



Right to property of the transgender people in Patuakhali district of Bangladesh: Findings and recommendations

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Abstract

The property rights of transgender people living in Patuakhali are the subject of this study. Locally, the term transgender is popularly known as 'Hijra' at Patuakhali in Bangladesh. They are severely deprived of their property rights. Many times, they are destitute of their property rights only because of their gender issues and their families. The purpose of this research is to uncover an inconsistency in the management of rights to property and its distribution among transgender and ordinary people. Usually, they are homeless and marginalized people in the Patuakhali district. This study has observed that they are living roughly and always these groups of people are getting underprivileged/deprived of their human rights. The current reality of the hijras regarding property rights are still unpublished. They are still living in isolated groups in Patuakhali district. They have been a fundamental part of Patuakhali society since ancient times. The negative attitude of the people towards them has alienated them from the society. Due to the negative attitude of the society, the hijras are neglected and deprived of all their rights. One of the noticeable issues is the tendency to deny the hijras of their property. The main object of this article is to highlight that how inconsistent as well as unlawful the right to property of the transgender people is in Bangladesh's Patuakhali district.

Keywords: Property, right to property, distribution of property, state instrument, global instrument, working environment, acknowledgement

Introduction

On the Indian subcontinent, eunuchs, transgender, and intersex people are known to as hijra^[1]. The word is derived from the Hindustani language, and it roughly translates as "eunuch" or "hermaphrodite" in English. A Transgender is a person who is neither wholly male nor wholly female. Such a person can be a combination of female and male, or neither male nor female^[2]. Hijras have been recognized as the third gender by the government. In December 2009, Bangladesh granted voting rights to transgender people, also referred to as transgender or hijras^[3]. The government announced in November 2013 that hijra would be recognized as a third gender category in all national documents and passports^[4]. Now it can be assumed that they will enjoy other benefits of normal men and women in the country. On that note, people should recall that the Nepal Supreme Court was the first in South-East Asia to officially distinguish third-gender people in the case of *Sunil babu pant vs. Nepal government* (2007)^[5]. According to national statistics, at least ten thousand transgender people currently live in Bangladesh, though the figure could be ten times higher. It is unknown whether the hijras will be heirs like any other child of their parents. Bangladesh has recognized permitted transgender persons. They are almost 1.5 million in number. The transgender people are identified as a distinct gender subsequently in 2013^[6]. In accordance with statistics, it appears that there are at least ten thousand hijras^[7] in Bangladesh and they are being denied their rights in various sectors including property because of being a marginal group which is clearly inconsistent with the provisions of the constitution. All of the laws of the land should be applied to them as they would to any other

person. They should be treated equally, respectfully, and without discrimination. They should not face discrimination when exercising their rights to apply for, own property, or seek justice. Civil rights under the law, such as the right to get property through will or make a will, and inherit property must be available to all regardless of gender or sex identity change. The Holy Quran states that men have a share in the abandoned property of parents and relatives. Whether it is less or more the prescribed part^[8]. Regarding determining the amount of property, the code says, 'Creator has instructed you about your children: the share of one son is equal to that of two daughters. But if the daughter is more than two, the abandoned property is two-thirds for them, and if there is only one daughter now, it is half for her^[9]. If he has a child, the parents have one-sixth of the inherited property for each, one-third for his mother if he is childless and heir to his parents, and one-sixth for his mother if he has siblings, after giving what he bequeaths and paying off debts. You do not know which of the fathers and the children is nearer to you in benefit. That is the law of Allah^[10]. Nowhere in the Holy Qur'an is anything said about the property rights of the hijras. Hijras are not born as hijras of their own free will. What crime have the hijra children committed to be deprived of the same privileges and inheritance rights as other children born through the same father and born in the same mother's womb? Detailed and elaborated discussions with many experts, it is learned that no clear opinion has been received from them regarding the property rights of the transgender people. But an Islamic scholar says that men with mustaches are considered men and women without beards are considered women. Hijras do not need to be mentioned as the third gender if this

statement is accepted. Hijra activists say the question of sharing their parents' property is not explicitly mentioned in any laws of Bangladesh. They further said that the law and social context of Bangladesh are complex and sensitive. The government should take effective action in this regard. The transgender people cannot be confident that there will be a solution.

