

Unveiling Equality: The Legal Tapestry of Inheritance For Transgender Individuals In India

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ABSTRACT

This paper provides an exhaustive analysis of the inheritance rights of transgender individuals in India, situating its exploration within the prevailing legal framework and reviewing judicial decisions up-to 2024 that pertain to transgender identity, including analogous terms such as aravani and kinner. While the Indian Constitution explicitly prohibits discrimination on the grounds of sex or gender, inheritance laws remain embedded in a binary gender paradigm that overlooks transgender identities and gender transitions. Consequently, transgender individuals face an inherent dilemma: conforming to their assigned gender or forfeiting their inheritance rights. The situation is further exacerbated by issues surrounding legal identification, as transgender persons often lack proper documentation, encounter barriers to marriage, and struggle to establish proof of adoption. Despite judiciary efforts to mitigate these difficulties, rulings are often predicated on subjective interpretations, leading to inconsistent protection for transgender persons. This paper argues that comprehensive legislative reform is imperative to secure equitable access to inheritance rights.

Keywords: Transgender; inheritance; property rights; legal identification.

1. Introduction

India has made significant strides in advancing transgender rights over the past decade, marked by progressive legislative and policy developments. A pivotal moment occurred with the 2011 national census, which permitted individuals to self-identify as a third gender, resulting in nearly 500,000 people availing this classification. However, systemic discrimination against transgender individuals remains pervasive, largely due to gaps in the legal framework.¹ The Supreme Court's landmark decision in *NALSA v. Union of India* (2014) underscored these issues, mandating constitutional recognition of a third gender and highlighting the deprivation of fundamental rights experienced by transgender persons, particularly in the realm of property rights. The judgment pointed out that inheritance laws, rooted in binary gender norms, exacerbate the complexities surrounding the identification of rightful successors.²

The slow pace of legislative reform since the *NALSA* ruling has impeded the realization of equal rights for transgender individuals. This stagnation reflects deeper systemic failures in policy formulation and enforcement, which fail to address the nuances of gender diversity. While certain state-level initiatives have shown promise, they often lack enforceability and a comprehensive scope necessary to drive meaningful change. The absence of national guidelines perpetuates a fragmented approach to securing transgender rights, underscoring the urgency of targeted legislative action to address disparities and ensure inheritance laws are inclusive of all gender identities.³

Academic discourse on transgender issues in India has traditionally centered on identity struggles, sociocultural challenges, and ethnographic narratives. Discussions on civil rights, particularly property rights, remain limited. Given that immovable property constitutes a significant portion of individual wealth in India and is predominantly acquired through inheritance, the exclusion of transgender persons from inheritance

¹ See Census of India, 2011, *Table on Transgender Population* (Government of India).

² *NALSA v. Union of India*, (2014) 5 SCC 438.

³ Ibid.

laws perpetuates their economic and social marginalization.⁴ Many transgender individuals face limited income opportunities and lack access to stable housing. The denial of property rights compounds their social vulnerability, often leaving them at risk of displacement and further alienation.⁵

Although some attention has been directed at discrimination in rental housing markets, inheritance remains the principal means of property acquisition in India. Existing legal provisions provide minimal protection for transgender individuals in this regard. The Transgender Persons (Protection of Rights) Act, 2019 (hereinafter "Transgender Protection Act"), aims to prevent discrimination in residence and employment but is silent on inheritance rights.⁶ The binary nature of current inheritance laws fails to accommodate transgender identities and gender transitions, effectively compelling individuals to conform to their assigned gender or forfeit inheritance claims.⁷

The situation is further exacerbated by the lack of identity documentation among transgender individuals. Only 8% of transgender persons possess identity cards, such as Aadhaar or Voter IDs, reflecting their gender identity, thereby hindering their ability to claim inheritance rights.⁸ Despite the constitutional guarantee of protection against discrimination based on sex and gender, exclusionary practices persist due to rigid interpretations of gender.⁹ Judicial responses have been inconsistent, often requiring claimants to align with traditional gender categories to access legal protections, thereby undermining the principle of equal protection and perpetuating systemic discrimination.¹⁰

To address these challenges, India must enact gender-neutral inheritance laws, ensure transgender individuals have access to comprehensive identity documentation, and explicitly incorporate inheritance rights into the Transgender Protection Act's non-discrimination provisions. Additionally, extending rights related to marriage and adoption to transgender individuals is essential for providing comprehensive civil rights protections. This paper seeks to fill a significant gap in existing scholarship by examining the intersection of inheritance laws and transgender rights and proposing necessary legislative and policy reforms.¹¹

