



# Property Rights of Transgender Persons in Joint Family Property: A Legal Vacuum

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## Abstract

The present article is about the legal lacunae in the Indian law vis-à-vis the right to ownership of transgendered individual, specifically on the issue of joint family property. To provide a clear approach, the article will examine the question of whether transgender people will have access to property rights via land reform frameworks. By the end of this article you will gain some insight into how presently existing loopholes in judiciary and laws of India restrict the rights of transgender people in asserting their inheritance or ownership rights with complete authority. The discussion will also focus on the scope of transgender inclusion in the Land Acquisition Act in order to observe the necessity for changing the legislation, so that property rights for transgender people can be affected equally.

## Introduction

### Meaning of transgender (biologically)

Transgender: Biologically or in the context of gender identity, a person whose gender identity is a male and female or that of another gender, not the one that was assigned at birth. A person who has been socially determined female can feel and/or self-identify as a man,

### Meaning of transgender (law)

The meaning of transgender in law in India is given explicitly in the Transgender Persons (Protection of Rights) Act, 2019. Under this Act, a "transgender person" is a person whose gender is not the one they were assigned at birth and encompasses Trans men, trans women, transgender intersex and those with other gender identities. This Act brings a legal framework into place in which this legal definition is grounded; it is the main Act that makes it possible to recognize and protect the rights of transgender persons.



## **Meaning of property**

In the common-sense sense, property is anything that one owns or has control over. Any of the kinds of things you can own, whether used or exchange, such as a house or land, a car, jewelry.

## **Importance of property**

The importance of property is foundational to both individual and societal well-being. On a personal level, property provides security—a home is not just a roof over one's head, but a foundation for stability and future planning. Economically, property acts as a source of wealth, investment, and collateral—allowing individuals to secure loans, generate income, and build intergenerational wealth. Socially, property ownership grants status, recognition, and a stake in the community. In a legal sense, property rights underpin many freedoms—like the ability to participate in the economy, exercise control over one's life, and pass on resources to future generations. In short, property is a cornerstone of economic and social empowerment.

## **Historical Background of Transgender Persons in India**

### **Ancient India**

Encyclopedias of ancient Hindu texts refer to people who didn't fit into the genders by halves.

Mahabharata Shikhandi. Arjuna assumed the new identity known as Brihannala which is a transgender. Mak yong is begat by the Ardhanarishvara, the combination of male and female power.

The aforementioned instances show that gender differences were accepted in the old Indian culture.

### **Medieval Period**

Transgender individuals were well placed in the administrative and military functions during the Mughal period, in particular as eunuchs. They were often employed in royal courts and who were held in social esteem.

### **Colonial Era**

Transgender status seriously worsened during British rule. The Criminal Tribes Act, 1871, stigmatized and excluded eunuchs by categorizing them as a 'criminal tribe'. The Act was revoked following independence but its impact still remained in society.

### **Post-Independence Developments**

Despite the promise of equality in the Constitution, transgender individuals were seldom visible within the legal system until the 21st century, when it came to the attention of the courts and culminated in the NALSA judgment in 2014.



## Statistical Overview

Category	Figure
Total transgender population (2011 Census)	4.88 lakh (488,000)
Literacy rate among transgender persons	56.1%
Social exclusion and economic marginalization reported	High levels

Various studies conducted by organizations such as the **United Nations Development Program (UNDP)** and the **National Human Rights Commission (NHRC)** have revealed:

A high rate of family rejection.

Limited access to employment opportunities.

Greater risk of experiencing homelessness.

Denial of inheritances and family assets.

These factors highlight the significance of the importance of the economic empowerment by way of property rights.

## Legal aspect

Property rights are an integral part of social and economic empowerment. Personal property ownership and inheritance gives people the economic independence, social recognition and financial security as a property owner. The rights of transgender persons are still pending in respect of ancestral and joint family property while the rights of women have been gradually declared with the enactment of several laws over the years, particularly the Hindu Succession (Amendment) Act, 2005.

In the famous case of the Supreme Court of India in the year 2014 (National Legal Services Authority (NALSA) v. Union of India) transgender persons were defined as a “third gender”, and were given all the constitutional rights assumed by us. Later, the Act for the Protection of Rights of Transgender Person, 2019 introduced to curb discrimination against transgender persons in all areas. However, the Succession Act does not mention anything about their status as coparceners or heirs in this regard, in the context of Hindu joint family property. In the context of Hindu joint family property, however, succession laws fail to mention their position as coparceners or heirs.