A transgender has been destitute of her parents' property due to being a transgender person. One of her brothers and two sisters have inherited property under Muslim inheritance law. But she sees law and society as major obstacle for not getting a share of the property ^[11]. When the transgender requested her share of the estate from her father, based on identity he would give her the property, the transgender said from Patuakhali. Transgender has a feminine nature. Father told them that if they take a woman's identity or wear women's clothes and take property from her, it will not be accepted by the society. Father also said you have no family, what will you do with the property? He reached to the conclusion that he would not share his property. Now a days various campaign is going on for the rights of the hijra community in all domains of society, including property. The transgender said that in accordance with provisions of the Bangladesh Muslim Inheritance laws and the Hindu Religious laws hijras are not allowed to get the share of any property under any religious law. Family members take advantage of this law. Furthermore, the attitude of family members and society towards the transgender people is not positive ^[12]. One of them works in the department for the rights of transgender people of the human rights organization BLAST. The human rights activist herself is a transgender. Elaborating on the experience of a friend fighting for a share of the property, the transgender said that as her friend was a transgender person, the transgender had to accept her fate in that legal fight without any support from the law and society ^[13]. The government said that the friend had no right to the family property. When the transgender repeatedly asked for a share of the property, his siblings beat him and kicked him out of the house. Then her friend was forced to give up her property claim due to the lack of security. While speaking to one victim he further added that as an oppressed transgender he did not take legal action because there was no benefit in filing a lawsuit. Supreme Court lawyer has said that the Muslim Inheritance Act of 1961 is in force in Bangladesh. The law does not explicitly state the property of the hijras ^[14]. The Muslim inheritance law speaks of children. The existing law of Bangladesh does not explicitly state anything about transgender people or the third gender. However, Islamic jurists in various countries have favored the division of property among the hijras, and this has been followed in many countries ^[15]. A province of Pakistan has issued a fatwa after conducting a study on Islamic law, stating that male dominance is predominant among transgender children and that they should be considered male offspring. And those who have more female natures should be considered daughters. Considering such signs, the inheritance law gives a share of the property amongst the transgender people there. However, there is still no unanimous decision among Islamic scholars in the world.

Objectives of the study

The main points of this study are to create awareness among the common people and the policymaker about the rights of

the transgender in property and to point out the query of creating a responsive position to ensure their right to property. The objectives are the following-

1. To create awareness among the common people about their (transgender) right to property.
2. To call for the existing policy of the right to property for transgender people.
3. To guide the way of how to ensure the right to property for transgender people.
4. To increase the empowerment of the gender-diverse population through capacity building by addressing their human rights issues.

Methodology

This study data is collected from the Patuakhali district of Bangladesh and also from both primary and secondary sources. Generally, this article is written mostly based on qualitative techniques. The following are the sources-

- Data is collected from notable authorities on law, different journals, daily newspapers, the internet, etc.
- National and International instruments
- This study has been done based on an objective approach centered on accessibility to literature.
- Government, NGO, and welfare organizations and also from door to door among the transgender people and their families.

Literature review

During the preparation of this article, the author studied a good number of documents and articles which deal generally with the difficulties of transgender people concerning their incapacities & the possibility to provide them a fair chance of staying somewhere in the society. The Author took an interview of the transgender people of Patuakhali. As far as the author is concerned there is no article written on the right to property of transgender people staying at Patuakhali district in Bangladesh. This article endeavors to come out with probable ways for ensuring their right to property.

