Privacy and individual choices

What is the issue?

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- With the recent judgement on Right to Privacy, attention is now drawn to an associated area of rights to individual choices.
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- A scrutiny into the age old Andhra Pradesh (Telangana Area) Eunuchs Act becomes important in this context.
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What is the Eunuchs Act?

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- 'Eunuchs' refers to persons who are “males in female dress”.
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- They are 'not transgenders' as such but are males who have undergone castration.
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- The Eunuchs Act, enacted in the Nizam’s dominions, has been in force since 1919.
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- This was explicitly an enactment for the registration and control of eunuchs in the notified areas in Andhra Pradesh (now Telangana).
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- The provisions of the Act include:
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1. The Government shall cause a register to be kept of the names and place of residence of all eunuchs.
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2. It applies to those who are reasonably suspected of kidnapping or emasculating boys, or of committing 'unnatural offences' or backing the commission of the said offences.

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3. Any registered eunuch may be arrested without warrant if found in a street or public place with the intention of being watched or involved in any public entertainment in such places.
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4. A penalty would fall on a registered eunuch if a boy under sixteen is found with him.
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- The mention of 'unnatural offences' could reasonably be presumed to have come from Section 377 of the IPC that criminalises homosexuality.
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- Also, the provisions make no exception for the possibility that a boy with a eunuch may be a biological or adoptive child.
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- It thus explicitly bars eunuchs from the right to relationship, family, child custody and parental autonomy.
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What are the notable precedents in this regard?

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- **Constitution** - Article 15 lists “sex” as a ground of non-discrimination.
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- Notably, the constitutional category of “sex” has not been defined as restricted to male and female alone.
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- It could be constructively interpreted to offer protection to all persons of all genders including the eunuchs or transgender persons.
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- **Court Judgements** - A 2009 Delhi High Court judgment upheld non-discrimination and protection of human rights of all, regardless of sexual orientation or gender identity.
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- Markedly, the recent privacy Bench also stressed on the fundamental rights of the transgender community.
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- It held sexual orientation as an essential component of identity and thus equal protection demands protection of the individual identity.
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- Also, a National Legal Services Authority (NALSA) observation relates Article 15 and Article 21, and holds constitutional right to privacy as an expression of individual autonomy, dignity and identity.
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- All these judgements and observations firmly uphold the individual right and also question the validity of Section 377 on homosexuality.
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What lies ahead?

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- Despite transgender and eunuchs being subjected to sexual assault and sexual violence, legal recourse to them is ineffective due to social stigmatisation and vulnerability.
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- The core of Right to Privacy judgement is the idea of "privacy of choice" which protects an individual's autonomy over personal choices.
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- The judgement should rightly be utilised to assess the constitutionality of various age old legislations like the Eunuchs Act to uphold the principle of natural justice.
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Source: The Hindu

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