## **Constitutional Framework Improve transgender equality<sup>1</sup>**

### **Article 14 – Equality before Law**

This article is the foundation of equality in the Indian law. It explicitly says that "any person" has to equality before the law and not leaves transgender people out of it. This means that they have the right to be treated on an equal footing with all other citizens and have their needs catered to through laws, policies and judicial processes without prejudice.

### **Article 15 - Prohibition of Discrimination**

Traditionally, Article 15 only guaranteed a ban on discrimination on the basis of religion, race, caste, sex or place of birth. While the Supreme Court in the NALSA judgment, however, defined "sex" as gender identity. An expansion of this means transgender individuals are now legally protected from discrimination,

### **Article 16 – Equality of Opportunity**

This provision guarantees everyone the equal opportunity to public or civil careers irrespective of gender identity. This implies in practice that 'transgender' people cannot be excluded from employment due to their gender identity, which is fundamental to economic inclusion.

### **Article 19(1)(a) – Freedom of Expression<sup>2</sup>**

Freedom of Expression: This article protects the right for people (transgender or not) to say what they wish. This is important for transgender people as it means they are able to publicly declare themselves a transgender person, and as this identification is an essential proportion of their sense of self and sense of belonging, it has tremendous significance.

### **Article 21 Right to Life and Personal Liberty**

Right to Life and Personal Liberty: This is one of the most expansive rights under the Constitution. The Supreme Court has held that the right to life includes the right to dignity, autonomy, and privacy—so for transgender persons, it guarantees their right to self-identify, free from coercion or state interference. In this way, these constitutional provisions collectively lay a robust legal foundation for recognizing, affirming, and protecting the rights and dignity of transgender individuals in India.

## **Landmark Judicial Decisions**

### **National Legal Services Authority (NALSA) v. Union of India (2014)**

The Supreme Court:

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<sup>1</sup> INDIA CONST. art. 14, INDIA CONST. art. 15, INDIA CONST. art. 16.

<sup>2</sup> | INDIA CONST. art. 19, cl. (1)(a). INDIA CONST. art. 21. National Legal Services Authority v. Union of India, (2014) 5 SCC438 (India). SCC 438 (India). Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1 (India). Navtej Singh Johar v. Union of India, (2018) 10 SCC 1 (India).



- Recognized transgender persons as the "third gender."
- Upheld the right to self-identification.
- Directed governments to ensure social and legal protections.

This case serves as the constitutional foundation for transgender rights in India.

### **Justice K.S. Puttaswamy v. Union of India (2017)**

The Supreme Court recognized privacy and personal autonomy as fundamental rights, strengthening the principle of self-determined gender identity.

### **Navtej Singh Johar v. Union of India (2018)**

The Court emphasized dignity, equality, and constitutional morality, reinforcing protections for gender and sexual minorities.

### **Relevant Statutory Provisions<sup>3</sup>**

#### **Transgender Persons (Protection of Rights) Act, 2019**

##### **A separate act for transgender in year 2019**

The Transgender Persons (Protection of Rights) Act, 2019 is a landmark Act in India towards ensuring protections for the rights of transgender persons. The key aim of the Act is to discriminate no longer and ensure the equal treatment in different areas of life.

Part 3 of the Act bans transgender discrimination in regards to education, work, health care, public services, and housing. This measure reinforces the Constitutional guarantee of equality and attempts to work for social inclusion.

Moreover, Section 12 guarantees transgender individuals the right to family life which means that they cannot be denied a place on the household, a place of residence, and access to family support merely because of their gender identity. Familial acceptance and protection is recognized in the provision.

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<sup>3</sup> The Transgender Persons (Protection of Rights) Act, The Transgender Persons (Protection of Rights) Act, No.40 of 2019, INDIA CODE (2019). National Legal Services Authority v. Union of India, (2014)5 SCC438 (India). Hindu Succession Act, No.30 of 1956, INDIA CODE (1956). Hindu Succession (Amendment) Act, No. 39 of 2005, INDIA CODE (2005).



But, this protection has not addressed anything regarding succession, inheritance and coparcenaries rights. Under existing personal laws, transgender individuals' right to ancestral and joint family property remains unclear even as they are legally recognized as a family member.

### **Understanding coparcenary Rights under Mitakshara Law**

Most Hindu joint families in India are to be governed by the Mitakshara system.

Coparcenary means a group of the family members who gain an interest in the ancestors' property as a result of birth.

