

## **Inheritance of Hermaphrodite (Hijra) under the Muslim, Hindu and Christian Law: A Case of Bangladesh**

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### **Abstract**

The 'hermaphrodite' is commonly known as Hijra in Bangladesh who are mostly neglected far and beyond the realm of inheritance. Recently, they got a gender status and recognized as 'third gender', besides male and female. Although Bangladesh government has recognized this transgender people as third gender and given them right to vote, but till now most of the rights are not guaranteed to them specially accesses to right to inheritance. They are supposed to be totally marginalized and isolated people in our society though they are the fundamental part of our society from the ancient time. However, it is apparent that this group of people is always deprived of their rights including right to inheritance under different religious communities. But due to some confusion and lacking of gender identity, this third gender group is deprived of getting family property. Unfortunately the present state of their existence has been undergone to wretched poverty, illiteracy, hatred and mockery. They are still living in the shadow of rejection from their basic right of inheritance. The core object of this article is to focus on the issue regarding hermaphrodite's right of inheritance under the existing personal laws in Bangladesh. The society is set about to forget that they are also human beings and have equal rights like other people of the society. The people are possessing the negative attitude towards them with no respect and isolating them from the society with no mercy. This article took an effort to achieve or complete the steps which might be taken by the concerned authority for their better life based on right to inheritance.

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Consequently, to ensure the implementation of this basic right of inheritance along with other legal and human rights to the third gender; so that they can be a strong part of our society.

**Keywords:** *Hermaphrodite, inheritance, third gender, deprivation and personal law.*

## **Introduction**

Human being is the supreme creation of the Almighty. Hermaphrodite are also treated as human being and they must have some rights, obligations and liabilities, etc., though they are mostly deprived. In Bangladesh, thousands of welfare schemes have been launched by the Government but these were for the male and female, as such hermaphrodite being a different sect categorized on the basis of sexual formation has not been the subject of the schemes. Their rights as human being are not being recognized, rather they have been excluded from the mainstream social, cultural, religious, professional and political life. They have no right of family and conjugal life so that they are largely deprived of their fundamental rights and needs especially they are deprived of the right of inheritance. The personal laws (Muslim, Christian and Hindu) do not clearly say about their rights of inheritance though Islamic jurists drive some rules regarding their rights of inheritance with the help of Hadith and Qiyas. So it is the duty of the State to ensure their rights of inheritance from their family property. A legal statutory framework must be established so that they can inherit their family property. This article shall try to give an overview on the inheritance of hermaphrodite under Muslim, Christian and Hindu laws, and also try to make some suggestions regarding their right to inheritance.

## **Definition and Legal Status of Hermaphrodite/Transgender/ Third Gender**

Hermaphrodite or transgender communities have historical existence in many cultural contexts around the world. They are known as bakala in the Philippine, xaniths in Oman, serrers among the Pokot

people of Kenya and Hijra, jogappas, jogtas or shivshakti in South Asia (Khan and Hussain, 2009). In Bangladesh they are commonly known as Hijrathat has traditionally been translated into English as 'eunuch' or 'hermaphrodite'. The American Heritage Dictionary defines 'eunuch' as (1) 'A castrated man employed as a harem attendant or as a functionary in certain Asian courts' (2)' A man or boy whose testes are nonfunctioning or have been removed (Hauser, 2003). Etymologically the word "Hijra" is an Urdu or Hindi word that may alternately be used ashijira, hijda, hijada, hijara, hijrahand is pronounced "heejra" or "heejda (Chettiar, 2015). But it is originally derived from the Semitic Arabic root "hjr" in its sense of leaving one's tribe (Alhawary and Benmamoun, 2005). As far as third gender is concerned, it is a concept in which hermaphrodite are categorized, either by themselves or by society as neither man nor woman or having both male and female sexual organ or characteristics. Hermaphrodite can be classified into three sections such as true hermaphrodite, female pseudo and male pseudo. True hermaphrodite is a person who born with ovary (female sexual organ) and testicular tissue (male sexual organ). When a person born with xx chromosome having normal sexual organs but with "masculinized' genitalia (Internal female sexual organ but physical looks as a male because of having external male sexual organ) is to be treated as female pseudo hermaphrodite. But a male pseudo hermaphrodite is totally opposite of female pseudo hermaphrodite who born with xy chromosome with testes and having external genitalia as usually of female pseudo hermaphrodite (Mithani and Burfat, 2003). In biology, a hermaphrodite is an organism that has complete or partial reproductive organs and produces gametes normally associated with both male and female sexes.<sup>2</sup> Another Arabic word 'mukhannath' has distinct meaning similar to hermaphrodite or transgender. According to Islamic scholar and Hadith collector Al Nawawi, "A mukhannath (hermaphrodite/transgender) is the one ("male") who carries in his movements, in his appearance and in his language the characteristics of a woman.

