Oxford Journal of Law and Religion, 2025, **14**, 298–324
https://doi.org/10.1093/ojlr/rwaf013
Advance access publication 3 October 2025
Original article

OXFORD

Silent histories, loud exclusions: Hindu inheritance and transgender personhood from Dharmaśāstras to India's Trans Rights Act

Jaideep Singh Lalli *

ABSTRACT

This article examines how the silence on inheritance rights in India's Transgender Persons (Protection of Rights) Act 2019 operates not as legislative oversight but as a regulatory technique that functions alongside Hindu legal traditions to reproduce structural exclusion. Drawing on Dharmaśāstric texts, colonial-era case law, and post-Independence legislation, this article offers a new analysis of how gender non-normative persons have historically been denied inheritance through normative configurations of the family rooted in reproductive cis-heteronormativity. Through a queer-theoretical and philological analysis of Sanskrit terms such as klība, the article challenges translations that obscure how śāstric law encoded exclusions. It also presents the first close reading of parliamentary debates and committee records to show how contemporary legislative silences were deliberately sustained. Rather than offering a reformist proposal, the article foregrounds how legal recognition is governed by what law chooses not to say and how such silences naturalize normative family forms while delegitimizing others.

* Jaideep Singh Lalli, PhD (Law) Candidate, Trinity College, University of Cambridge; Visiting Fellow, Centre for Constitutional Law Studies, Jindal Global Law School, India, Email: jsl76@cam.ac.uk. My deepest intellectual debt is to Prof. Wendy Doniger, whose pioneering scholarship has profoundly shaped my orientation to Dharmaśāstric texts. Her approach to Sanskrit texts gave me the methodological courage to read against the normative grain, and this article would not exist without the frameworks her work made possible. I am also deeply grateful for her generous comments on earlier drafts, which sharpened both my arguments and my thinking. I am thankful to my supervisor, Dr Lena Holzer, for her thoughtful guidance, unwavering support, and critical engagement with my work at every stage. I also owe immense thanks to Prof. Patrick Olivelle for directing me to the Resource Library for Dharmaśāstra Studies at UT-Austin; my conversation with him helped anchor the foundations of my Dharmaśāstric analysis. My thanks also to Prof. Jessica Hinchy for taking the time to discuss her pioneering work with me. Portions of this article were presented at the Cambridge Gender & Sexuality History Workshop, and I am grateful to the participants for their thoughtful feedback and generative questions. Finally, heartfelt thanks to Akriti Sharma and Stephen Watson for the many conversations that refined my thinking and for sustaining me through the long writing process.

© The Author(s) 2025. Published by Oxford University Press.
This is an Open Access article distributed under the terms of the Creative Commons Attribution License (https://creativecommons.org/licenses/by/4.0/), which permits unrestricted reuse, distribution, and reproduction in any medium, provided the original work is properly cited.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

1. INTRODUCTION

> The *Urdu Guide*, of the 5th November, agrees with the *Oudh Punch*, in holding that native members in Committees and Councils are as useless things as moonlight on a wintry night, a young wife to an old man, or wealth to a eunuch...
> ~ Bengal (India). Bengali Translator's Office. *Report on native papers for the week ending November 12, 1881* (South Asia Open Archives)

Ever since the Parliament of India passed the Transgender Persons (Protection of Rights) Act 2019, it has been mired in criticism and constitutional challenges by those who feel betrayed.[1] Academic discourse has mostly described the 2019 Act to be 'silent' on the issue of inheritance rights.[2] Specifically, academic analysis emphasizes that the Act's non-discrimination provision (ie, section 3) fails to prohibit discrimination against transgender persons in inheriting property even when it prohibits discrimination with regard to 'the right to reside, purchase, rent, or otherwise occupy any property'; the word 'inherit' is notably missing.[3] Through a careful analysis of the legislative record, I argue that section 3's silence on inheritance rights was a conscious act, produced and maintained at every stage of the law-making process despite repeated calls for inclusion. More importantly, I show that this silence is embedded within a previously unexamined matrix of Hindu legal norms, which have historically excluded transgender persons from inheriting property within their natal families: from *Dharmaśāstric* disqualifications to colonial (mis)interpretations, to their endurance in post-Independence legal regimes.

My analysis proceeds in four parts. In Section 2, I trace how inheritance was repeatedly omitted from legal discourse surrounding trans rights in India in parliamentary debates, ministerial reports, and even landmark cases like *NALSA v Union of India*. I argue that the absence of inheritance rights in the Trans Rights Act 2019 was not accidental but the outcome of deliberate erasure, maintained despite persistent advocacy. By interrogating the events and drafting processes that culminated in the 2019 Act, I offer a new reading of the purposes that underlie the Act's non-discrimination provisions.

Section 3 turns to the historical foundations of this exclusion. Drawing on queer theory, trans studies, and *Dharmaśāstra* scholarship, I argue that the exclusion of gender non-normative persons from inheritance is embedded in the religio-legal discourse of the *Dharmaśāstras*, where terms like *klība* and *paṇḍa* encoded normative ideas of reproductive masculinity and gender conformity.[4] This section not only examines the logics of exclusion

[1] Kyle Knight, 'India's Transgender Rights Law Isn't Worth Celebrating' (cross published *Human Rights Watch* and *The Advocate*, 5 December 2019) <https://www.hrw.org/news/2019/12/05/indias-transgender-rights-law-isnt-worth-celebrating>; Esha Roy, 'Transgender Law: Centre Publishes Draft Rules, Activists Say Law Problematic' (*The Indian Express*, 15 July 2020) <https://indianexpress.com/article/india/transgender-law-centre-publishes-draft-rules-activists-say-law-problematic/>; 'Reinforces Prejudice Against Transgenders: SC Issues Notice On Petition Challenging Transgender Persons Act' (*LiveLaw*, 27 January 2020) <https://www.livelaw.in/top-stories/sc-issues-notice-on-petition-challenging-transgender-protection-of-rights-act-2019-152052?code=eJ7Py5TAUrIqlqzH8wYLxl3OR8DCNz#> accessed 2 January 2025; Dipika Jain and Kavya Kartik, 'Unjust Citizenship: The Law that Isn't' (2020) 13 NUJS Law Review 159.

[2] Karan Gulati and Tushar Anand, 'Inheritance Rights of Transgender Persons in India' (2023) 7 Indian Law Review 1, 3, 7; Supinder Kaur and Manisha Garg, 'An Analysis of the Rights of Transgender Persons under Transgender Persons (Protection of Rights) Act, 2019: Gaps and Challenges' (2024) 62 Panjab University Law Review 14, 26; Aishwarya Mohanty, 'How Familial Hostility, Binary Laws hinder Property Rights of Transgender Persons' (*Behan Box*, 5 May 2023) <https://behanbox.com/2023/05/05/how-familial-hostility-binary-laws-hinder-property-rights-of-transgender-persons/> accessed 20 December 2024.

[3] Transgender Persons (Protection of Rights) Act 2019, s 3(g) (India).

[4] In this article, I reorient scholarly attention toward the roots of exclusion within Hindu Law, given that the historical trajectory of its influence on transgender inheritance rights remains severely understudied. That said, this inquiry does not claim exclusivity; Hindu Law, even though it governs most Indians today, represents only one of several socio-legal pathways through which the systemic exclusion of gender and sexually non-normative persons from inheritance has been historically constituted.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

but also contributes to scholarly debates about the semantic scope of these Sanskrit terms. I challenge the prevailing translations of *klība* (often narrowly rendered as 'impotent') by showing that these terms historically marked a broader constellation of non-normative sexual and gender embodiments in *śāstric* verses on inheritance disqualifications. I further show how colonial-era courts adapted these exclusions into Anglo-Hindu law, often modifying them to favour normatively gendered men while continuing to marginalize *Hijras*, *Kinnars*, and other non-normative persons.[5]

In Section 4, I examine a fleeting moment in colonial legislative history when a legislative committee considered abrogating *Dharmaśāstric* exclusions for 'eunuchs'. Though ultimately the concern disappeared from the final legislative record, I argue that this moment of interruptive concern complicates the otherwise totalizing narrative of colonial oppression, revealing the possibilities and limits of legal reform even under empire.

Section 5 turns to post-Independence legal regimes, specifically the Hindu Succession Act 1956 and the Trans Rights Act 2019. I show how these statutes, though framed in the language of progress and equality, operate together to reinscribe the cis-heteronormative logics of their precursors. The gender-binarized structure of the Hindu Succession Act and the medicalized preconditions imposed by the Trans Rights Act create a legal terrain in which transgender persons can only access inheritance by aligning themselves with binary norms either through re-association with birth-assigned gender or by undergoing medical transition. Both choices amount to legal coercion and structural violence, rendering non-normative life legible only through assimilation.

Ultimately, this article demonstrates that the exclusion of trans persons from inheritance is neither incidental nor merely doctrinal. It is a product of deep-seated religio-legal norms that define the human, the family, and the heir through cis-heteronormative scripts. By unearthing these silent histories and exposing their loud exclusions, this article studies how the legal encoding of cis-heteronormativity works in the service of asymmetric distributions of precarity to the non-normative subject. This assumes particular significance in the Indian context, where the majority of property is acquired through inheritance. My analysis is situated at the intersection of queer theory, trans and queer legal studies, and *Dharmaśāstra* studies. Instead of viewing these fields as hermetically isolated, my analysis mobilizes them in concert—as mutually entangled modes of critique—each enriching others' capacity to foreground what existing scholarship filters out.

2. THE ARCHITECTURE OF ABSENCE: INHERITANCE IN THE LEGAL TREATMENT OF TRANS RIGHTS

In this section, I argue that legal developments immediately preceding the emergence of parliamentary bills on transgender rights in India were characterized by silence on inheritance rights. By examining the parliamentary record, I show that this continuing silence on inheritance in the Trans Rights Act 2019 is not accidental, but the result of deliberate and

[5] *Hijras* are a marginalized trans/queer socio-religious community in India, mostly comprising individuals who are assigned male at birth but who embody gender expression and roles traditionally considered feminine, often living in structured kinship systems led by a *Guru*. However, *Hijra* gender expression cannot be uncomplicatedly reduced to the feminine. *Kinnar* is a more contemporary and sometimes regionally preferred term, used interchangeably with *Hijra* in many contexts, though it may sometimes carry different religio-cultural resonances. Section 2(k) of the Transgender Persons (Protection of Rights) Act 2019 expressly includes both *Hijras* and *Kinnars* within the statutory definition of a 'transgender person'. See Ina Goel, 'Understanding Caste and Kinship within Hijras, a "Third" Gender Community in India' in Nadine Fernandez and Katie Nelson (eds), *Gendered Lives: Global Issues* (State University of New York Press 2021); Gayatri Reddy, *With Respect to Sex: Negotiating Hijra Identity in South India* (University of Chicago Press 2005); Serena Nanda, *Neither Man Nor Woman: The Hijras of India* (Wadsworth 1999); Jennifer Ung Loh, 'Narrating Identity: the Employment of Mythological and Literary Narratives in Identity Formation Among the *Hijras* of India' (2014) 4 Religion and Gender 21, 22; Daniela Bevilacqua, 'From the Margins to Demigod: The Establishment of the Kinnar Akhara in India' (2022) 81 Asian Ethnology 53, 59.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

repeated omissions persistently upheld despite numerous and consistent calls for inclusion throughout the law-making process.

A. From criminal tribes to contemporary legal personhood: A brief prehistory of Trans Rights Bills

In what is possibly the first Parliamentary reference to inheritance rights of trans persons, on 8 August 2011, Shri Manish Tewari (MP from the Indian National Congress) asked,

> Will the Minister of Social Justice and Empowerment be pleased to state: (a) whether the Government is considering any legislation to provide recognition of the acquired gender of transgender people; (b) if so, whether the Government is contemplating any steps to ensure that laws relating to marriage, rape, *inheritance*, etc legally recognise the 'third gender'; and (c) if so, the steps being taken for social inclusion of transgender community in the country?[6]

The answer from Shri D. Napolean (the Minister of Social Justice & Empowerment at the time) was a dispiriting no: '[a]t present there is no such proposal'.[7]

In the aftermath of a colonial history of criminalization as 'eunuchs' under the Criminal Tribes Act 1871, the legal system's apathy had become the default state for transgender persons and *Hijras* until their communities saw some progress on legal rights in the 2000s.[8] Specifically, the Indian Supreme Court's judgment in *NALSA v Union of India* (2014) played a significant role in impelling the Parliament to address transgender rights.[9] The Supreme Court in *NALSA* issued multiple directions intended to address the legal and social concerns of the transgender community in India.[10]

While an important landmark case regarding the rights of transgender persons, the *NALSA* decision fails to include any specific directions on inheritance or property rights. The two-judge bench in *NALSA* understood the question before them to be on the non-recognition of transgender persons' gender identity.[11] While addressing this question, the judgment engages with inheritance and property rights at various points.[12] The judgment even acknowledges the hurdles faced by transgender persons in exercising inheritance and property rights due to the gender binarized nature of the law and lack of legal recognition for their gender identification.[13] Despite these acknowledgements, the judgment fails to include any specific directions on inheritance or property rights.

