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# Case Comment on *Sweety (Eunuch) Vs General Public (2016)*

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DIYA NARAG<sup>1</sup>

## ABSTRACT

*This case comment aims to deconstruct the succession of property amongst transgenders based on customs rather than statutory provisions. It seeks to critically analyse both the advantages of the judgement as well as the loopholes that need to be addressed, to make civil rights like succession to property easier for the transgender community. It highlights the exploitative nature of the Guru-Chela relationship, and makes a case for the codification of succession rights for trans-individuals in various personal laws in India, so that they cannot be dispossessed of property from their natal families. It also looks at other subsidiary rights to make the Courts friendlier spaces for transgenders.*

**Keywords:** *Transgender Rights, Right to Succession, Right to Property, Right to Self-Identification*

## I. INTRODUCTION AND PROGRESSIVE ASPECTS OF THE JUDGEMENT:

The judgement *Sweety v. General Public*<sup>2</sup> discusses the pertinent issue of Guru-Chela succession of property amongst transgenders, or the 'third sex'. *Sweety*, a third gender appealed to the High Court of Himachal Pradesh as the Guru of her deceased Chela *Rajia*, to acquire her property. While the lower courts stated the mode of succession would be governed by the Hindu Succession Act<sup>3</sup>, using the *Nalsa v. Union of India*<sup>4</sup> judgement to recognize the third gender's protection of rights and *Ilyas v. Badshah*<sup>5</sup> as precedent, the court ruled that a custom to the contrary prevails and hence *Sweety* will have a right over the possession of the property.

The judgement is a progressive one as well as holds contemporary relevance. By ruling in *Sweety's* favour the court goes beyond religious personal laws, that don't include civil rights for trans people, in terms of inheritance. It gives legal recognition to both the third gender

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<sup>1</sup> Author is a student at Jindal Global University, India.

<sup>2</sup> *Sweety v. General Public* MANU/HP/1242/2016.

<sup>3</sup> Hindu Succession Act, 1956.

<sup>4</sup> *Nalsa v. Union of India* AIR 2014 SC 1863.

<sup>5</sup> *Ilyas v. Badshah* AIR 1990 MP 334.

identity as well as accords Sweetly the right to inherit property. The second reason for its relevance is questioning the normative family structure prevalent in India. Property has remained a fundamental foundation around which the family has formed.<sup>6</sup>

The guru-chela relationship is a perfect depiction of how a family can be envisaged beyond kinship and marriage, serving to debunk the notion of family as a heteronormative unit borne through blood relations, adoption or marriage.<sup>7</sup> A similar understanding has also been reflected in the definition of family provided by recent international statutes.<sup>8</sup>

This judgment has not been overruled and can be categorized as a good precedent according to me. This paper seeks to critically analyse the guru-chela relationship, the right to self-identification and why codification of inheritance rights in personal laws is important for the third gender.

## II. GURU CHELA RELATIONSHIP AS EXPLOITATIVE

The relationship between a guru and chela is often seen as one of respect, where the former is the chela's 'mother, father, husband, sister, everything'.<sup>9</sup> One acquires seniority by becoming a guru to a chela in such structures. The chela's responsibilities towards the guru are both economic and social. Right from the initiation ritual, the guru controls the chela's means of livelihood, while certain forms of fees are needed to be paid. Chelas are expected to be obedient and loyal by catering to all the domestic needs of their gurus. In return for the chela's services, gurus are required to look after their health, provide them with clothes, food and the requisite training about hijra customs to permit their rise in the structure.

The guru-chela relationship may be one of care and affection but can also be exploitative in nature. Chelas have to usually be at the beck and call of their gurus and a delay in responding can lead to verbal and physical abuse. Their working hours are also controlled by their gurus and often on not fulfilling domestic obligations, the guru has the right to beat them.

While this relationship is supposed to be matriarchal and feminized, yet it is hierarchical and patriarchal in a lot of ways,<sup>10</sup> like the traditional family structure. Thus it can be concluded a

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<sup>6</sup> MAYUR SURESH 'Possession is 9/10ths of the Body: Law, Land and Hijra Identity' LAW LIKE LOVE, QUEER PERSPECTIVES ON LAW, 381 (Yoda Press, 2011).

