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Beyond Binary: Navigating Property Rights for Transgender Individuals across India's Personal Laws

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ABSTRACT

This study focuses at the way property rights and transgender identity interact within the framework of India's many personal laws. Although there have been legal modifications to accommodate transgender people's rights, especially with regard to identity recognition and anti-discrimination laws, the topic of property rights has not received as much attention. This study examines the different personal laws in India that deal with property ownership, succession, and inheritance while taking transsexual identities into account. India's legal system is made up of numerous personal laws that apply to different religious communities, each with unique rules around inheritance and family. Diverse personal laws such as Hindu, Muslim, Christian, and others present a challenging landscape for transgender people looking for legal recognition and safeguarding of their property rights due to their disparate perspectives on succession and property rights. This research attempts to clarify the differences and shortcomings in the existing legal system by thoroughly analysing these laws and how they affect transgender people. When it comes to defending their property rights, transgender people face a variety of obstacles, such as structural hurdles to the legal recognition of their gender identification, widespread prejudice, and societal stigma. Their vulnerability is made worse by the current property laws' lack of clear protections, which marginalises and alienates them in matters of succession and property ownership. Using legal research, case law analysis, and socio-legal perspectives as a starting point, this study aims to clarify the nuances surrounding the relationship between property rights and transgender identity. This study intends to provide light on the obstacles transgender people encounter while trying to exercise their legal rights within the current framework by thoroughly analysing legislation provisions, case law, and socio-legal views. Additionally, it looks for possible reform areas to guarantee more equity and inclusivity in the property sector.

Keywords: transgender, property rights, personal laws, India, inheritance, succession, legal reform.

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I. INTRODUCTION

Recent years have seen a rise in discussion and attention to transgender rights in India, which is indicative of larger efforts throughout the world to acknowledge and celebrate gender variation. Transgender people in India have long fought for legal recognition, social acceptance, and access to fundamental rights. They have been historically marginalised and are frequently the targets of violence and prejudice. Even if governmental initiatives and legal reforms pertaining to transgender rights have made tremendous progress, there are still issues that need to be resolved, especially with regard to property rights.

It is impossible to overestimate the significance of property rights for social and economic empowerment. Individual autonomy and financial security are fundamentally supported by property ownership, which empowers people to express their independence, provide for their families, and engage fully in society. Property rights and access are essential for encouraging social inclusion, economic stability, and upward mobility, all of which are critical for advancing more general goals of human development.

Protecting and recognising property rights is very important to transgender people. Due to their historical exclusion from mainstream cultural structures and economic prospects, transgender people frequently encounter increased obstacles when trying to obtain and purchase property. Their vulnerability to poverty, homelessness, and exploitation is exacerbated by discrimination, social stigma, and legal obstacles that make it difficult for them to obtain houses, land, and other assets.

Furthermore, property rights are intertwined with legal recognition, familial relationships, and healthcare access, among other aspects of transgender identity. Transgender people may experience difficulties with succession rights, inheritance rules, and property disputes, which exacerbates their marginalisation and denial of rights.

In light of this, this study aims to investigate the nuances pertaining to transgender people's property rights in the framework of India's varied personal laws. The goal of this research is to shed light on the difficulties faced by transgender people and identify areas for reform by investigating the institutional hurdles, societal attitudes, and legal framework that shape transgender experiences with property ownership and inheritance.

(A) Methodology

This study's methodology involves a thorough analysis of how India's many personal laws relate to transgender identity and property rights. This comprehensive method includes case studies,

policy analysis, legal analysis, socio-legal research, and ethical issues. Legal study comprises evaluating pertinent statutes and case law, comparing inheritance rules between religious communities, and determining court rulings that affect the property rights of transgender people. To obtain qualitative insights into difficulties and lived experiences, socio-legal research includes focus group discussions, interviews, and literature reviews. Policy analysis assesses recent revisions and finds legal loopholes in the current legislation, while case studies are chosen to highlight important concerns and demonstrate legal principles. Ethical considerations guarantee privacy, anonymity, and awareness of the intersectional nature of the research throughout.

II. OVERVIEW OF INDIA'S PERSONAL LAWS (HINDU, MUSLIM, CHRISTIAN, ETC.)

(A) Hindu Succession Act

The succession rights of Sikhs, Buddhists, Jains, and Hindus are governed by the Hindu Succession Act. It offers comprehensive guidelines for succession. Nonetheless, transgender individuals are not included in the Act's scope. The definition section, which states that heirs may only be male or female individuals, makes this clear. Additionally, it establishes the rights of agnates and cognates using a binary definition of gender.

