



A Law That Details Its Purpose

This article is related to General Studies-
Paper II (Governance).

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"The Transgender Bill omits positive rights and ignores the protections of the 'NALSA' judgment."

The Transgender Persons (Protection of Rights) Bill, 2018, passed by the Lok Sabha recently, has caused great alarm. Transgender and intersex activists have protested on the streets, campaigned with parliamentarians and spoken out against the Bill. Is it not an irony that all of this is being done to ensure that the law is not passed? Why is there such a strong resistance to this Bill? Here are the main concerns.

Gender recognition

In the landmark NALSA v. Union of India judgment, the Supreme Court laid down that transgender and intersex persons have the constitutional right to self-identify their gender as male, female or transgender even without medical intervention. The court held: "Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom and no one shall be forced to undergo medical procedures, including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity". Hence, medical procedures should not be required as a pre-condition for any identity documents for transgender and intersex persons, nor should there be any requirement of a mental health assessment. Requiring a person to submit proof of medical treatment or mental health assessment of their gender identity violates one's right to dignity, the right to be free from unwanted medical treatment and the right to be free from discrimination.

The 2018 Bill in Section 6 establishes a District Screening Committee for the purpose of recognition of transgender persons. This Screening Committee includes a chief medical officer and a psychologist/psychiatrist, which goes to show that medical and psychological tests would be required for grant of change of gender identity. There is no provision in the Bill that gender change would be permitted without medical or psychological treatment.

The Bill also does not allow for recognition of gender identity as male or female. It only allows for an identity certificate as 'transgender'. This goes against the decision of the Supreme Court, which recognised the right to self-identify oneself as male, female or transgender and would also be forcing intersex persons to get a gender identity as "transgender".

The U.K.'s Gender Recognition Act 2004 was the first law in the world allowing people to change gender without surgery. Since then other countries, including Argentina, Ireland and Denmark, have passed laws that allow people to 'self-declare' their gender, rather than seek approval from a panel of medical experts. Hence the District Screening Committee needs to be removed from the 2018 Bill. The Bill needs to state explicitly that no medical or mental health examination will be required and applicants will simply need to submit an affidavit attesting the request for a change of gender identity.

Reservations not provided

Debates on the Bill have always included the demand for reservations for transgender and intersex persons in educational institutions and in public employment as they are seen to be crucial for their social inclusion. This was not only mandated by the Supreme Court in NALSA, the Rights of Transgender Persons Bill 2014 too provided for 2% reservation.

Surprisingly the 2018 Bill does not provide for any reservation. It provides in Sections 10 and 14 that there would be no discrimination in education and employment, but these rights are meaningless if transgender persons are not able to get access in the first place. Equality would demand that in order for the trans and intersex community to get access to their basic social rights, there should be horizontal reservation in education and employment provided to them. When the new Rights of Persons with Disabilities Act 2016 was passed, it included reservations of 5% and 4% in education and government jobs, respectively. It is surprising therefore that the 2018 Bill has no mention of similar provisions.

Criminalising lives

The Bill in Section 19 makes it a criminal offence for anyone to compel a transgender person into begging. This has serious implications. A large number of people from the trans and intersex community are engaged in begging and sex work due to discrimination and not having any other opportunities. This provision would lead to members of the trans community being criminalised. When the criminalising of begging itself has been held to be unconstitutional by the Delhi High Court, there is no place for this offence in the 2018 Bill. For too long, gender minorities have been criminalised for being out in the streets and in public, and having this offence in the Bill will lead to further criminalising of transgender lives.

In all these ways the 2018 Bill is seriously flawed. It does not have a whole gamut of positive rights such as the rights of trans and intersex persons to inheritance of property, rights within the family such as adoption and to be free from domestic violence, rights of political participation such as the right to vote and hold public office, and the right to health to include free



sex reassignment treatments. It also does not make sexual violence against transgender and intersex persons a criminal offence. The current law on rape is gender specific and transgender persons have no recourse under criminal law for sexual assault.

The Bill is an opportunity to ensure that the constitutional rights of transgender and intersex persons are realised. Let us not lose this opportunity by passing such a flawed legislation.

GS World Team...

Transgender Person (Protection of Rights) Bill, 2018

Why in the discussion

- In order to give equal right to transgender persons and to provide them protection under law, the Lok Sabha has passed the Transgender Persons (Protection of Rights) Bill, 2018 with sound vote.

Background

- This bill was sent to the Standing Committee for consideration. The committee then suggested 27 modifications in the bill which the government had approved.

New definition

- One of the amendments accepted was about the old definition of transgender persons, in which they were neither fully known as females nor fully male.
- This definition was criticized as insensitive.
- According to the new definition, a transgender person is a person whose present gender is different from his gender at birth and these people come in - Trans male or trans female, person with inter-sexual diversity, person with bizarre gender and socio-cultural identity such as- Kinnar, Hijra, Aravani and Jogata

Main Point

- The objective of this bill is to eliminate discrimination in different areas against the transgender

person. In areas where these are discriminated, they are - education, livelihood and health care.

- Bill directs the Central and State Governments to run welfare schemes for them.
- It has been said in the bill that any person will be recognized as transgender on the basis of identity certificate which will be issued through the District Screening Committee.
- This certificate will be considered proof of identity of the transgender and the powers conferred in the bill will be given to it.

Why protest?

- The transgender person should have had the right to give his identity for himself, and not through any District Screening Committee.
- The bill is also silent in terms of reservation for transgender people.
- There has been a provision for penalties for organized begging in the bill, but no financial option has been given in lieu of this.
- There is no provision for penalties for rape or sexual acts of transgenders, as transgender has not been included in the definition of rape in the Indian Penal Code.

Expected Questions (Prelims Exams)

1. Consider the following statements regarding Transgender Persons (Protection of Rights) bill, 2018-
 1. There is provision of reservation of Transgender and intersex in educational institutes in sections 13 and 14.
 2. According to section-19, any body who intice transgender to beg will be considered culprit.Which of the above statements is/are correct?
 - (a) Only 1
 - (b) Only 2
 - (c) Both 1 and 2
 - (d) Neither 1 nor 2

Expected Questions (Mains Exams)

- Q. Transgender bill ignores the safety of judgement of NALSA Vs Union of India along with ignoring the positive rights. Critically Analyse. **(250 Words)**

Note: Answer of Prelims Expected Question given on 28 Dec. is 1(b).