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<sup>2</sup> [https://en.wikipedia.org/wiki/Hermaphrodite#cite\\_note-1](https://en.wikipedia.org/wiki/Hermaphrodite#cite_note-1), (Accessed on 9/03/2018)

There are two types; the first is the one in whom these characteristics are innate, he does not put them on by himself, and therein is no guilt, no blame and no shame, as long as he does not perform any (illicit) act or exploit it for money (prostitution etc.). The second type acts like a woman out of immoral purposes and he is the sinner and blameworthy (Rowson, 1991).

The term '*Hijra*' or 'third gender' describes the individuals who are categorized neither male nor female and this term is used sometimes in a very derogatory manner. *Hijras* live in the society in a marginal level having very low social and legal status. This group is one that is rejected primarily by their parents who give birth to them and after that by the whole society. In spite of having a huge number of national and international documents of human rights like UDHR, ICCPR and ICESCR etc. where their rights like right to education, health, shelter, food, property, employment etc. are recognized as a human being but in reality they are deprived of all of these rights specially the right to property or inheritance as a result of which this community remains socially excluded.

It is to be noted, the right to be free from discrimination on the basis of sexual orientation or gender identity has emerged as a prominent theme in the global human rights discourse. The Yogyakarta Principles, propagated in 2006 by a group that included human rights activists, judges, academics, NGO officials, and former UN High Commissioner for Human Rights, call on the international community to recognize that "human beings of all sexual orientations and gender identities are entitled to the full enjoyment of all human rights," and that "each person's self-defined sexual orientation and gender identity is integral to their responsibility and is one of the most basic aspects of self-determination, dignity and freedom" (Dickson and Sanders, 2014). In a land mark judgment in *Christine Goodwin vs. The United Kingdom*, the rights of transgender people is recognized. It said that a test of biological factors could no longer be used to deny recognition of transgender (Sindhe, 2012). Since the late 20th century, some Hijra activist and Non-Government Organization

(NGO) have lobbied for official recognition of the Hijra as a kind of 'third sex' or 'third gender' as neither man nor woman in the sub-continent (Agarwal, 1997). In the Indian subcontinent, Nepal was the first country to recognize the hermaphrodite as third gender and gave them the official recognition through a landmark decision in *Pant Vs Nepal* (Pant and Nepal, 2007) case. The decision of The Supreme Court of Nepal in 2007 creates a third legal category of gender, and declares that all sexual minorities deserve full protection of their human rights, and orders substantial governmental action to enforce the courts holdings (Dickson, and Sanders, 2014). Subsequently, the recognition of *hijras* rights in Pakistan began when Muhammad Aslam Khaki, an Islamic Legal Scholar filed a case in the year of 2009 alleging that hijras were suffering significant discrimination stigma and harassment at the hands of state actors. The court held that *hijras* had been neglected on the basis of gender disorder but they are entitled to enjoy all rights granted to them by the constitution. Moreover the court singled out inheritance and voting rights of *hijras* could not be denied on the basis of their gender identity and ordered the National Database and Registration Authority to issue national identity cards with a "third gender" category for non-binary citizens.<sup>3</sup> Whereas, the Supreme Court of India in April 2014 finally recognized *hijras* as third gender in law after the third sex was granted the right to vote in the year of 1994 (The Guardian, 2014). In Bangladesh, the question of recognition of *hijras* as a separate gender came into discussion since they had got right to vote in 2009. Subsequently, they were recognized as a 'third gender' in a policy decision in 11th November, 2013 through a Cabinet meeting Presided over by the then Hon'ble Prime Minister of Bangladesh (Islam, 2016). Along with Bangladesh, Nepal, India and Pakistan, some other countries of the world namely Germany, New Zealand, Australia etc. also have recognized them as third gender. Though recognizing *hijras* 'third gender' in Bangladesh but in reality they are not getting remarkable change to secure their rights.

