Transgender Persons (Protection of Rights) Act, 2019 – Proposed Amendments

Mains: *GS II – Governance*

Why in News?

Recently, The Union government introduced the Transgender Persons (Protection of Rights) Amendment Bill, 2026 in the Lok Sabha proposing significant changes to the Transgender Persons (Protection of Rights) Act, 2019.

What is the 2019 act and the NALSA judgment?

- **The NALSA (2014) judgment** – It was a historic ruling by the Supreme Court, that recognised transgender persons as a "third gender" beyond male and female.
- **Observations by the court:**
  - Self-determination of gender identity is a fundamental right.
  - Gender identity forms part of personal autonomy, dignity, and self-expression.
  - The right falls within the right to life and personal liberty under Article 21.
  - Individuals should not be forced to undergo medical procedures such as Sex Reassignment Surgery (SRS), sterilisation, or hormonal therapy for legal gender recognition.
- **Enactment of the Act** – Based on these principles, Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019, which sought to prohibit discrimination and guarantee rights to transgender persons, including the right to self-perceived gender identity.

What are the key changes proposed in the amendment bill, 2026?

- **Removal of the right to self-perceived gender identity** – One of the most significant changes proposed is the omission of Section 4(2) of the 2019 Act, which states that a person recognised as transgender has the right to self-perceived gender identity.
- The removal of this provision would effectively take away the statutory recognition of gender self-identification.
- **Redefinition of "transgender person"** – The Amendment Bill proposes a narrower and more specific definition of transgender persons.
- Under the proposed definition, a transgender person includes:
  - Individuals with socio-cultural identities such as *hijra, kinner, aravani, jogta, or eunuch*.
  - Persons with intersex variations or congenital variations in biological

characteristics such as genitalia, chromosomes, hormones, or gonadal development.
    - Individuals forced to assume a transgender identity due to procedures such as mutilation, emasculation, or castration.
- However, the proposed definition explicitly excludes persons with different sexual orientations and self-perceived sexual identities.
- This differs from the current definition in the 2019 Act, which broadly includes anyone whose gender does not match the gender assigned at birth, including trans-men, trans-women, genderqueer individuals, and socio-cultural identities.
- **Introduction of a medical authority for certification** – The amendment introduces the concept of an "authority", defined as a medical board headed by a Chief Medical Officer or Deputy Chief Medical Officer.
- Under the proposed changes:
    - The District Magistrate (DM) will examine the recommendation of this medical authority before issuing a transgender certificate.
    - The DM may also consult additional medical experts before making a decision.
- This significantly increases the medical scrutiny involved in gender recognition.
- **Changes in gender certificate and SRS provisions** – The amendment also modifies provisions related to gender certificates:
    - A transgender person will be required to apply for a revised certificate after undergoing Sex Reassignment Surgery (SRS).
    - Medical institutions performing SRS must submit procedural details to the District Magistrate.
- Under the current law, undergoing SRS is not mandatory for legal recognition of gender identity.
- **Right to change first name in official documents** – A new provision allows transgender persons to change their first name in birth certificates and other official documents.
- However, this benefit applies only to those recognised as transgender under the new definition.
- **Expanded offences and penalties** – The amendment significantly expands the offences and penalties related to crimes against transgender persons and children.
  The proposed punishments include:
    - Rigorous imprisonment
    - Life imprisonment in severe cases
    - Fines up to ₹5 lakh
- This expansion aims to strengthen legal protection against violence and discrimination.

What are the concerns raised by the transgender community?

- **Violation of the NALSA judgment** – Activists argue that removing the right to self-perceived gender identity directly contradicts the NALSA (2014) judgment, which recognised self-identification as a fundamental right.
- **Narrow and exclusionary definition** – The new definition is criticised for being restrictive and biologically oriented, excluding many individuals who identify as transgender but may not fall under socio-cultural or medical categories.

- This has raised fears that many transgender individuals may lose legal recognition and protection.
- **Medicalisation of gender identity** – Requiring medical board recommendations for certification is seen as medicalising gender identity, undermining the principle that gender identity is self-determined rather than medically certified.
- **Potential divisions within the community –** Activists have also warned that the new definition may create internal divisions within the transgender community, determining who is considered a "legitimate" transgender person.
- **Lack of consultation** – Many activists have stated that the amendments were introduced without meaningful consultation with transgender community representatives.
- **Government's justification for the amendments** – The government has argued that the current definition of transgender persons in the 2019 Act is vague and difficult to implement.
- According to the Statement of Objects and Reasons:
    - The broad definition makes it difficult to identify genuine beneficiaries of the law.
    - It creates challenges in implementing criminal, civil, and personal laws.
    - The legislation was intended primarily to protect individuals facing severe social exclusion due to biological reasons, rather than all forms of gender identities or gender fluidity.
- The government therefore argues for a more precise and restricted definition to ensure targeted benefits.

What lies ahead?

- The proposed amendments to the Transgender Persons (Protection of Rights) Act, 2019 have sparked a major debate on the balance between administrative clarity and constitutional rights.
- The government argues that the changes aim to address implementation challenges and better target protections.
- Critics contend that they undermine the fundamental principle of self-identification of gender, which lies at the heart of the NALSA judgment and the constitutional guarantee of dignity and personal liberty.
- The outcome of this legislative process will have significant implications for transgender rights, constitutional jurisprudence, and the broader discourse on gender identity in India.

Reference

The Hindu| Transgender bill amendment



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