Prior to 2005:

There were only male coparceners.

Following the amendment of Hindu Succession Act, 2005:

Equal rights of coparcenary were given to daughters.

But the act doesn't include transsexuals.

This leaves behind some questions that are left unanswered:

### **What if the trans man/woman is still a coparcener, despite being a transgender person, what then?**

May a transsexual female have the rights of a daughter?

Does a trans-man have the rights of a boy or a girl?

How does the place for non-binary people fit in with the model?

There are currently no definitive answers to this question in the law.

### **Legal Vacuum in Property Rights**

When there is no recognition in the Hindu Succession Act, 1956 Inheritance laws have not worked as fast as the trans-gender people were given constitutional status. The Hindu Succession Act, 1956 primarily introduces gender norms like son, daughter, widow, and mother. The Act does not specifically refer to transgender individuals or what such individuals shall be classified as under the act for purposes of succession and inheritance. The absence of legislation leaves question over their rights to family property

### **Greividence of Vagueness in the Inheritance of Coparcenary Rights**

Daughters have equal coparcenary rights in the ancestral property across the country as a result of the landmark reform, The Hindu Succession (Amendment) Act, 2005. The amendment did not however, consider transgender identities. Consequently, there remain some unanswered questions. Whether a trans woman has



rights like a daughter, and whether a trans man has rights like a son, as well as how non-binary people fit into the legal system are not specified. When laws are not clearly-defined, there is often conflict regarding entitlement and status within the family line.

Although transgender citizens are able to vote and be granted identity cards, the law has not completely acknowledged their property rights. The Hindu Succession Act, 1956 still employs the gender specific language such as son, daughter, widow, mother and has no reference to transgender people. Therefore, despite the equality enshrined in the law in many aspects, there remains some ambiguity and disagreement regarding claiming one's rights to family assets.

### **Practical Barriers**

Even where constitutional principles support equality, transgender persons frequently encounter:

- Family rejection.
- Denial of inheritance.
- Lack of documentary recognition.
- Lengthy litigation.

### **Global comparison**

Country	Legal Framework	Impact on Transgender Inheritance Rights
Canada	Human Rights Legislation	Protects against discrimination based on gender identity, including in property matters.
United Kingdom	Gender Recognition Act, 2004	Legal gender recognition affects inheritance rights directly.
Australia	Anti-Discrimination Laws	Gender diversity is recognized, ensuring equal treatment in inheritance.
United States	Varies by State Laws	Some states recognize gender identity in property succession; others do not.

This table highlights how different countries have taken steps to ensure transgender individuals can equally inherit property, depending on their gender identity

### **Need for Legal Reforms**

#### **Amendment to Hindu Succession Act**

By establishing a national uniform inheritance code, we would be doing transgendered persons, and all people, a tremendous favor by granting them equal rights to property. Transgender people have no clear rights at the moment in matters related to inheritance of property as the laws vary from religious personal laws. A single



code would ensure all citizens with the same rights regardless of gender identity; this meaning property was equally inheritable.

The need to replace gendered language — such as “son” or “daughter” — with language that is inclusive of non-binary and transgendered people is essential for achieving transgender equality in all areas of acquiring and retaining property rights. All genders are taken care of and all equal in inheritance laws.

### **Restatement of the Coparcenary Standing.**

There is a need for clear statutory amendments and judicial guidance to establish the property rights of trans men, trans women and non-binary individuals in joint family property in the controversy.

### **Conclusion-**

In India, there has been tremendous strides in the recognition of transgender's dignity and identity via constitutional interpretation and statutory changes. Some of the milestones for equality are achieved in the NALSA judgment and the Transgender Persons (Protection of Rights) Act, 2019. But, the problem of who is entitled to which portion of the family property and who is entitled to its coparcenary rights under the Hindu Joint Family System is still not resolved.

There is a huge void in the law with regard to transgender persons, since there is no mention of them in the Hindu Succession Act or in the Mitakshara coparcenary system. Transgender people remain uncertain, discriminated and excluded from ancestral land without explicit legal protection. Property rights are not only economic rights, but also very much instruments of dignity, social inclusion and empowerment.

A progressive law which aims at equality, dignity and non-discrimination in the observance of the constitution of the country should ensure that transsexuals have the same rights as other citizens in terms of inheritance and coparcenary. This is a gap that needs to be closed through legislative reform, judicial interpretation, and more comprehensive legal changes to move towards substantive equality.



## **References links -**

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