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- - Note - -

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INHERITANCE RIGHTS OF TRANSGENDER PERSONS

-Chidige Sai Varshitha, student, Damodaram Sanjivayya National Law University.

Introduction:

In India, property inheritance is regulated by the personal laws of each faith and group. These rules categorize people into two groups based on their gender: male and female. To fall under the jurisdiction of the inheritance laws, a transgender person must fall into one of these classifications.

India has a bad history of biased laws. This is particularly evident in legislation governing personal rights. The use of such terminology repeatedly reveals inherent biases in law formulation. Aside from using gendered language, law varies in how they treat people of different genders. There are various inheritance rules for males and females. This not only excludes transgender people, but it also creates uncertainty about how they will inherit property if they are incorporated. This is extremely critical because the Constitution prohibits sex-based discrimination. Since gender has been read within sex in Article 15, legislation shouldn't discriminate against transgender persons merely because of their characteristics.

Civil rights of transsexual persons have gotten minimal attention, especially the inheritance right. Persons' largest asset position in India is immovable property. Property ownership is widely believed to improve a person's social position. This is especially important because transgender people have a poor salary, little savings, and no housing. It will lead to continued marginalization if they are unable to access (inherit) property.¹

Transgender and Hindu Succession Act:

Only women and men are recognized as subjects of property rights under the Hindu Succession Act, 1956, which regulates Hindus for succession of joint property and separate property.²

¹ Karan Gulati, *Inheritance Rights of Transgender Persons in India*, Live Law(Aug.18,2021), <https://www.livelaw.in/columns/rights-of-transgender-persons-right-to-inheritance-constituion-of-india-179777?infinitescroll=1>

² Hindu Succession Act 1956

Man, woman, daughter, son, and other terminology used in the act are limited to binary gender identification. The act makes no mention of transgender people or people of distinct sexual orientations. Typically, such a person is kicked out of their family and has no control over their own or their parents' possessions. They had to sacrifice their gender identification as transgenders in order to have the inherit property right. Transgender people, on the whole, see themselves as female and thus can acquire property as a daughter or as a son. For inheritance purposes, a person's gender identity is determined by the gender ascribed to them on their birth certificate. The need of inheriting property from parents and family violates Article 15 of the Constitution of India, which outlaws discriminate on the grounds of gender.³ The term 'sex' refers not only to biological sex as men or women, but also to an individual who does not identify as either male or female.⁴ The factors for a person's disqualification are limited to Sections 24 to 26 of the Act, and being transgender is not one of them.⁵

Interpretation of term 'Person':

Also, in these parts, the term "person" has been used, which is a broader term defined in the General Clause Act of 1897 as "any business, association, or body of individuals, whether incorporated or not".⁶ According to the definition, the term "person" does not just apply to males and females, but also includes transgender people who are citizens of India.⁷ As a result, under Section 28 of Act, rejecting transgender people on the basis of their gender identity isn't justifiable.⁸ Even though the most typical objection against this kind of contention is that the legislators intended the Act to cover only males and females.

Landmark Judgements:

Moreover, in the Supreme Court's decision in *National Legal Service Authority v. Union of India & Others*⁹, India became the 1st country in the world to recognize the LGBT

³ Constitution of India, Article 15

⁴ Manjeet Kumar Sahu, *Case Comment on National Legal Services Authority v. Union of India & Others (AIR 2014 SC 1863): A Ray of Hope for the LGBT Community*, Brics Law Journal, 3, file:///C:/Users/lenovo/Downloads/48-91-1-SM.pdf

⁵ Hindu Succession Act 1956, s 24-26

⁶ The General Clauses Act, No. 10 of 1897, Section 3(39)

⁷ Constitution of India, Article 5

⁸ Hindu Succession Act 1956, s 28

⁹ National Legal Service Authority v. Union of India, AIR 2014 SC 1863

community's rights and grant them the title of "Third Gender" citizen. It was stated that transgender rights are a question of Human Rights, not a societal or medical one. The judgment is that the "Hijras/Eunuchs, who also fall in that group, claim legal status as a third gender with all legal and constitutional protection.¹⁰ They have right to education, employment and inheritance of property, etc." The court also delivered in the judgment of *Suresh Kumar Koushal and another v. Naz Foundation and Others*¹¹ has already discussed on the Section 377 IPC constitutionality and this decision has a distinct issue as to the transgender community's Human Rights.

The Supreme Court of Pakistan gave a landmark judgment in *Dr. Mohammad Aslam Khaki & Anr. v. Senior Superintendent of Police Rawalpindi & Ors.*¹² According to the ruling, transgender people, often known as Eunuchs, are Pakistani citizens who are governed by the Islamic Republic of Pakistan's Constitution of 1973.¹³ The court ruled that transgender people have the same right to life and property as regular citizens under the Constitution of Pakistan. This case was afterwards referred by the Justice K.S. Radhakrishnan in *National Legal Service Authority v. Union of India & Others*¹⁴ to determine the rights of transgender.

Transgender Bill, 2016:

After *National Legal Service Authority v. Union of India & Others*¹⁵ Judgment, in 2016, the Lok Sabha adopted the Transgender Persons (Protection of Rights) Bill. The Bill is divided into chapters that are related to numerous rights that should be offered to transgender people in order to protect them from discrimination. The identity of transgender is recognized in Chapter III of the Bill. The Bill's Chapter V grants transgender people rights in a variety of settings. The right of residency of transgender people is addressed in Section 13 of the Chapter. Section 13(1) expressly specifies that a transgender person's family and immediate relatives shouldn't be separated because of their gender identification.¹⁶ Section 13(2) gives them the usage right of all house's facilities and to enjoy the house.¹⁷ This entitles them to the same level of support

¹⁰ *Ibid*

¹¹ (2014) 1 SCC 1

¹² PLD 2013 SC 188

¹³ Constitution of Islamic Republic of Pakistan 1973

¹⁴ *Supra* Note.9

¹⁵ *Ibid*

¹⁶ The Transgender Persons (Protection of Rights) Lok Sabha Bill (2016) 210

¹⁷ *Ibid*

as other family members, regardless of gender. Despite the fact that the Lok Sabha law mentions transgender people's residence right, it does not mention their inheritance rights. They are not awarded the coparcener status in the Joint Hindu Family or as a legal heir to separate property of their parents because of their gender identification. The bill requires a lot of work because transgender people are Indian citizens who should be acknowledged as third gender in every law that deals with their human and legal rights.¹⁸

Conclusion:

The Lok Sabha's bill to protect transgender people's rights will require a lot of thought in the area of inheritance and property succession. The legal acknowledgment of transgender people as a third gender is still a long way off. Perceptions and preconceptions about transgender people have been strongly engrained in our society for centuries and are difficult to undo. The decision by several international organizations and governments to accept transgender people as third gender has laid the groundwork for the global empowerment of human rights.

¹⁸ Rupal Sharma, *Inheritance Rights of Transgender*, IJLMH, 1, <https://www.ijlmh.com/wp-content/uploads/2019/03/Inheritance-Rights-of-Transgender-A-Cry-of-Humanity.pdf>