Meaning of transgender people

"Transgender Person ^[16]" is one who is (i) Intersex (*Khunsa*) with a blend of man and woman venereal structures or hereditary obscurities, or (ii) Eunuch allotted male at birth, but experiences genital deletion or castration; or (iii) a Transgender Man, Transgender Woman, Khawaja Sira or any individual whose gender distinctiveness and/or gender appearance changes for the social customs and cultural potentials founded on the sex they were given at the time of their birth. Transgender persons are people whose gender identity is dissimilar from the gender they were believed to be at birth. "Trans" is habitually used as stenography for transgender ^[17]. Transgender is an overall term that defines people whose gender uniqueness, or their inner sense of being male, female, or somewhat else, does not contest the sex they were given at birth. By difference, the term gender defines people whose gender identity brings into line with the sex they were assigned at birth ^[18]. A Hijra's woman is a female who was congenital as a man. A transgender man is a one born as a woman. Some transgender people identify as neither male nor female, nor as a blend of both. Non-binary and gender queer are two terms used to describe people who are neither entirely male nor entirely female. The transgender community in Bangladesh expressions many

contests, counting matters with marriage, property, voter rights, adoption, and so on.

Right to property of the transgender people: National and international legal aspect

The International Covenant on Civil and Political Rights and the International Covenant on the Economic, Social and Cultural Rights of Diverse Sexualities are both signed by Bangladesh. In addressing human rights issues relating to sexual orientation and gender identity, the National Human Rights Commission of Bangladesh is in a position to make a substantial contribution. Several international conventions stipulate that discrimination against transgender people is not allowed. It is acknowledged in both the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) that no one's legal rights may be arbitrarily deprived of. Firstly, we have to see the rights which means 'Human rights are legal, social, or ethical moralities of self-determination or privilege; that is, rights are the fundamental regulating rules about what is allowed of people or owed to people according to some legal system, social settlement, or moral theory' [19]. Property is a term telling anything that a person or a professional has legal title over, and has enough money, owners' certain enforceable rights to said matters. Currently, the Court had only two opportunities to deal with inheritance rights. In these matters, the Court mostly relies on customary practices (of a deceased transgender) while recognizing their inheritance rights. Like in this case of *Illyasand Ors. vs Badshah Alias Kamla* [20], the Appellant contended before the Madhya Pradesh High Court that Munilal (a transgender guru) had executed a will in his favor. On the same grounds, the Respondent contended that he was also Munilal's disciple and had an equal right to the bequeathed property. After the investigation was complete, the Court held that the will in favor of the Appellant was forged and noted that even if there was a will, even then the deceased being a Muslim, could not bequeath more than one-third of their property (which is the testamentary limit of a Muslim person) [21]. A belonging of property, which may be touchable or incorporeal, contains self-propelled vehicles, industrial equipment, furniture, and real estate the last of which is often referred to as "real property. Property is any element that a being or a business has lawful title over. The furthestmost communal types of property are real, private, government-owned, and personal property. "Transfer of property" means an act by which a living person conveys property, in current or upcoming, one or more other existing persons, or himself and one or more other living persons; and "to transfer property" is to perform such an act. In this section "living person" includes a company or associations or body of individuals, whether incorporated or not, but unknown herein contained shall affect any law for the time being in force relating to the transfer of property to or by concerns, associations or, bodies of individuals [22]. The State must come advancing to uphold a legitimate right of the public and must arrange an instrument to ensure their right to property. It's worth mentioning here that in December 2009, the Supreme Court of Pakistan ordered that the government shall formally recognize a distinct gender for Pakistan's hijra community, which includes transgendered people, in the much-discussed *Khaki vs Rawalpindi* case [23]. All citizens must have equal access to opportunities, as stated by the state [24]. In order to

promote an equitable distribution of wealth among citizens and of possibilities to achieve a uniform level of economic development across the Republic, the State should adopt effective measures to end social and economic inequality between persons [25]. The state shall make every effort to ensure women's equality of opportunity and participation in all aspects of national life [26]. All citizens are equal before the law and are entitled to equal protection of the law [27]. Every citizen, no matter where he may be, and every other person for the time being within Bangladesh have an absolute right to respect the defense of the law, to be treated in accordance with the law, and to only follow the law. No action that jeopardizes a person's life, liberty, body, standing, or property may be taken unless authorized by the law [28]. Every citizen shall have the right to own, possess, transfer, and otherwise dispose of property, subject to any limitations established by law, and no property shall be compulsorily acquired, nationalized, or requisitioned unless by authority of law [29]. A law passed in accordance with paragraph (1) of this article must specify how property will be acquired, nationalized, or demanded in exchange for compensation, as well as the amount of compensation to be paid. However, no such law may be challenged in court on the grounds that any provision regarding the compensation is insufficient [30]. *Hindu Succession Act, 1956* which governs Hindus for the inheritance of both Joint and separate property only recognizes males and females as a focused matter to the property rights [31]. It expresses what a Hindu is and who meets the requirements for that explanation. The Act establishes a uniform and comprehensive inheritance system that put on to both the *mitakshara* and *dayabhaga* schools of thought. This law also mentions the individual. International Covenant on Civil and Political Rights (ICCPR) in its Article 17 states that no one shall restrict the transgender the right to privacy, family, etc., and should be given the right to protection of the law in contradiction of such interference [32].

