Inclusion of Transgender Women

Mains: *GSII – Polity |Governance*

Why in News?

The conflicting High Court judgments on whether transgender women are covered under the term 'woman' in penal laws called for an inclusive interpretation of criminal protections against sexual and gender-based violence.

What the current Legal Position and Judicial Interpretations?

- **NALSA v. Union of India (2014)** – Supreme Court recognised transgender persons' right to self-identified gender as part of constitutional rights.
- **Bombay High Court** – Vishal Sunil Ingle (2026) – Allowed a transgender woman to seek protection under provisions concerning outraging the modesty of a woman, without gender-affirming surgery.
- **Allahabad High Court** – Mohd Saakir (2026) – Held that transgender women do not fall within the statutory definition of a woman in a case involving a false promise of marriage, even after gender-affirming surgery.

What are the Issues Surrounding Legal Recognition?

- **Conflicting interpretations** – Different High Court judgments have created uncertainty regarding the scope of legal protection available to transgender women.
- **Surgery-based exclusion** – Making gender-affirming surgery a condition for recognition undermines the right to self-perceived gender identity.
- **Inadequate legal protection** – The Transgender Persons Act provides limited offences covering abuse, coercion and exploitation, with maximum punishment of two years.
- **Biological determinism** – Restricting protection based solely on biological characteristics ignores discrimination arising from gender identity.
- **Gender-based violence** – Transgender women remain vulnerable to sexual violence without equivalent protection under existing penal provisions.

Constitutional and Legal Dimensions
• **Article 14** – Excluding transgender women from legal protection may constitute arbitrary and discriminatory treatment. • **Article 15** – Prohibits discrimination on grounds of sex and supports substantive equality. • **Article 21** – Protects dignity, personal autonomy and the right to self-identified gender. • **NALSA Judgment (2014)** – Established constitutional recognition of gender identity irrespective of medical or surgical intervention.

What is the Way Forward?

- **Inclusive interpretation** – Courts should interpret the term ‘woman’ broadly where the ingredients of an offence are satisfied.
- **Victim-centric approach** – Protection against sexual violence should not be denied solely because of sex assigned at birth.
- **Gender-neutral sexual offences** – Introduce broader legislative reforms to protect all victims of sexual violence.
- **Strengthen transgender protection** – Provide comprehensive legal safeguards against sexual and gender-based violence.
- **Judicial clarity** – Supreme Court should resolve conflicting interpretations and establish uniform principles of protection.

What lies ahead?

- Legal protection against gender-based violence must prioritise dignity, equality and victimisation rather than biological classifications.
- An inclusive legal framework is essential to uphold constitutional morality and substantive justice.

Reference

The Indian Express| In crimes against women, how to define woman

SHANKAR IAS PARLIAMENT
Information is Empowering