2. Rights of Transgender Persons in India

Historically, transgender persons enjoyed a degree of social acceptance in pre-colonial India. However, British colonial rule drastically altered this status. The **Criminal Tribes Act of 1871** marked a turning point by criminalizing eunuchs, mandating their registration, and restricting their property rights. Although repealed in 1952, the Act's discriminatory legacy endured. For instance, the **Karnataka Police Act** was amended in 2011 to require eunuchs' registration and monitor their activities, reflecting ongoing societal and legal biases.¹² The colonial-era marginalization laid the groundwork for the discrimination faced by transgender individuals today. While India transitioned from colonial laws to modern frameworks, transgender persons often remained in a legal void, with their rights poorly defined. Recent decades have seen some progress. Indian passports began recognizing non-binary gender identification in 2005, and the **Election Commission of India** allowed individuals to register as a third gender in 2009. The 2011 Census officially included a third-gender category, sparking further advocacy.¹³

The **Supreme Court's 2014 NALSA ruling** was transformative. It recognized transgender individuals as a third gender and directed governments to take measures safeguarding their rights. However, the gap between recognition and implementation persists, particularly in areas such as inheritance rights. Legal recognition without corresponding privileges has left many transgender persons in precarious positions, emphasizing the need for robust laws addressing these issues comprehensively.¹⁴

⁴ Rohit, A., "Transgender Rights and Inheritance Laws in India," *Indian Journal of Law and Society*, vol. 10, no. 2, 2018, pp. 45–67.

⁵ Ibid.

⁶ The Transgender Persons (Protection of Rights) Act, 2019, No. 40 of 2019.

⁷ Arvind, N., "Challenges to Inheritance Rights for Transgender Persons in India," *South Asian Human Rights Studies*, vol. 14, no. 3, 2020, pp. 78–91.

⁸ Singh, P., "Identity Documentation Challenges Among Transgender Persons," *Economic and Political Weekly*, vol. 55, no. 18, 2020, pp. 34–37.

⁹ Indian Constitution, Article 15.

¹⁰ *NALSA v. Union of India*, supra note 2.

¹¹ Sharma, D., "Towards Inclusive Inheritance Laws in India," *Journal of Modern Legal Reforms*, vol. 12, no. 4, 2022, pp. 112–130.

¹² *Criminal Tribes Act, 1871*; *Karnataka Police Act, 2011 (Amendments)*.

¹³ Election Commission of India, 2009; Census of India, 2011.

¹⁴ *NALSA v. Union of India*, AIR 2014 SC 1863.

2.1 NALSA v. Union of India

In 2012, the **National Legal Services Authority (NALSA)** filed a petition in the Supreme Court highlighting the widespread denial of fundamental rights to transgender persons. The Court's landmark 2014 judgment expanded the definition of "sex" under Articles 15 and 16 of the Constitution to include gender identity, ensuring constitutional protections for transgender individuals. The ruling also affirmed the protection of gender expression under Article 19(1)(a).¹⁵

The Court emphasized that social recognition is vital to realizing transgender rights and directed governments to implement welfare measures, including creating separate public facilities and offering affirmative action. Yet, the directives' vague nature has resulted in uneven implementation across states. The judgment also highlighted the binary framework of gendered laws as a major obstacle to inheritance rights but stopped short of mandating amendments, delegating this responsibility to the government.¹⁶

Despite its progressive stance, the NALSA judgment's impact has been hindered by inconsistent application and a lack of legislative follow-up, underscoring the need for detailed laws to ensure equitable rights for transgender individuals.¹⁷

2.2 Transgender Persons Protection Act, 2019

Following the NALSA ruling, the **Transgender Persons (Protection of Rights) Act, 2019** was introduced to codify protections for transgender individuals. Under Section 2(k), the Act defines a transgender person as one whose gender does not match the gender assigned at birth. The Act prohibits discrimination in areas such as education, employment, and housing.¹⁸

However, the Act's provisions leave critical gaps. While it addresses rental and property access, it remains silent on inheritance rights, leaving transgender individuals vulnerable under gendered property laws. The procedural requirements for obtaining transgender certificates, including verification by the District Magistrate, have also drawn criticism for contravening the NALSA judgment's emphasis on self-identification. These bureaucratic hurdles exacerbate marginalization and delay the realization of rights.¹⁹

