



Daffodil *International* **University**

A Research Monograph
On

**Legal Analysis of Ensuring the Inheritance Right of
the Transgender in Bangladesh**

Submitted To

Dr. Kudrat-E-Khuda Babu,
Associate Professor & Coordinator of LL.M.
Department of Law
Daffodil International University

Submitted By

Priyo Chandra Das
ID: 193-38-360
Batch: 30th
Program: LL.M.
Department of Law
Daffodil International University
Date of Submission: 24/10/2020

**A research Monograph Submitted in Partial Fulfillment of the
Requirement for Masters of law (LL.M.) program, Department of
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Letter of Transmittal

Date: - 20 October,2020

Dr. Kudrat-E-Khuda Babu

Associate Professor & Coordinator of LL.M.

Department of Law

Daffodil International University

Dear Sir,

After my utmost endeavor I have been able to make research monograph on Legal Analysis of Ensuring the Inheritance Right of the Transgender in Bangladesh, hereby it's a great joy for me to dedicate this research paper on this topic. During ending this research I even have made all effort to form this research obligate and up-to-date by recruiting all the pertinent information during this paper in order that it can accomplish ones thirst for knowledge and your anticipation.

Therefore, I shall be remain grateful to you if you underlie this research paper for your appraisalment and that I would be glad if any precious suggestion is formed from your part in this issue.

I am always available for any clarification of any part of this paper at your convenience.

Thanking you.

Name: - Priyo Chandra Das

ID: - 193-38-360

Program: - LL.M.

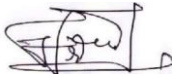
Department of Law

Daffodil International University

Certificate of Supervisor

This is to certify that the work is entitled “Legal Analysis of Ensuring the Inheritance Right of the Transgender in Bangladesh” is an original work done by Priyo Chandra Das, ID-193-38-360, Batch-30, Department of Law, Daffodil International University, completed under my supervision and submitted in the partial fulfillment for the award of research, work is done for the fulfillment of the course requirements of Law-812, 812 to accomplish the Research Monograph under Department of Law, Daffodil International University.

I wish him success.



Dr. Kudrat-E-Khuda Babu

Associate Professor & Coordinator of LL.M.

Department of Law

Daffodil International University

Declaration

I am Priyo Chandra Das, hereby proclaim that the work, present in this thesis is the result of the investigation and performed by me under the supervision of Dr. Kudrat-E-Khuda Babu, (Associate Professor & Coordinator of LL.M., Department of Law at Daffodil International University). I also proclaim that this research or no part of it has been or is being submitted elsewhere for the award of any degree.

Signature

Priyo Chandra Das

Priyo Chandra Das
(Candidate)

Acknowledgement

I would first resembling to thank my thesis advisor Dr. Kudrat-E-Khuda Babu (The Associate Professor & Coordinator of LL.M., Department of Law at Daffodil International University). The door to Dr. Kudrat-E-Khuda Babu office was constantly open at whatever time I ran into a dilemma or had an inquiry about my thesis or writing. He consistently accepted this paper to be my personal work but carried me in the precise direction whenever he thought I required it.

To conclude, I must articulate my very profound gratitude to my parents to provide me with unfailing encouragement and unremitting support all through my years of study and throughout the process of researching and scripting this thesis. This accomplishment would not have been feasible without them. Lastly, I'm showing very much respect and gratitude to my God.

Thank you

Preface

This research monograph is an endeavor to study on “the Inheritance Right of the Transgender in Bangladesh” I have tried to set this research paper in a systematic methodical & easeful understandable approach with my best endeavor, which will be suit of the reader of this paper.

During this entire research, I tried to apply my sincerest endeavor to assemble the most dependable and absolute intimation about this matter “Legal Analysis of Ensuring the Inheritance Right of the Transgender in Bangladesh”.

By reading this research paper every reader will be able to understand about the subject matter of the research monograph, importance of this issue and can analysis with present actual situation.

Each single observation and suggestion for further perfection of this research paper or of any new concept about the subject issue will make me inspire.

Abstract

The ideas of common liberties and privileges of correspondence have been an outflow of the 21st century. Transsexual is large known as people who are neither male nor female. The Transsexual is generally known as "hijra" in Bangladesh who are generally disregarded volume of individuals far and past the region of legacy. Starting at now, they took a sex status and perceived as 'third sex' other than male and female. Regardless of the way that assembly of Bangladesh has confirmed this transgender people as third sex and introduced them alternative to project a polling form, anyway starting now and into the foreseeable future an enormous part of the rights are not be guaranteed to them particularly gets the opportunity to right of heritage. They are assembled to be completely disparaged the bygone era outline. Howsoever, clearly this bit of individuals is continually denied of their appropriate rights along with right to legacy under different strict networks. In any case, because of some problem and non-existent of sex character, this transsexual network is forsaking of receipt legacy property. Grievously the current status of their quintessence has been experienced to woeful destitution, obliviousness, dread and joke. They are up 'til now taking in the resemblance of give up from their prime right of heritage. The nuclear object of this hypothesis is to center upon the issue concerning transgender right of heritage under the remaining alive individual laws in Bangladesh. The people of society are jumped on target to apathy that they are similarly human and they have equivalent rights like other human of the overall population. People are remaining the pessimistic speculation towards them with no honor and isolating them from the overall population with no compassion. This hypothesis token endeavor to make sure about or entire the methods which might be taken by the respected master for their fine life reliant on right to inheritance. Consequently, to affirm the effectuation of this essential right of legacy alongside other lawful and basic liberties to transsexual so they can be the compelling aspect of our general public.

