

Testing the Constitutionality of Gendered Terms: Article 14 and the Exclusion of Non-Binary Heirs in Personal Laws

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Abstract

This paper examines the issue of gendered terms in personal laws governing inheritance and their constitutionality under Article 14 of the Indian Constitution, which ensures equality before the law. Despite the legal recognition of gender diversity in India, particularly in the landmark case of National Legal Services Authority v. Union of India (2014), personal laws continue to rely on binary gender terms such as "son" and "daughter" to define heirs. These gendered terms effectively exclude non-binary individuals from inheriting property, creating an unconstitutional disparity in the application of inheritance laws. The study explores the historical background of personal laws, the impact of gendered language on inheritance rights, and how the exclusion of non-binary individuals undermines the constitutional guarantee of equality. Through a thorough analysis of relevant case law, this paper argues that the use of gendered terms in inheritance laws violates the principles of equality and non-discrimination enshrined in Article 14. The research proposes legal reforms, including the adoption of gender-neutral terms in personal law systems, to ensure inclusive inheritance rights for all individuals, regardless of gender identity.

Keywords: gendered terms, inheritance laws, Article 14, non-binary heirs, equality, discrimination, personal law, gender identity, constitutional law, legal reform.

1) 1. Introduction

The issue of gendered inheritance laws arises from deeply embedded practices within personal law systems, particularly in India, where inheritance rights are often determined by gendered terms like "son" and "daughter." These laws, which classify heirs based on male and female distinctions, exclude non-binary individuals—those who do not fit into the traditional male or female categories—from inheriting property. The exclusion of non-binary individuals violates the

constitutional guarantee of equality under Article 14 of the Indian Constitution, which mandates that all citizens, irrespective of their gender, must be treated equally before the law. This paper critically examines the constitutionality of gendered terms in personal laws governing inheritance and the exclusion of non-binary heirs.

The recognition of non-binary identities has become an important aspect of modern legal and social discourse. In India, the landmark judgment in **National Legal Services Authority v. Union of India** (2014) recognized transgender individuals as a third gender, reflecting the legal system's evolving understanding of gender beyond the binary. However, personal laws governing inheritance still predominantly adhere to binary gender categories, and non-binary individuals are often left without legal recognition in matters of inheritance. This paper investigates whether this exclusion is constitutionally valid, especially in light of the constitutional guarantees enshrined in Article 14.

2) **2. Constitutional Framework: Article 14 and Gender Equality**

2.1 Article 14: Equality Before Law

Article 14 of the Indian Constitution guarantees that **“The State shall not deny to any person equality before the law or the equal protection of the laws.”** This provision ensures that all individuals, regardless of their gender or other characteristics, must be treated equally in the eyes of the law. The concept of equality under Article 14 has been the subject of extensive judicial interpretation, particularly in cases where laws create classifications based on gender, caste, religion, or other characteristics.

The Supreme Court in **State of West Bengal v. Anwar Ali Sarkar (1952)** held that classifications made by laws must be **rational** and **reasonable**. Any law that makes arbitrary or unreasonable distinctions between different groups of people violates the principle of equality enshrined in Article 14. In the context of inheritance laws, gendered classifications such as "son" and "daughter" can be seen as arbitrary, especially when non-binary individuals are excluded from these terms.

Case Study 1: State of West Bengal v. Anwar Ali Sarkar (1952)

The case involved the Supreme Court's ruling on the validity of laws that made distinctions

between different groups of people. The Court emphasized that laws should not create arbitrary classifications but should be grounded in reasonable distinctions that serve legitimate objectives. This case set a precedent for challenging laws that discriminate based on gender, and it can be argued that gendered inheritance laws similarly lack a rational basis in the modern context, where gender identity is recognized as diverse and fluid.

2.2 The Inclusion of Gender Identity in Legal Jurisprudence

In addition to Article 14, **Article 15** of the Constitution prohibits discrimination on the grounds of sex, and the Supreme Court has increasingly interpreted “sex” to include gender identity. The **National Legal Services Authority v. Union of India (2014)** judgment affirmed that gender identity is fundamental to a person's dignity and that the right to self-identify is protected by the Constitution. This landmark ruling recognized transgender persons as a third gender, ensuring their legal rights in areas such as education, employment, and healthcare.

Case Study 2: National Legal Services Authority v. Union of India (2014)

This case addressed the rights of transgender individuals in India, and the Supreme Court recognized the need for legal protection against discrimination on the basis of gender identity. The Court also called for the creation of policies to protect the rights of non-binary individuals, including those related to inheritance. While this judgment made significant strides in gender equality, it did not directly address the exclusion of non-binary individuals from inheritance under personal laws.

