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The Transgender Persons (Protection of Rights) Bill

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Why in News

- The bill recently got passed in Lok Sabha with 27 amendments. The bill will now be placed in Rajya Sabha.
- The bill seeks to protect the rights of transgender and promote social equality that has eluded them for very long.

Who are Transgender?

- According to the bill transgender means a person whose gender does not match with the gender assigned to that person at birth.
- It includes trans-person with intersex variations, gender-queer and person having such socio-cultural identities as kinnar, hijra, aaravani and jogta.

Timeline of Reforms

- In 2009, appropriate directions were issued by the Election Commission to all provinces to **amend the format of the registration forms to include an option of "others"**. This enabled transsexual people to tick the column if they didn't want to be identified as either male or female.
- The **Supreme Court in National Legal Services Authority Vs. Union of India (2014) recognized them as the "Third Gender"**. In the landmark ruling, Justice K.S Radhakrishnan observed that "recognition of transgenders as a third gender is not a social or medical issue, but **a human rights issue**".
- The Rights of Transgender Persons Bill, 2014, was introduced as a private member's Bill by the Dravida Munnetra Kazhagam MP Tiruchi Siva, and passed by the Rajya Sabha in April 2015.
- HIV services for the community are rapidly improving in a targeted manner after the SC verdict. For example, the National Aids Control Organisation (NACO) reported that 2,40,000 hijras were provided with HIV prevention and treatment services in 2015,

compared to 1,80,000 the previous year.

- At the present, Lok Sabha has passed the Transgender Persons (Protection of Rights) Bill 2016. The bill will now be placed in Rajya Sabha.

Key Provisions of the Bill

- **Prohibition against discrimination:** the Bill prohibits discrimination of transgenders in relation to opportunities for education, job, health care services, and access to services etc.
- **Right to be recognized as transgender:** every person has a right to be recognized as a transgender.
- **Procedure for transgender recognition:** A certificate of identity has to be obtained from the District Magistrate, who will issue the certificate based on the District Screening Committee.
The committee will comprise of a Chief Medical Officer, District Social Welfare Officer, Psychologist or Psychiatrist, and a representative of transgender community.
- **Right of residence:** No transgender person shall be separated from parents or immediate family on the ground of being a transgender.
- Provision for establishment of **National Council for Transgender Persons.**
- **Penal Provisions:** it criminalizes: (i) begging, forced or bonded labor (ii) denial of use of a public place; (iii) denial of residence in the household, village, etc.; (iv) physical, sexual, verbal, emotional and economic abuse.

Challenges in the Bills

- Transgender persons are **not defined properly** and the Bill does not have any provision for self-determination of gender.
- Bill is **silent on granting reservations** to transgender person, going against the Supreme Court verdict in **NALSA judgment in 2014** which seeks to give reservation to transgender as socially and educationally backward classes.
- Begging is a way of life for transgender as they dance or sing and earn money. However bill **criminalizes begging** by making it an offence without taking alternative affirmative action for their social security.
- It sets lighter consequences for discrimination and assault on Trans people compared to cis-gender people which prescribes jail sentence of 7 years for sexual assault on women.
- The Bill treats **transgender as victims rather than an empowered** subject with rights.
- The Standing Committee's concerns about recognizing **rights in marriage, divorce and adoption** of transgender person have not been addressed.
- Bill **violates the transgender's constitutional Right to Freedom of Residence**

under the Article 19 as they must either stay with their parents or approach a court.

Issues Faced by Transgender

- **Lack of legal protection** – They are subjected to custodial violence, dereliction of duty by state and overall apathy to their issues such as educational, residential, medical and employment.
- **Poverty** – Lack of legal protection translates into unemployment for transgender people. They're denied services and experience high rates of unemployment, housing insecurity and marginalization.
- **Harassment and stigma** – They are met with ridicule from a society and are considered mentally ill, socially deviant and sexually predatory.
- **Anti-transgender violence** – They are forced for gender conformism, aversion based pseudo-psychotherapies, forced marriages, stripping, physical and verbal abuse and are pushed into prostitution by their own families.
- **Barriers to healthcare** – Their exposure to basic health care is minimal as they are subject to apathy from medical fraternity with professionals lacking transgender health care competency.

Suggestions

- Inclusive approach for Transgender must be planned and adopted by the Government and society.
- Legal and the law enforcement systems need to be empowered and sensitized on the issues of Transgender community.
- Provision of free legal aid, supportive education, and social entitlement must be ensured for the Transgender community at ground level as suggested by NALSA Judgement.
- Separate policies related to health care must be framed and communicated in all private and public hospitals and clinics.
- Liberal credit facilities and financial assistance must be ensured to start up their career as an entrepreneur or businessman.

Way Forward

- Certain provisions of **Private member bill introduced in 2014 by Tiruchi Siva** can also be incorporated such as reserving 2% of seats in education institutions funded by the government, formation of special employment exchanges for transgender people in government jobs, etc.
- The bill should be provisioned in such a manner that it is able to integrate transgender persons seamlessly into the fabric of everyday public life be it public spaces, at workplaces, and in normative domestic spaces.

- Policies and regulation alone won't help there is a need to increase awareness and inculcate sense of respect and acceptance for transgender community.
- Their grievance of being not included in policies formulation or decision making needs to be allayed and chances for their public participation should increase.