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Chapter One

Introduction

1.1 Introduction

We realize individual is the sole formation of the Omnipotent. Transsexual are additionally treated as human and as a person they should have a few rights, obligations and liabilities and so on, however they are generally disregarded one. In Bangladesh, a large number of government assistance outline have been present by the Legislature yet those were for the male and female as such transsexual being a differed segment grouped based on sexual structure has not been the subject of the government assistance plan. Their privileges as human are not being declared rather they have been denied from the standard social, strict, social, proficient and political life. They have no privilege of arrangement family and intimate life so they are generally disregarded of their rule rights and essential needs especially they are dismissed of the privilege of legacy. The individual laws (Muslim, Hindu and Christian) don't unmistakably proclaim about third sexual orientations privileges of legacy. Islamic legal advisers are given a few standards and guidelines with respect to their privileges of legacy with the assistance of Hadith and Qiyas. So it is the liabilities of the State to affirm their privileges of legacy from their legacy property. A lawful legal structure must be presented so transsexual can acquire their family property. This proposal will attempt to give a review on the legacy of transsexual under Muslim, Christian and Hindu laws and furthermore attempt to make a few recommendations with respect to one side of legacy.

1.2 Literature Review

This Exploration paper is formed fundamentally by taking help of both the essential and optional sources. The sources join appropriate legitimate course of action, case and laws in different district, investigating scholarly works, focused on transsexual issues (e.g., books, dairies, articles, reports and papers), and glancing through the web and talking college educators, teachers and specialists (e.g., Family Law rehearing Lawful counsels, Attorney, individual from Law Maintaining Association). Express references of the materials used are given in the editorial

of concerned segments. I in like manner used data totaled by public laws for instance Muslim Law, Hindu Law, Christian law, Constitution of Bangladesh and Global laws. Likewise, available disseminated Investigation Reports and Articles related matter of transsexual privileges of legacy. “Transgender is an umbrella term that portrays people whose sexual direction character or enunciation doesn't arrange the sex they were delegated after entering the world. For example, a transgender individual may recognize as a woman paying little mind to having been carried into the world with male genitalia”.¹ “Transgenderism stays a zone of uncertainty with respect to legacy and the possible troubles in the phrasing of current wills. Imprint Lindley, accomplice at Boodle Hatfield represent considerable authority in wills and trust, talks about how utilizing sexually impartial pronouns in wills and the presentation of Sex Acknowledgment Authentications (GRCs) improve lucidity with respect to legacy issues”.² “As indicated by Islamic lawful hypothesis, it notices to the transmission of substantial or immaterial, moveable, unfaltering resources assets from the expired to their current legal beneficiaries”.³ “In case the khuntha or third genders are fall into the game plan of male or female, there the individual will be considered to as a male or female according to in all region simultaneously, if third genders people are not delegated a men or women who have recently male or female genital peculiarity and can't wrap up which sex is major in that kid, by then Khuntha or third sexual direction won't be viewed as an individual sex and regarded as third genders inconvenience”.⁴ “A perished Hindus resource is controlled by the Dayabhaga School. Progression as indicated by the Dayabhaga School is administered by the ability to present profound advantages. The premise of this teaching of profound accommodation is parvanasradha ceremony congruity. It shows up from a panda offering, that is, a sacrifice of rice balls to expired progenitors. In any case, the tenet of viability is the main standard of the school of Dayabhaga”.⁵ “Keeping up the rules of heritage according to Dayabhaga school of Hindu Law, It is seen that under the base of sexual characteristics, male and female are competent to obtain the property of terminated. As the third genders are requested neither male nor female, they are being removed from getting property. Under the conventional Hindu legacy laws, a beneficiary will be ousted from getting legacy

¹ <<https://www.livescience.com/54949-transgender-definition.html>>

² Mark Lindley, LexisNixis, 30/11/2017 <<https://www.boodlehatfield.com/media/1671/transgenderism-in-wills-and-inheritance.pdf>>

³ Tanzil,R. Mujmuah Quanini Islam, “Islamic Research Institute, IIUI”, 2nd Edition, <volume 5, p.1585,(1958)>.

⁴ Uddin, “Muslim Law of Inheritance and Practice”, Dhaka, Kitabmohol, p.100, M (2000).

⁵ Mulla,D.F, “Standards of Hindu Law”, <Eastern Law House>, P.101-109, (1946)

property because of deafness, visual impairment, ridiculousness and for extravagant of any appendages or organs, given the flaw are both acquired and not reparable”.⁶ “In Bangladesh the arrangement of legacy proper to Christian as indicated by the Progression Demonstration 1925, isn't sex recognized where both male and female have the option to acquire similarly. Under the guidelines of progression Act anyplace a Christian bites the dust without having made a will, leaving after a widow/life partner and tribal descendent”.⁷ “In the Christian world customary eunuchs by birth are not allowed to get familial assets. In any case, such irregularity of inheritance isn't right of these who made themselves androgynous for Christ”.⁸ This theory token undertaking to procure or whole the means which may take by regarded expert on behalf of their fine existence dependent on right to inheritance. hence, to affirm the effectuation of this essential right of legacy alongside other lawful and basic liberties to transsexual with the goal that they can be the compelling aspect of our general public.