A few months before the *NALSA* judgment, the Indian Ministry of Social Justice & Empowerment released a report of the Expert Committee it had constituted to study challenges faced by the transgender community.[14] The report contained a compilation of suggestions received, noting that civil society representatives highlighted the significance of recognizing the inheritance and property rights of transgender persons.[15] Chapter 7 of the report expressly acknowledges that transgender persons who remain in their natal families

[6] Lok Sabha Debates (hereinafter 'LS Debates'), 15th Lok Sabha—8th Session (8 August 2011) 339.
[7] ibid.
[8] Gulati and Anand (n 2) 5.
[9] (2014) 5 SCC 438.
[10] The judgment has been rightly critiqued by various scholars.
[11] *NALSA* (n 9), 2, 87.
[12] ibid 24, 60.
[13] Gulati and Anand (n 2), 6; *NALSA* (n 9), 63, 84–85, 116.
[14] Ministry of Social Justice & Empowerment, *Report of the Expert Committee on the Issues relating to Transgender Persons* (21 January 2014).
[15] ibid, Annexure–4, 19, 21.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

are 'often denied their share of the family property'.[16] While there are suggestions regarding housing-related problems, quite like the Supreme Court's judgment in *NALSA*, even the Expert Committee failed to include any specific directions on inheritance or property rights of transgender persons.

B. The act of leaving out: Repeated omissions and resultant silences in the 2019 Act

It is against this immediate backdrop that the first bill on transgender rights came to be introduced in the Indian Parliament. This section contends that the omission of inheritance rights from the Trans Rights Act was no accident, but a product of drafting choices repeatedly maintained during the legislative process in the face of persistent calls for change.

In December 2014, Shri Tiruchi Siva (Member of Parliament from the Dravida Munnetra Kazhagam party) introduced a private member's bill in the Rajya Sabha titled 'The Rights of Transgender Persons Bill 2014' (the 2014 Bill). The government had initially asked Siva to withdraw the bill, but the opposition refused, and the bill was passed unanimously by the Upper House in 2015 and sent to the Lok Sabha (ie, the Lower House).[17] At the time of the bill's passage, government officials said that the government would bring a fresh bill after removing some 'infirmities' and 'impractical clauses'.[18] Neither the version of the bill introduced in 2014 nor the version eventually passed by the Upper House included any specific provision on the inheritance rights of transgender persons.[19]

Although it was ranked second in the order of discussion for private members' bills during the monsoon and winter sessions of 2015, the 2014 Bill was not discussed in the Lok Sabha following its unanimous passage in the Rajya Sabha. Anuvinda and Siva highlight that this delay was brought about by discussing another private member's bill, the only one listed above Siva's Bill, for more than 9 hours; about five times the usual amount of time spent on a private member's bill discussion. On 26 December 2015, in the aftermath of this 'manufactured delay', the website of the Ministry of Social Justice & Empowerment displayed and sought comments on a draft bill titled 'Rights of Transgender Persons Bill 2015'—a similar sounding title and text—but with a major weakening of provisions and once again, no provisions on inheritance.[20] Out of the various responses sent to the Ministry and shared on the public domain, at least six responses specifically demanded that the 2015 Draft Bill address inheritance, succession, and property rights of transgender persons.[21]

When the government introduced 'The Transgender Persons (Protection of Rights) Bill 2016' (the 2016 Bill) in the Lok Sabha, it became clear that exhortations to include

[16] ibid, ch 7, 46–47.

[17] Jatin Gandhi and Smriti Kak Ramachandran, 'Rajya Sabha Passes Bill on Transgender Rights' *The Hindu* (Chennai, 24 April 2015) <https://www.thehindu.com/news/national/rajya-sabha-passes-private-bill-on-transgenders/article60364349.ece1> accessed 1 January 2025; P Anuvinda and Tiruchi Siva, 'No Country for Transgenders?' (2016) 51 Economic and Political Weekly 19.

[18] ibid.

[19] This is not to say that the 2014 bill was not otherwise laudable and comprehensive. The bill contained 58 clauses under 10 chapters dealing with various aspects ranging from reservation, social inclusion, rights and entitlements, financial and legal aid, education, skill development, creation of transgender welfare commissions at the national and state levels, to prevention of abuse, violence, and exploitation.

[20] Anuvinda and Siva (n 17); In addition to Siva's 2014 Bill and the 2015 Draft Bill, two more Bills were introduced in the Indian Parliament—The Transgender Persons (Provision of Social Security) Bill 2015 (private member's bill introduced by BJP MP Shri Maheish Girri) and The Transgender Persons (Welfare) Bill 2015 (private member's bill introduced by Trinamool Congress MP Smt. Kakoli Ghosh Dastidar). Neither of these two Lok Sabha bills included any provisions on inheritance.

[21] Responses sent by South India Transgender Samithi, Telangana Hijra Intersex Transgender Samiti, Queer Campus Delhi, LesBiT Bangalore, Nirangal India, and Sangama, Aneka, and ReachLaw, can be accessed at: Orinam, 'MSJE Rights of Transgender Persons Bill 2015' (*Orinam*, 5 August 2016) <https://orinam.net/resources-for/law-and-enforcement/nalsa-petition-tg-rights-india/msje-rights-of-transgender-persons-bill-2015/> accessed 1 January 2025.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

provisions on inheritance rights had fallen on deaf ears.[22] Despite various queer, transgender, intersex, and allied organizations recommending the inclusion of inheritance rights, the 2016 Bill omitted any reference to inheritance. Fortunately, the bill was not passed immediately and was instead sent to the Standing Committee on Social Justice & Empowerment for consultation, which presented its report in 2017.[23] Echoing the recommendations of organizations that sent responses to the 2015 Draft Bill, the Standing Committee noted how the bill did not mention the inheritance rights of transgender persons that could protect them from being disinherited from their rightful share in parental property.[24] In fact, at the very first sitting of the Standing Committee held on 5 October 2016, the Committee had discussed the absence of the right to inherit property in the bill.[25] However, once again, the government did not include provisions on inheritance rights in the bill.

On 17 December 2018, the 2016 Bill again came up for consideration in the Lok Sabha. In the ensuing debate, Sh. Shashi Tharoor (MP from the Indian National Congress) and Smt. Supriya Sule (MP from the Nationalist Congress Party) specifically highlighted the absence of inheritance rights in the bill and requested the concerned minister to withdraw the bill.[26] Undeterred by these protestations, the 2016 Bill was passed by the Lok Sabha without provisions on inheritance rights.[27] However, with the dissolution of the Lok Sabha in May 2019 in light of fresh elections, all of the previous bills on transgender rights lapsed, including Siva's 2014 Bill.

With the reconstitution of the Lok Sabha after the 2019 General Elections, in which the Bharatiya Janata Party (BJP) led government returned to power, the transgender community once again faced the bill that the previous Lok Sabha had passed. The government declared its intention to reintroduce the lapsed 2016 Bill, which had been passed by the previous Lok Sabha in December 2018.[28] True to its word, the government introduced 'The Transgender Persons (Protection of Rights) Bill 2019' (the 2019 Bill) in the Lok Sabha, amid objections by Dr Shashi Tharoor and a subsequent walkout by Dr Tharoor, Shri Adhir Ranjan Chowdhury, and other MPs.[29] On 5 August 2019, when the 2019 Bill was discussed, one of the BJP's own MPs, Smt Sangeeta Kumari Singh Deo underlined that the Bill did not mention the right of inheritance. The MP described this as a 'major issue' and said, 'I am saying this because if we want to bring them into the mainstream of our society, then we have to treat them at par with other citizens of the community … So, I would request the Hon. Minister if he could kindly incorporate the right of inheritance into the Bill.'[30] But not even a request from the ruling party's own MP convinced the government to

[22] The 2016 Bill was introduced in the Lok Sabha on 2 August 2016 by Thawar Chand Gehlot (Minister of Social Justice & Empowerment at the time), Rohan Abraham, 'All you need to know about the Transgender Persons Bill, 2016' (*The Hindu*, 30 November 2017).

[23] This report has been rightly critiqued: Gee Imaan Semmalar, 'First as Apathy, Then as Farce: The Transgender Persons (Protection of Rights) Bill, 2016' (*Orinam*, 14 August 2017) <https://orinam.net/apathy-farce-trans-rights-bill-standing-committee-report/> accessed 1 January 2025.

[24] Standing Committee on Social Justice & Empowerment, *Forty Third Report: The Transgender Persons (Protection of Rights) Bill 2016* (Lok Sabha Secretariat, New Delhi) 71.

[25] ibid, 108.

[26] LS Debates, 16th Lok Sabha—16th Session (17 December 2018) 918, 923–924.

[27] 'Lok Sabha passes Transgender Bill' (*Press Trust of India*, 17 December 2018) <https://web.archive.org/web/20190817092137/http://ptinews.com/news/10250267_Lok-Sabha-passes-Transgender-bill.html> accessed 1 January 2025.

[28] 'Transgender rights Bill to be reintroduced' (*The Hindu*, 5 June 2019) <https://www.thehindu.com/news/national/transgender-rights-bill-to-be-reintroduced/article27474400.ece> accessed 1 January 2025.

[29] LS Debates, 17th Lok Sabha—1st Session (19 July 2019) 53.

[30] LS Debates, 17th Lok Sabha—1st Session (5 August 2019) 47–48.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

incorporate inheritance rights into the Bill; once more, the government's bill on transgender rights was passed by the Lok Sabha unaccompanied by a guarantee of inheritance rights.[31]

After its passage in the Lok Sabha, Union Minister Thawar Chand Gehlot introduced the Bill in the Rajya Sabha on 20th November 2019. On that day, Shri M.V. Rajeev Gowda (MP associated with the Indian National Congress) pointed out that he had moved an amendment to the Bill adding the right to inherit property.[32] On the same day, Smt. Shanta Chhetri (MP from the Trinamool Congress) insisted, '[t]he Bill should properly enlist the rights of transgender persons to marry, adopt and inherit property'.[33] Smt Vijila Sathyananth (MP from the Dravida Munnetra Kazhagam), while referring to transgender persons, further asserted,

> They should be given employment guarantee. We have to have a different attitude towards them. They should inherit parental properties … The parents and siblings should give them equal opportunities at home. They should also inherit their parents' properties. It is a must. We have to bring it up and this inclusiveness has to be there.[34]

Subsequently, when the 2019 Bill was taken up again on 26 November 2019, the Upper House finally considered the amendment moved by Shri Rajeev Gowda. Among other things, the amendment sought to add the following text to Clause 12 (right of residence) in the 2019 Bill, '[Every transgender person shall have …] (d) the right to inherit property as per existing laws on inheritance and devolution of property.'[35] The motion was voted down, and Clause 12 was added to the Bill without any provisions on inheritance. The Bill was passed the same day without any amendments.[36] On 5 December 2019, the Bill was signed into law by the President and then published in the Gazette.[37] In this lamentable way, the only amendment that sought to change the 2019 Bill to guarantee inheritance rights for transgender persons met its unsuccessful end.

This study of the events that led to the 2019 Act's enactment shows that the Act's silence on inheritance rights was produced by repeated omissions. These omissions were consciously maintained with complete disregard for numerous exhortations to include inheritance rights, preferred at every stage of the law-making process. I will now show how this silence is shaped by and operates in service of historically rooted exclusions that maintain the dominance of normative familial configurations and gender binarized identifications while materially delegitimizing the non-normative subject.

[31] The Bill was passed by a voice vote amidst chaos in the Lok Sabha following the revocation of the special status constitutionally granted to the state of Jammu & Kashmir on the same day: 'Congress, opposition parties protest in LS, seek presence of PM on Kashmir decisions' (*ANI*, 5 August 2019) <https://www.aninews.in/news/national/politics/congress-opposition-parties-protest-in-ls-seek-presence-of-pm-on-kashmir-decisions20190805161922/> accessed 1 January 2025.