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<sup>3</sup> Ibid,341

## **Right of Inheritance under Muslim Law**

Inheritance is the practice of passing of property, titles, debts, rights and obligation upon the death of an individual. The rules of inheritance differ between societies and have changed over time.<sup>4</sup> It is the process of creating new classes, called derived classes, from existing classes or base class, but can add embellishment and refinements of its own. The precise meaning of inheritance is transferring an article from one to another; usually this transfer donates to wealth, knowledge, honor or dignity. According to Islamic law, it refers to the transfer of moveable, immovable tangible or intangible properties belonging to the deceased to his or her living legal heirs (Tanzil, 1958).

### **Basic Provision Regarding Inheritance under Muslim Law**

Islamic law of inheritance is the most exact and scientific law and the Muslim jurists laid great importance on the law of inheritance and they would frequently repeat the saying of the prophet (peace be on him) - "Learn the laws of inheritance and teach them to the people; for they are one- half of useful knowledge" (Quoted in Al-Sirajiyah, 1890). Muslim jurists recognize only three sources of Islamic law of inheritance, namely i) The Holy Quran, ii) The Hadith, iii) Ijma or consensus of opinion and unlike the other branches of law, no reliance has been made on Qiyas or analogy with respect to laying down the law of inheritance (Faiz-ud-Din, 2008). There are some verses of the Holy Quran dealing with the law of inheritance. The translations of these verses are as follows:

"Allah (thus) directs you as regard to your children's inheritance: to the male, a portion equal to that of two females, if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children and the parents are the only heirs, the mother has a third; if the deceased left brothers (or sisters) the mother has a sixth.

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<sup>4</sup> <https://en.wikipedia.org/wiki/Inheritance> (accessed on 03/03/2018)

(The distribution in all cases is) after the payment of legacies and debts. You know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah; and Allah is All-Knowing, All-Wise.<sup>5</sup>

"In that which your wives leave, your share is a half, if they leave no child, but if they leave a child, you get a fourth of that which they leave after payment of legacies and they may be bequeathed or debts, in that which you leave, their (your wives) share a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in third; after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is the commandment from Allah; and Allah is ever All-Knowing, Most Forbearing.<sup>6</sup>

"They ask thee for a legal decision. Say: Allah directs (them) about those who leave no descendants or ascendants as heirs. If it is man that dies, leaving a sister but no child, she shall have half of inheritance. If (such deceased was) a woman who left no child, her brother takes her inheritance. If there are two sisters, they shall have two thirds of the inheritance (between them). If there are brothers and sisters, (they share), the male having twice the share of female. Thus does Allah make clear to you (His Law) let you go astray? And Allah is the All-Knower of everything".<sup>7</sup>

Besides the above verses, verse seven, eight, thirty two and thirty three of sura An- Nisha (4:7, 4:8, 4:32 and 4:33 and verse seventy five of sura An- Anfal deal with the law of inheritance regarding the rights of distant kindred (Faiz-ud-Din, 2008. There are also some Hadith of the prophet (peace be on him) regarding the right of inheritance, which are as follows:

<sup>5</sup> Al Quran, Sura An Nisa, (4:11)

<sup>6</sup> Al Quran, Sura An Nisa,(4:12)

<sup>7</sup> Al Quran, Sura An Nisa,(4:176)

It is reported from Umran-bin-Hushain (Allah is pleased with him). He said, "A man came to the prophet (peace be on him) and said, my son has died, what is for me out of the inheritance. He replied, 'For you is one-sixth', when he returned he called him back, and said, 'For you there is another one-sixth' and when he returned, he (peace be on him) called him back and said 'this second one-sixth is supplementary'".<sup>8</sup> Again, Ibn-E-Bureda reported from his father that the prophet (peace be on him) gave one-sixth to grandmother when there was no mother.<sup>9</sup> It is found from this Hadith that the mother's mother represents the mother. MiqdamIbnMaadiKurab( Allah is pleased with him) reported that the prophet of Allah(peace be on him) said, " Maternal uncle is the heir, when there is no other heir".<sup>10</sup> This hadith has established the right of maternal uncle to inherit.