1.3 Objective of the Study

My research objectives are as follows:

- a) Critical review of Inheritance rule of Transgender under the different religious personal laws in Bangladesh.
- b) To Analysis National and International Legal instrument for the protection of inheritance rights of Transgender.
- c) To find out limitation of laws and actual reasons of barrier to implementation of this laws.
- d) To give some recommendation for remove loopholes of the laws of inheritance of transgender.

⁶Haque, M. A. “Hindu Law in Bangladesh: Theory and Practice, University Publications”. “First Edition, p.200”, (2014)

⁷“The Succession Act, 1925”

⁸Karavites, “Evil, Freedom and The Road to Perfection in Clement of Alexandria”, page no.89, see <<https://books.google.com.bd>>

1.4 Significance of the Research

This study is most effective to the transgender for getting their inheritance. The reason is this study will help to know about the inheritance rights of transgender under national and international laws perspectives. In the entire world along with Bangladesh transgender are deprive from getting their all basic human rights as well as inheritance rights. Though national laws and international laws have provided statutory provision as well as given legal status of transgender but all are remain just in paper or as mere document, there have not proper implementation. This is the right time for transgender to turn around. They have proper right to get their property of inheritance. By this paper transgender as well as general people will be aware about inheritance right of transgender. It will help to find loopholes of laws and proper procedure of implementation of laws for distribution of inheritance property of transgender. Moreover, this research will open a great opportunities for other researchers concerned with this area. Again this research will be very much helpful for the students of law to enrich their knowledge.

1.5 Research Question

My research questions are as follows:-

- a) Is the transgender recognized by law?
- b) What is the attitude of national and international laws towards transgender?
- c) How is it possible to properly implement inheritance right of transgender by removing loopholes of the laws?

1.6 Methodology

The research study is basis on Qualitative methodology. This is generally widely used in legal research. Qualitative research is focuses on determining what the law is on a particular sense. It involves locating and interpreting significant primary and secondary sources of laws and adjusting those sources to form a rule or rules of laws. As part of this procedure, an

estimation and analysis of competing or conflicting sources may be required. Qualitative methodology researches also suggest a ways in which the law should develop. The research has collected information data by use of books, journals, websites, newspapers, reports, articles, national laws, international laws and other relevant sources of data. The researcher has analyzing and evaluating the data so as to come up with a comprehensive research and appropriate suggestions to be able to solve the complex issues. Here the researcher has conducted a Qualitative methodology research by use of articles analysis and resolution of landmark judgment of cases.

1.7 Limitations of Research

The main limitation of the thesis is its comprehensive reliance on journals, books and reports throughout the online. Further regard to practical scenario, unavailability of data in relation to the research concern may also be settled as another limitation. Essentially there have a lot of data but we cannot say that this research is accurate or 100 percent authentic. There have another problem of time restriction and budget. In fact it's so much tricky to complete a research precisely within short time, with inadequate budget.

CHAPTER TWO

Definition, Classification and Legal Status of Transgender

2.1 Recognition of transgender in different countries.

In entire world transgender assemblages have historical entity in many cultural chapters of books. Transgender are known by different identity with various name in different countries. “In the Philippine third gender are familiar as “Bakala”, In the Oman is “xaniths”, to the people of Kenya natives are called them “Serrers” and on the other hand the South Asian countries people are called or known them in various name like “Ashijra, Shivshakti, Jogtas or Jogappas, etc.”⁹ Latin American countries and European countries are known transgender as ‘Berdache’ and most of the countries of entire world they are known as ‘Third gender ‘or ‘Transgender’. Again in Bangladesh generally third gender is known as “Hijra. When traditionally the word “Hijra” has translated then it has been in English as ‘Eunch’ or ‘hermaphrodite’.

2.2 Origin the word of Transgender

The American Dictionary Heritage defines “Eunuch as a person who is employed as a harem attendant or as a functionary in certain courts of Asian are known as hermaphroditic or transgender again A person whose intend is abortive or been detached.”¹⁰ Generally we know that etymologically the word “hijra is come from ‘Urdu or Hindi’ language which are alternately be used in other different word like ‘hijada’ or ‘ashijira’ or ‘hijrahand’ or ‘hijda orhijara’ which is prominent as ‘Heejra’ or ‘Heejda’.”¹¹ “In other sense the word is generally origins from the root of Arabic ‘hjr’ its sense of leaving is one’s tribe.”¹²

⁹Khan,S.I, Hussain, M.I, , ‘Living on the Extreme Margin: Social Exclusion of the Transgender Population’, “Journal of Health, population and Nutrition”, <27(4), 440-453>, (2009)

¹⁰Hauser, B. R, “A Eunuch-Harmful Inheritance Practices and Human Rights, Law& Ine”,21-22,(1),(2003),

¹¹Chettiar.A, “International Journal of Social Science and Humanity”,<5(9),753>, (2015)

¹²Alhawary.M.T, and Benmamoun, E.(Eds.), “Perspectives on Arabic Linguistics XVII-XVIII: Seventeenth and Eighteenth Annual Symposia on Arabic Linguistics” (Vol. 267), John BenjaminsPublishing.<p 97,(2005)>.

