between formal legal frameworks and community-specific customs, particularly in the context of transgender inheritance rights.

The second case, *Sweety v General Public*³⁴, presented an inverse scenario. Here, the chela had passed away, and the guru sought to inherit the contested property. The lower court denied the claim, stating that the Hindu Succession Act did not recognize such a relationship. However, the Himachal Pradesh High Court overturned this decision, ruling that the guru should inherit the property as per customary practices. The court also noted that since the religion of the parties was not on record, they should not be bound by the Hindu Succession Act, which could restrict their rights. This case underscored the judiciary's willingness to

³³ AIR 1990 MADHYA PRADESH 334.

³⁴ AIR 2016 HP 148.

recognize customary practices in the absence of clear legal provisions, but it also revealed the lack of a consistent legal framework for transgender inheritance rights.

Beyond inheritance, courts have addressed how gendered laws apply to transgender individuals, often with mixed results. In *Arun Kumar v Inspector General of Registration*³⁵, the Madras High Court ruled that the term "bride" in the Hindu Marriage Act includes transwomen. The court held that excluding transwomen from this definition would violate their fundamental rights. Similarly, the Madras High Court has consistently allowed transwomen to apply for police constable posts reserved for women, a precedent later adopted by the Rajasthan High Court³⁶.

However, this inclusive approach is not uniform. In *Sumita Kumari v State of West Bengal*³⁷, the Calcutta High Court ruled that transwomen could not apply for Asha posts specifically reserved for women. This inconsistency reveals a broader issue: while courts often interpret gendered terms to include transgender individuals, they do so at their discretion, leaving room for subjective judgments. This forces transgender persons to conform to binary gender norms to seek legal protection, which undermines their right to self-identification. Importantly, none of these cases directly address inheritance rights, leaving a significant gap in legal precedent.

Courts have also played a crucial role in ensuring that transgender individuals can obtain identification documents that reflect their gender identity. In one notable case, a petitioner born female but identifying as male sought to change their name and gender on their birth certificate. Despite providing medical and psychological certificates and undergoing surgical procedures, the District Registrar rejected the application. The Karnataka High Court intervened, directing the Registrar to make the requested changes. This case set an important precedent for the recognition of transgender identities in official documents³⁸.

In other instances, courts have directed authorities to allow transgender individuals to take exams under their preferred gender, mandated the inclusion of a third gender on identification forms, and ensured that the lack of ration cards does not hinder their rights. These interventions demonstrate the judiciary's commitment to addressing the practical challenges faced by transgender individuals in their daily lives. However, they also highlight the need for systemic reforms to ensure consistent and widespread implementation of these rulings.

³⁵ W. P. (MD) No. 4125 of 2019.

³⁶ https://clpr.org.in/wp-content/uploads/2024/12/Accessible_Transgender-Rights-Resource-Book-3.pdf

³⁷ W.P. 8911/2015.

³⁸ <https://indianexpress.com/article/explained/explained-law/transgender-change-name-official-documents-9751809/>.

IX. CONCLUSION

The Hindu Succession Act, 1956, and its subsequent amendments, particularly the 2005 reform, have made significant strides toward gender equality in inheritance laws. By granting daughters equal coparcenary rights, the law has attempted to dismantle centuries-old patriarchal norms that excluded women from property ownership. However, despite these legal advancements, challenges persist. Widows and married daughters often face societal resistance and familial pressures that hinder their ability to claim their rightful inheritance. Transgender individuals, on the other hand, remain largely invisible in the legal framework, with no explicit recognition of their inheritance rights, leaving them vulnerable to exclusion and discrimination. The exclusion of agricultural land from the purview of the 2005 amendment further exacerbates gender disparities, particularly in rural areas. While judicial interpretations have sought to clarify ambiguities, the gap between legal rights and their practical realization remains wide. To achieve true gender equality, further reforms are necessary, including the explicit inclusion of transgender persons in inheritance laws, better enforcement mechanisms, and broader societal change to challenge deep-rooted patriarchal attitudes. Only then can India's succession laws truly embody the principles of justice and equality for all genders.

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