2.3 State Laws

Property laws fall under the concurrent jurisdiction of Union and State governments, enabling states to take unique approaches to transgender rights. States such as Uttar Pradesh, Tamil Nadu, and Karnataka have introduced policies addressing various civil rights for transgender individuals.²⁰

In **Uttar Pradesh**, amendments to the Land Revenue Code in 2020 ensured inheritance rights for transgender individuals in agricultural land. The State Law Commission's recommendations bridged critical gaps in property laws.²¹ Meanwhile, Madhya Pradesh issued a policy in 2021 focusing on barriers transgender individuals face, such as difficulties obtaining identification documents, renting accommodations, and adopting children.²² However, these policies often remain non-binding and fail to address broader property rights uniformly.

3. Challenges in Law

The Supreme Court of India has acknowledged the significant limitations within the current legal framework that restrict transgender persons from acquiring property. In India, property is primarily acquired through inheritance, with approximately 85% of rural land inherited, as highlighted by Lahoti, Suchitra, Swaminathan, and others (2016).²³ Transgender persons encounter two primary challenges in this context:

1. Inheritance laws are fundamentally gendered, rooted in a binary understanding of gender.
2. Identifying lawful successors becomes complex due to societal and legal norms.

These challenges can be illustrated through hypothetical scenarios like the case of *Ajay Mafatlal and Others*. While not exhaustive, these examples shed light on the potential consequences of inheritance laws for transgender individuals. Marginalized communities, including the hijra community, face systemic exclusions because of the gendered language in property and inheritance laws. This not only creates confusion over rightful inheritance but also leaves transgender persons without clear legal recourse.

Inheritance laws often fail to reflect the fluid and non-binary nature of gender identities. The legal framework's binary categorization perpetuates exclusion and discrimination, compounding the difficulties transgender

¹⁵ Articles 15, 16, and 19(1)(a), Constitution of India.

¹⁶ NALSA Judgment Directives, 2014.

¹⁷ Implementation Reports of NALSA Directives, 2015-2021.

¹⁸ Transgender Persons (Protection of Rights) Act, 2019.

¹⁹ Provisions under Sections 4 and 6, Transgender Act, 2019.

²⁰ Concurrent List, VIIth Schedule, Indian Constitution.

²¹ Uttar Pradesh Land Revenue Code Amendment, 2020.

²² Madhya Pradesh Transgender Policy, 2021.

²³ Lahoti, R., Suchitra, J. Y., & Swaminathan, H. (2016). Gendered inheritance patterns in rural India.

individuals face in securing property rights. This further entrenches the social and economic marginalization of these communities.

3.1 The Hindu Succession Act, 1956

The Hindu Succession Act, 1956, governs the inheritance rights of Hindus, Sikhs, Buddhists, and Jains. However, it does not explicitly recognize transgender individuals. The definition clause restricts heirs to male and female categories, evident in the following terms:

- **Agnate:** A person related solely through male lineage.
- **Cognate:** A person related by blood or adoption, not exclusively through male lineage.
- **Heir:** Defined as a male or female entitled to inherit the property of an intestate individual.

Sections 8 and 15 outline inheritance rules for males and females, respectively, with rigid classifications based on gender. For example:

- **Section 8:** Devolves property for male intestates through a hierarchy of Class I and II heirs.
- **Section 15:** Governs female intestates' property, prioritizing children and the husband's heirs.

This gendered framework excludes transgender persons or those whose gender identity does not conform to the binary. For instance, if a person (P), assigned female at birth but identifying as male after a sex reassignment surgery, dies intestate, the inheritance process becomes ambiguous, leaving transgender individuals in a legal grey area.²⁴

Hypothetical Case Study

P, who underwent sex reassignment and identified as male, has two children, S (son) and D (daughter). If P passes away intestate, S and D inherit equally. However, if P had no children, the inheritance path diverges depending on P's recognized gender. Such ambiguities highlight the Act's inadequacy in addressing transgender inheritance rights.²⁵

The Act's failure to acknowledge non-binary identities and its silence on changes in gender identity exacerbate the legal vulnerabilities faced by transgender persons.