Sons and daughters are granted inheritance rights under the Act. It does not anticipate gender identity changes or transgender people. In addition, separate sections cover the rules of inheritance for men and women. It specifies the order in which succession through classes of heirs is prioritised and controls the devolution of male intestates' property. In general, the mother of the male intestate and his lineal descendants are considered class I heirs. The father, siblings, siblings' lineal offspring, and siblings of the male intestate's parents are class II heirs. However, the statute also specifies the laws of inheritance for assets owned by female testates. The heirs are not arranged according to classes. Rather, it enumerates the individuals who are qualified to inherit the property. The deceased's children inherit the property first, then her husband's heirs.

The Act clearly distinguishes between the treatment of men and women. On the other hand, neither of these terms makes it clear who is covered. For instance, the Act says nothing about a transgender individual who identifies as male's inheritance rights.

(B) Muslim Personal Law (Shariat) Application Act

In India, Muslim law regarding property is mainly uncodified. Customary laws govern the determination of inheritance rights. These originate from Qur'anic texts and traditional Islamic

legal theory. But colonial and postcolonial practices have also moulded and changed them. As a result, there are wide differences in the ways that people inherit property. There may be no distinction between the genders in certain cases due to the degree of separation. In some cases, the male relative receives a share of the inheritance that is twice as great as that of the female relative, but he also has the duty to look after the female relative. This is due to the fact that a wife is supposed to receive Mehr and any subsequent maintenance from her husband at marriage.

However, the Muslim Personal Law (Shariat) Application Act was passed in 1937 in order to strengthen Muslim women's inheritance rights. According to , Muslim personal law should be applied to all Muslims, with a few exceptions. These include females' personal property that is inherited or acquired through contracts, gifts, marriages, or divorces.

(C) Indian Succession Act

Everything not covered by the aforementioned rules is governed by the Indian Succession Act. It is widely believed to control Christians' and Parsis' inheritance. It tends to use phrases like kindred and lineal descendants, which are gender-neutral in general.

When property is inherited intestate, it goes to the deceased's offspring without making a distinction between boys and girls. Any lineal descendants in the first degree of the individual are considered children. When gendered phrases are employed, they aim to establish a comparable lineage.

For instance, although though male and female are used individually in the Act, they essentially have the same inheritance privileges.

Nevertheless, the Act is not fully gender-neutral. The inherited rights of the deceased's parents are distinguished under the act , which regulate the rights of Christians (a different system applies to Parsis). If the deceased person's father is still alive and there are no surviving lineal descendants, the father receives the entire estate; the mother receives nothing. In contrast to what the father would be entitled to, the act mandates that the mother share the intestate's property equally with the siblings, even in cases where the deceased's father does not survive.

Examining these provisions makes it clear that judicial interpretation, public opinion, and legislators' willingness to clear up legal framework ambiguities and gaps are all necessary conditions for the legal recognition and protection of transgender people's rights to inheritance and succession. In addition, the issue becomes more complex due to the confluence of transgender identity with other elements including caste, class, and regional differences, which calls for a nuanced and context-specific approach to law reform.

In the future, the goals of equality, dignity, and nondiscrimination should direct efforts to advance the rights of transgender people with regard to inheritance and succession. This means promoting legislative changes that ensure transgender people receive equal treatment under the law by clearly recognising and defending their rights as legal heirs. Moreover, capacity-building projects, legal literacy classes, and awareness-raising campaigns can support transgender people in asserting their legal rights and successfully navigating complicated legal procedures. India may make progress towards achieving the ideals of justice, equality, and human rights for all of its citizens—regardless of gender identity—by tackling these issues.

III. INDIA’S GLOBAL RESPONSIBILITIES

According to a number of international conventions, discrimination against transgender people is prohibited. No one may have their legal rights arbitrarily denied, according to the International Covenant on Civil and Political Rights (ICCPR) and the Universal Declaration of Human Rights (UDHR). The Yogyakarta Principles cover a wide variety of human rights in a similar manner. Additionally, India has been advised by the United Nations Development Programme (UNDP) to guarantee transgender people's legal recognition and steer clear of ambiguity while issuance identifying cards. The proposal stems from the relationship that exists between identity documents and civic rights, including the ability to inherit.

(A) Transgender rights in Nepal.

In Nepal, the journey towards LGBTQ+ rights has been marked by significant legal and political developments over two decades. The landmark *Sunil Babu Pant v. Nepal Government* Supreme Court judgment of 2007 played a pivotal role in recognizing the rights of transgender individuals. It affirmed that fundamental rights in the Nepalese Constitution apply to all "natural persons," including those of the third gender. The judgment emphasized self-perception in determining gender identity, rejecting societal, state, or legal interference without medical examination.