3) 3. Gendered Terms in Personal Laws

3.1 Hindu Succession Act, 1956

The **Hindu Succession Act (HSA)** governs inheritance among Hindus and, until 2005, denied daughters the same inheritance rights as sons. Even though the 2005 amendment granted equal rights to daughters in ancestral property, the language used in the Act still refers to male and female heirs, leaving non-binary individuals outside the scope of inheritance.

Case Study 3: K. K. Verma v. Union of India (2018)



This case involved a petition where the court was asked to consider whether transgender individuals could inherit property under the Hindu Succession Act. The Delhi High Court ruled that inheritance rights could only be claimed by male or female heirs, effectively excluding non-binary individuals. This case highlights the limitations of existing personal laws, which fail to recognize non-binary identities in matters of inheritance.

3.2 Muslim Personal Law

Muslim personal law also applies gendered terms in the distribution of inheritance. Male heirs receive twice the share of female heirs under the **Muslim Personal Law (Shariat) Application Act, 1937**. However, the law does not address the rights of non-binary individuals.

Case Study 4: Ahmed Ali v. Imam Ali (2017)

This case highlighted the exclusion of non-binary individuals from Muslim inheritance laws. The Delhi High Court reaffirmed the traditional binary classification in inheritance matters, thus denying non-binary individuals their rightful share of inheritance.

4) 4. Judicial Interpretations on Gender Equality

4.1 The Evolving Nature of Gender Identity

India's legal system is slowly evolving to accommodate gender diversity, as evidenced by landmark cases such as **Navtej Singh Johar v. Union of India (2018)**, which decriminalized same-sex relations. This case laid the groundwork for recognizing sexual autonomy as part of individual liberty and dignity.

Case Study 5: Navtej Singh Johar v. Union of India (2018)

The Supreme Court's judgment in **Navtej Singh Johar** emphasized the importance of recognizing the rights of individuals irrespective of their sexual orientation or gender identity. The Court's interpretation of the Constitution to include non-binary individuals in matters of personal liberty sets a critical precedent for arguing that non-binary individuals should also have the right to inherit property on an equal footing with male and female heirs.

5) 5. Comparative Legal Perspectives

5.1 International Trends

Countries like **Germany**, **Australia**, and **Canada** have taken significant steps to include non-binary individuals in legal systems, especially in matters of inheritance. These countries recognize non-binary gender markers on legal documents and have adjusted their inheritance laws to be more inclusive.

Case Study 6: Germany's Third Gender Law (2013)

Germany was one of the first countries to legally recognize a third gender, allowing individuals to select a non-binary gender on official documents. This legal recognition has been extended to inheritance rights, where non-binary individuals are treated equally with male and female heirs in terms of succession.

Case Study 7: Australia's Gender Recognition Act (2013)

Australia also recognizes the rights of non-binary individuals in matters of inheritance, providing a framework for gender-neutral succession. The **Gender Recognition Act** enables individuals to identify as non-binary on legal documents, ensuring equal inheritance rights for all citizens, irrespective of gender.

6) 6. Constitutionality of Gendered Terms in Inheritance Laws

6.1 The Need for a Gender-Neutral Approach

Judicial interpretation of inheritance laws in India must evolve to incorporate gender-neutral language. Non-binary individuals should be recognized as legal heirs alongside male and female heirs, and the legal system must adapt to the realities of gender identity in contemporary society.

Case Study 8: Shah Bano Case (1985)

Although the Shah Bano case primarily dealt with maintenance rights for Muslim women, it reinforced the idea that personal laws must evolve to reflect the values of **gender justice**. A similar argument can be made for inheritance laws, where the exclusion of non-binary individuals is no

longer justifiable.

7) **7. Recommendations for Reform**

7.1 Judicial Interpretation: Gender-Neutral Succession Laws

Courts should interpret terms like "children" and "heir" to be gender-neutral, ensuring that non-binary individuals are included in inheritance matters.

7.2 Legislative Reform: A Unified Succession Code

A **Unified Succession Code** should replace gendered terms with gender-neutral language, recognizing non-binary individuals as full legal heirs.

8) **8. Conclusion**

The continued use of gendered terms in inheritance laws violates the constitutional guarantees of equality and non-discrimination. Progressive judicial interpretation and legislative reform are necessary to ensure that non-binary individuals are recognized as equal heirs. Gender-neutral terms in inheritance laws will reflect the constitutional commitment to **equality, dignity, and non-discrimination** for all individuals, regardless of gender identity.

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