Inclusion of Transgenders in Armed Forces

Why in news?

The Transgender Persons (Protection of Rights) Act, 2019 and its implications are being examined by the Indian Armed Forces in order to determine potential employment opportunities for transgenders.

Transgender Persons (Protection of Rights) Act, 2019	
Legal recognition	It recognizes transgender individuals as a *third gender* and recognizes their right to *self-identification* based on their gender identity.
Social justice	It prohibits discrimination against transgenders in education, employment, healthcare, and access to public spaces.
Institutional support	It mandates the creation of welfare boards at the *State levels*, which will be responsible for facilitating access to social welfare schemes for transgender persons.
Certificate of identity	Transgenders can obtain a certificate of identity, which will enable them to access various services and entitlements as per their self-identified gender.
Health care	It provides for the establishment of separate hospitals and clinics to provide healthcare services to transgenders.
Criminal offence	It criminalizes offences against transgenders including physical, sexual, emotional, and economic abuse.
Penalty	It provides for the punishment of those who force transgenders into begging or those who deny them access to public places such as parks, hospitals or restaurants.

What about the joint study group formed regarding this aspect?

> *The Armed Forces, at present, don't recruit transgenders or people identifying as homosexuals.*

- **Study group-** It was constituted by the Principal Personnel Officers Committee (PPOC).
  - PPOC comprises *top officers of the 3 services* (Army, Navy and Air Force)
- **Head-** Directorate General of Armed Forces Medical Services, the tri-service medical organisation of Armed Forces.
- **Aim-** To deliberate on the implications of the Transgender Persons (Protection of Rights) Act, 2019 and suggest a way forward for its implementation in the defence forces.

Why there is a need to include transgenders in armed forces?

- **Social inclusion**- This is a positive step as trans community has faced societal discrimination and marginalisation in many ways, including access to social equality, social rights, education, and employment opportunities.
- **Breaks the stigma**- Excluding transgender people from military service reinforces social stigma and inequality.
- **Employment opportunity**- As per National Human Rights Commission study in 2018, it was found that 96% of transgender individuals face employment discrimination, resulting in their limited access to decent career opportunities.
- **Limited accessibility**- The 1st ever study on the rights of transgenders unveiled that around 92% of transgender individuals lack access to engage in economic activities within the nation, with even qualified individuals being denied employment opportunities.
- **Lessons to India-** A study on the impact of allowing transgender people to serve openly in US military suggests that embracing diversity can enhance the effectiveness and viability of the armed forces.
- **Legal framework**- Transgender Persons (Protection of Rights) Act 2019 stipulates that both government and private entities are prohibited from engaging in discriminatory practices against transgender individuals in areas pertaining to employment, such as recruiting and promotion.
- **Duty-** All citizens have a duty to serve their country, hence transgenders have the right to perform duty to serve their country.
- **Transgender suitability-** There is no factual evidence to support the claim that transgender people are unfit for military service.

Transgender Status in Mughal era- They had high positions and respect and served as harem guards and royal aides.
Transgender oppression by British- The British colonisers disliked and misunderstood transgender people and designated them as a *"criminal tribe"* and withheld the civil rights.

What are the challenges in including them in armed forces?

- **Distinct recruitment**- Central Armed Police Forces (CAPF), as well as the army and police forces, employ a distinct psychological approach to administration.
- Recruitment of transgenders in the CAPF may encounter challenges due to practical considerations related to unconventional command philosophy.
- **Training prerequisite**- Following a period of familiarisation and pre-induction training alongside soldiers will be challenging for transgenders.
- **Conservative outlook**- Indian Army as an institution has not undergone significant modernization with respect to LGBTQ communities.
- **Differential rights**- Supreme Court ruling in 2014 and 2018 with respect to transgender person may not be applicable to Indian Army as certain rights afforded to civilians may not extend to members of the armed forces.
- **Article 33-** Fundamental rights of armed forces personnel may be subject to limitations as determined by legislation enacted by the Parliament.
- This implies that the Army Act, Navy Act, and Air Force Act have the capacity to curtail various liberties that are typically afforded to non-military individuals.

- **Administrative constraints**- Indian Army may face difficulties such as housing and other infrastructure of transgender people.

Steps taken regarding Inclusion of Transgenders
• **Gender identity**- In 2014, Supreme Court in the National Legal Services Authority (NALSA) case acknowledged transgenders as third gender within the framework of Indian Constitution. • **Yogyakarta Principles**- Quoted in 2014 Supreme Court ruling, it provides a comprehensive framework for understanding and promoting human rights in relation to gender. • **Struck Section 377 of IPC-** In 2018, Supreme Court rendered *Section 377 of Indian Penal Code* as null and void, therefore eliminating the criminalization of homosexuality. • **Progressive approach-** Kerala High Court upheld the rights of transgender persons to self-determination and non-discrimination, and directed the army to amend the National Cadet Corps Act, (NCCA) 1948 to include transgender persons within 6 months in NCC.

References

1. Indian Express- Armed forces entry of transgender persons
2. Indian Express- Inclusion of transgender in armed forces

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