



Recognition of Transgender Persons in Indian Prisons

For Prelims: Transgender Persons (Protection of Rights) Act, 2019 and its provisions

For Mains: Safeguarding rights of Transgender Persons in Indian Prisons, Issues, related steps taken and needs to be done

Why in News

Recently, the Union Home Ministry sent an **advisory to Heads of Prisons in the States/UTs** to ensure privacy, dignity of the third gender inmates.

- According to a [National Crime Records Bureau](#), there were 70 transgender prisoners in jails across the country in 2020.
- The advisory was issued in light of the [Transgender Persons \(Protection of Rights\) Act, 2019](#), which came into effect from January 2020.

Key Points

- **Infrastructure in Prisons:**
 - Separate enclosures or wards and separate toilets and shower facilities for transmen and transwomen to preserve the right to privacy and dignity of the inmates.
- **Respect Self-identity:**
 - The self-identity of transgender persons must be respected at all times while conducting admission procedures, medical examination, frisking, clothing, requisitioning of a police escort, treatment and care inside prisons.
 - **Prisons to facilitate the process of acquiring the transgender identity certificate** under the transgender persons law if such a request is made.
- **Search Protocol:**
 - Searches should be carried out by a **person of their preferred gender** or by a trained medical professional or a paramedic trained in conducting searches.
 - The person **conducting the search must ensure the safety**, privacy and dignity of the person being searched.
- **Admission in Prison:**
 - The prison admission register may be suitably revised to include **“transgender” as a category other than male and female gender**.
 - A similar provision may be made in the **Prison Management System in maintaining electronic records**.
- **Access to Healthcare:**
 - Transgender inmates **should have equal right to healthcare**, without any discrimination on grounds of their gender identity.
- **Communication with outside World:**
 - They must be **allowed an opportunity to interact with their family members, relatives, friends and legal advisers** and after-care planning by probation, welfare or rehabilitation officers.

- **Training and Sensitisation of Prison Personnel:**
 - It should be done for developing an understanding of gender identity, human rights, sexual orientation and legal frameworks for transgender persons.
 - Similar awareness must also be spread among other prisoners.

Major Initiatives Related to Transgender

- **Transgender Persons Act, 2019:**
 - The Act defines a transgender person as one whose gender does not match the gender assigned at birth. It includes transmen and trans-women, persons with intersex variations, gender-queers, and persons with socio-cultural identities, such as kinnar and hijra.
- **Judgements of the Supreme Court:**
 - [National Legal Services Authority \(NALSA\) v. Union of India, 2014](#): The SC declared transgender people to be a 'third gender'.
 - [Read down the Provisions of Section 377 of the Indian Penal Code \(2018\)](#): The SC decriminalised same-sex relationships.
- **[Transgender Persons \(Protection of Rights\) Rules, 2020](#):**
 - The Central Government made the rules under the powers conferred by the Transgender Persons (Protection of Rights) Act, 2019.
 - [National Portal for Transgender Persons](#) was launched under in consonance with the Transgender Persons (Protection of Rights) Rules, 2020.
- Scheme of **'Shelter Home for Transgender Persons'**:
- To provide safe and secure shelter to transgender persons in need, the Ministry of Social Justice and Empowerment is setting up 'Garima Greh' shelter homes for them.

Prisons Act and Transpersons

- In India, the Prisons Act, 1894, is the central legislation regulating the administration of prisons.
- The Act majorly differentiates prisoners convicted under civil law from those convicted under criminal law.
- Unfortunately, the Act **does not even recognise sexual minorities based on Sexual Orientation and Gender Identity (SOGI)** as a different class of prisoners.
- It only separates prisoners into the categories of women, young offenders, undertrials, convicts, civil prisoners, detenues and high-security prisoners.
- The **NALSA judgment**, while extending constitutional protection to trans persons under **Articles 14, 15, and 21**, directs states to make policies on their legal and socio-economic rights.
- This extends to trans prisoners as well, since **prisons and their administration is a state subject**.
- Even though the directions given in the NALSA judgment constitute the law of the land, there is still a requirement to bring forth changes in the present laws.
- The Prisons Act, however, **allows the prison authorities to follow procedures that are strictly gender-binary**.
- These procedures not only challenge the validity of the legislation but also result in a kind of torture and degrading treatment being inflicted upon trans people inside prisons.
- All of this is substantiated by a report titled **'Lost Identity: Transgender Persons Inside Indian Prisons'** by the **Commonwealth Human Rights Initiative (CHRI)**.
 - This report sheds light on issues faced by Transgender persons confined in Indian prisons.

Way Forward

- The colonial Prisons Act has become obsolete and it fails to be the touchstone of constitutional morality which ushers for a pluralistic and inclusive society.
- Since **constitutional morality is something that has to be cultivated** keeping in mind the evolving nature of the law and the rights of the people, the present law falls short of any such progressive realisation of the rights of sexual minorities.
- **Awareness and documentation** are two important tools to address the reforms in reference to

sexual minorities, especially trans prisoners.

- Thus, the CHRI is one step in that process which advocates for a gender-fluid approach for the treatment of transgender prisoners.
- The **CHRI's recommendations should be considered by the Union government** to bring a 'model policy' on the special needs of trans prisoners, through a consultative process with the members of the trans community, to honour the mandate of the NALSA judgment.

[Source: TH](#)

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