According to Engels 'The family is based on the supremacy of the man, the express purpose being to produce children of undisputed paternity, where the children inherit their father's property as natural heirs.'

<sup>7</sup> Arijeet Ghosh and Diksha Sanyal, *How can Families be Imagined Beyond Kinship and Marriage*, EPW, 54, no. 45 (2019) (12<sup>th</sup> Mar. 2021) <https://www.epw.in/engage/article/how-can-families-be-imagined-beyond-kinship-and-marriage>.

<sup>8</sup> *The Human Rights Council Resolution 29/22 on the Protection of the Family by Human Rights Council*.

<sup>9</sup> GAYATRI REDDY *Our People: Kinship, Marriage and The Family* WITH RESPECT TO SEX, 145 (University of Chicago Press, 2005).

<sup>10</sup> Brinda Bose, *Hijra Intimacies and Inheritances* THE AUDACITY OF PLEASURE, 195 (Three Essays)

certain form of ‘homonormativity’<sup>11</sup> is seen in such a family structure too. According to Gayatri Reddy, in her case-study on Kothis in Hyderabad, she highlighted cases where chelas had been ostracized from the community for not following the commands of the guru. The second point of contention is unlike Kath Weston who focuses on the idea of ‘chosen families’<sup>12</sup> by doing a comparative analysis of gay couples in San-Francisco, the guru-chela relationship is more often than not assigned not chosen. This automatically makes the relationship unequal.

Despite suffering abuse at the hands of her guru, Munira a subject in Reddy’s book states “A Hijra is not considered a real hijra without a guru.”<sup>13</sup> Thus, the idea of acceptance in such family structures is of paramount importance.

### III. RIGHT TO SELF-IDENTIFICATION

In Lockean terms property is an extension of the self<sup>14</sup>. The judgement refers to Sweety as a ‘Eunuch’ and confirms this identity through the property rightfully seen as hers. Property can be looked at as a form of one’s personal identity but is also simultaneously embedded in the social and material context in which the identity is located.<sup>15</sup> The right to self-identification then becomes even more important as the state reaffirms one’s sexual identity for them.

According to Dipika Jain, gender diverse persons often go to court and face epistemic injustice<sup>16</sup> as their experiences are often discredited and they need to make such experiences visible in courts. According to her ‘a litigant and court driven homogenization of gender diverse persons’ takes place where the such litigants are not provided the space or the language to profess their identity and often need to take recourse to existing gender binaries to attain justice.

The Nalsa Judgement although hailed as seminal when it comes to legal recognition of the third gender, fails to address the sex/gender distinction adequately, leaving room for ambiguity. For starters it includes intersex and transgender people under the same ambit. It is under-inclusive and doesn’t include male to female, female to male transitions<sup>17</sup>.

This judgement is then used as a precedent by courts, to ossify sexual identities and puts all

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Collective, 2018).

<sup>11</sup> Dipika Jain, Kimberly Rhoten M *Epistemic Injustice and Judicial Discourse on Transgender Rights in India: Uncovering Temporal Pluralism*. JOURNAL OF HUMAN VALUES, 7, 26(1), (2020). (14<sup>th</sup> Mar.2021) doi:10.1177/0971685819890186

<sup>12</sup> *Supra* note 9 at, 151.

<sup>13</sup> *Id* at 158.

<sup>14</sup> *Supra* note 6 at, 388.

<sup>15</sup> *Supra* note 6 at, 389

<sup>16</sup> *Supra* note 11 at, 4

<sup>17</sup> Aastha Khanna *Nalsa Judgement: Critique of the Indian Perspective Beyond the Adams and Eves Wordview* GLOBAL FREEDOM OF EXPRESSION (3<sup>rd</sup> Sep. 2020) (15<sup>th</sup> Mar. 2021) <https://globalfreedomofexpression.columbia.edu/publications/nalsa-judgment-critique-of-the-indian-perspective-beyond-the-adams-and-eves-worldview/>

identities falling outside the gender binary into one bracket. This doesn't leave room for gender diverse people to self-identify. A deep-seated transphobia or lack of understanding thereof seems to be prevalent in the judgement.<sup>18</sup>

Further the Transgender Act of 2019<sup>19</sup> goes against the very fabric of self-identification propounded in the Nalsa judgement, for it introduces a district certificate to be acquired by the district magistrate. It doesn't qualify how this certificate will be obtained and implies the conduction of medico-legal procedures or psychological tests, opposed by trans people.