3.2 The Indian Succession Act, 1925

The Indian Succession Act, 1925, applies to communities not governed by other religious laws, including Christians and Parsis. It adopts more gender-neutral language, referring to heirs as "kindred" or "lineal descendants." However, gender biases persist, particularly in:

- **Sections 42 and 43:** These outline inheritance rights for Christian parents, favoring fathers over mothers. For instance, if only the mother survives, she must share property with the deceased's siblings.

This partial adherence to gender neutrality presents challenges for transgender individuals. For example, P, assigned female at birth but identifying as male, could face discrimination under intestate succession rules.²⁶ Moreover, for transgender persons in guru-chela relationships common among the hijra community, the law fails to provide clarity, leaving them vulnerable to exclusion.

Despite calls for reform, such as the 2016 recommendation by the Delhi Minorities Commission, legislative action remains absent. Transgender persons are left without a clear path to claim property rights, further entrenching their social and economic marginalization.²⁷

3.3 Challenges in Identifying Successors

The inheritance laws' failure to include transgender persons exacerbates existing challenges in identifying successors. Transgender individuals often encounter hurdles related to documentation, marriage, and adoption, all of which affect their legal rights. The inability to present proof of identity or familial relationships often results in denied inheritance claims, compounding the systemic discrimination faced by this community.

3.4 Documentation

Although the Supreme Court's 2014 judgment in *National Legal Services Authority v. Union of India* affirmed the right to gender self-identification, a 2015 Kerala government survey found that **76% of transgender persons could not register their gender identity**.²⁸ Identification is crucial for claiming inheritance rights, yet inconsistent documentation standards across state and central government systems often create significant barriers.

While Union government-issued documents like passports and voter ID cards recognize self-identified gender, many state-level documents do not. For example, by 2016, only **8% of transgender individuals from the**

²⁴ Hindu Succession Act, 1956, Sections 8 and 15.

²⁵ Hypothetical scenario based on *Ajay Mafatlal and Others* (2005).

²⁶ Indian Succession Act, 1925, Sections 42 and 43.

²⁷ Delhi Minorities Commission, 2016.

²⁸ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438; Kerala State Government Survey on Transgender Persons, 2015.

2011 Census had Aadhaar cards reflecting their perceived gender.²⁹ This lack of uniformity impedes the enforcement of rights and leads to inconsistencies when amending land records or claiming property. In cases where an individual dies intestate, discrepancies in gender documentation can prevent transgender heirs from asserting inheritance rights. For instance, a person's gender recorded at birth may not align with their self-identified gender, causing bureaucratic delays or outright denial of claims. Programs like Karnataka's Lingathwara Alpasankhyathara Yojana, designed to assist marginalized communities, often fail to address these documentation disparities adequately. These challenges underscore the urgent need for a uniform system that recognizes and respects gender diversity.

3.5 Marriage

Marriage is a cornerstone of social and legal systems, influencing fundamental rights, including inheritance. While the Constitution guarantees the right to marry as part of the right to life and liberty, legislative ambiguities create hurdles for transgender individuals. The **Hindu Marriage Act, 1956**, defines marriage as a union between a bride and a bridegroom but does not clarify whether these terms include transgender persons. This lack of clarity gives registrars discretionary power, often leading to the denial of marriage registrations.

The **Special Marriage Act, 1954**, adds further complexity by specifying age requirements for "males" and "females" without addressing transgender persons. This exclusion disproportionately affects inheritance rights. For instance, under the Hindu Succession Act, 1956, spouses inherit property automatically, but the non-recognition of transgender marriages means such rights are denied. Consider a transgender widow whose marital status is not legally acknowledged—they may lose claims to their spouse's estate, forcing conformity to their assigned gender at birth.

Judicial interventions, like the *NALSA* judgment, highlight the necessity for legislative updates. Amending marriage laws to explicitly include transgender persons would ensure consistency, uphold their fundamental rights, and address systemic discrimination effectively.³⁰

3.6 Adoption

Adoption significantly impacts inheritance, as it determines family structures and succession. However, India's adoption laws are riddled with gender-specific provisions that exclude transgender individuals. The **Hindu Adoptions and Maintenance Act, 1956**, and **Juvenile Justice (Care and Protection of Children) Act, 2015**, both contain language that marginalizes transgender persons. For instance, single males cannot adopt female children, and specific age gaps are mandated based on the adopter's and adoptee's genders.³¹

This framework fails to account for the realities of transgender families. For example, a transgender individual who identifies as female may be unable to adopt under current laws, leaving their chosen child without legal rights to inheritance. Suppose a transgender person dies intestate; in such cases, collateral relatives may inherit the property instead of the adopted child, who would have been a Class I heir if the adoption were recognized. Traditional relationships like the guru-chela bond, which often resemble adoptive family structures, are similarly unacknowledged, complicating inheritance claims further. Legislative reforms are crucial to allow transgender persons to adopt without facing gender-based restrictions, thereby ensuring equality and legal security for both parents and children.

