

Transgenders and issues related to their rights

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Manifest Pedagogy:

Sexual Identity and Sexual orientation are two important topics for this year prelims and mains. In these topics three landmark cases are important for the exam: Puttaswamy judgment on Privacy, NALSA judgment on Transgenders and Navtej Singh Johar judgment on Section 377.

In news

Madras High Court's recent judgment on Civil rights of Transgenders

Placing it in the syllabus

Indian Society: Social Empowerment

Indian Polity: Mechanisms, laws, institutions, and Bodies constituted for the protection and betterment of these vulnerable sections.

Static dimensions

- NALSA judgment on Transgenders
- Transgender bill

Current dimensions

- Madras High Court's recent judgment on Civil rights of Transgenders and its importance

Content

NALSA judgment on Transgender

The Supreme Court delivered a judgment following a **writ petition filed by NALSA** (the National Legal Services Authority) and supported by prominent transgender activists like Lakshmi Narayan Tripathi. Following are the highlights of the judgment;

- It gave directives for the **legal recognition of transgender persons' identities** and the provision of reservations in jobs and education.
- The NALSA judgment made a sincere attempt in understanding the identity, it stated that; "Gender identity refers to each person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body which may involve a freely chosen, modification of bodily appearance or functions by medical, surgical or other means and other expressions of gender, including dress, speech and mannerisms. Gender identity, therefore, refers to an individual's self-identification as a man, woman, transgender or other identified category."
- The judgment stated that Transgenders are also citizens of India. The spirit of the constitution is to provide equal opportunity to every citizen to grow and attain their potential, irrespective of caste, religion or gender.
- The ruling mentioned that medical intervention to determine gender identity unnecessary. And Self-identification as man or woman, irrespective of sexual reassignment surgery, is now protected by law.
- The court related the issue to Human rights and stated that recognition of transgenders as a third gender is not a social or medical issue but a human rights issue.

- It was mentioned by the judges that as a result of the ruling rights such as the right to vote, own property, marry and to claim a formal identity would be made available more meaningfully to the transgender community.
- The judgments said that non-recognition of gender identity amounts to discrimination under Article 15, which prohibits discrimination on the basis of sex.
- The text of the NALSA judgment concludes with a demand from the Supreme Court that the **central and the state governments uphold the right of transgender persons** to decide their self-identified gender, and pursuant to this, be granted full legal recognition towards the same.

Transgender Persons(Protection of Rights) Bill

Following are the key highlights of the bill;

- The Bill seeks to **recognize transgender persons**, and confer anti-discriminatory rights and entitlements related to education, employment, health, and welfare measures.
- The Bill **defines a transgender** 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, genderqueer and person having such socio-cultural identities as Kinner, Hijra, Aravani and Jogta.
- Though the bill recognizes the rights of transgender people **it does not mention about marriage rights of these people.**
- According to the bill, a transgender person must obtain a **certificate of identity as proof of recognition of identity** as a transgender person and to invoke rights under the Bill.

- It mentions that such a certificate would be granted by the District Magistrate on the recommendation of a Screening Committee. The Committee would comprise a medical officer, a psychologist or psychiatrist, a district welfare officer, a government official, and a transgender person.
- **It prohibits discrimination against a transgender person** in areas such as education, employment, and healthcare. It directs the central and state governments to provide welfare schemes in these areas.
- Under the bill offences like compelling a transgender person to beg, denial of access to a public place, physical and sexual abuse, etc. would attract up to two years' imprisonment and a fine.

Madras High Court's recent judgment on Civil rights of Transgenders and its importance

The Madras High Court's recent judgment is truly path-breaking for the LGBTQ community as it extended the civil rights of Transgenders, following are the key highlights of the judgment;

- A judgment of the Madras High Court, Madurai Bench in Arunkumar and Sreeja v. Inspector General of Registration and Others (2019) case, has extended the enjoyment of civil rights, especially those pertaining to marriage, to transpersons.
- In its judgment, the court held that a properly solemnized marriage between a male and transwoman is valid under the Hindu Marriage Act, 1955, and the Registrar of Marriages is bound to register the same.
- however, this **judgment breaks new ground** when it comes to the interpretation of the statutory terms found in the Hindu Marriage Act, especially that of the bride. It states that the expression "bride" occurring in Section 5 of the Hindu Marriage Act cannot have a static or immutable meaning. As noted in the Principles of

Statutory Interpretation of Justice G.P. Singh, **the court is free to apply the current meaning of a statute to present-day conditions.**

- This judgment has **revised the legal construction of gender and the conventional interpretation of terms such as “bride” and “bridegroom”**. Now, when this is read along with the Supreme Court’s explicit reference to the American court’s guarantee of right to marry to homosexual couples shows that there cannot be a legal bar any more to extending civil rights such as marriage, succession or inheritance to LGBTQ couples who have decided to get married consensually, have married in accordance with the existing laws and are not in violation of any other laws.
- The Solicitor General, representing the Government of India, sought, at the preliminary hearings before the Supreme Court in **Navtej Singh Johar**, to curtail the scope of the case to that of the decriminalization aspect or the constitutional validity of Section 377 of the Indian Penal Code alone, 1860.
- Consequently, the Supreme Court had no opportunity to examine the bundle of rights that would naturally arise from striking down of Section 377. Therefore, in this context, the present judgment is truly path-breaking for the LGBTQ community, which is denied equal protection of laws with regard to civil rights.