2.3 Classification of Transgender

Though it is concerned that this is a common concept, in which third gender are being classified, by their selves or by community as neither are they man nor are they woman. Sometimes they have both male and female carnal organ and character. Generally transgender should be categorized under three basic orders those are actual hermaphrodite, female mendacity and male mendacity. Pure hermaphrodite is a group of people who are born with ovum (female sexual limb) and their testicular tissues bear male sexual limbs character. According to medical science a sole who born with 'XX' chromosome they are getting with general feminine sexual limbs but they bears "masculinical" genitals character (Bear feminine sexual limbs but physically elegance as a masculine genetically character because of their having exotic male sexual limb is to be classified as a female mendacity transgender. On the other hand when a person who is male mendacity transgender is fully opposed of female mendacity transgender. "When a person born with 'XY' chromosome and character with testes and having exotic genital as generally of female mendacity transgender"¹³. In biology, "a third gender has bears an ingredient which has proper or some particular reproductive limbs and creates gametes generally combined with both male and female sex"¹⁴. In different word of Arabic 'Mukhannath' has classified meaning same to transgender. Again according to Islamic scholar also Hadith collectors Al Nawawi, "A mukhannath (transgender) is the one (male) who conveyance in his course, presence and in his speech the nature like a woman. There have two kinds, one of them is any one in whom those natures are inherent, there those nature does not revoke by himself, and there have no culpability, no disrespect and no discredit, until he does not plays any kind of illicit act or exploit it for income of money (prostitution etc.). The types of acts as a woman out of adulterous intention and he is the offender and reprehensible"¹⁵.

¹³Mithani, A, & Burfa, F. M, Hijra—the sex in between. J Independ Stud Res, 1, (2003)

¹⁴<https://en.wikipedia.org/wiki/Hermaphrodite#cite_note-1>, "last edited on 25 July 2020, at 12:48 (UTC).

¹⁵Rowson, E. K, <The effeminates of early Medina>"Journal of the American Oriental Society", 670-694, (1991)

2.4 Legal status of transgender

The word 'Hijra' or 'Transgender' is being used for those particulars whom are classified neither male nor female and this word is be used occasionally in very prejudicial approach. Third genders are getting their live hood in the society in a level which is very marginal. They are always get low level of social and legal rank. Their first discarded of their life is beginning by their families. At first their family is departing them and then by the entire society. In national and international level we have a huge number of documents which are related to human rights like UDHR, ICCPR and ICESCR etc. According to those documents and statutes third genders also have some basic human rights like other persons; those are right to education, food, health, employment, property, shelter etc. But the actual reality is they are abandoning all of those human rights, particularly the inheritance of property right which is called as inheritance. By deprived from getting inheritance property, this neglected community is being kept excluded from society.

UDHR states there have no discrimination on the foundation of sexual alignment or gender distinctiveness. By a assembly which is broadcasted in 2006 called The Yogyakarta Ideologies states that comprised human rights objectors, judges, scholars, NGO officials and UN High Commissioner for Human Rights, the international community to identify that human beings of all sexual orientations and gender individualities are permitted to the entire pleasure of all the human rights and that every person's are self-defined in sexual orientation with gender individuality is very essential to their accountability and it is one of the most elementary parts of self- determination, self-respect and liberty. "Ever since the late 20th century, there have some certain hijra activist and some Non-Government Organizations (NGO) have urged for the official gratitude of the hijra as a kind of third gender or third sex as neither woman nor man in this sub-continent area".¹⁶ In the Indian area, "Nepal is country which is as a first country first recognized the transgender as third gender and provided them the official acknowledgment through a landmark judgment in Pant Vs Nepal case"¹⁷.

¹⁶ Agarwal, "A Gendered Bodies: The case of the 'Third Gender' in India, Contributions to Indian Sociology", 31:273>, (1997).

¹⁷ Pant Vs Nepal, "Writ No. 917,2006 BS (2007 AD)", "translated in National Judicial Academy Law Journal (Nepal)",2008,at 262

“The verdict of Nepal Supreme Court in 2007 generated a third legal groups of gender, and announced that all sexual components justify full safety of their human rights and order generous governmental act to apply the courts holding”.¹⁸ Afterward, the acknowledgement of third genders rights instigated in Pakistan when Muhammad Aslam Khaki, an Islamic Scholar of law filed a landmark case in the year of 2009 declaring that were misery substantial discrimination dishonor and irritation at the hands of the state government. The court is held that on the basis of gender malady, third genders had been mistreated but by the constitution they are entitled to get all rights approved to them. Besides right of inheritance and voting rights of third genders are signed out by the court. Also declared that “inheritance right could not be deprived on the basis of their gender distinctiveness and gives ordered the National Database and Registration Authority of it declared to issue national identity cards with ‘third gender’ classes for non-binary residents”.¹⁹

Although, in April 2014 “Indian Supreme Court finally acknowledged hijras as third gender are by law in the year of 1994”²⁰. “In Bangladesh, since third gender was granted the right to vote in 2009, the issue of identifying Hijras as a distinct gender has been debated. Afterwards they were known as a third gender in a political decision of 11 November 2013 through a cabinet chaired by the then Honorable Prime Minister of Bangladesh”.²¹ Beside with Bangladesh, other countries like Nepal, India and Pakistan, Germany, New Zealand, Australia, etc. those countries are also renowned them as a third gender. In Bangladesh they are not actually making proper changes to assurance third genders rights although Bangladesh recognizes hijra as a third gender.