### **Islamic Attitude to Wards Third Gender in Terms of Inheritance**

Islam is believed to be complete and comprehensive code of human life by its followers. It has not kept any human problem untouched. Where the holy Quran has not directly spoken about anything else, these are solved by mutual agreement by Muztahid. Like other creations of almighty Allah, the hermaphrodites are also the best creation like all other human beings. Though, the Holy Quran does not determine the specific way how to distribute the property among them. But like all other solutions given by Muztahid, it is also solved by the way of 'Izma'.<sup>11</sup> As the holy Quran says, "Allah is one who shapes you in wombs as He pleases",<sup>12</sup> that is, all physical traits including sexual characteristics and inclination of a human being, come with the pleasure and permission of Allah. Thus every child-male, female or even transgender has the equal right blessings of God and there is no justification for parents, courts or government to engage in gender-based ill treatment.

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<sup>8</sup>. Ibid

<sup>9</sup>. Ibid

<sup>10</sup>. Ibid

<sup>11</sup>. Ijm?? is an Arabic term referring to the consensus or agreement of the Muslim scholars basically on religious issues. <https://en.wikipedia.org/wiki/Ijma> (accessed on 03/03/2018).

<sup>12</sup>. The Holy Quran (3:6)



So of course they are whatever by names, are entitled to inherit the property from the deceased.

### **The Process of Determining Third Gender (hijras) under Muslim Law**

According to Fiqh or Islamic jurisprudence the one having both male and female multiplicative organs is called Khuntha or hermaphrodite or third gender (Uddin, 2017). All actions with regard to Islamic Law will be taken to determine the gender of hermaphrodite. One the gender is determined it will be considered as that gender for all legal rulings, including inheritance. Certain symptoms are essential to be analyzed to regulate the sex of hermaphrodite, the first of which is the organ it uses to urinate. If it uses the male organ, he will be classified as a male and if it uses as female organ, she will be categorized as female. If the hermaphrodite urinates from both male and female organs, then the first one to release urine will determine the gender. These symptoms should be analyzed at or immediately after birth to ascertain the sex of the hermaphrodite (Ali, 2016). Based on their sexuality, they have been categorized as male and female (Hirschfeld, 1923). If the Khuntha or hermaphrodite falls into the category of male or female, he or she will succeed to as a male or female accordingly in all cases (Uddin, 2000). But, if they are not classified as male or female who have both male or female genital features and cannot determine which sex is dominant in that child, then the Khuntha or hermaphrodite will not be assigned as a specific gender and treated as 'hermaphrodite difficulty'.

### **Inheritance of Hermaphrodite or Hermaphrodite Difficulties**

It is clear that if the hermaphrodite is treated as male he will inherit the property like son, brother and paternal uncle and, in cases of female, they will inherit like daughter on the status of female. But in cases of hermaphrodite difficulty there is conflict between the jurists. According to Imam Abu Hanifa and Muhammad, the general rule is that hermaphrodite or Khuntha difficulties will take the share as female unless as male he will get lesser share. In short lesser share would be given to hermaphrodite difficulties (Ullah, 1940). So, it is

apparent that in Bangladesh there is no specific law regarding the inheritance of Hermaphrodite or Khuntha or third gender. Islamic principles of inheritance for hermaphrodite or Khuntha (hermaphrodite difficulty) are applicable in the country as per followers of different Imams.

### **Right of Inheritance under Hindu Law**

Generally, succession or right of inheritance in Bangladesh is governed by one own personal laws. So, if any deceased person is the follower of Hinduism, then the property of the deceased will be distributed in accordance to Hindu Law. There are two schools of thought under Hindu Law, namely Dayabhaga and Mitaksara. The Dayabhga, is treaties written by Jimutavahana after eleventh or thirteen century which primarily focuses on inheritance procedure. On the other hand, the Mitaksara, written by Vajnanesvra (11th century), seems to be an elaborative commentary on the Yajnavalkya-smrtialso related with the inheritance matters. On matters relating to inheritance and succession in Bangladeshi Hindus, Dayabhaga School is mostly followed.

