

# The Transgender Persons (Protection of Rights) Bill, 2018

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## Manifest Pedagogy

Legislations in news become highly relevant for exam. The Parliamentary sessions of a year and so and the important bills passed even by a single house stand higher chances of being asked in the exam.

## **In news**

Lok Sabha passes Transgender Bill

## **Placing it in syllabus**

1. Indian Society : Social Empowerment
2. Indian Polity : Government policies and interventions for development in various sectors and issues arising out of their design and implementation.

## **Static dimensions**

1. Gender as a social issue
2. SC judgement on 'Transgender'

## **Current dimensions**

1. Transgender Bill, 2018
2. Criticisms
3. Welfare measures needed for the community

# Content

## History of Supreme Court judgment declaring Transgender as third gender

Supreme Court of India in its landmark judgment in **National Legal Services Authority v/s Union of India** case, it declared that transgender people to be a 'third gender', 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.

The Court even gave following directions to Centre and State Governments;

- To grant legal recognition of gender identity whether it be male, female or third-gender.
- To grant legal recognition for Persons transitioning within male/female binary.
- To take proper measures to provide **medical care** to Transgender people in the hospitals and also provide them separate public toilets and other facilities
- To provide the community various social welfare schemes and to treat the community as socially and economically backward classes.
- To take steps to create public awareness so that Transgender people will feel that they are also part and parcel of the social life and not be treated as untouchables.

**Recently Supreme Court of India in its judgment, decriminalized homosexuality by declaring parts of Section 377 of Indian Penal Code unconstitutional.**

## Provisions of the bill

- The Bill defines a "**transgender person**" as a person whose gender does not match with the gender assigned to

that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, gender queer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.

- It also defines **“person with intersex variations”** as a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes or hormones from normative standard of male or female body
- The Bill **prohibits the discrimination against a transgender person**, including denial of service or unfair treatment in relation to: (i) education; (ii) employment; (iii) healthcare; (iv) access to, or enjoyment of goods, facilities, opportunities available to the public; (v) right to movement; (vi) right to reside, rent, own or otherwise occupy property; (vii) the denial or discontinuation of, or unfair treatment in, the opportunity to stand for or hold public or private office; and (viii) the denial of access to, removal from, or unfair treatment in, Government or private establishment in whose care or custody a transgender person may be.
- The bill states that **no child shall be separated from parents or immediate family on the ground of being a transgender**, except on an order of a competent court, in the interest of such child.
- **Right of residence:** Every transgender person shall have a right to reside and be included in his household. If the immediate family is unable to care for the transgender person, the person may be placed in a rehabilitation centre, on the orders of a competent court.
- **Employment:** No No establishment shall discriminate against any transgender person in any matter relating to employment including, but not limited to, recruitment,

promotion and other related issues

- **Education:** Every educational institution funded or recognised by the appropriate Government shall provide inclusive education and opportunities for sports, recreation and leisure activities without discrimination on an equal basis with others.
- **Health care:** The government shall take steps to provide health facilities to transgender persons including separate HIV surveillance centres, sex reassignment surgeries, etc. And provide **comprehensive medical insurance schemes** for them.
- **Certificate of identity for a transgender person:** A transgender person may make an application to the District Magistrate for a certificate of identity, indicating the gender as 'transgender'.
- **Welfare measures by the government:** The Bill states that the relevant government will take measures to ensure the full inclusion and participation of transgender persons in society. It must also take steps for their rescue and rehabilitation, vocational training and self-employment, create schemes that are transgender sensitive, and promote their participation in cultural activities.
- **Offences and Penalties:** The Bill recognizes the following offences: (i) begging, forced or bonded labour (excluding compulsory government service for public purposes); (ii) denial of use of a public place; (iii) denial of residence in household, village, etc.; (iv) Physical, sexual, verbal, emotional and economic abuse.
- **National Council for Transgender persons (NCT):** The NCT will consist of: (i) Union Minister for Social Justice (Chairperson-ex officio); (ii) Minister of State for Social Justice (Vice- Chairperson, ex officio); (iii) Secretary of the Ministry of Social Justice; (iv) one representative from ministries including Health, Home Affairs, Minority Affairs, Housing and Poverty Alleviation, Human Resources Development, etc. Other members include representatives of the NITI Aayog,

National Human Rights Commission, and National Commission for Women. State governments will also be represented. The Council will also consist of five members from the transgender community and five experts from non-governmental organizations.

- The Council will advise the central government on the formulation and monitoring of policies, legislation and projects with respect to transgender persons.

## **Criticisms of the bill**

- The requirement that a district screening committee must recommend the issue of a certificate to each transgender may be necessary to prevent misuse, but such a process goes against the principle of self-identification, a key right the Supreme Court had protected.
- The legitimate concern in the revised Bill is the bar on forcible separation of transgender persons from their families, except through court orders.
- Another concern is that the Bill criminalizes begging by making it an offence for someone to compel or entice a transgender person into seeking alms. When begging itself is no more seen as an offence, it may harm the community if such a means of livelihood – in the absence of employment – is criminalized.
- The Bill, unfortunately, does not give effect to the far-reaching directive of the Supreme Court to grant backward class reservation to the transgender community. Nor have the Standing Committee's concerns about recognizing civil rights in marriage, divorce and adoption among them been addressed

## **Overall measures needed for this community**

- **Education is the way to address the problem of discrimination.** It's important for advocates, organizations and individuals to learn about the violence and discrimination that transgender people

face. Armed with this knowledge, people can call out transphobia when they see it and take steps to allow transgender voices to be heard.

- **Access to quality health care**, It help this community to get their hormonal transfer in a proper way.
- **Employment**- Self employment would be better way to avert this community from begging.
- **Spreading awareness among general public regarding gender sensitivity**

## **Test Yourself : Mould your thoughts**

The Transgender Persons (Protection of Rights) Bill, 2018, though a progressive one fails to address the issues of the community. Do you agree with the statement? Substantiate.