[32] Rajya Sabha Debates (hereinafter 'RS Debates'), Government Bill–Consideration & Passing/Return/Withdrawal (20 November 2019) 396.

[33] ibid 405.

[34] ibid 407.

[35] RS Debates Government Bill—Consideration & Passing/Return/Withdrawal (26 November 2019) 44.

[36] The Bill was passed after a motion by Tiruchi Siva to refer it to a select committee was rejected by 77 noes against 55 ayes: 'Parliament Passes Bill to Protect Rights of Transgenders' (*The Hindu*, 26 November 2019) <https://www.thehindu.com/news/national/parliament-passes-bill-to-protect-rights-of-transgenders/article61672997.ece> accessed 1 January 2025.

[37] 'Despite Massive Protests, Trans Bill Gets President's Assent, Becomes Law' (*The News Minute*, 7 December 2019) <https://www.thenewsminute.com/news/despite-massive-protests-trans-bill-gets-president-s-assent-becomes-law-113643> accessed 2 January 2025.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

3. INHERITANCE IN CHAINS: DHARMAŚĀSTRIC EXCLUSIONS, COLONIAL COURTS, AND GENDERED LAW

From a queer theoretical perspective, omissions of the Trans Rights Act convey a complicated story of which purposes the Act's non-discrimination provisions are designed to pursue. They loudly convey how legal reform often 'merely tinkers with systems to make them look more inclusive while leaving their most violent operations intact'.[38] Such omissions, à la Foucault, can be understood as a mechanism of normative reinforcement where the existing legal position on inheritance and property transmission is retained.

With queer theory, I now examine 'hierarchical systems of sexual value', 'sexual stratification',[39] and regimes of normalization where 'certain kinds of sex, stylizations of gender, and modes of intimacy are awarded gold-star status', while others are pathologized, punished, and delegitimized.[40] From these insights comes the notion of *reproductive cis-heteronormativity*, identifying the complex networks that naturalize and privilege the 'charmed circle'[41] of cisgender identifications, heterosexuality, and connected reproduction as the normative mode of kinship, intimacy, and social belonging—thereby marginalizing trans, queer, and non-reproductive lives.[42] Within this tradition, law is not simply a neutral arbiter of rights but a disciplinary and regulatory regime that consolidates normative ideals of gender, sexuality, and the human itself. It does so under the guise of recognition while shaping subjects that it claims to unproblematically govern.

Foucault's reflections on the nature of silences have particularly informed the way I analyse what is left unsaid in law:

> Silence itself—the things one declines to say, or is forbidden to name, the discretion that is required between different speakers—is less the absolute limit of discourse, the other side from which it is separated by a strict boundary, than an element that functions alongside the things said, with them and in relation to them within over-all strategies. There is no binary division to be made between what one says and what one does not say; we must try to determine the different ways of not saying such things, how those who can and those who cannot speak of them are distributed, which type of discourse is authorised, or which form of discretion is required in either case.[43]

The 2019 Act's silence then is not merely an oversight but a reproduction (through retention) of historically rooted exclusions that maintain the dominance of normative familial configurations and gender binarized identifications. It is this legal history of exclusion to which I will now turn. I will show how the identified silence in this instance, 'functions alongside the things [previously] said, with them and in relation to them within overall strategies'.[44]

Hints towards the legal position reinforced by the Trans Rights Act's silences are found in *Sweety (Eunuch) v. General Public*, a 2016 judgment of the Himachal Pradesh High

[38] Dean Spade, *Normal Life: Administrative Violence, Critical Trans Politics & The Limits of Law* (Duke University Press 2015) 47.

[39] Gayle S Rubin, *Deviations* (Duke University Press 2011) 149, 158.

[40] Brenda Cossman, 'Queering Queer Legal Studies: An Unreconstructed Ode to Eve Sedgwick (and Others)' (2019) 6 Critical Analysis of Law 23, 37.

[41] Rubin (n 39) 152.

[42] *See* Lauren Berlant and Michael Warner, 'Sex in Public' (1998) 24 Critical Inquiry 547; Jasbir Puar, *Terrorist Assemblages: Homonationalism in Queer Times* (Duke University Press 2017); Meredith Worthen, 'Hetero-cis-normativity and the Gendering of Transphobia' (2016) 17 International Journal of Transgenderism 31; Gayatri Chakravorty Spivak, *An Aesthetic Education in the Era of Globalization* (Harvard University Press 2012).

[43] Michel Foucault, *The History of Sexuality, Volume 1: The Will to Knowledge* (Penguin 1976) 27, 101.

[44] ibid 27.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

Court.[45] This case decided the question of whether the intestate succession of deceased *Kinnars* was governed by Hindu succession law or the inheritance customs of the *Hijra* and *Kinnar* community. The plaintiff/appellant in this case had filed a suit seeking a declaration that they were the sole successor to the property left behind by 'Rajia alias Ratni Nani (Eunuch)'.[46] The plaintiff claimed to be the '*Guru*/Patron' of both Rajia and Desh Raj (also described by the court as a 'eunuch'), who passed away in 2009, leaving the plaintiff as their only legal heir and *Guru*. It was asserted that within the *Kinnar* community, there is a customary practice where a *Guru* takes in a eunuch child at birth and raises them. The *Guru*-disciple (*chela*) relationship is considered the primary bond in matters of inheritance, and since the deceased was the plaintiff's *chela*, the plaintiff argued that they were the sole rightful successor to the deceased's estate.[47]

The trial court dismissed the claim, and the lower appellate court upheld this decision, leading the plaintiff to file an appeal before the High Court. The core legal issue was whether the plaintiff was governed by Hindu succession law or the *Guru-Chela* custom. Importantly, Hindu succession law, as codified in the Hindu Succession Act 1956, is structured around a heterosexual, reproductive family model privileging a binary-gendered understanding of kinship. Rights of inheritance in the 1956 Act are tied to blood relations, marriage, or adoption—each defined within heteronormative, cisgendered terms (eg, 'son', 'daughter', 'widow', 'husband').[48] Heirship conceptualized along *Guru-Chela* customs among *Hijras* and *Kinnars* has no legitimacy within its legal architecture.

Despite this, the lower courts erroneously applied the Hindu Succession Act 1956, even though the plaintiff never claimed that the deceased were Hindus. The lower courts presumed Hindu identity based on the deceased persons' names, overlooking the lack of explicit religious identification. The High Court castigated this presumptive reasoning and emphasized that religious identity could not be presumed based on someone's name, especially when people professing different religions share common names.[49]

To further highlight how fallacious the lower courts' application of the Hindu Succession Act to *Kinnars* was, the High Court focused attention on *Dharmaśāstric* law. The High Court opined, 'Coming to the question of law, it would be noticed that Shastric law did not confer a right of inheritance upon eunuch'. This was followed by direct quotes from English translations of *Viṣṇusmṛti*, *Manusmṛti*, and *Yājñavalkyasmṛti* dealing with the exclusion of 'eunuchs':

> 8. Of the Smriti writers, Vishnu had observed as under:
> *"Outcastes, eunuchs, persons, incurably diseased or deficient in organs of sense or action, such as blind, deaf, dumb, or insane persons or lepers, do not receive a share; they should be maintained by those who take the inheritance and their legitimate sons receive a share-Chapter XV, Ss. 32-35."*

[45] *Sweety (Eunuch) v General Public* AIR 2016 HP 148.

[46] The term 'eunuch' as used in the description of the deceased and other individuals in this case is quoted directly from the judgment to highlight the court's persistent mischaracterization of *Kinnars* and *Hijras* through terminology that these communities consider derogatory. Any subsequent use of 'eunuch' in this article is not an endorsement, but a critical reflection of the historically situated and institutionally sanctioned misdescription of *Hijras*, *Kinnars*, and transgender persons. See Dipika Jain and Kimberly Rhoten, 'Epistemic Injustice and Judicial Discourse on Transgender Rights in India: Uncovering Temporal Pluralism' (2020) 26 Journal of Human Values 30.

[47] *Sweety (Eunuch) v General Public* (n 45) [2].

[48] *See* Hindu Succession Act 1956 (hereinafter 'HSA 1956'), ss 3(a), 3(c), 3(e), 3(j), 8, 10, 12, 14, 15, 16, 18, sch.

[49] *Sweety (Eunuch) v General Public* (n 45) [6].

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

> 9. Manu has stated eunuchs and outcastes, persons born blind or deaf, the dumb and such as have lost the use of a limb, are excluded from the share of heritage.
> 10. Yajnavalkya had stated that "an impotent person or outcaste and his son, an eunuch, one lame, a mad man and an idiot, one born blind and who is afflicted with an incurable disease must be maintained without any limit of shares."[50]

Contrasting the *Dharmaśāstric* position with *NALSA v Union of India*, the High Court underlined how the Supreme Court had now recognized transgender persons as a 'third gender' with legal protections. Since the lower courts wrongly rejected the *Guru-Chela* custom in favour of statutory Hindu inheritance laws, the High Court reversed the lower court decisions and ruled in favour of the plaintiff. Citing another High Court's judgment, the Himachal Pradesh High Court affirmed the validity of *Hijra* and *Kinnar* customs in inheritance matters.[51] Subsequently, *Sweety (Eunuch) v. General Public* became the citational authority in *Mulla's Hindu Law* (a leading commentary) for the proposition that transgender persons are not governed by Hindu Law, and that they are instead governed by their own customs.[52]

The HP High Court's reference to the legal status of 'eunuchs' under *Dharmaśāstric* Hindu law enables one to consider the related view that transgender persons are excluded not just from the application of statutory Hindu Law, but also excluded from claiming inheritance under it. Gulati and Anand have shown that the Hindu Succession Act's conceptualization of 'heirs' and inheritance rights is entirely gender binarized, leaving no scope for the inclusion of third-gender identifications.[53] Further, the Trans Rights Act 2019 insists on 'surgery' as a prerequisite for changing legal gender to the opposite gender.[54] Taken together, the statutory position keeps transgender persons excluded from claiming inheritance rights in their Hindu natal families until they assimilate into the gender binary; either by onerously realigning with the gender assigned to them at birth or by submitting to normativizing surgical intervention to become the opposite gender, sufficient to satisfy the District Magistrate.[55]

This brief account of the extant legal position, however, is embedded in a long history of the crystallisation, development, and modern reconfiguration of Hindu Law. The Himachal Pradesh High Court helps us trace the roots of this development to the *Dharmaśāstra* texts.[56] In what follows, I will trace how trans persons were historically excluded from inheritance rights through legal regimes in India operating under reproductive cis-heteronormative logics: from their articulation in *Dharmaśāstras*, through their colonial administration, to their persistence in postcolonial legal formations. I will show how these legal regimes and logics distribute life chances and precarity asymmetrically, leaving trans/queer persons legally vulnerable and materially dispossessed. I will conclude this part with a detailed examination of how the Hindu Succession Act 1956 and the Trans Rights Act 2019 reify this position.

[50] ibid [7]–[10].

[51] *Illyas v Badshah (alias Kamla)* AIR 1990 MP 334.

[52] Sir Dinshaw Fardunji Mulla, *Hindu Law* (23rd edn, Lexis Nexis 2018) 1111.

[53] Gulati and Anand (n 2) 11–13.

[54] Male or female, opposite to the one assigned at birth within binary identifications; see Transgender Persons (Protection of Rights) Act 2019, s 7.

[55] ibid.

[56] Beginning this analysis with *Dharmaśāstra* texts is not to claim a fixed or originary source for the exclusionary logics of reproductive cis-heteronormativity. Rather, it is to examine how certain exclusions have been legally rationalized and sedimented over time. The point is not to locate a singular genesis, but to trace how particular traditions of reasoning about gender, inheritance, and kinship have come to acquire institutional endurance.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

A. The *Dharmaśāstric* exclusion of *Klība* from inheritance

In this section, I argue that the *Dharmaśāstras* excluded certain heirs from inheritance on the basis of reproductive cis-heteronormative logics. In doing so, I advance existing understandings of inheritance disqualifications in the *Dharmaśāstras* by challenging prevailing translations of the Sanskrit term *klība*. I argue that the contemporary rendering of *klība* as 'impotent' in *Dharmaśāstric* verses on inheritance exclusions does not sufficiently capture the organizing logics of *klība*'s exclusion from inheritance.