### **The General Rule of Inheritance under Dayabhaga School of Law**

As far as the concerned of Bangladeshi personal law for the Hindus, the property of a deceased Hindu is governed by Dayabhaga School. Succession according to Dayabhaga School is governed by the capacity for conferring spiritual benefit. The foundation of this doctrine of spiritual benefit is the parvanasradhaceremony. It arises by panda offering i.e., rice ball offering to the deceased ancestors. However, the doctrine of efficacy is the guiding principle under Dayabhaga School (Mulla, 1946). Under Dayabhaga School, the son doesn't acquire any right by birth in the ancestral property. The son's right arises for the first time on father's death. All properties thus, devolve by inheritance and not by survivorship. Under this school of law, the coparcenaries are formed only on death of the father. Females can also be coparcener. Dayabhaga law thus recognizes only devolution by succession and it doesn't recognize the devolution by

survivorship as it recognizes in case of Mitakshara Law. On the other hand, according to Dayabhaga School, only five females are entitled to inherit the property. They can succeed as heirs to a male, namely: (1) the widow (2) daughter (3) mother (4) father's mother and (5) father's father's mother. Three more were added to this list by the Hindu Law of Inheritance (Amendment) Act 1929, namely son's daughter, daughter's daughter and sister. It is to be noted that males can succeed the property absolutely, whereby females can enjoy only life time interest.

### **The Attitude of Hindu Law towards the Hijras (Third Gender) in terms of Inheritance**

The Hindu epics, Puranas and mythology mentioned in detail stories of the courageous activities of hermaphrodite who have been referred to as people of the 'third sex' within the scriptures. In the ancient text of Mahabharata it has been mentioned that, during the near end days of exile period of five sons of Pandu, their most talented warrior Arjun, took the name of Brihannala, transformed his identity as an eunuch to avoid being caught. Actually it is said that Brihannala was a teacher of fine arts such as dance to princes Uttara, daughter of the King Virat of Matsya kingdom (Bhattachariya, 2016). In fact these activities of Arjun have become the custom of hijras to be carried out by them in the present age. In Hindu culture as well, Hijras were socially recognized and held a special status, especially they were employed as trusted servants, informers or messengers of the king in the administrative part of the country (Chowdhury, 2016). They were also considered to hold religious authority and were sought out for blessings particularly during religious ceremonies. However, with the time, this elevated position of the Hijra community fell low, relegated to dust and incarceration. During the British regime, third gender people were likened to a deadly deceased and criminalized the Hijra community through various laws (Nambiar, 2017). According to Hindu Shastras, they (hermaphrodite/hijras) have been provided with social status, respect and dignity. But the question is how they have been treated in case of inheriting property from the

deceased person. Observing the rules of inheritance under Dayabhaga school of Hindu Law, It is seen that on the basis of gender, male and female are capable to inherit the deceased's property. As the hijras are not categorized either male or female, they are being excluded from receiving property. Again as per Orthodox Hindu Law of inheritance, an heir will be excluded from inheritance due to blindness, deafness, dumbness and for want of any limb or organ, provided the defect is both congenital and incurable (Haque, 2014). It includes the case of congenial impotence also which is inherent and congenial to hermaphrodite people. In Bangladesh it may be treated also as a ground of exclusion from the inheritance.

### **Right to Inheritance under Christian Law**

Constitution of Bangladesh has recognized 'Bangladesh' as a secular and democratic country.<sup>13</sup> Islam is the religion of the majority people in Bangladesh constitutes 89.1% of the population while Hindus constitutes 10% of the population. Christianity is a minority religion in Bangladesh (0.5%) and together with the other minority religion makes up of 0.9% of the population (includes Buddhism, Jainism etc.).<sup>14</sup> In Bangladesh Christians like other religious communities are governed by their own personal laws in the family matters including succession. But personal laws for Christian in Bangladesh mean some civil laws that were adopted during the British ruling. Christian personal law in Bangladesh has a unique history. Under the British rule Christian communities in the subcontinent had intended to invoke on the laws of their own nationality because the Christian religion does not present clear, textual basis for personal matters. But the problem arose when the people of the sub-continent took conversion to Christianity. It had a unique dilemma for the converted people in respect of determining the applicability of laws in family matters. As a result some civil laws were passed including the Succession Act (XXXIX of 1925) which is now applied to determine the proprietary right of Christians in Bangladesh.