¹⁸ Dickson, S., & Sanders, “India, Nepal, and Pakistan: A unique South Asian constitutional discourse on sexual orientation and gender identity”, “Social difference and constitutionalism in Pan-Asia: Comparative constitutional law and policy”<Page. No. 336, (2014)>.

¹⁹ Ibid,<Page. No. 336, (2014)>.

²⁰ “The Guardian”, ‘India recognizes transgender people as third gender’, (2014).

²¹ Islam, M, “Right to Education of the Third Gender of Bangladesh: An overview”, “IOSR Journal of Humanities and Social Science”,<21 (9) PP 28-34>,(2003)

CHAPTER THREE

Inheritance Right of Transgender under Muslim Law Perspective

3.1 Introduction

“The means of inheritance are the practice of transferring property, titles, debts, rights and obligations after the death of a person. The rules of inheritance differ between companies and have changed over time”²². It is the procedure of making fresh classes, called derivative classes, from current classes or base class, but can enhance enhancement and improvements of its individual. The precise significance of inheritance is moving an object from one to other; generally this handover provides to knowledge, dignity, and honor or wealth. According to Islamic legal theory, “it mentions to the transmission of tangible or intangible, moveable, immovable assets possessions from the deceased to his or her existing lawful heirs”.²³

3.2 Statutory Provisions regarding Inheritance right of transgender under Muslim Law

According to Muslim inheritance law, it is the utmost precise and strict law and Muslim scholars laid consequence in inheritance laws and they could habitually repeated proverbs of the prophet –“everybody should learn inheritance laws and teach them who have no knowledge about it, for them it will be one-half of useful knowledge”²⁴. “In Islam scholars classify inheritance laws from three sources, those are i) The Holy Quran, ii) The Hadith, iii) Ijma or accord estimate as well as dissimilar with course of laws, there have no dependence has completed on Qiyasor similarity with regard putting down in inheritance laws”²⁵. Several clusters of the Holy Quran indenture guideline of inheritance. Adaptations of those clusters are as follows:

“Allah leads you as affections yours children’s inheritance to the male, a percentage alike to

²² <<https://en.wikipedia.org/wiki/Inheritance>>, accessed on (03/03/2018).

²³ Tanzil,R., Mujmuah Quanini Islam, “Islamic Research Institute,(IIUI)”, 2nd Edition, <volume 5, P.1585,(1958)>.

²⁴ “Quoted in Al-Sirajjyyah”, P.11 (Introduction), (1890).

²⁵ “Faiz-ud-Din”, <A Text Book on Islamic Law, Shams Publications,Dhaka>,8th Edition,<p.230,(2008)>

that of two women, if there have only two or more daughters, their share are two thirds of the heritage but if there have only one, it is parts of half. For parents, one sixth portion of the bequest for single, if the death person has left child; if there have no kid and the guardians are the main beneficiaries, mother has a third; if the perished has left siblings or sisters, mother gets sixth after recompense of gifts. These accepted shares anticipated by Allah; and Allah is All-Knowing, All-Wise”.²⁶ “Jointly with the on top of verses, verse seven, eight, thirty-two and thirty-three extremely An-Nisha 4:7, 4:8, 4:32, 4:33 and seventy-five verse of the sura An-Anfal treats inheritance laws for regarding rights of remote relatives”.²⁷ There have some hadiths of prophet (may peace be upon him) regarding rights of inheritance, those are as follows: It is reported by Umran-bin-Hushain (Allah is pleased with him). He said: “A man came up to the prophet (PBUH) and said: My son is dead, what is left of the inheritance. He replied: 'For you it is a sixth', when he came back, he called him and said: 'For you there is another sixth and when he came back, (PBUH) he called him and said 'this second sixth is additional’”.²⁸ Prophet of Allah said: “The maternal uncle is the beneficiary, when there is no other beneficiary”.²⁹ This hadith recognized the maternal uncle's inheritance right.