Following this judgment, Nepal's 2015 Constitution became inclusive of LGBTQI identities, guaranteeing the right to equality and non-discrimination. It mandated citizenship certificates to include "gender identity" and upheld the right to "social justice" for sexual and gender minorities. Nepal allowed "third gender" identifying individuals to open bank accounts, own property and register for universities.

Despite these strides, challenges persist. While progressive measures like the inclusion of an "other" gender category in official documents have been initiated, bureaucratic inefficiency and insensitivity hinder access to documentation for transgender individuals. Non-binary persons

also find existing gender categories inadequate.

Moreover, there's ambiguity regarding the scope of the "others" category and its inclusion of LGBTQI persons. Intersex individuals remain excluded, and issues such as the criminalization of sex work and lack of anti-discrimination laws continue to affect the transgender community. Proposed amendments to citizenship laws in 2020 could potentially impose medical examinations to determine gender identity, posing further challenges to transgender rights in Nepal.²

(B) Transgender rights in Pakistan

The Pakistan Supreme Court rendered a historic decision in the 2009 case of Dr. Muhammad Aslam Khaki & Anr. v. Senior Superintendent of Police Rawalpindi & Ors., holding that transgender people are protected by the Pakistani Constitution and have the right to life and property.

The Transgender Persons (Protection of Rights) Act was passed by the Pakistani Parliament on May 8, 2018, granting its inhabitants the option to self-identify as either male, female, or a combination of both genders. In addition to the fundamental rights that are protected, Pakistani laws guarantees transgender people the right to property, health care, education, and inheritance—a right that is often contested under certain interpretations of Islamic law. This historic Act is part of that legislation.³

(C) Transgender persons (Protection of Rights) Act, 2019

The Transgender Persons (Protection of Rights) Act, 2019, was indeed a significant step by the Indian Parliament aimed at safeguarding the rights and welfare of transgender individuals. Despite its intentions, the Act has faced several criticisms regarding its provisions and their implementation. Here are the salient features of the Act along with the criticisms:

a. Salient Features of the Act

Right to Reside and Inclusion in a Household:

Transgender persons are entitled to reside within their household and be included as part of the family. If the immediate family is unable to care for them, a competent court can order their placement in a rehabilitation centre.

² “Trans Rights in Nepal: Progress and Pitfalls - Centre for Law & Policy Research.” *Centre for Law & Policy Research*, 6 July 2020, clpr.org.in/blog/trans-rights-in-nepal-progress-pitfalls.

³ Mahawar, Sneha. “Status of the Inheritance Rights of Transgenders Under the Indian Law - iPleaders.” *iPleaders*, 16 Oct. 2021, blog.ipleaders.in/

Prohibition of Discrimination:

Both government and private entities are prohibited from discriminating against transgender persons in matters of employment, including recruitment and promotion.

Establishment of the National Council for Transgender Persons (NCT):

The NCT is tasked with redressing grievances of transgender persons, advising the Central Government, and monitoring the impact of policies, legislation, and projects concerning transgender individuals.

Certificate of Identity:

Transgender individuals can apply to the District Magistrate for a certificate of identity, indicating their gender as transgender. A revised certificate reflecting a change to male or female can only be issued if the individual undergoes sex reassignment surgery.

b. Criticisms of the Act

Complex and Invasive Certification Process:

The requirement for a transgender person to undergo sex reassignment surgery to obtain a revised certificate of identity has been criticized as invasive and a violation of bodily autonomy. Critics argue that gender identity should not be contingent upon medical procedures.

Ambiguity and Lack of Clarity:

The Act lacks clarity on several issues, such as the specifics of the rehabilitation process and the functioning of rehabilitation centres. Additionally, the role and effectiveness of the NCT in truly addressing the grievances of transgender persons have been questioned.

Insufficient Protections Against Discrimination:

While the Act prohibits discrimination in employment, it does not comprehensively address other areas where transgender persons face discrimination, such as healthcare, education, and housing.

Inadequate Grievance Redressal Mechanism:

The effectiveness of the National Council for Transgender Persons in providing a robust grievance redressal mechanism is uncertain. Concerns have been raised about the Council's ability to enforce its recommendations and ensure accountability.

Rehabilitation Centre Provisions:

The provision allowing courts to place transgender individuals in rehabilitation centres if their

family cannot support them has been criticized for potentially leading to institutionalization, which may not always be in the best interest of the individual.

While the Transgender Persons (Protection of Rights) Act, 2019, represents a step forward in recognizing and protecting the rights of transgender individuals in India, it has significant shortcomings that need to be addressed. The criticisms highlight the need for amendments that respect the autonomy of transgender persons, provide clearer guidelines, and ensure more comprehensive protection against discrimination. Implementing these changes could make the Act more effective in achieving its intended goals.