#### IV. NEED FOR CODIFICATION OF RIGHT TO SUCCESSION FOR THE THIRD GENDER

The Yogyakarta Principles address a broad range of human rights standards and their application to issues of sexual orientation and gender identity<sup>20</sup>.

While the Transgender Act does talk about the right of residence for trans individuals, it doesn't look at any rights of inheritance or other civil rights<sup>21</sup>. It has been argued that marriage isn't that important an aspect for the third gender, but what's more important is right to property, right to a life of dignity, right to self-identify etc.<sup>22</sup>

The exploitative nature of the guru-chela relationship shows the various practices that need to be followed to ensure a rise in seniority and a succession to property. Any deviance can lead to dispossession from the guru's property. Hence the financial independence of such individuals remains precarious from both sides, as they're exploited by their natal families and often face abuse in their 'chosen' families as well.

Inclusion of the third gender in various personal laws, like the Hindu Succession Act is the need of the hour. The Delhi Minorities Commission after consultation with the Advisory Committee of Christians has recommended the Law Commission to amend Section 44, of Indian Succession Act<sup>23</sup> to include transgenders. Something similar can be proposed for other personal laws as well.

While the recognition of customary laws when it comes to succession is progressive, this

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<sup>18</sup> *Id*

<sup>19</sup> The Transgender Persons (Protection of Rights) Act, 2019

<sup>20</sup> Dipayan Chowdhary, 'Recognizing the Right of the Third Gender to Marriage and Inheritance Under Hindu Personal Law' BRICS LAW JOURNAL, 57, no.3(3) (2016)

<sup>21</sup> Rupal Sharma 'Inheritance Rights of Transgender A Cry of Humanity' IJLMH 5, no. 1(3) (2018)

<sup>22</sup> Akhil Kang, Vqueeram Aditya Sahai *The Story of a Movement: the Law, the Leaders, the Lies* AKADEMI MAGAZINE (24<sup>th</sup> Sep. 2020) (14<sup>th</sup> Mar. 2021)

<https://www.akademimag.com/guruswamy-katju-rainbow-casteism>

<sup>23</sup> MARIA AKRAM, *Christian transgenders to have equal right on ancestral property* THE HINDU (16<sup>th</sup> May 2016) (15<sup>th</sup> Mar. 2021) <https://www.thehindu.com/news/cities/Delhi/christian-transgenders-to-have-equal-right-on-ancestral-property/article8587686.ece>

relationship can be exploitative in itself, as elucidated above. Including the third gender in personal laws of various religions including the Hindi Succession Act, will lead to better protection of the economic rights of trans individuals to make sure their natal families cannot dispossess them of property that is rightfully theirs simply based on gender. It will safeguard their right to property to get a share in their ancestral property, when they suffer abuse by their gurus.

## V. FURTHER REFLECTIONS ON INTERSECTIONALITY OF IDENTITIES

Gayatri Reddy has spoken about a ‘third gender’ view that precludes other aspects of the Hijra identity like religion, class or social structure. A further analysis should be done along these lines too, since the domain of sexuality cannot be separated from the social and political economy. The Ministry of Social Justice and Empowerment, has proposed reservations for trans people under the ambit of ‘Other Backward Classes.’ One needs to analyse saffronization of the third gender<sup>24</sup>, and how the dichotomy between upper and lower caste hijras will play out by adding them to a pre-existing category of the OBC.

## VI. CONCLUSION

Therefore concluding, the most important argument made by this essay is the codification of the rights of the third gender in personal laws to inherit property from their natal families. A further analysis in this respect will need to be done in terms of which identity takes precedence, the religious one provided by the natal family, or the sexual identity provided by the customary /chosen family.

Secondly relooking at different judgements like the Nalsa judgment and the Transgender Act to re-evaluate the right to self-identification, within the court room so that gender fluidity is accepted and made clearer. Lastly, a closer look at provisions of reservation of the transgender community to analyse how intersectionality plays out if the trans-community is added to a pre-existing category of the OBC for such purposes.

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<sup>24</sup> *Supra* note 10 at, 202