3.3. Islamic Overlook in terms of Inheritance to Transgender

Islam is supposed to be a wide-ranging and complete code of creature life by its admirers. No one didn't leave human troubles untouched. When the Holy Quran did not verbalize directly of something else, Muztahid resolves it by mutual concurrence. Like different manifestations of Omnipotent Allah, bisexuals are additionally the best manufacture similar to other human beings. However, the Holy Quran is not concluding definite mode of distributing properties among them. But similar to all other solution provided by Muztahid, this is one too solved through "Izma". As the Holy Quran says, "Allah is the one who shape you in the womb at spirit",³⁰ that is, all physical character, counting sexual characteristics and the nature of a human being, come with the aspiration and permission of Allah. As a result, all children,

²⁶ “Al Quran, Sura An Nisa”, (4:11)

²⁷ Faiz-ud-Din, M, “A Text Book on Islamic Law”, Dhaka, Shams Publications, <8th Edition, p. 231>, (2008)

²⁸ Ibid

²⁹ Ibid

³⁰ “The Holy Quran”, (3:6)

men, women, or even third gender people have equal rights to God's sanction and there is no corroboration for parents, the government or the court to engage in gender utilization. So, of course, whatever their name is, they are allowable of the deceased assets to inherit.

3.4 The method of ascertaining transgender under Muslim Law

As affirmed by Fiqh or Islamic jurisprudence, “the one with male and female multiply organs are called Khuntha or hijra or third gender”.³¹ All cadastre will be involved with regard to rules of Islam to regulate the sex of the transgender. “Once gender is recognized, gender will be calculated for all legal verdict, as well as inheritance. Some sign are important to appreciate in order to organize the sex of the transgender, the first of which is the organs which is uses to urinate. If one used male organ, there it will be considered as male and if one used female organ, there it will be considered as female. On the other hand if the third genders urinate from both organs of male and female, then the first to get rid of the urine will considered the sex. This symptom should be determined at birth or soon after to control the sex of the transgender”.³² “On the basis of sexuality, they were divided as male and female”.³³ “If the khuntha or third genders are fall into the categorization of male or female, there he or she will be considered to as a male or female according to in all sector but, if third genders people are not categorized as a men or women who have only male or female genital individuality and cannot wind up which sex is major in that child, then Khuntha or third gender will not be deemed as a individual gender and deemed as third genders difficulty”.³⁴ So it is obvious that there have no particular law in Bangladesh regarding the inheritance of third gender or transgender. The Islamic metaphysics of inheritance in favor of transgender or Khuntha (hermaphrodite difficulty) are contextual in the country according to followers of different imams.

³¹ M-Uddin, <An overview of Inheritance of Hermaphrodite under the Muslim Law>,”Beijing Law Review”,<8,226-237>, (2017).

³²Ali, A & M., “Simplify inheritance rights in Islamic law Hermaphrodite right to inheritance and Married (khuntha)”, “Australian Journal of Basic and Applied Science”, <10(7) Special 2016, p.104-110>,(2016).

³³Hirschfeld, M, "Die intersexual Konstitution". “Jarhbuch fuer sexuelle Zwischenstufen”, 3–27, (1923).

³⁴ Uddin, “Muslim Law of Inheritance and Practice”, Dhaka, Kitabmohol,p.100, M (2000).

CHAPTER FOUR

Inheritance Right of Transgender under Hindu Law Perspective

4.1 Introduction

Generally, the law of succession or inheritance law in Bangladesh is guided by one's own private laws. So, when a deceased sole is a Hinduism follower, the essence of the deceased will be dispersed in accordance with Hindu law. According to Hindu law there are two schools of thought, illustrations are Dayabhaga and Mitaksara. The Dayabhaga, are compositions composed by Jimutavahana after the 11th or 13th period which mainly focuses on the inheritance procedure. On the other hand, the Mitaksara, is written by Vajnesvara in the 11th century, turned up to be an indulgent clarification on the Yajnavalkya-smriti also regarding to the phenomenon of inheritance. In matters relating to inheritance and succession in the Hindus of Bangladesh, the school of Dayabhaga is generally followed.

4.2 Statutory Provisions regarding Inheritance right of transgender under Dayabhaga School of Law

As for Bangladesh's own law for Hindus, "A deceased Hindu's assets is ruled by the Dayabhaga school. Succession according to the Dayabhaga School is ruled by the capability to bestow spiritual benefits. The basis of this doctrine of spiritual convenience is parvanasradha ceremony harmony. It arrives from a pinda offering, that is, a sacrifice of rice balls to deceased ancestors. Nevertheless, the doctrine of efficacy is the leading principle of the school of Dayabhaga".³⁵ At the Dayabhaga School, any inheritance on patrimonial assets son does not profit. After father's death the child's right arises for the initial time. As a result, all property is devolved by birthright and not under survival. According to this law school, coparceners are observed when the deaths of the father. Also females can be also coparceners. Therefore, only accepted settlement by birthright and does not distinguish

³⁵Mulla, D.F., "Principles of Hindu Law", <Eastern Law House>, P.101-109, (1946).

settlement for endurance as in the case of Mitakshara law. The Hindu Inheritance (Amendment) Act 1929 stated more three to this list, that is, son's daughter, daughter's daughter and daughter's sister. It should be noted that where females can simply enjoy the interest in life there males will be flourishing on property.