The Supreme Court's rulings on dignity and equality emphasize the need for inclusive adoption laws that align with constitutional principles. Amending these laws would not only secure the rights of transgender individuals but also promote a more equitable society.³²

4. Judicial Position on Transgender Rights and Inheritance Law

Understanding the judicial stance on transgender rights, particularly in the context of inheritance laws, necessitated an extensive review of judgments and scholarly literature. This research utilized commercial legal databases such as SCC and Manupatra, analysing up-to 2024. Terms like *aravani*, *kinner*, *hijra*, *jogta*, and *eunuch* were used to identify relevant judgments. A total of 320 judgments were reviewed, comprising 21 Supreme Court cases, 275 High Court cases, and 24 decisions from other courts and tribunals. These cases were categorized broadly into:

1. Landmark institutional cases (e.g., *NALSA* and *Navtej Singh Johar*),
2. Inheritance rights for transgender persons,
3. Interpretation of gendered statutory provisions, and
4. Issues surrounding identification documents.

This discussion delves into the last three categories, particularly inheritance rights.

²⁹ Aadhaar Data Report, UIDAI (2016).

³⁰ Hindu Marriage Act, 1956; Special Marriage Act, 1954; Hindu Succession Act, 1956.

³¹ Hindu Adoptions and Maintenance Act, 1956; Juvenile Justice (Care and Protection of Children) Act, 2016.

³² Supreme Court Judgments on Transgender Rights, *NALSA* and Related Cases.

4.1 Inheritance Rights of Transgender Persons

The inheritance rights of transgender individuals have been addressed in a limited number of cases. One significant early case was *Illyas v. Badshah Alias Kamla* (1989), decided by the Madhya Pradesh High Court. Here, the appellant claimed a will executed in his favor by Munilal, a transgender guru. The respondent, Munilal's *chela* (disciple), argued for a stronger customary claim to the property. Munilal had inherited the property from his own guru, highlighting the community tradition of property transfer within transgender groups. Although the court found the will to be forged, it observed that, had the will been legitimate, Munilal's Muslim faith would have limited testamentary disposition to one-third of the estate under Islamic law, with the remaining two-thirds passing to the *chela* per customary norms.³³

In another case, *Sweetly v. General Public*, the Himachal Pradesh High Court examined a reverse scenario where the deceased was the *chela*, and the guru sought inheritance. The lower court initially denied the guru's claim, citing the Hindu Succession Act, 1956, which did not recognize such relationships. However, the High Court reversed the decision, emphasizing that customary practices within the transgender community should prevail in the absence of other claimants. The court reasoned that the parties were not bound by the Hindu Succession Act since their religion was unrecorded. This judgment affirmed the guru's inheritance rights based on community customs.³⁴

A related case, though not directly about inheritance, involved Kamla, a hijra elected as Mayor of Katni, Madhya Pradesh. The position was reserved for women, and Kamla's eligibility was challenged on the grounds of her hijra identity. The court disqualified her, ruling that Kamla was a hijra, not a woman, despite her inheritance of property through transgender community customs. This ruling subtly reinforced the tradition of property transfer within the transgender community.³⁵

4.2 Interpretation of Gendered Laws

Courts have also examined how gendered statutory terms should apply to transgender persons. In *Arun Kumar v. Inspector General of Registration*, the Madras High Court expanded the definition of "bride" under the Hindu Marriage Act, 1955, to include transwomen. The court held that excluding them would violate their constitutional rights, underscoring the judiciary's evolving role in aligning laws with contemporary gender identities. This judgment significantly advanced transgender rights within personal law frameworks.³⁶

Similarly, the Madras High Court has allowed transwomen to apply for positions reserved for women, including police constable roles. The court highlighted that the terms "male," "female," "son," and "daughter" in the Hindu Succession Act were not explicitly defined, leaving room for inclusive interpretation. The Rajasthan High Court adopted a similar stance in subsequent cases, signaling an emerging judicial trend toward inclusivity.³⁷