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<sup>13</sup>. Article 12, The Constitution of the People's Republic of Bangladesh.

<sup>14</sup>. see for details [www.cia.gov](http://www.cia.gov) (Retrieved on 03.03.2018).

Under this Act, succession starts after the death of a Christian only if he had not executed a will or any document of gift or a settlement deed. In the absence of any will or gift or any settled deed, the rules regulating succession depicted in section 29 to 49 in Part V of the Succession Act, 1925 would come into play.

### **General Rules of Distribution of Properties under Christian Law in Bangladesh**

The rules of inheritance applicable to Christian in Bangladesh under the Succession Act 1925 are not gender discriminated whereby both male and female can inherit equally. As per the rules of succession where a Christian dies intestate leaving behind a widow/husband and 'lineal descendant'<sup>15</sup> then 1/3 of his or her property goes to the widow or husband and another 2/3 to the lineal descendants. On the other hand, when a Christian dies leaving behind husband or widow and kindred (such as father, mother, etc.) only, then ½ of the property goes to widow or husband and other ½ to the kindred and if no kindred are left either the whole of the estate shall belong to widow/husband. Again when a Christian dies leaving behind neither lineal descendant, nor parent, sibling, then property shall be divided equally among those of his relatives who are in the nearest degree of kin to him. If there are no heirs whatsoever to the intestate, it shall go to the Government.<sup>16</sup>

If any Christian dies leaving behind widow/husband and lineal descendants, then after deducting the widow/husband share the rest of the property will be inherited by the lineal descendants. Where a Christian dies leaving behind child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child if there is only one or equally among all his surviving children.<sup>17</sup> On the other hand where a deceased has not left any surviving child, but has left grandchild or grandchildren and

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<sup>15</sup>. A person who is in direct line to an ancestor with blood such as child, grandchild, great grandchild and so on.

<sup>16</sup>. The Succession Act, 1925, section 34 & 35

<sup>17</sup> Ibid section 37

has no more remote lineal descendant through a deceased grand-child, the property shall belong to his surviving grand-child if only one or equally among all his surviving grandchildren.<sup>18</sup> Again where deceased has left only great grandchildren or remote lineal descendants, the property shall go to the surviving lineal descendants who are nearest in degree to the intestate.<sup>19</sup> Moreover, where the deceased has left behind lineal descendants who do not all stand in the same degree of remoteness, then the number of branches becomes important and each branch of lineal descendants takes equal shares in the property.<sup>20</sup>

Father of the deceased has the superior position among all the kindred. When a Christian dies leaving behind no lineal descendant but only a father and other kindred (such as mother, brother, sister etc.), then the father succeeds to the entire property (subject of course to the share of the widow/husband if any).<sup>21</sup> On the other hand if the deceased has no lineal descendants or a father, then, the deceased's mother, brothers, and sisters share equally.<sup>22</sup> Again if the intestate father is dead but the mother is living and if any brother or sister and the child or children of any brother or sister who may have died in the intestate's lifetime are also living, then the mother and each living brother or sister and the living child or children of deceased brother or sister, shall be entitled to the property in equal shares - only the shares which their respective parents would have taken if living at the time of the intestate's death.<sup>23</sup> Moreover, when the deceased father is dead, but the intestate mother is living and there is neither brother nor sister, nor child of any brother and sisters of the intestate, the property shall belong to the mother.<sup>24</sup> And lastly the deceased property shall be divided equally among those of his relative who are the nearest kindred in the absence of lineal descendants, parent, brother and sister.<sup>25</sup>

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<sup>18</sup> Ibid section 38

