



Transgender Persons Bill 2019

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This article is based on **“Why are there objections to the Transgender Persons Bill?”** which was published in The Hindu on 1/12/2019. It talks about issues related to Transgender Persons (Protection of Rights) Bill, 2019.

Recently, the Parliament has passed the **Transgender Persons (Protection of Rights) Bill, 2019**, which had been framed for the welfare of transgender persons.

However, the LGBTQ+ (**lesbian, gay, bisexual, transgender, queer**) community as a whole organised protest across the country, urging changes to the Bill.

Background

- In 2013, the government set up an expert committee to study the problems of transgenders and recommend solutions.
- In 2014, in **National Legal Services Authority v. Union of India case**, the Supreme Court of India declared transgender people to be a **'third gender'**.
It also affirmed that the fundamental rights granted under the Constitution of India will be equally applicable to transgender people, and gave them the right to self-identification of their gender as male, female or third-gender.
- In 2014, a **private member Bill**, The Rights of Transgendered Persons, was introduced in the Rajya Sabha.
 - The bill looked at a range of entitlements of such persons, providing specifically for them in health, education sectors, skill development and employment opportunities, and protection from abuse and torture.
 - However, this Bill got lapsed.

- In 2016, the **Government introduced its own Bill** in the Lok Sabha and it was referred to a Standing Committee.
 - The Standing Committee, made a number of recommendations including defining the term persons with intersex variations, granting reservations for socially and educationally backward classes, and recognition of civil rights including marriage, partnership, divorce and adoption.
 - However, with the dissolution of the 16th Lok Sabha (2014-19), that Bill lapsed.

Key Provisions of the Transgender Persons (Protection of Rights) Bill, 2019

- **Definition of a transgender person:** The Bill defines a transgender person as one whose gender does not match the gender assigned at birth. It includes trans-men and trans-women, persons with intersex variations, gender-queers, and persons with socio-cultural identities, such as kinnar and hijra.

Intersex variations is defined to mean a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes, or hormones from the normative standard of male or female body.
- **Prohibition against discrimination:** Any person who is found to be compelling a transgender person into **bonded labour** denying right of public passage to a transgender person, evicting a transgender from his/her place of residence, causing physical, sexual, verbal, economic and emotional abuse, can be penalised with imprisonment of not less than six months, that can extend up to two years.

It **prohibits discrimination** against a transgender person on grounds including denial, discontinuation or unfair treatment in educational establishments, services, employment, healthcare.
- **Certificate of identity:** The Bill states that a transgender person shall have the right to self-perceived gender identity.

A **certificate of identity** can be obtained at the District Magistrate's office and a revised certificate is to be obtained if sex is changed.
- The bill has a provision that provides transgender the **right of residence** with parents and immediate family members.
- **Welfare measures by the government:** The Bill mentions that the Government will formulate transgender sensitive, non-stigmatising and non-discriminatory welfare schemes and programmes.
- The government shall provide education, sports and recreational facilities for transgender people.
- Provisions for separate HIV surveillance centres and sex reassignment surgeries should also be provided by the government.
- The Central Government will set up the **National Council for Transgender Persons (NCT)**.

Issues

Poor understanding of gender and sexual identity

- The Bill does not differentiate between transgenders, transsexuals, intersex persons and genderqueer.
- **One-solution fits all approach:** Treating Transgender, Transsexual and Intersex persons as same is insensitive.

Note:

Transgenders have a different gender identity than what was assigned to them at birth, while intersex indicates the diversity of gender based on biological characteristics at birth. There are also multiple variations in intersex itself.

- The Bill is a consequence of the directions of the Supreme Court in the **National Legal Services Authority vs. Union of India case**.
 - The judgement directed that, along with recognising civil rights (including marriage, partnership, divorce and adoption), **the LGBTQ+ community shall be granted reservations in public employment and education**.
 - The legislation doesn't provide reservation of LGBTQ+ community.
- The Bill is progressive in that it allows self-perception of gender identity, but **regresses by mandating that each person would have to be recognised as 'transgender' on the basis of a certificate of identity issued by a district magistrate**.
 - Also, there are no avenues open either for appeal in the event a magistrate refuses to hand out such a certificate.
- The Bill doesn't address the issue of non-consensual sex reassignment surgery.
- The legislation does not explicitly define what constitutes discrimination in the context of the transgender community.
- Lack of enforceability dilutes provisions.

Way Forward

- In April 2019, the **Madras High Court in Arunkumar v. The Inspector-General of Registration** took up the issue of the validity of consent given on behalf of intersex infants for undergoing sex-selective surgeries.
 - It held that the consent of the parent cannot be considered as the consent of the child. Hence, such surgeries should be prohibited.
 - Therefore, this momentous judgment, which recognises the consent rights of intersex children and the right to bodily integrity, must be emulated throughout the country.
- Also, there should be strict penal provisions to curb the non-consensual sex reassignment surgery in transgenders.

- In order to adopt a holistic approach the narrative of 'Transgender rights' should be replaced by **gender identity, gender expression and sex characteristics rights**.
- The National Council for Transgender Persons which plays a vital role in the implementation of the law must be provided with greater representations from the community.
- Transgender and intersex persons might require a range of unique health care needs. Therefore, the government should incorporate healthcare interventions into the Act.

Drishti Mains Question

The narrative of 'Transgender rights' should be replaced by gender identity, gender expression and sex characteristics rights. Analyse the statement in the context of Transgender Persons (Protection of Rights) Bill, 2019.