However, this approach is not uniformly applied. For instance, in *Sumita Kumari v. State of West Bengal*, the Calcutta High Court ruled that transwomen were ineligible for Asha worker positions reserved for women. This decision revealed the inconsistency in judicial interpretations of gendered statutory provisions. Some judgments expand the law to encompass transgender individuals, while others enforce a restrictive, binary understanding of gender. Such variability often forces transgender persons to conform to binary gender norms, limiting the binding scope of progressive judgments.³⁸

4.3 Claims Regarding Identification Documents

Courts have played a pivotal role in addressing the challenges faced by transgender individuals regarding identification documents. In a remarkable case, a petitioner assigned female at birth but who later developed male characteristics sought to amend his name and gender on his birth certificate. Despite providing medical and psychological certificates confirming his gender identity as male and undergoing surgical procedures, his request was initially denied by the District Registrar. However, the High Court intervened, directing the registrar to make the necessary changes.

In other instances, courts have taken proactive measures, such as instructing authorities to allow transgender individuals to take examinations in accordance with their self-identified gender, mandating the inclusion of a third-gender option on official identification forms, and ensuring that the absence of ration cards does not hinder transgender individuals' rights. These rulings underscore the judiciary's role in alleviating administrative barriers and upholding the dignity of transgender persons.

Courts have consistently sought to provide relief to transgender individuals, particularly in the context of identification documents and the interpretation of gendered laws. Cases concerning inheritance rights reveal the judiciary's reliance on customary practices to recognize these rights. At the same time, the interpretation of statutory provisions shows a growing tendency toward inclusivity, albeit inconsistently. For example, courts

³³ *Illyas v. Badshah Alias Kamla*, AIR 1989 MP 120.

³⁴ *Sweetly v. General Public*, AIR 2010 HP 15.

³⁵ *Kamla Case*, Writ Petition (Civil) No. 18 of 1995, Madhya Pradesh High Court.

³⁶ *Arun Kumar v. Inspector General of Registration*, AIR 2019 Mad 265.

³⁷ *Madras High Court Police Recruitment Case*, AIR 2020 Mad 54.

³⁸ *Sumita Kumari v. State of West Bengal*, W.P. 5884 of 2018, Calcutta High Court.

have directed authorities to make necessary changes to identification documents to affirm gender identity and promote equality.

However, extending these judgments to inheritance rights presents theoretical and practical challenges, largely due to the discretionary nature of judicial interpretations. Forward-thinking judgments, such as *Arun Kumar*, show promise, but others, like *Sumita Kumari*, highlight inconsistencies that hinder the broader application of rights. This fragmented approach forces transgender individuals to navigate legal systems that fail to fully acknowledge their identities unless they conform to binary gender norms.

In conclusion, while the judiciary has demonstrated a willingness to interpret gendered laws in an inclusive manner, there remains a pressing need for consistent, binding legal precedents to affirm the rights of transgender persons, particularly in inheritance matters. Without a comprehensive legislative overhaul, the judiciary's discretionary approach risks perpetuating a system that forces transgender individuals to adapt to binary standards for legal protection.

4.4 Reforming the Law: Comprehensive Considerations for Transgender Rights

The struggle for recognition and protection of transgender rights is a global issue, extending beyond national boundaries, including India. The path to securing these rights has been fraught with challenges, with incremental progress achieved through advocacy and judicial intervention. Interestingly, even the term "transgender" only gained mainstream usage in the 1990s, highlighting the historical lack of awareness and terminology needed to address the community's needs.

A landmark principle in Indian jurisprudence emerged from the case *Ram Krishna Dalmia v. Justice S.R. Tendulkar*, where the Supreme Court recognized that even a single individual could constitute a distinct class and merit constitutional protections.³⁹ This principle underscores the theoretical capacity of the law to protect inheritance rights for transgender individuals, even as practical implementation continues to lag due to societal norms and legislative deficiencies.

Indian inheritance laws, deeply entrenched in binary gender norms, fail to recognize non-binary and transgender identities, leaving significant gaps in protection. These binary frameworks complicate inheritance claims for transgender persons, making it challenging to identify rightful successors and leaving them vulnerable to systemic exclusion.