<sup>19</sup> Ibid section 39

<sup>20</sup> Ibid section 40

<sup>21</sup> Ibid section 42

<sup>22</sup> Ibid Section 43

<sup>23</sup> Ibid section 44

<sup>24</sup> Ibid section 46

<sup>25</sup> Ibid section 48

## **Attitude of Christianity Towards Eunuch or Hermaphrodite in terms of Inheritance**

In the Christian world, natural eunuchs by birth are not entitled to get ancestral property. But such denial of inheritance is not true of these who made themselves eunuch for Christ (Karavites, P).<sup>26</sup> Bible verses regarding that is 'for there are some eunuchs, which were so born from [their] mothers' womb: and there are some eunuchs, which were made eunuchs of men: and there be eunuchs, which have made themselves eunuchs for the kingdom of heaven's sake. He that is able to receive [it], let him receive [it]'.<sup>27</sup> There have some rules of inheritance laid out in the old testament of the Bible. Deuteronomy states that eldest son was to inherit father's estate with a double portion as first born.<sup>28</sup> If there are no sons, daughters were allowed to inherit their fathers' land.<sup>29</sup> Genesis states that no inheritance is allowed to illegitimate son.<sup>30</sup> Genesis also states that in the absence of the direct heirs, a favored servant or more distant kinsman could inherit the land.<sup>31</sup> Now the Christians of Bangladesh are governed by civil law in terms of inheritance and take ancestral property under the Succession Act 1925. Husband, wife, father, mother, child or children, lineal descendants and kindred are entitled to get property of the deceased Christian. To gain the right of inheritance it is essential for a Christian to be related with the deceased either by marriage or by a blood relationship, as well as categorized as male and female. The eunuchs in Bangladesh are not categorized as male or female and do not have any right to marry, so they are deprived of getting the property of deceased.

### **Conclusion and Recommendations**

Right to property is universally recognized as human rights all over the world irrespective of color, sex, religion, caste etc.

<sup>26</sup>. Karavites,P 'Evil, Freedom and The Road to Perfection in Clement of Alexandria' page.89, see <https://books.google.com.bd>

<sup>27</sup>. Matthew 19:12

<sup>28</sup>. See Deuteronomy: 21:15-17

<sup>29</sup>. See Numbers 27:8

<sup>30</sup>. See Genesis : 21-9-12

<sup>31</sup>. Ibid 15:2

UDHR declares, "Everyone has the rights to own property alone as well as in association with others. No one shall be arbitrarily deprived of his property" (article 17) .On the other hand, the Constitution of Bangladesh ensures the equitable distribution of wealth among the citizens. In this regard article 19(2) says, "The state shall adopt effective measures to remove social and economic inequality and to ensure the equitable distribution of wealth among the citizens and of opportunities in order to attain a uniform level of economic development throughout the Republic. So all the citizens of the country according to the constitution as well as the Universal Declaration of Human Rights are entitled to inherit, acquire, and enjoy the property and it is the responsibility of the state to restore this human right as a fundamental right.As far the hermaphrodite is concerned, they have been recognized as the citizens of the countrythrough passing the resolution on January 26, and 2014.The Government of Bangladesh recognizing the Hijra as third genderkeeps alive all the hopes to be executed especially in terms of right to property in the future.This article has tried to find some recommendations on the basis of above loopholes and lacuna of the law of inheritance under different personal laws:

- (1) As Bangladesh being Muslim majority country, Muslim personal law is applicable in case of the matter of inheritance. The rights of inheritance have been ensured for the hermaphrodite by Qiyas. But the application of it seems to be very far, because of having gap between the society and the hermaphrodite community, and they are not let to know the fact of inheritance they are entitled to. So the state should adopt very specific laws on the basis of the existing provisions of Qiyas along with Quranic verse.
- (2) Under Hindu Personal Law, they (hermaphrodite) have been given a lot of respect and honor because of getting blessings from God. But they are not provided with any religious provision by which they can claim inheritance under their personal law. So legislation may be made ensuring a specific



portion for the hermaphrodite in the property of the propositus.

- (3) In Christian Law, they are totally deprived of getting property from the ancestors according to the verse of the religious scriptures as well as the existing civil laws of inheritance. So for the Christian hermaphrodite people, legislation may be amended ensuring a specific portion for them in the property of the deceased.

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