Case study of transgender for property rights

The Madras High Court in the case of *Arun Kumar v. Inspector General of Registration (2019)* It is held that the term 'bride' in the *Hindu Marriage Act, of 1955* also includes transwomen [33]. Generally, the court in the substance of inheritance gives relief to transgender petitioners based on customary performs but still denies them equal rights that are ordinarily exercisable by the people. Afterwards, the ruling in the case of *National Legal Service Authority v. Union* [34] of India the Transgender Peoples (Protection of Rights) Bill was announced in Lok Sabha in the year 2016. This bill discusses the right of residence for the communal but does not dialog about their inheritance rights. They have not stated the position of coparcener in the Joint Hindu Family with their gender atmosphere nor as a lawful heir of their parents' different property [35]. The entity deals with transgender rights in India as the transgender have the right to be recognized as a third gender and are entitled to lawful guard under the law. The rights are equally guaranteed below the Indian constitution to the transgender being as the constitution guarantees justice and equality to every Indian Citizen [36]. The Pakistan Supreme Court in the case of *Dr. Muhammad Aslam Khaki & Anr. v. Senior Superintendent of Police Rawalpindi & Ors. (2009)* gave a landmark judgment and stated that transgender is subject to the Constitution of the

Islamic Republic of Pakistan and will be given the right to life and property under the Pakistani Constitution ^[37].

Need to property for transgender

When a transgender child is born in different families of Patuakhali district, the transgender child has to face different family and social problems. As a result, these entire transgender children leave their families and live temporarily in a different place. The problems, faced by transgender are discrimination, and lack of property, want of unemployment, lack of shelter. A legal outline must be established so that persons of the transgender (hijra) community can inherit family property. The state must confirm that the hijra community enjoys all basic rights such as- accommodation, property, education, and medical treatment without any discrimination. All the laws of the state should be pragmatic to them like any other person. They should be preserved equally, humbly, and without any insight. They should not be discriminated against in working out their right to property, or their right to access to justice. Civil rights under the act such as the right to inherit property, and adopt children must be obtainable to all notwithstanding the transformation in gender/sex characters. Bangladesh's policy of distinguishing only two sexes and declining to recognize transgender as third sex has deprived them of a number of several rights that Bangladesh citizens take for granted. These rights contain the right to own property, the right to marry, the right to claim a formal identity through a passport and a driver's license, the right to education, employment, health, and so on. Such deprivation excludes hijras from the very fabric of Bangladesh's civil society.

Challenges to implement property rights for transgender people at Patuakhali

Patuakhali district is a riverine district and as it is located in the southernmost part of Bangladesh, the news of oppression and deprivation in this region is not transmitted all over Bangladesh. As a result, the voice of justice cries silently here. However, the concepts of human rights and equal rights have been a matter of the twentieth century, and the fight for legal recognition and respect of a "third category of gender" in addition to the male and female gender has recently begun to bear fruit ^[38]. The terminology not only classifies itself as third but also creates a sense of superiority and inferiority between the other two gender identities. The political, cultural, and legal emergence of a complex, contentious term, 'third gender, from ancient Greece to digital Bangladesh, has not been easy ^[39]. However, hijra or frequently male-to-female transgender persons have extensive antiquity in South Asia. Many human rights groups are continuously forcing the stakeholders to abolish the social disgrace toward the transgender community and ensure equal civil rights to merge them within the mainstream. Like many other basic rights, transgender people are also deprived of inheriting property ^[40]. In due course, they adopted begging, prostitution, and other questionable professions for their survival. This provisional discrimination was repealed in 1949 but exploitation, and discrimination towards them continues ^[41]. Although the state of one hundred sixty-eight million people is legitimately secular, property legislation still follows religious laws, with transgender people generally barred from inheriting estates when parents die. In