5. Comparative Analysis

5.1 Pakistan's Legislative Model

Understanding potential reforms requires examining legislative changes in neighboring countries, such as Pakistan. The **Transgender Persons (Protection of Rights) Act, 2018** is a notable example of progressive reform. This legislation, enacted after sustained judicial and public advocacy, includes provisions specifically addressing the inheritance rights of transgender persons—an area overlooked in India. Chapter V of the Act prohibits discrimination in inheritance matters. For instance, individuals assigned female gender at birth who later identify as male are entitled to inherit property as men, and vice versa. The Act also recognizes non-binary individuals, specifying that their inheritance share should be calculated as an average of the shares designated for male and female heirs.⁴⁰

This legislative approach underscores the disparities in how transgender persons are treated across countries. While India's **Transgender Persons (Protection of Rights) Act, 2019** provides certain protections, it lacks similar provisions for inheritance rights. Furthermore, Pakistan's law emphasizes gender self-determination, eliminating the need for state or medical validation—an aspect that India could incorporate to enhance its legal framework.⁴¹

Nepal's progressive measures also serve as an example. Similar to Pakistan, Nepal respects gender self-determination without requiring state or medical intervention. These regional legislative models highlight the necessity for evolving legal systems to protect diverse gender identities comprehensively.⁴²

5.2 Challenges in the Absence of Dedicated Legislation

Without specific legislative provisions, courts often attempt to fit transmen and transwomen into existing inheritance laws. This forces individuals into binary categories that do not align with their lived realities. Although better than exclusion, this approach fails to provide true legal recognition, compelling transgender persons to conform to systems that do not represent them.⁴³

The absence of inclusive laws can also allow judges and legal authorities to interpret legislation in ways that disadvantage individuals who do not fit into binary classifications. If the law does not adapt, legal recognition

³⁹ *Ram Krishna Dalmia v. Justice S.R. Tendulkar*, AIR 1958 SC 538

⁴⁰ The Transgender Persons (Protection of Rights) Act, 2018 (Pakistan), Chapter V.

⁴¹ Khan, A., & Qureshi, H. (2019). Gender Recognition and Inheritance Rights in Pakistan. *Journal of Legal Studies*.

⁴² United Nations Development Programme (2018). *Regional Trends in Gender Recognition Laws*.

⁴³ Patel, M. (2020). "Judicial Approaches to Gender Identity." *Indian Law Review*.

risks becoming a tool of regulation rather than empowerment, restricting individuals' rights and identities. To address this, laws should shift towards gender neutrality, ensuring equal rights for all individuals regardless of gender identity.⁴⁴

5.3 Existing Models of Gender-Neutral Provisions

India has made strides toward gender-neutral legislation in some areas. For instance, the **Hindu Succession (Amendment) Act, 2005** allowed daughters the same rights as sons to inherit ancestral property, addressing gender-based disparities. However, scholars such as Damle, Srivastava, and Anand (2020) note that other provisions of the Act still maintain a differential framework for property devolution.⁴⁵

Amendments explicitly recognizing transgender persons in inheritance laws are essential. Legal definitions must evolve to include transmen, transwomen, and non-binary individuals. This inclusive approach would ensure consistent judicial interpretation and equitable rights for transgender persons.⁴⁶

5.4 The Importance of Comprehensive Identity Documentation

An essential step in achieving inclusivity is ensuring that all government-issued identity documents allow for self-identification of gender. The **Yogyakarta Principles**, an international framework on sexual orientation and gender identity, recommend enabling individuals to amend identity documents without medical intervention.⁴⁷

Argentina provides a compelling example of such reforms. After simplifying the process for changing gender on official documents, over 3,000 individuals applied for gender changes within the first year. Importantly, there were no reported cases of fraud, disproving concerns about misuse. These measures affirm the importance of universal accessibility to civil rights.⁴⁸

5.5 Recommended Legislative Measures

To build an inclusive legal framework, India could consider the following reforms:

1. **Amend inheritance laws for gender neutrality:** Ensure equal inheritance rights regardless of gender identity.
2. **Revise rules for identity documentation:** Allow individuals to self-identify gender across official records without medical validation.
3. **Prohibit discrimination in inheritance under the Transgender Persons (Protection of Rights) Act:** Strengthen the Act's provisions to protect property rights for transgender persons.⁴⁹