Hindu inheritance law, as outlined in *Dharmaśāstra* texts, revolves around the principles of lineage, ritual obligations, and the maintenance of family property. *Śāstric* inheritance law traditionally prioritized patrilineal succession, while at times linking property rights to one's ability to perform *śrāddha* (ie, ritual acts required for the spiritual welfare of deceased ancestors).[57]

Bearing this context in mind, I will now turn to what the *Dharmaśāstra* texts say about heirs who are excluded from inheritance. According to Patrick Olivelle's translation, Chapter 9 of the *Manusmṛti* states,

> **Disqualification from Inheritance** [201]The following receive no shares: the impotent, outcastes, those born blind or deaf, the insane, the mentally retarded, mutes, and anyone lacking manly strength. [202]It is right, however, that a wise man should provide all of them with food and clothing according to his ability until the end; if he does not, he will become an outcaste. [203]If, on the other hand, any of these, the impotent and so forth, somehow want to have wives and do have issue, their offspring is entitled to a share.[58]

The Sanskrit word that Olivelle translates as 'impotent' in this verse is *klība*.[59] As far as the exclusion of *klība* from inheritance is concerned, similar verses are found in the *Dharmasūtras*.[60] The same is true for *Yājñavalkyasmṛti*, *Viṣṇusmṛti*, and the *Nāradasmṛti* with *Nārada* substituting the word *paṇḍa* for *klība* to indicate the same referent.[61]

While most nineteenth-century translators of this verse mistranslated *klība* as 'eunuch', there were others during the same period who rendered it as 'impotent' and even those who used both 'eunuch' and 'impotent' inconsistently in the context of the same verse. So, depending on which translation one was looking at, one would have found different renderings of the same word (*klība*) in similar verses on inheritance exclusions across different *śāstric* texts.[62]

'Eunuch' was almost certainly a mistranslation of the word *klība*. Wendy Doniger has convincingly argued that 'eunuchs (in the particular sense of men intentionally castrated in order to serve as guardians in the royal harem) did not exist in India before the Turkish presence in the ninth century', and, therefore, could not have been recorded in *śāstric* texts composed long before that date.[63] Based on Doniger's account, *klība*, rather, encompasses a broad range of meanings, under the general rubric of 'a man who does not act the way a

[57] Ludo Rocher, 'Inheritance: *dāyabhāga*' in Patrick Olivelle and Donald R Davis Jr (eds), *Hindu Law: A New History of Dharmaśāstra* (Oxford University Press 2017) 164.

[58] Patrick Olivelle, *Manu's Code of Law* (Oxford University Press 2005) 200.

[59] ibid 783 (Sanskrit text).

[60] Patrick Olivelle, *Dharmasūtras* (Oxford University Press 1999) 57, 126, 175, 295; for Olivelle's thinking behind translating *klība* as 'impotent' in the *Dharmasūtras*, see p xlvi (*Note on the Translation*).

[61] Patrick Olivelle, *Yajnavalkya: A Treatise on Dharma* (Harvard University Press 2019) 158–159; Julius Jolly, *The Institutes of Vishnu* (Clarendon Press 1880) 64; Patrick Olivelle, *The Law Code of Viṣṇu* (Harvard University Press 2009) 72, 265; Richard Lariviere, *The Nāradasmṛti* (Motilal Banarsidass Publishers 2003) 206, 405.

[62] *See* Shane Gannon, 'Exclusion as Language and the Language of Exclusion: Tracing Regimes of Gender through Linguistic Representations of the "Eunuch"' (2011) 20 Journal of the History of Sexuality 1.

[63] Wendy Doniger, *Redeeming the Kamasutra* (Oxford University Press 2016) 114.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

man should act'—a failed or 'defective male'. It serves as an umbrella term in traditional Hindu discourse for men considered sexually dysfunctional or non-normative. This includes men who were sterile, impotent, or castrated, as well as transvestites, those engaging in oral or anal sex with other men, men with mutilated or defective sexual organs, hermaphrodites, and even men who fathered only female children.[64]

Against the backdrop of this wider meaning of *klība*, not only the translation of *klība* into 'eunuch' but also the contemporarily popular rendering of *klība* as 'impotent' in the verse on inheritance disqualifications seems doubtful to me. In his translation of the *Manusmṛti*, Patrick Olivelle acknowledges the wider meaning of the term *klība* while nevertheless deciding to translate it as 'impotent'. Olivelle provides the following reasoning for his translation:

> impotent: the term *klība* has been subject to widely different interpretations. It probably did have a range of meanings, and in different contexts may have assumed somewhat different meanings. In general, it refers to males who are in some way sexually dysfunctional or deviate from the cultural constructed notions of masculinity. Such individuals include the impotent, the effeminate, transvestites, hermaphrodites, and the like. This term does not refer to castrated eunuchs; I think the term ṣaṇḍha indicates such a person, although there is scholarly disagreement even with regard to this. A verse of Kātyāyana cited in the *Dāyabhāga* (5.8.) gives a definition of *klība*: 'If a man's urine does not foam, if his stool sinks in water, if his penis has no erection or sperm, he is called *klība*.'[65]

To my mind, the sufficiency of *klība's* translation into 'impotent' is less secure for several reasons. Firstly, as Olivelle himself admits, *klība* is a polysemous term in Sanskrit, historically used to denote not just physiological impotence but also broader categories of sexual and gendered difference, making a narrow rendering as 'impotent' potentially reductive.[66]

Second, in *Dharmaśāstric* verses on *klība's* disqualification from inheritance, exclusion from inheritance is understood as linked to concerns about lineage continuation[67]; in that context, procreative sterility is only one of the many reasons why someone called a *klība* might fail to produce an offspring. Based on what we know about the polysemous nature of *klība*, other reasons for this failure could be the lack of procreative interest, general lack of heterosexual desire, or non-normative gender embodiment that might undermine one's participation in heterosexual intercourse. All of these possibilities are consistent with the perceived rationale for *klība's* exclusion.

Third, and most interestingly, some commentarial texts interpret *klība* in ways that extend beyond mere impotence (or one's inability to get it up). Some *saśtric* texts associate the term with words that signified non-masculine comportment or a failure to adhere to normative male socio-sexual roles. *Vijñāneśvara's Mitākṣarā*, described as 'the most influential commentary in the Dharmaśāstra tradition' with widespread influence in many parts of India, equates *klība* with *tṛtīyā prakṛti* ('third nature') while commenting on *Yājñavalkyasmṛti's*

[64] ibid; for associations between *klība* and transvestism, *see* the discussion of *Atharva Veda* in: Leonard Zwilling and Michael J Sweet, 'The Evolution of Third-Sex Constructs in Ancient India: A Study in Ambiguity' in Julia Leslie and Mary McGee (eds), *Invented Identities: The Interplay of Gender, Religion and Politics in India* (Oxford University Press 2000) 105–106.

[65] Olivelle (n 58) 263–264; see Ludo Rocher, *Jīmūtavāhana's Dāyabhāga: The Hindu Law of Inheritance in Bengal* (Oxford University Press 2002) 131, 306–307.

[66] In addition to his aforementioned note on *Manu's* translation, *see* Olivelle, *Dharmasūtras* (n 60) xlvi (*Note on the Translation*).

[67] Devdutt Pattanaik, *The Man Who Was a Woman and Other Queer Tales from Hindu Lore* (Routledge 2012) 7; Additionally confirmed by Patrick Olivelle, *virtual meeting with the author* (8 February 2025); Wendy Doniger, *virtual meeting with the author* (30 March 2025).

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

verses on inheritance disqualifications.[68] *Vātsyāyana's Kāmasūtra* (second half of the third century) uses the term *tṛtīyā prakṛti* to describe two sorts of third-nature persons who are biologically male—a 'cross-dressing male' with stereotypically female gender behaviour and a 'closeted man'—both of whom gain sexual satisfaction from performing fellatio:

> There are two sorts of third nature, in the form of a woman and in the form of a man. The one in the form of a woman imitates a woman's dress, chatter, grace, emotions, delicacy, timidity, innocence, frailty and bashfulness. The act that is [generally] done in the sexual organ is done in her mouth, and they call that 'oral sex'. She gets her sexual pleasure and erotic arousal as well as her livelihood from this, living as a courtesan. That is the person of the third nature in the form of a woman.
>
> The one in the form of a man, however, conceals her desire when she wants a man and makes her living as a masseur. As she massages the man, she caresses his two thighs with her limbs, as if she were embracing him. Then she becomes more boldly intimate and familiar … pretending to tease him about how easily he becomes excited and laughing at him. If the man does not urge her on, even when she has given this clear sign and even when it is obvious that he is aroused, she makes advances to him on her own. If the man urges her to go on, she argues with him and only unwillingly continues.[69]

George Artola understands these verses of the *Kāmasūtra* as suggestive of a 'more enduring transvestite' who must have been a 'member of Indian society'.[70] However, even this understanding of *tṛtīyā prakṛti*-as-transvestite is complicated by its usage as a synonym for other words representing third-sex constructs like *klība*, *ṣaṇḍha*, *paṇḍaka*, and *napuṃsaka*, around the fourth-fifth centuries.[71] Additionally, the *Nāradasmṛti's* exclusion of *paṇḍa* from inheritance operates in the context of other verses that describe *paṇḍa* capaciously. The twelfth chapter of the *Nāradasmṛti* describes fourteen types of *paṇḍa* men who are unfit for marriage for reasons not just of procreative sterility but also for reasons of desire. The list includes a homosexual, a man who performs fellatio, a man who is shy, and even a man 'who is virile with others than his wife', though some of these conditions are considered curable.[72] Hence, a fixed or monolithic interpretation as 'impotent' of Sanskrit terms like *klība* and *paṇḍa* is increasingly untenable, given the fluidity and contextual variability embedded within their semantic histories.

Across time and space, disparate authors and commentators, situated in diverse regions and spanning centuries, engaged with the term *klība* through divergent frameworks, particularly in the context of inheritance disqualifications. While it is true that many texts narrowly conceptualized *klība* through the lens of impotence-as-sterility (or one's inability to get

[68] For the Sanskrit text, *see* Wāsudev Laxman Śāstrī Panśikār (ed), *Yājñavalkyasmṛti, with the Commentary Mitākṣarā of Vijñāneśvara* (Nirnaya Sagar Press 1936) 226–227; Roman transcription is available at the online Resource Library for Dharmaśāstra Studies (University of Texas at Austin); For the influence of *Mitākṣarā*, *see* Pandurang Vaman Kane, *History of Dharmaśāstra—Volume 1 Part II* (2nd edn, Bhandarkar Oriental Research Institute 1975) 599; Donald R Davis Jr and David Brick, 'Social and Literary History of Dharmaśāstra: Commentaries and Legal Digests' in Patrick Olivelle and Donald R Davis Jr (eds), *Hindu Law: A New History of Dharmaśāstra* (Oxford University Press 2017) 39–41.

[69] Doniger, *Redeeming the Kamasutra* (n 63) 114–115; Wendy Doniger and Sudhir Kakar, *Kamasutra* (Oxford University Press 2002) xi (for dating), 65–66 (for verses); also see Michael J Sweet and Leonard Zwilling, 'The First Medicalization: The Taxonomy and Etiology of Queerness in Classical Indian Medicine' (1993) 3 Journal of the History of Sexuality 590, 600.

[70] George Artola, 'The Transvestite in Sanskrit Story and Drama' (1975) 25 Annals of Oriental Research 57, 66.

[71] Zwilling and Sweet (n 64) 112.

[72] Lariviere (n 61) 380–381.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

it up),[73] it is crucial to recognize that there existed others who understood and applied the term with a broader disdain for gender and sexual difference, while maintaining the enduring undercurrent of the reproductive imperative. Contemporary renderings of *klība* as 'impotent' engender a localization of its semantic content to sterile genitality. However, in light of the word's complex terminological history, any claim to the definitive accuracy of a translation must remain in a state of perpetual suspension, queerly contingent on the fluidities of new discoveries, interpretation, and context.[74]

What emerges from this discussion is that *Dharmaśāstric* texts conceptualized the exclusion of *klība* as referring to signified subjects who, for reasons not only of anatomy but also potentially of desire and gender embodiment, were deemed incapable of engaging in reproductive heterosexual intercourse and fulfilling the masculine norm. The contemporary rendering of *klība* as 'impotent' does not fully capture the organizing logic underwriting *klība*'s exclusion from inheritance—a logic rooted in reproductive cis-heteronormativity and a concomitant disdain for the non-normative.[75] Those who inhabit contemporary trans/queer identities, such as the *Kinnars* and *Hijras*, would have been considered unworthy of inheritance according to these logics. I will now analyse how these inheritance exclusions were applied during the colonial era and later in the post-Independence legal context.