IV. SUGGESTIONS FOR INDIA

(A) Legal Recognition and Inclusion:

Amend Personal Laws to Include Transgender Individuals:

Amend personal laws such as the Hindu Succession Act, Muslim Personal Law (Shariat) Application Act, and Indian Succession Act to explicitly include transgender persons as legal heirs. This can be done by adopting gender-neutral language and recognizing the legal rights of individuals regardless of their gender identity.

Simplify the Process for Legal Gender Recognition:

Streamline the process for transgender individuals to obtain legal recognition of their gender identity without the requirement of sex reassignment surgery. This can be achieved by allowing self-identification and ensuring that this recognition extends to all aspects of civil rights, including property rights.

(B) Comprehensive Anti-Discrimination Measures:

Implement Broad Anti-Discrimination Laws:

Expand anti-discrimination laws to cover all aspects of public life, including healthcare, education, housing, and social services, to ensure that transgender individuals are protected against discrimination in all areas that affect their ability to acquire and maintain property.

Establish Effective Grievance Redressal Mechanisms:

Strengthen the National Council for Transgender Persons (NCT) and other relevant bodies to provide effective grievance redressal mechanisms for transgender individuals facing discrimination or denial of their property rights.

(C) Inclusive Policy Reforms:

Develop Specific Property Rights Policies:

Formulate and implement policies that specifically address the property rights of transgender individuals, ensuring their right to inherit, own, and transfer property on an equal basis with others.

Provide Legal Aid and Support:

Offer legal aid and support services to transgender individuals to help them navigate property disputes and legal procedures. This can include establishing dedicated legal clinics or support centers for transgender persons.

(D) Awareness and Sensitization Programs:

Conduct Public Awareness Campaigns:

Initiate public awareness campaigns to educate society about the rights of transgender individuals, focusing on reducing stigma and discrimination related to property ownership and inheritance.

Train Legal and Judicial Professionals:

Provide training for legal and judicial professionals on the rights of transgender individuals to ensure fair and unbiased treatment in legal proceedings related to property rights.

(E) International Best Practices and Compliance.

Incorporate International Standards:

Align national laws with international human rights standards, such as those outlined in the Yogyakarta Principles, to ensure the protection and promotion of transgender individuals' rights, including property rights.

Learn from Other Jurisdictions:

Study and incorporate best practices from other countries with progressive laws regarding transgender property rights, such as Nepal and Pakistan, to develop a robust legal framework that supports transgender individuals in India.

(F) Research and Data Collection:

Conduct Comprehensive Research:

Undertake comprehensive research to understand the specific challenges faced by transgender individuals in accessing property rights. This can include qualitative and quantitative studies to gather data on their experiences and needs.

Monitor and Evaluate Policy Impact:

Establish mechanisms to monitor and evaluate the impact of policies and laws on the property rights of transgender individuals, making necessary adjustments based on feedback and outcomes.

(G) Inclusive Legal Drafting:

Adopt Gender-Neutral Legal Language:

Ensure that all new laws and amendments use gender-neutral language to avoid exclusion and ensure the inclusivity of transgender persons in all legal documents.

Explicitly Define Transgender Rights in Law:

Clearly define the rights of transgender individuals in all relevant legislation to eliminate ambiguities and ensure their protection under the law.

By implementing these suggestions, India can move towards a more equitable and inclusive legal framework that fully recognizes and protects the property rights of transgender individuals, thereby promoting their social and economic empowerment.

V. CONCLUSION

It is imperative that transgender people's property rights be addressed within India's complex personal law framework in order to support their social and economic emancipation. Although there has been progress in the recognition of transgender rights, there are still large gaps in the laws protecting their property rights. Whether they are Christian, Muslim, Hindu, or another religion, the personal laws that are in place today do not appropriately acknowledge transgender persons because they frequently use binary gender categories that exclude both transgender and non-binary people.

It is imperative to change these personal laws to expressly recognise transgender people as legal heirs and property owners in order to foster an inclusive legal environment. Crucial measures include streamlining the legal gender recognition process, extending anti-discrimination safeguards, and establishing efficient grievance redressal procedures.

India's commitment to upholding international human rights norms and learning from best practices around the world will help it better defend the rights of transgender people. Thorough investigation and ongoing observation of these legislative changes' effects will guarantee that they successfully tackle the particular difficulties encountered by transgender individuals.

Through the implementation of these measures, India can progress towards a fairer and more equal society in which transgender people are able to fully utilise their property rights,

improving their general well-being and supporting more general objectives of social inclusion and economic stability. With an inclusive approach, transgender people will be able to fully and equitably participate in all facets of society while also enhancing their autonomy and sense of dignity. This will preserve the ideals of equality and non-discrimination.