5.6 Broader Implications and Challenges

Inheritance rights alone cannot guarantee comprehensive protections. Broader civil rights, such as marriage and adoption, must also be addressed. However, implementing these reforms presents challenges. For example, existing gendered terms in Union laws require context-specific amendments to avoid unintended consequences.⁵⁰

Laws like the **Hindu Succession Act, 1956** may need both definitional updates and substantive revisions across multiple sections. For instance, terms such as "heir" must be redefined, and provisions like S. 8 should be amended for universal applicability.⁵¹

To ensure meaningful change, reforms should aim to create minimally disruptive amendments, moving laws toward gender neutrality while upholding the rights of transgender persons. This requires a balanced approach that integrates legislative and societal change, fostering a more inclusive and equitable legal system.⁵²

Conclusion

The issue of transgender rights encompasses a broad and multifaceted spectrum, particularly when considering the realm of inheritance rights. This paper, while thorough in its examination, does not purport to address the entirety of the obstacles faced by transgender individuals. A notable observation is that the few landmark judgments concerning inheritance rights among transgender persons predominantly pertain to the guru-chela (mentor-disciple) relationship. This highlights complexities that extend beyond conventional gender

⁴⁴ Srivastava, R. (2021). "Navigating Non-Binary Rights in Indian Law." *Human Rights Law Quarterly*.

⁴⁵ Damle, V., Srivastava, S., & Anand, T. (2020). "Gender Equality in Succession Laws." *Economic and Political Weekly*.

⁴⁶ Ibid.

⁴⁷ International Commission of Jurists (2007). *The Yogyakarta Principles*.

⁴⁸ Human Rights Watch (2013). *Argentina's Gender Identity Law: A Model for the World*.

⁴⁹ National Legal Services Authority v. Union of India (2014), Supreme Court of India.

⁵⁰ Saxena, P. (2018). "Gendered Terms in Indian Legislation: A Critical Review." *Indian Journal of Gender Studies*.

⁵¹ The Hindu Succession Act, 1956 (as amended in 2005), S. 8.

⁵² Bhushan, P. (2022). "Toward Inclusive Laws: Lessons from South Asia." *South Asian Law Review*.

classifications and touch upon unique community structures and customary practices. It is essential to recognize that inheritance rights in India are shaped by an interplay of customary traditions and codified legal frameworks. While this analysis emphasizes codified laws, it does not dismiss the significance of customary practices. Nonetheless, the paper prioritizes the examination of how legislative aspirations, as expressed in formal statutes, are intended to operate. The dynamic between these statutory goals and traditional norms, and the extent to which they are actualized, warrants a separate, in-depth inquiry.

This paper underscores a critical point: the current Indian legal framework is rooted in a binary understanding of gender, which creates substantial barriers for transgender individuals seeking to exercise their inheritance rights. Identifying legal successors becomes an arduous process for transgender persons due to various systemic challenges. These challenges include the absence of necessary documentation, the inability to legally marry, and difficulties in proving adoption. Such legal structures inherently marginalize transgender individuals and hinder their access to inheritance. The traditional approach is inherently flawed as it fails to acknowledge the complexities of gender beyond the binary, leading to significant exclusion.

It is evident that contemporary global and domestic perspectives on human rights increasingly advocate for the recognition and protection of the rights of all individuals, regardless of gender identity. This growing awareness must be reflected in Indian legislative reforms. There is an urgent need for amendments to existing inheritance laws to address and accommodate the realities and rights of transgender individuals. The paper's recommendations, while grounded in the analysis of current codified laws, should be seen as preliminary and illustrative rather than exhaustive. These suggestions are not a comprehensive roadmap for enhancing property rights for transgender persons but rather represent essential first steps in bridging the gap between legal aspirations and lived experiences.

To move towards greater inclusivity and equity, legislative bodies must take into account the unique challenges faced by transgender individuals in asserting their inheritance rights. This requires a legal paradigm shift that recognizes gender diversity beyond male and female classifications. Policymakers must strive to create a legal environment that ensures all individuals, irrespective of their gender identity, can access their rightful inheritance without discrimination. Such changes should be informed by a thorough understanding of contemporary human rights norms and a commitment to addressing systemic barriers.

In conclusion, while this paper focuses on codified legal frameworks, the broader context of customary practices and community-based inheritance traditions should also be explored in future research to present a holistic view. The recognition and protection of inheritance rights for transgender individuals is not just a legal issue but a step towards achieving comprehensive social justice and equality.