B. Colonial courts and the application of *Dharmaśāstric* exclusions: The gendered limits of precedential reform

In this section, I will show how even when colonial-era courts attempted to whittle down *Dharmaśāstric* inheritance disqualifications, they retained and amplified their cis-heteronormative logics. I will also argue that the benefits of this attempted attenuation never flowed to the 'eunuchs', *Hijras*, gender and sexually non-normative persons, given their continued marginalization at the hands of the colonial administration during this period. Thus, precedential reform for normatively gendered men contributed little to the lives of the non-normative.

In 1772, British authorities in Calcutta determined that they should not impose British laws, unknown and likely incomprehensible to the Indian population, but instead apply local Hindu and Muslim law, with which the Indians were not only familiar but assumed to have revered for centuries. Governor Warren Hastings directed:

> In all suits regarding inheritance, marriage, caste, and other religious usages or institutions, the laws of the Koran with respect to Mohamedans and those of the Shaster with respect to the Gentoos shall invariably be adhered to.[76]

Thus, Anglo-Hindu Law was born, and this direction was eventually codified into law.[77] This sparked significant interest in the study and translation of *Dharmaśāstra* texts,

[73] For instance, see Julius Eggeling, *The Satapatha-Brahmana* (Clarendon Press 1882) 123; Patrick Olivelle, *The Early Upaniṣads* (Oxford University Press 1998) 145.

[74] For the theoretical basis of this queer sensibility, see Judith Butler, *Bodies That Matter* (Routledge 2011) 169–185.

[75] While *klība* are clearly excluded from inheritance and certain ritual roles in *Dharmaśāstra* texts (frequently grouped with others deemed ineligible due to bodily, cognitive, or moral incapacity), this exclusion coexists with injunctions requiring their care and protection. *Smṛti* texts explicitly state that those who inherit property must provide for persons excluded from inheritance, including *klība*, ensuring them food, clothing, and maintenance. Additionally, they are not to be killed in battle. Such provisions reveal that legal and ritual disqualification did not render them entirely outside the moral or familial order. Rather, *Dharmaśāstra* texts exhibit a complex configuration in which the non-normative subject is subordinated through exclusion, yet also incorporated through obligations of paternalistic care. The resulting structure reflects not pure disdain, but a stratified form of inclusion grounded in hierarchies of gender, embodiment, and social function.

[76] Ludo Rocher, *Studies in Hindu Law and Dharmaśāstra* (Anthem Press 2012) 86.

[77] ibid 103.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

particularly as colonial courts were entrusted with the legal responsibility of administering *śāstric* law.[78] Mounting interest coupled with the exigencies of colonial administration and growing suspicion for court *pandits* produced the now famous works, Sir William Jones' translation of the *Manusmṛti* (1794) and Henry Thomas Colebrooke's *Two Treatises on the Hindu Law of Inheritance* (1810).[79]

Colebrooke's work, in particular, produced the mistaken (yet paramount) concept of regionally differentiated schools of Hindu Law whereby *Jīmūtavāhana's Dāyabhāga* was regarded as authoritative for Bengal and *Vijñāneśvara's Mitākṣarā* for the rest of India.[80] A fundamental difference between *Dāyabhāga* law and *Mitākṣarā* law concerns the time at which heirs acquire ownership in the family estate. According to the *Dāyabhāga*, ownership of sons and, by extension, of all heirs, originates at the time of the prior owner's death or his being incapacitated in his lifetime (ie, *uparamasvatvavāda*). Under *Mitākṣarā* law, however, heirs acquire ownership in the family property by birth (ie, *janmasvatvavāda*).[81] The sources of Anglo-Hindu Law thus ossified, left little scope for further commentarial development in the *Dharmaśāstra* tradition.[82]

From the early years of colonial administration of *śāstric* law, colonial courts adjudicated cases concerning inheritance disqualifications, and the corpus of these cases only increased in subsequent years.[83] Different colonial-era High Courts disagreed on a variety of issues in the application of these verses. Some judges, for example, declined to enforce *śāstric* disqualifications on the grounds that they were 'obsolete'.[84] Although such outright refusals were steadfastly overruled, other methods of diluting or circumventing *śāstric* inheritance disqualifications continued to flourish.[85] I will now examine one such interpretive manoeuvre aimed at narrowing *śāstric* disqualifications to show how colonial-era High Courts, even as they appeared to relax certain exclusions, ultimately retained and amplified the cis-heteronormative logics embedded within *Dharmaśāstras*.

The cases I will now discuss concern the question of whether an estate once vested in qualified heirs could be divested by the subsequent emergence of a nearer heir (for instance, the son of a disqualified heir born after the death of the ancestor)? One of the first judgments to engage with this issue comprehensively was the Calcutta High Court's decision in

[78] Rosane Rocher, 'The creation of Anglo-Hindu Law' in Timothy Lubin and others (eds), *Hinduism and Law: An Introduction* (Cambridge University Press 2010) 78–88.

[79] ibid.

[80] This moment also marked the reversal of authority between the *śāstras* and the commentaries. Ludo Rocher explains, 'it is mainly the *Two Treatises* which is responsible for the fact that during the British period—and after it—the Mitākṣarā and the Dāyabhāga and, hence, the whole commentarial literature has become more authoritative than the original *sūtras* and *śāstras*. Even setting aside our theory that the *sūtras* and *śāstras* had real authority, certainly much more than the commentaries, the fact remains that in the eyes of the commentators themselves their own works were mere explanations of and, therefore, less authoritative than the revealed *śāstras*. From now onward, these evaluations will be reversed.' The *Mitākṣarā* School was further divided into four geographically defined sub-Schools, each with their own supplementary digest(s), which agree with the *Mitākṣarā* on the main issues but deviate from it and from one another on minor points. See Rocher (n 76) 186–188; Rocher (n 57) 174.

[81] Ludo Rocher explains, 'The two Schools of Hindu Law, therefore, differ in that, in the *Dāyabhāga* School, the head of the family remains the sole owner of, and the single person who has the power to make decisions for, the entire family property as long as he lives, whereas in the *Mitākṣarā* School the role of the head of the family is limited to that of a manager, his power being restricted by other family members who, just by virtue of being born into a family, acquire the right of ownership in the family estate.' Rocher (n 57) 175.

[82] Donald R Davis Jr, 'A historical overview of Hindu Law' in Timothy Lubin and others (eds), *Hinduism and Law: An Introduction* (Cambridge University Press 2010) 25.

[83] For cases from the early 1800s, see William Hay Macnaghten, *Principles and Precedents of Hindu Law - Volume 2* (Higginbotham & Co 1874) 129–133.

[84] *Yellavajhula Surayya v Yellavajhula Subbamma* MANU/TN/0071/1919; *Venkata Subba Rao v Purushottam* ILR (1902) Mad 133; *Vedanayaga Mudaliar v Vedammal* ILR (1904) Mad 591; *Kayarhhana Pathan v Subbaroya Thevan* ILR (1915) Mad 250.

[85] *Pudiava Nadan v Pavanasa Nadan* MANU/TN/0065/1922.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

Krishan Chandra Das v Kalidas Das.[86] For the sake of clarity, I will summarize key facts of the case:

> **X** died in the year 1832, leaving a son **Y** (who had been blind from his birth) and two widows (**Z** and **P**), the survivor of whom (**P**) died in 1849. **Y** (the blind son) was excluded from inheritance (as per *śāstric* law). On the death of P, **Q** (X's nephew), occupied the position of X's valid heir. Y subsequently married and a son (**R**) was born to him, in 1858. Y died in 1861.

Justice John Paxton Norman held that on the birth of **R**, he became entitled to the inheritance from which his blind father **Y** had been excluded. However, on appeal, a Full Bench of the High Court reversed the decision to hold that an estate once vested (in **Q**) cannot be divested in favour of the son of an excluded person born after the death of the ancestor. The Court clarified that this ruling does not apply to the case of the son of an excluded person if he was in the womb at the time of the ancestor's death, and is afterwards born capable of inheriting.

Taking the opposite view, in *Krishna v Sami*,[87] a full bench of five judges of the Madras High Court held that under the Hindu law of inheritance, which obtains in Southern India, the sons of a congenitally deaf and dumb member of an undivided Hindu family are entitled to a share of the family estate in the lifetime of their father, notwithstanding that they were born after the death of their grandfather. In such a case, the estate vests on the death of the grandfather in the qualified heirs, subject to the contingency of its divestment on the disqualified person recovering from his disqualification or the birth of a qualified heir. The Court cited the following passages from Thomas Foulkes' nineteenth-century English translation of the *Sarasvatīvilāsa*, discussing *Manusmṛti's* verses on exclusion from inheritance:

> The meaning of this is: Impotent persons and outcastes do not take shares. The two thus mentioned are to be nourished and cherished by their brothers who are eligible or by those who take the estate or by those who take the women.
>
> Those who are blind and those who are deaf, as to those thus coupled together, to them a share belongs certainly; but though they are possessed of a share they are maintainable by reason of potentiality of marriage. By the use of the word 'so' the inner meaning is, deformed persons, *if they are eligible for marriage, are share-takers* and are to be nourished and cherished.[88]

Through interpretive gymnastics based on the above misinterpretation and mistranslation of *Sarasvatīvilāsa*,[89] the Court carved out an even more absurd distinction among the many categories of heirs whom the *Manusmṛti* disqualified from inheritance:

> There are classes of disqualified persons who cannot be relieved of their disqualification and cannot transmit heritable blood; there are classes who, though they may be unable to

[86] MANU/WB/0107/1869.

[87] MANU/TN/0134/1885.

[88] *Sarasvatīvilāsa* is a regional digest attributed to Pratāpa Rudra Deva (a ruler of Orissa's Gajapati dynasty) believed to be written around the year 1515, *see* Thomas Foulkes, *The Hindu Law of Inheritance according to the Sarasvati-Vilasa* (Trübner & Co 1881) vii–xviii, 31–32.

[89] For a well-reasoned explanation of how the Madras High Court relied on a misinterpretation of the *Sarasvatīvilāsa* in this line of cases: KV Venkatasubrahmanya Aiyar, 'Coparcenership of Disqualified Son under the Mitakshara' (1942) Madras Law Journal 63-82.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

> be relieved of their disqualification, are capable of transmitting heritable blood. Their right to share in the family wealth is *latent*, or may come into existence at a future time as it does in the case of the after-born son. When it comes into existence, either in the person of the formerly disqualified heir or of his son, it is to be recognised. *If capable of transmitting heritable blood, they are share-takers though not at the time share-enjoyers.*[90]

This distinction between share-takers and share-enjoyers, as applied to *saśtric* inheritance disqualifications and mediated through fitness to marry, finds no support in *Dharmaśāstra* texts.[91] Yet, the Madras High Court reached heights of interpretive absurdity in *Amirthammal v Vallimayil Ammal*, when the court decided whether a 'congenital idiot' would have the status of a coparcener 'notwithstanding that he is excluded from the enjoyment of his share'.[92] One can already see that the issue itself is framed with the conceptual universe of *Krishna v Sami's* share-takers/share-enjoyers distinction in mind. Emphasizing the *Mitākṣarā* rule of *janmasvatvavāda* (doctrine of birthright ownership, as opposed to *Dāyabhāga's uparamasvatvavāda*),[93] the Court held:

> It is a fundamental rule of Hindu law that a son born to a member of a joint family has on birth the right to share in the family estate. The fact that a son is born with an affliction which disqualifies him from enjoying his share does not rob him of his birthright. The affliction merely prevents his enjoyment of the right while the affliction lasts.

From a purely *śāstric* standpoint, the application of this distinction between 'share-takers' and 'share-enjoyers' is an unreasonable basis for the Madras High Court's decisions since both *Krishna v. Sami* and *Amirthammal v Vallimayil Ammal* were cases of congenital disqualifications. Someone who was disqualified from the very moment he was born is presumably the worst candidate for benefiting from a 'birthright in abeyance' or 'latent coparcenership' logic.[94]

However, in *Amirthammal v Vallimayil Ammal*, the Madras High Court tried to overcome this difficulty by relying on the *Sarasvatīvilāsa* and *Krishna v Sami* to say that if the persons who are disqualified are fit for marriage, they will be considered share-takers (though not share-enjoyers until their disqualification persists).[95] Such a view is neither supported by the *Smṛti* texts nor shared by any other authoritative commentaries to which the court referred. *Dharmaśāstric* texts do not envisage a means of escaping inheritance disqualifications that is contingent upon one's capacity to marry. Similarly, the distinction drawn between share-takers and share-enjoyers also lacks foundation in *Dharmaśāstric* texts. In fact, soon after the judgment was delivered, KV Venkatasubrahmanya Aiyar showed how the High Court had

[90] *Krishna v Sami* MANU/TN/0134/1885, para 41.