4.3 The approach of Hindu Law in terms of Inheritance to Transgender

The Hindu epos, Puranas and myths narrated in describe stories of the valiant activities of third gender that have been prescribed to as people of the 'third sex' in the scriptures. "Arjun have turn into the convention of hijras to be approved out by them in the current age. According to Hindu ethnicity as well, Hijras were generally recognized and apprehended a special position, mainly they were engaged as entrusted servants, correspondent or harbinger of the kingin the governmental part of the state".³⁶ "They were also measured to grasp religious influence and were attempt to find out for Gods favor and protection particularly during spiritual ceremonies. Nevertheless, with the time, this superior pose of the Hijra society fell low, exile to dust and imprisonment. In the period of the British administration, third gender people were compared to be a deadly deceased and criminalized the third genders group of people through diverse laws".³⁷ In Hindu Shastras, they (third genders/hijras) have been provided with social status, admiration and distinction. But the matter is how "third genders have been treated in the case of property of inheriting from the person who is deceased. Maintaining the regulations of inheritance according to Dayabhaga school of Hindu Law, It is noticed that under the base of sexual characteristics, male and female are competent to inherit the property of deceased. As the third genders are classified neither male nor female, they are being expelled from getting property. Again under the orthodox Hindu inheritance Law, an heir will be expelled from getting inheritance property due to deafness, blindness, daftness and for fancy of any limbs or organs, provided the fault is both inherited and not curable".³⁸ It comprehends in the case of congenial disability which is

³⁶Chowdhury D, "Recognizing the Right of the Third Gender to Marriage and Inheritance under Hindu Personal Law in India", "BRICS Law Journal", <3(3), 43-60>, (2016),.

³⁷Nambiar,S, "A brief history of hijra", India's Third Gender < <https://theculturetrip.com> > (accessed on 16/03/2018), 2017

³⁸Haque, M. A. "Hindu Law in Bangladesh: Theory and Practice, University Publications". "First Edition, p.200", (2014)

implicit and congenial to Hijra people. Also in Bangladesh it may be dealt also a ground of omission from the inheritance property.

CHAPTER FIVE

Inheritance Right of Transgender Under Christian Law Perspective

5.1 Introduction

“According to Constitution of Bangladesh recognized ‘Bangladesh’ as a country of secular and democratic”.³⁹ Christianity is a marginal religion in the Bangladesh (0.5%). In Bangladesh Christians similar to additional religious societies are ruled by their own private laws in the family occurrence as well as succession. But private laws for Christian communities in Bangladesh direct some civil laws which were accepted during the British governing. There has a unique history of Christian personal law in Bangladesh. According to the British governance Christian denomination in the subcontinent had proposed to call upon on the laws of their personal nationality for the reason that the Christian religion does not existent clear, textual base for private matters. But the difficulty emerged when the natives of the sub-continent apprehended adaptation to Christianity. It had a distinctive dilemma for the rehabilitated natives in respect of ascertaining the pertinence of laws in family matter of issues. Consequently some civil laws were approved as well as the Succession Act (XXXIX of 1925) which is at the present functional to settle Bangladeshi Christians communities the proprietary right. According to this Act of Succession start up after the departure of a Christian only if he had not accomplished a will or any deed of gift or a settlement deed. In the nonappearance of any kind of will or gift or any settlement deed, the rules and regulation of succession states in section 29 to 49 in the Part V of the Succession Act, 1925 would approach into play.

5.2 The Distribution Rules of Inheritance Property in Christian Law in Bangladesh

“In Bangladesh the policy of inheritance appropriate to Christian according to the Succession Act 1925, is not gender distinguished where both male and female be able to inherit equally. Under the rules of succession Act anywhere a Christian dies without having made a will,

³⁹ “The Constitution of the People’s Republic of Bangladesh”, Article 12,

leaving after a widow/spouse and ancestral descendent”.⁴⁰ “Afterward 1/3 portion of his or her belongings goes to the widow or spouse and another 2/3 to the ancestral descendants. Again, when a Christian natives dies without having made a will, leaving after spouse or widow and family members (like father, mother, etc.) simply, then ½ of the portion of property is goes to widow or spouse and other ½ of the portion of property to the family members and if there have no family members are missing either the entire of the domain shall belong to widow/spouse. On the other hand where a Christian dies without having made a will, leaving after neither ancestral descendant, nor sibling, parent then assets shall be alienated equally among individuals of his connections who are in the adjoining degree of relatives to him. When there have no heirs whatever to the intestate, it shall be go the Government administration”.⁴¹ “Where a deceased person has not left any existing child, but has left grand-child or grand-children and there has no more inaccessible ancestral descendant throughout a deceased grand- child, the assets shall belong to his existing grand-child if there only one or likewise among all his existing grand-children”.⁴² On the other hand where deceased has left just great grand-children or distant ancestral descendants, the assets shall go to the existing ancestral descendants who are adjacent in degree to the intestate.