Bangladesh, the most of the property is attained through inheritance, especially in the rural zones. The contest of transgender persons to inherit property arises due to three core reasons: (1) Rights below inheritance laws describe only two sexes either male or female; (2) Difficulty in identifying a successor; (3) Due to social attitudes. In this case, Pakistan's policies could be followed because in this regard Pakistan has enacted momentous laws on the property rights of transgender people, which has enabled the country to protect hijras with property laws.

Right to Inherit. - (1) Transgender people are entitled to their proper portion of the property as specified by the law of inheritance without prejudice ^[42].

(2) Transgender people's cases will be resolved based on the gender indicated on their CNIC (Computerized National Identity Card), enforcing Pakistan's inheritance law ^[43].

(3) The portion of inheritance for transgender persons will be as follows: -

1. the inheritance will be divided among transsexual men in a man's proportion ^[44].
2. (ii) The share of the inheritance that transsexual females get will belong to women ^[45].
3. The following rules apply to individuals who have ambiguous or dual traits that make it challenging to discern their gender at birth ^[46].
 - a. If at the age of 18, the individual identifies as a transgender male, the male gender will make up the majority of their inheritance ^[47].
 - b. When a person reaches the age of 18, if they self-identify as a transgender female, their inheritance will be divided equally between women ^[48].
 - c. If the person's self-perceived gender distinctiveness is neither transgender man nor a transgender woman at the age of 18, the portion of the legacy will be as usual: two distinct circulations for a man and a woman ^[49].
 - d. A medical officer determines a child's gender under the age of eighteen using the child's predominately masculine or female traits ^[50].

Property right: On the grounds of sex, gender identity, or gender expression, no transgender person shall be denied the right to buy, sell, rent, or lease property, a home, or a tenancy ^[51]. In terms of renting or leasing, it is forbidden to discriminate against any transgender person based on their sex, gender identity, or gender expression ^[52].

Recommendations to overcome the situation

The followings are some of the policy implications based on the specific findings of the study:

1. To protect the property rights of Hijra by certain laws and rules
2. To safeguard the rights of the Hijra community and other marginalized groups, advance anti-discrimination legislation.
3. Besides the creation of many policies, taking actual steps to actually implement the laws.
4. To guarantee transgender people's legal rights in the state, a new policy must be implemented.
5. For the Hijra community's property rights, a private bill needs to be submitted before the parliament.
6. For transgender people, property and inheritance laws should be enumerated as an immediate step to ensure the fair distribution of property.

7. Create a system for transgender housing, giving older transgender individuals top priority when allocating properties.
8. The constitutional recognition of transgender people must be established.
9. Awareness counseling can be given for the right to property at the family level of the transgender family.
10. non-government organizations should provide legal and financial support.
11. Adopt a thorough anti-discrimination law with the goal of emancipating discrimination based on protected grounds like gender character, gender appearance, and sex characteristics, in accordance with international law and standards. This law should be based on open, meaningful, and widespread national discussions with relevant parties.

Conclusion

Property is one of the fundamental principles of state policy of Bangladesh's as well as the fundamental rights in Bangladesh constitution. The Government has to give special sight to the property of the transgender and the state has to ensure the right to property for everyone due to transgender being one of the underprivileged communities in Bangladesh. Transgender has the right to access all kinds of property of their family so that the state has to implement their right to property and has to ensure the state mechanism. There is no alternative for improving their lives without ensuring the right to property. Only the right to property can ensure the right track or main flow of the society. They are treated as the burden of family and society but they have to be treated as the equal stakeholder of the state. They are the most vulnerable and one of the poorest groups as they are deprived of basic needs facilities and employment opportunities due to their gender identity. They have also identified the necessity of executing their recognition in the true sense (building up third gender category in all official documents) for improving their current situation. This can also be an issue for further research as to how far the legal recognition of transgender people has changed their lives or not.

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