[91] *See* Venkatasubrahmanya Aiyar (n 89).

[92] MANU/TN/0059/1942; The terms 'congenital idiot' or 'lunatic', as used in this article, are quoted directly from the language of source materials to draw attention to the ableist and dehumanising terminology historically employed by the courts. Their use here is not an endorsement, but a deliberate invocation of the juridical record's pathologization. Any subsequent appearance of these terms in the article is intended as a critical engagement with the legal system's role in reproducing such stigmatising classifications.

[93] The reasoning of *Mitākṣarā* and *Dāyabhāga* behind these different rules is explained in: Rocher, *Studies in Hindu Law and Dharmaśāstra* (n 76) 527–538.

[94] This logic indeed worked well without controversy for *Mitākṣarā* cases of supervening (as opposed to congenital) disabilities, see *Muthusami Gurukkal v Meenammal* AIR 1920 Mad 652; *Masammat Dilraj Kuari v Rikeshwar Ram Dube* AIR 1934 Pat 373; *Mool Chand v Chahta Devi* AIR 1937 All 605. A decision of the Madras High Court expressly views the cases of congenital and supervening disabilities differently, *see Venkateswara Pattar (Insane) v K Mankayammal* AIR 1935 Mad 775, even though it mistakenly conflates this distinction with the *Sarasvatīvilāsa's* presumed attachment of relevance to distinguishing among those disqualified persons considered fit for marriage and those who are not.

[95] *Amirthammal v Vallimayil Ammal* MANU/TN/0059/1942 (Somayya J).

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

misunderstood even the *Sarasvatīvilāsa's* Sanskrit text in coming to this decision despite the bench comprising a judge who was well versed in Sanskrit.[96]

In privileging such interpretive distortions, colonial-era courts whittled down *Dharmaśāstric* rules on disqualification from inheritance, even as they retained (and in some respects amplified) the centrality of heterosexual marriage and the reproductive imperative, extending their legal relevance beyond what the *Dharmaśāstras* themselves had envisaged.[97] Alignment with reproductive cis-heteronormativity thus became a pathway for evading *śāstric* inheritance disqualifications.

In the specific facts of the *Amirthammal* case, this had the effect of reinstating the priority of succession through the male line of a congenital idiot to the exclusion of female heirs. The inheritance claim of female heirs in this case drew strength from a bequest made by the deceased father of a congenital 'idiot' to his wife. Since the *saśtric* disqualification of the congenitally idiot son of the deceased ancestor was lifted as a result of having married and produced sons, the ancestor could not have bequeathed the entire property to his wife without considering the son's coparcenary rights. Accordingly, the claim of female heirs through that invalid bequest failed.[98]

These developments, howsoever laudable, in normatively gendered men's precedential march to progress coexisted with the deplorable marginalization of those described by the British as 'eunuchs'.[99] Aimed primarily at the *Hijras*, Part II of the Criminal Tribes Act 1871 criminalized 'eunuch' lives, defining 'eunuch' to include 'all persons of the male sex who admit themselves, or on medical inspection clearly appear, to be impotent'.[100] Jessica Hinchy's meticulous archival research shows that Part II of the 1871 Act sought to gradually eliminate the *Hijra*/'eunuch' population through a combination of legal and policing strategies.[101]

By registering 'eunuchs', authorities sought to monitor and prevent new cases of *Hijra* initiation and castration, ensuring that the existing population would naturally decline over time. Removing children from *Hijra* households was intended to stop their initiation and castration, while disrupting *Hijra* succession and inheritance practices would further limit incentives for new initiations. Additionally, criminal punishment for *Hijras*' performances and feminine attire aimed to erase their presence from public spaces. This multi-pronged approach combined both physical and cultural erasure.[102] From 1865 to the early twentieth century, the British administration of North-Western Provinces annually recorded its progress in causing 'eunuchs' to 'die out', operating under the belief that colonial law and policing would completely eradicate a community with a long history in the Indian subcontinent.[103] In light of the British understanding of *Hijras* as 'cross-dressing habitual sodomites', the 1871 Act operated in tandem with stigma and persecution sourced from the Indian Penal Code's criminalization of 'carnal intercourse against the order of nature'.[104]

[96] *See* Venkatasubrahmanya Aiyar (n 89).

[97] The whittling down of *Dharmaśāstric* disqualifications on the share-taker/share-enjoyer logic continued in cases like *Kesava v Govindan* MANU/TN/0220/1946.

[98] See Venkatasubrahmanya Aiyar (n 89).

[99] As highlighted earlier, in an act of epistemic violence, nineteenth-century British writers flattened the variegated semantic content of Sanskrit words like *klība*, *ṣaṇḍha*, *paṇḍaka*, *napuṃsaka*, and *tṛtīyā prakṛti* by translating all of them as 'eunuch': Gannon (n 62) 4.

[100] Gannon (n 62) 16–17; Criminal Tribes Act 1871, s 24 (India).

[101] Jessica Hinchy, *Governing Gender and Sexuality in Colonial India* (Cambridge University Press 2020) 12.

[102] ibid; see Criminal Tribes Act 1871, ss 24–31.

[103] The boundaries of the 'suspect eunuch' category shifted throughout the four decades that Part II of the CTA was enforced in the NWP, from 1871 until 1911. While the NWP government and many British district administrators primarily targeted the *Hijra* community (perceived as cross-dressing sodomites who kidnapped and castrated children), the identification of 'suspect eunuchs' remained unstable and contested. Colonial officials struggled to clearly distinguish between *Hijras* and other so-called 'immoral' groups in Indian society, including uncastrated but 'effeminate' *Zananas*, ritual cross-dressers like *Sakhis*, and performers such as *Bhagatiyas*. *See* Hinchy (n 101) 114, 192.

[104] ibid 53, 76.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

Against this backdrop, it is not surprising that precedential relaxations in *Dharmaśāstric* inheritance disqualifications never inured to the benefit of those described as 'eunuchs' in the British imagination, during the nineteenth and early twentieth centuries. Even as the whittling down of *śāstric* disqualifications was attempted, the *Dharmaśāstric* privileging of heterosexual intercourse and the reproductive imperative was retained. It was, in fact, amplified when the Madras High Court unreasonably invested immense significance in a disqualified person's capacity to perform a heterosexual marriage as a precondition for escaping *śāstric* disqualifications to become a share-taker (though not a share enjoyer). In *Amirthammal v Vallimayil Ammal*, the Madras High Court effectively held that disqualified persons are coparceners with a right of survivorship, whether the disqualification is congenital or supervenient, *provided there is fitness to marry*.[105] Clearly, this structurally denied the salutary effects of discursive legitimization to those already cast as unfit for heterosexual marriage—*Hijras* and gender and sexually non-normative people.

However, not all was lost. Legislative developments following the repeal of CTA's Part II in 1911 are inspiring, even if only conditionally and temporarily so.[106] I now shift focus to the long-overdue examination of these legislative changes.

4. THE HINDU INHERITANCE (REMOVAL OF DISABILITIES) ACT 1928: DISINTERRING THE UNEXCAVATED CADAVERS OF INTERMITTENT IRREVERENCE

In this section, I turn to the legislative history of the Hindu Inheritance (Removal of Disabilities) Act 1928 to locate a fleeting moment in which colonial legal institutions appeared to depart (however hesitantly) from the cis-heteronormative logics of *Dharmaśāstric* inheritance law. Focusing on the Bill's evolution, I examine how a legislative select committee momentarily considered lifting inheritance exclusions for 'eunuchs', even in the absence of any sustained civil society advocacy or formal consultation with the community itself. I read this moment not as one of transformation, but as a revealing interruption—one that complicates overly totalizing accounts of colonial law as uniformly disempowering. At the same time, I remain attentive to what the archive withholds: the absence of eunuch voice consciousness, the lack of recorded testimony, and the enduring silences that structure the very documents we might otherwise read as progressive.

In 1921, TV Seshagiri Ayyar introduced a bill called 'The Exclusion from Inheritance Bill' in the Central Legislative Assembly, which was the lower house of British India's Imperial Legislative Council.[107] Section 2 of this Bill prescribed, 'Notwithstanding any rule of Hindu Law or custom to the contrary, no person governed by the Hindu Law shall be excluded from inheritance or from a share in joint-family property by reason only of any disease, deformity, physical or mental defect.'[108] The Statement of Objects and Reasons explains,

> Certain classes of persons have been excluded from inheritance presumably on the ground that their present condition is due to sins in the former birth and that they are therefore

[105] Venkatasubrahmanya Aiyar (n 89) 71.

[106] Provisions targeting 'eunuchs' were not removed from the 1911 version of the Criminal Tribes Act out of benevolence. They were removed because colonial administrators believed that the 'eunuchs were dying out'; depletion of the registered eunuch population convinced the administrators that their eradicatory purpose had been achieved, and a renewal of the provisions was no longer necessary. Hinchy (n 101) 246-47.

[107] *Legislative Assembly Debates Vol 2*, Second Session of the Legislative Assembly 1921 (Government Central Press 1921) 1010–1011.

[108] The Exclusion from Inheritance Bill 1921, s 2 <https://elibrary.sansad.in/handle/123456789/78641> accessed 1 April 2025.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

> not entitled to share in the patrimony; without questioning the soundness of this reason of the rule, I am of opinion that in the times that we live in such grounds of exclusion should not be allowed to deprive a person of temporal rights: These persons stand in greater need of assistance than their more favoured brethren who can earn their living. Public opinion has expressed itself strongly against the disability which the present state of the Hindu Law imposes on them.[109]

TV Seshagiri Ayyar's draft bill was then referred to a Select Committee, which submitted its report in 1923 with a new title for the Bill: the 'Hindu Inheritance (Removal of Disabilities) Bill'. Among other important recommendations, the Select Committee decided, '*unanimously as regards eunuchs and impotent persons*, and by a majority in the other cases, that no person should be excluded from inheritance or coparcenary unless he is a congenital lunatic or idiot.' Accordingly, the Select Committee altered the initial draft to reflect the retention of inheritance disqualifications for a 'congenital lunatic or idiot'.[110]

The Select Committee's unanimous support for abrogating the *Dharmaśāstric* exclusion of 'eunuchs and impotent persons' is especially remarkable since there is no trace in the legislative archive of any sustained civil society campaign for the benefit of eunuchs or any consultation with 'eunuchs' at the time. There is record, however, of opinions being invited from local governments and administrations, the High Courts, Chief Courts, Judicial Commissioner's Courts, Bar Associations, and other authorities which the local governments 'thought fit to consult'.[111] During a debate in the Legislative Assembly about insufficient consultation on the Bill, Seshagiri Ayyar said that he printed 2000 copies of the Bill and sought opinions from religious leaders, legislators, and 'orthodox gentlemen', but no mention of eunuchs.[112] Given the colonial attitude towards eunuchs, it is also highly unlikely that British local governments would have sought their opinions.

The Committee's support for unburdening 'eunuchs' from *Dharmaśāstric* exclusions was unanimous despite the prejudicial milieu created for them by the continuing validity of the Indian Penal Code's criminalization of 'unnatural offences' and almost four decades of the CTA's enforcement in the neighbouring North-Western Provinces. In the absence of any recorded consultations that could have potentially humanized the abjected 'eunuchs' of the colonial period, it is extraordinary that some concern for them found expression nevertheless.

On 27 March 1923, when the Select Committee's draft was discussed, orthodox Hindu members of the Legislative Assembly voiced various interesting objections to the draft's approval. Most relevant for my analysis is the orthodox Hindu members' attempts at rationalizing and justifying *Dharmaśāstric* exclusions. These members paternalistically argued that the exclusions were animated by the benevolent aim of preventing 'scheming people' from taking advantage of disqualified persons (and their property) who were 'incapable of taking care of themselves'.[113] Fascinatingly, while justifying the *Dharmaśāstric* exclusions for a leper and a congenitally blind, deaf, and dumb person, JN Mukherjee made the following admission, '*Only in respect of eunuchs* and persons devoid of limbs, *it can be questioned why when they have got the mentality to enjoy property we should refuse them their inheritance.*'[114] This

[109] ibid.