5.3 The approach of Christian Law in terms of Inheritance to Transgender

In the Christian world ordinary eunuchs by birth are not allowed to get ancestral assets. But such contradiction of inheritance is not right of these who made themselves hermaphrodite for Christ. “In Bible verses states that is ‘for there have some hermaphrodite, which were born from their mother’s womb and there are some hermaphrodite, which were made hermaphrodite of men and there be hermaphrodite, which have made themselves hermaphrodite for the realm of heaven’s sake. He that is able to receive it, let him to accept it’”.⁴³ “There have some set of laws of inheritance which laid out in the old demonstration of the Bible. Deuteronomy added that eldest son was to succeed to father’s property with a double segment as first born”.⁴⁴ Now the Christians community of Bangladesh is ruled by

⁴⁰“The Succession Act, 1925”

⁴¹ The Succession Act, 1925, section 34& 35

⁴² Ibid, “section 38”

⁴³ “Matthew”, 19:12

⁴⁴ “Deuteronomy”: 21:15-17

civil law in terms of heritage and takes inherited property under the Succession Act 1925. Here father, mother, husband, wife, children, ancestral descendants and relatives are allowed to get assets of the departed Christian. To achieve the right of inheritance it is vital for a Christian to be interrelated with the deceased to get married or to have a blood affiliation as well as categorize as both male and female. The hermaphrodite in Bangladesh are not classified as male or female and do not comprise any right to marry, so they are dispossessed of receiving the assets of deceased.

CHAPTER SIX

Inheritance Right of Transgender under International Laws

6.1 Attitudes of international laws towards transgender

Third genders are faces segregation everywhere on the world. A few nations as Malaysia, Nigeria, Kuwait and so on deny the very reserve of third sex and nations as India content them as criminal clans. For the lack of lawful delegacy denies third sexual direction of Common liberties. Opportune give them legitimate affirmation and permission to common liberties various estimates was being used by the UN and other worldwide and global associations. Yogyakarta standards set out that the Worldwide Basic freedoms Law corresponding to sexual course and sex. This philosophy gave transsexual right to instruction, right to property, business, right to property, option to actualize their line of sexual course marvel and so onward "Rule no 3 of the Yogyakarta states that freedom to confirmation under the stable gaze of law. Rule 3A of Yogyakarta guarantee the birthright human rights of third sex by qualifying state to allocate property rights similarly counting decision to gain all through bequest to third sex with no special on the floor of sexual way and sex individuality". "As per worldwide assurance on familiar and Political Rights, its Article 17 expresses that no one will be discourage with the transsexual right to safety, family unit and so on and have to be indicated right to pledge of law against such arbitration". "The obstruct in the family grasps decision to be captive away by not acknowledging transsexual as an part of the family and thus issue to the no rights energizing out of family scheme just as bequest rights. The verdict is given by European Courts of Common liberties on explanation of Christine Goodwin v The Unified Realm". Shaped the assemble dominion to stretch out beyond expansive Proposal Act, 2004. This Act not only be attentive of acquired gender of persons as lawfully but also take procedures the provisions to highlight the results of the fresh gender class and their lawful rights in different viewpoint such as marriage, succession, etc".⁴⁵ "After the appreciation of transgender in the above-proposed initiative in the Pakistan Supreme Court provide a landmark judgment in the case of Dr. Mohammad Aslam Khaki & Anr. V.

⁴⁵ "General Recommendation Act", 2004

Senior Superintendent of Police Rawalpindi & Ors”.⁴⁶ “The verdict stated that third genders or hermaphrodite are the citizen of the Pakistan and are subject to the Constitution of Islamic Republic of Pakistan, 1973”.⁴⁷

⁴⁶ “Dr Mohd Aslam Khaki VS Operations SSP Rawalpindi and others.” Constitution Petition no 43. “Supreme Court of Pakistan”, 2009.

⁴⁷ Constitution of Islamic Republic of Pakistan 1973

CHAPTER SEVEN

Recommendation and Conclusion

7.1 Recommendations

In this thesis states some recommendations on the basis of loopholes and omissions of inheritance laws under various personal laws:-

- (1) While Bangladesh is a Muslim religious preponderance state, Islamic personal laws are acceptable in the subject of inheritance. The rights of transgender have been ensured by Qiyas. But infliction of it evident to be very far because of having lacuna between the society and the transgender community and they have not knowledge on their fact of inheritance for them. So the state and authorities should implement very specific laws according to basis of the subsisting provisions of Qiyas in company with Quranic verse.
- (2) In Hindu Personal Law, they (third gender) have specified a lot of admiration and honor because of receiving blessing from God. But transgender are not take measures with any religious stipulation by which they can allege inheritance according to their personal law. So legislation should be made ensuring a explicit portion for the transgender in the property of the deceased.
- (3) Under the Christian Law, third genders are fully deprived of acquiring property from the deceased under the verse of the spiritual scriptures in addition to the accessible civil laws of inheritance. Consequently in support of the Christian transgender people, legislation authority should be ensuring a specific portion for them in the property of the deceased.

7.2 Conclusion

Right of property is all around perceived as common liberties everywhere on the world independent of shading, sex, religion, station and so forth UDHR announces, "Everybody has the options to claim property alone just as in relationship with others. Nobody will be subjectively denied of his property" (article 17) .Then again, the Constitution of Bangladesh guarantees the fair transportation of riches among the residents. All the inhabitants of the nation as per the constitution just as the all inclusive revelation of basic liberties are competent for acquire, gain, and appreciate the property and it is the duty of the state to reestablish this basic liberty as a basic right. As far the bisexual is apprehensive, they have been perceived as the residents of the nation through passing the goal on January 26 and 2014. The Legislature of Bangladesh perceiving the Hijra as third gender keeps alive all the wants to be executed particularly regarding right to property later on.