[110] Report of the Select Committee on the Bill to amend the Hindu Law relating to exclusion from inheritance of certain classes of heirs, and to remove certain doubts, with the Bill as amended (14 March 1923) <https://eparlib.nic.in/handle/123456789/761802?view_type=browse> accessed 1 April 2025.

[111] *Legislative Assembly Debates Vol 3*, Third Session of the Legislative Assembly 1923 (Government Central Press 1923), JN Mukherjee (27 March 1923), 4021–4022.

[112] ibid, TV Seshagiri Ayyar (27 March 1923), 4022–4023.

[113] ibid, (27 March 1923) MGM Ayyangar, 4024; JN Mukherjee, 4030–4032.

[114] ibid, JN Mukherjee (27 March 1923), 4031; on the next page, Mukherjee also eulogizes the 'science of eugenics'.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

shows that even the most conservative members in the Legislative Assembly found it difficult to sustain a eunuch's exclusion from inheritance.[115]

The objections of orthodox Hindu members notwithstanding, the Select Committee's draft bill passed in the Legislative Assembly with only one material change, that the law shall not apply to any person governed by the *Dāyabhāga* (ie, the Bengal school of Hindu Law).[116] This Bill went to the Council of State (the upper house), where it met with considerable opposition and eventually lapsed.[117]

On 22 March 1928, this Bill was reintroduced by Sir Hari Singh Gour in the Legislative Assembly recomposed after the intervening elections. By this time, Seshagiri Ayyar, the Bill's original author, had passed away. The Bill passed without any discussion after Sir Hari Singh Gour's introductory remarks. However, this time around, the legislative record showed no exteriorization of concern for eunuchs. The *Dharmaśāstric* exclusions sought to be abrogated by the Bill were explained by Sir Hari Singh Gour purely in terms of their detriment to normatively gendered men:

> In the ancient Indian law it was provided that a person who was suffering from mental or physical incapacity, want of a limb or an organ, was incapable of acquiring any right in property, of either becoming a coparcener or an heir to the estate. Now, Sir, this archaic law has been responsible for the exclusion from inheritance of a very large number of people … The evil is this. Suppose a Hindu family consists of two brothers, and one brother goes to a war to fight for his country or is employed in a factory as a wage earner and suppose on account of some accident or on account of his fighting well in the war he loses his arm or his limb, he becomes disinherited and totally incapable of acquiring any right in property. He then becomes what is known to the law as a disqualified coparcener or a disqualified heir.[118]

In the Council of State's 1928 debates, eunuchs and impotent persons came up only when members referred to English translations of *Dharmaśāstric* exclusions.[119] Much like the Legislative Assembly debates of 1928, even the Council of State's record reflects an invisibilization of specific concern for eunuchs. After being passed by the Council of State, the bill that started out as 'The Exclusion from Inheritance Bill' eventually became the Hindu Inheritance (Removal of Disabilities) Act 1928, abrogating all *Dharmaśāstric* disqualifications resulting from 'any disease, deformity, physical or mental defect', while expressly retaining the exclusion of congenital lunatics or idiots.[120]

Taking inspiration from Janet Halley and Brenda Cossman's call to move beyond purely paranoid readings of the law in queer legal studies,[121] I read the legislative archive of the

[115] Even Rao Bahadur T Rangachariar's concedes, though not explicitly in the context of eunuchs, 'I am quite willing to say that some portion of the law of exclusion should be set right', Legislative Assembly Debates 1923 (n 111) (27 March 1923) 4028.

[116] Legislative Assembly Debates 1923 (n 111) 4038.

[117] *Council of State Debates Vol 3*, Third Session of the Council of State 1923 (Government Monotype Press 1923) 1625–1632.

[118] *Legislative Assembly Debates Vol 2*, Second Session of the Third Legislative Assembly 1928 (Government of India Press 1928), Sir Hari Singh Gour (22 March 1928) 1917–1918; Even the Statements of Objects and Reasons attached to the bill speak only of impotent heirs, not eunuchs.

[119] *Council of State Debates Vol 2*, Fifth Session of the Second Council of State 1928 (Government of India Central Publication Branch 1928) 109–116.

[120] Hindu Inheritance (Removal of Disabilities) Act 1928, s 2 (India).

[121] Janet Halley, 'Paranoia, Feminism, Law: Reflections on the Possibilities for Queer Legal Studies' in Elizabeth S Anker and Bernadette Meyler (eds), *New Directions in Law and Literature* (Oxford University Press 2017) 123; Cossman (n 40) 37–38; Joseph J Fischel and Brenda Cossman (eds), 'Introduction: An Enticement' in *Enticements: Queer Legal Studies* (New York University Press 2024) 8–14.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

Hindu Inheritance (Removal of Disabilities) Act 1928 as an instance in which the law and its institutions exhibited intermittent irreverence towards the dominance of cis-heteronormativity in defining the image of a rights-deserving subject. While the Act does not expressly create new rights for gender non-normative people and even as concern for 'eunuchs' disappeared around the time of its enactment, the process of the Act's legislative production resists a wholly dismal reading—opening up possibilities for interpretations that disrupt our contemporary understanding of who this law's envisioned beneficiary was. It complicates simplistic narratives that might fail to register these disruptive moments because of overreliance on the continued marginalization of gender and sexually non-normative people under criminal law during this period. Clearly, colonial-era law's content was not monolithically disparaging; slippages did occur, and a queerly attentive reading of law-making archives has helped me locate a new site of their manifestation.

However, it would be a profound mistake to engage in a fetishized valorization of these slippages. Faced with the discursive/archival filigree of the Standing Committee's unanimous support for unburdening 'eunuchs' from *śāstric* disqualifications, the orthodox Hindu members' hedged concessions, and the eventual silencing of concern for 'eunuchs', one never encounters the testimony of the eunuch's 'voice consciousness'.[122] A counter-sentence of the eunuch's priorities and their identification of key legal sites for the production of their vulnerability is rendered irretrievable. This is generated precisely by exclusion from pre-legislative consultation and from the archival record—the very moments that provided us the basis for avoiding a dismal reading in the first place. One can only speculate if, amidst criminalizing marginalization, overcoming inheritance disqualifications would have been central to the emancipatory agenda for 'eunuchs' at the time.

5. REINSCRIBING ASYMMETRIC DISTRIBUTIONS OF PRECARITY: INHERITANCE LAW IN THE POST-INDEPENDENCE PERIOD

Post-Independence legal developments inherited the effacement of legislative concern for the inheritance rights of the 'eunuch'. This section shows how the Hindu Succession Act 1956 and the Trans Rights Act 2019 entrench queer and trans precarity through a denial of inheritance. Even while appearing to sever connections with *śāstric* disqualifications, the 1956 Act preserves and operationalizes their cis-heteronormative logics, later reified by silences in the Trans Rights Act's non-discrimination provision.

As part of the post-Independence Hindu Code Bills,[123] the Hindu Succession Act 1956 (HSA) marked a major legislative milestone. Section 28 of the 1956 Act declared, 'No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever.' The 1956 Act improves upon the 1928 Act in many respects. Section 28 discards nearly all the grounds for exclusion from inheritance and bars disqualification on any other ground unless specifically mentioned elsewhere in the Act, of which there are very few.[124] Even the 1928 Act's retention of exclusions for congenital lunatics or idiots was eliminated.

Yet, the reparative potential of the 1956 Act is undercut by its gender-binarized conceptualization of heirs. The definition clause limits *heirs* to male and female persons. Section 3(f),

[122] My phraseology here is inspired by: Gayatri Chakravorty Spivak, 'Can the Subaltern Speak?' in Rosalind Morris (ed), *Can the Subaltern Speak?: Reflections on the History of an Idea* (Columbia University Press 2010) 50.

[123] Rina Verma Williams, 'Hindu Law as Personal Law: State and Identity in the Hindu Code Bills Debates, 1952-1956' in Timothy Lubin and others (eds), *Hinduism and Law: An Introduction* (Cambridge University Press 2010) 105.

[124] Mulla (n 52) 1281.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

defines an 'heir' as 'any person, male or female, who is entitled to succeed to the property of an intestate under this Act.' The words 'male or female', in this context, are made inseparable from 'any person' in the statutory understanding of an 'heir' since the entire structure of the Act is built around different inheritance rules for men (under section 8) and women (under section 15); transgender and gender non-normative persons are not envisaged within that scheme.[125] This exclusion was noted soon after enactment. In *Hindu Law: Past and Present* (1957), John DM Derrett highlights, 'There is no provision for hermaphrodites. In a system which insists upon a different order of devolution for males and females those whose sex is indeterminate ought to be specially provided for.'[126]

While the 1928 Act could, in theory, be interpreted as abrogating inheritance disqualifications even for gender non-normative people, the 1956 Act's corresponding provision forecloses such an interpretation once read alongside its gender-binarized structure. Further, the 1928 Act's reparative possibilities were effaced entirely when it was repealed by the Repealing and Amending Act 2017, following recommendations from the Law Commission of India, which considered the Act 'redundant' in view of Section 28 of the 1956 Act.[127]

The Hindu Succession Act 1956 is structured around a heterosexual, reproductive family model, privileging a binary-gendered understanding of kinship. Rights of inheritance are tied to blood relations, marriage, or adoption—each defined within heteronormative, patriarchal, and cisgendered terms.[128] Thus, those who exist outside the binary gender model (ie, gender non-normative persons) are rendered invisible. The Act's gendered categories (eg, 'son', 'daughter', 'widow', 'husband') presume a static binary aligned with birth-assigned sex/gender.[129] Those who cannot conform are denied legal personhood as heirs unless they assimilate into the gender binary: by realigning with their birth-assigned sex/gender or undergoing normativizing surgical intervention to be reclassified as male or female, under the Trans Rights Act. Each of these pathways constitutes a form of structural and embodied violence that is both epistemic and material, as understood in trans and queer theory.

Transgender and gender non-normative individuals who seek to inherit under the HSA without undergoing surgical transition face the prospect of aligning themselves with the sex/gender assigned at birth, as the Act does not recognize third-gender or non-binary categories. This imposes a regime of ontological misrecognition. This insistence on anatomical or birth-based gender identity forecloses the lived and embodied reality of trans people, rendering their subjectivity unintelligible to the law. This constitutes a form of epistemic injustice,[130] where the legal system not only refuses to see trans persons for who they are but requires them to perform a false identity to access basic rights. Dean Spade's concept of administrative violence is particularly illuminating here. He describes how the law enforces normative identities by rendering certain lives illegible or non-compliant.[131] The requirement that trans people conform to binary gender categories to be recognized as heirs effectively delegitimizes gender variance, offering recognition only through identity suppression.

The alternative—undergoing medicalized surgical transition to be recategorized as 'male' or 'female'—is equally coercive. The Trans Rights Act 2019 establishes two legal pathways for identity documentation and legal gender recognition. Under sections 5 and 6, a person

[125] Gulati and Anand (n 2) 11–13; for an analysis of the patriarchal nature of the Act's different inheritance rules for men and women, *see* Devendra Damle and others, *Gender discrimination in devolution of property under Hindu Succession Act, 1956* (Working Paper 305, National Institute of Public Finance and Policy 2020).

[126] JDM Derrett, *Hindu Law: Past and Present* (A Mukherjee & Co 1957) 265.

[127] Law Commission of India, *Obsolete Laws: Warranting Immediate Repeal* (Law Com No 250, 2014) 6.

[128] See HSA 1956, ss 3(a), 3(c), 3(e), 3(j), 8, 10, 12, 14, 15, 16, 18, sch.

[129] ibid.

[130] See Jain and Rhoten (n 46).

[131] Spade (n 38) 73–93.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

may apply to the District Magistrate for a 'certificate of identity as a transgender person' through a self-identification process. However, to obtain a 'revised certificate' recognizing a change to 'male' or 'female' under section 7, the individual must undergo sex reassignment 'surgery' and submit a certificate to that effect issued by the Medical Superintendent or Chief Medical Officer of the medical institution where the surgery was performed. The District Magistrate, acting as the approving authority, may then issue a revised identity certificate after verifying the medical documentation.

While some have read the Transgender Persons (Protection of Rights) Rules 2020 as relaxing the surgical requirement under section 7 of the 2019 Act,[132] this interpretation invites closer scrutiny. Section 7 of the parent statute clearly stipulates that only those who have undergone 'surgery' are eligible to apply for a revised certificate of identity recognizing a change to 'male' or 'female'. In contrast, the 2020 Rules only require 'medical intervention towards a gender affirming procedure, either as a male or female … along with a certificate issued to that effect by the Medical Superintendent or Chief Medical Officer of the medical institution … ', subject to the District Magistrate's assessment.[133] The Rules define 'medical intervention' broadly to include 'any gender affirming medical intervention … including but not limited to counselling, hormonal therapy, and surgical intervention, if any'.[134]

While this definition reflects a lower threshold for legal transition, it cannot legally override the explicit requirement of surgery embedded in the parent Act. Under well-established principles of Indian law, delegated legislation cannot amend or contradict the substantive provisions of the statute it is framed for without the parent Act's authorization of such a rule-making power.[135] As such, unless the parent Act is amended, the status of the expansive definition of 'medical intervention' in the 2020 Rules remains legally suspect to the extent it contradicts the statutory mandate of surgical transition under section 7. The Rules may suggest a progressive administrative stance, but their potency in changing the legal threshold set by the Act remains questionable and uncertain. That said, even the 2020 Rules' articulation of 'medical intervention' continues to reflect a pathologizing gaze and inflicts epistemic harm. Moreover, as a practical matter, Medical Superintendents or Chief Medical Officers of hospitals may refuse to issue the requisite 'certificate' if they deem counselling alone insufficient for transition in individual cases; likewise, District Magistrates may require medical modification beyond counselling for granting a change of gender.[136]

This complex procedure imposes a legal distinction between non-binary recognition and binary recognition, effectively conditioning access to the latter on medicalized modification. As a result, the law privileges pathologizingly medicalized transition as the gateway to full legal personhood within the gender binary, reflecting a biopolitical regime that governs trans bodies through institutionalized medical and bureaucratic oversight.

While the Trans Rights Act allows for legal recognition of a person as 'transgender' without medicalized oversight, the legal framework of the Hindu Succession Act compels a return to the gender binary, effectively necessitating modification to claim inheritance. This implicates Judith Butler's critique of normative gender recognition regimes, which violently

[132] K Brindaalakshmi, 'Debunking the Idea of a Single (Digital) Identifier: The Case of Identification Documents for Transgender Persons in India' (2025) 10 Journal of Development Policy and Practice 36; Anamika Dudvaani and Rishav Devrani, 'Transgender Persons Rules 2020: A Halfhearted Attempt at Redemption' (*Oxford Human Rights Hub*, 9 October 2020).

[133] Transgender Persons (Protection of Rights) Rules 2020, rule 6 (India); Moreover, the 2020 Rules allow individuals to apply directly for a gender change certificate without first obtaining a transgender identity certificate.

[134] ibid, rule 2(i).

[135] For instance, *see Kerala State Electricity Board v Thomas Joseph* 2022 INSC 1293.

[136] See Titha Ghosh, 'Battle for Recognition: Why It's So Difficult To Get Transgender IDs' (*Boom*, 25 July 2023); EJ Ashfaque and Mrudula Bhavani, 'Lack of expertise and government oversight endangers transgender people's gender affirmation' (*The Caravan*, 28 October 2021).

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

discipline the body into legible forms.[137] The law's demand for conformity under the guise of 'authentic' gender identity imposes biopolitical control over trans and non-normative bodies, reinforcing cisnormativity. The requirement of medical intervention as a precondition for legal rights is not only a barrier to access (given the financial, health, and social risks involved) but also a form of state-sanctioned bodily coercion.[138] This instrumentalizes the trans body as a site of bureaucratic negotiation, where recognition is conditional on physical transformation.

Both legal pathways enforce the illusion of choice (between denial of self and bodily modification) in an undesirable binary that masks the violence of legal legibility itself. The Trans Rights Act, despite its claims to recognition, ultimately reifies the state's power to define, certify, and regulate gender through documentation. In its current form, the HSA structurally excludes trans persons by refusing to imagine kinship and inheritance outside of a cis-normative, heteropatriarchal framework. As trans and queer theorists make clear, recognition that demands mimicry of dominant norms reinforces exclusionary norms about whose lives are grievable, whose families are valid, and whose futures are legally imaginable.[139]

By excluding gender-diverse persons from heirship, the Hindu Succession Act withholds access to both material and symbolic capital, reinforcing trans-queer precarity. In *NALSA*, the Supreme Court acknowledged transgender persons as one of the most socially and economically marginalized groups in India.[140] That marginalization endures. Trans-queer persons continue to face violence, familial expulsion, and socioeconomic dispossession.[141] Many are forced into precarious livelihoods, such as sex work or begging.[142]

In legal structures like the 1956 Act, one hears echoes of *Dharmaśāstric* exclusions and colonial disgust for the non-normative. After all, the historical exclusion of the *klība* was premised on a disdain for the non-normative and their supposed inability to perform reproductive heterosexual intercourse to sustain the family model built around it. Underlying the colonial vocabulary of 'disgust' and moral outrage with which the *Hijra/eunuchs* were described was a panic about the perceived ungovernability of groups that confused binary gender.[143] The 1956 Act then, with its gender-binarized abrogation of inheritance disqualifications and a succession system built around 'the sexual family',[144] allows the logics of *saśtric* and colonial exclusions to persist.

Like the *Dharmaśāstras*, the 1956 Act implies that only those who conform to normative roles (male/female, reproductive, heteronormative) deserve inheritance. Erasing gender-diverse persons from the sphere of legal kinship until they assimilate renders them disposable non-persons in the legal family. As a Foucauldian technology of discipline, the Act polices gender and legitimizes normative assumptions about who constitutes a family, who is worthy of inheritance, and who qualifies as an heir. As a Foucauldian technology of governance, the Act ensures that inheritance—and by extension, wealth, stability, security, life chances, and legacy—remains confined within hegemonic familial and gender

[137] Judith Butler, *Undoing Gender* (Routledge 2004) 67–68.

[138] Dipika Jain, 'Right to Health and Gender-Affirmative Procedure in the Transgender Persons Act 2019 in India' (2022) 55 Indian Journal of Plastic Surgery 205, 209.

[139] *See* Judith Butler, *Precarious Life: The Powers of Mourning and Violence* (Verso 2004); Spade (n 38); Puar (n 42).

[140] *NALSA* (n 9) 74–75, 128.

[141] *See* Kerala Development Society, *Study on Human Rights of Transgender as a Third Gender* (National Human Rights Commission, February 2017); However, this is not to undermine the agency that many queer and trans persons exercise when they decide to leave their natal families.

[142] ibid 28–30.

[143] Hinchy (n 101) 33-35, 46–47, 55, 114.

[144] Fineman analyses the punitive force exerted by societal and legal images of family that are 'tenaciously organised around a sexual affiliation between a man and a woman' (ie, 'the sexual family'), see Martha Albertson Fineman, 'The Sexual Family' in Martha Albertson Fineman and others (eds), *Feminist and Queer Legal Theory* (Ashgate 2009) 45.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

arrangements.[145] In the Indian context, where the majority of property is acquired through inheritance,[146] the denial of inheritance rights to trans persons who already lack access to housing and have low income and savings[147] is an efficient mechanism for maintaining their precarity.[148] An inquiry into the caste-inflected consequences of this marginalization would only further enhance one's outrage at this injustice.

That the Himachal Pradesh High Court in *Sweety (eunuch) v General Public* cited *Dharmaśāstric* inheritance disqualifications while discussing contemporary trans identities is telling. The colonial-era conflation of *klība* with 'eunuch' and 'eunuch' with *Hijras* still shapes judicial imagination.[149] In light of how *Dharmaśāstric* texts understood *klība*, contemporary *Kinnars* and *Hijras* would have been excluded from inheritance under *śāstric* rules, just as they are today.

Furthermore, in the post-Independence period, when the colonial-era Madras High Court's privileging of 'fitness to marry' (as an escape from *śāstric* disqualifications) was challenged as 'illogical', the Supreme Court of India refused to invalidate it and stamped its approval on the High Court's reasoning instead. Amusingly, in response to an argument about the absurdity of applying Madras High Court's 'latent coparcernership' logic to congenitally disqualified persons under *Mitākṣarā* law, the Supreme Court admitted, 'if the law had to be determined only on the basis of logic the argument would have got force … But Hindu Law has not always been logical.'[150] The Court declared Hindu Law illogical to uphold a judicial misinterpretation that even the *śāstric* texts themselves do not countenance. Hence, overall, the existing legal position continues to be structured around cis-heteronormative logics which ensure that material resources (via inheritance) flow only through 'normal', normative channels, thereby entrenching the marginalization of non-normative subjects.

This is the legal status quo that the Trans Rights Act reinforces through preservation, in its consciously produced silence on inheritance rights. Omissions from its non-discrimination provision and its bouquet of rights function alongside the law's wider historically-rooted effort at awarding 'gold-star status' to normative familial configurations and 'normal' stylizations of gender, leaving others legally vulnerable and materially dispossessed.[151] In that process, the Trans Rights Act, posturing as an anti-discrimination law, becomes one of many sites where gender-normative property statuses are naturalized. Silences and omissions in the design of its non-discrimination provision become vectors through which the religio-legally programmed asymmetry in status of the transgender subject is reaffirmed.

6. CONCLUSION: THE SILENCE THAT SPEAKS LOUDLY

This article has shown that the Transgender Persons (Protection of Rights) Act 2019, by omitting inheritance rights, reproduces a long-standing pattern of exclusion shaped by Hindu legal traditions, colonial law, and post-Independence codifications. What appears at first glance as legislative silence is, in fact, a carefully sustained omission; one that aligns

[145] To understand what Foucault means by discipline and population-level governance: Spade (n 38) 50–72.

[146] Gulati and Anand (n 2) 3.

[147] See Kerala Development Society (n 141) 21–41.

[148] This focus on inheritance is not meant to suggest that inheritance is universally relevant to trans lives. Many come from families where there is little or nothing to inherit due to systemic poverty. Rather, inheritance is examined here as a legal mechanism through which exclusion is structured and legitimised. The point is not just about wealth transfer, but about the ways in which law encodes normative belonging through access to kinship and property.

[149] *Klība* was translated as 'eunuch' by colonial-era writers, and *Hijras* were the quintessential 'eunuchs' to be targeted by the colonial administration under CTA 1871's Part II. This is not to diminish the broader harms that the legal position poses to other transgender persons and communities.

[150] *Kamalammal v Venkatalakshmi Ammal* AIR 1965 SC 1349 [25], [30].

[151] Cossman (n 40) 37.

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026

with deep-rooted normative investments in cisgender, reproductive, and binary models of kinship. This history is not buried; it is embedded in the very architecture of Indian personal law, from the disqualification of *klība* in the Dharmaśāstras to the gender-binarized heirship structures of the Hindu Succession Act.

By examining the meaning of Sanskrit legal terms like *klība*, and tracking their afterlives in colonial and contemporary law, this article has also argued for a more critical engagement with the semantics of legal exclusion. The refusal to grant transgender persons full recognition as heirs (unless they conform to cis-heteronormative ideals through surgical modification or self-erasure) is not only a denial of rights, but a reinforcement of a notion of legal personhood which was already always discriminatory.

If law's power lies not just in what it says but in what it chooses not to say, then the silence on inheritance in the Trans Rights Act is not neutral. It operates as a technology of discipline and governance regulating who may count as kin, who may transmit wealth, and whose life is seen as worthy of legal continuity. Inheritance, in this frame, is not simply a matter of property but of futurity, legitimacy, and belonging.

This article has not sought to resolve or remedy these exclusions, but to historicize and problematize them; to show how their persistence is neither incidental nor accidental, but foundational to how Hindu law, and Indian law more broadly, has imagined the family, the heir, and the transmissibility of value. In doing so, it draws attention to the legal and epistemological architectures that continue to delimit the possible, revealing a structure of exclusion that is as much about law's silences as about its speech. Ultimately, the point of my analysis is not to proffer comforts of linear continuity across history, but to trace the marks of cis-heteronormativity's morphological variegations; marks that cannot be read as extraneous to the present moment's intertextual production.

Conflict of interest. None declared.

© The Author(s) 2025. Published by Oxford University Press.
This is an Open Access article distributed under the terms of the Creative Commons Attribution License (https://creativecommons.org/licenses/by/4.0/), which permits unrestricted reuse, distribution, and reproduction in any medium, provided the original work is properly cited.
Oxford Journal of Law and Religion, 2025, 14, 298–324
https://doi.org/10.1093/ojlr/rwaf013
Original article

Downloaded from https://academic.oup.com/ojlr/article/14/2/298/8271765 by O.P. Jindal Global University user on 23 June 2026