Transgender Rights in India

Why in News?

As the US imposes restrictions on gender-affirming services, India's legal framework, including the NALSA judgment and the Transgender Persons Act (2019), offers a contrasting approach.

What is the definition of Transgender Persons?

- According to the Transgender Persons (Protection of Rights) Act, 2019, a transgender person is someone whose gender identity does not align with their sex assigned at birth. This includes,
- **Hijras, Aravanis**– Traditional transgender communities in India.(Legally recognized terms in India by the NALSA 2014).
- **Trans men and Trans women** – Individuals who identify with a gender different from their birth sex.
- **Genderqueer and Non-binary** – Those who do not conform to traditional gender categories.

What are the Constitutional and Legal Backing for Transgender Rights in India?

- **Constitutional Provisions - Article 14 (Right to Equality)** – Ensures transgender persons are treated equally under the law.
- **Article 15 & 16 (Prohibition of Discrimination)** – Bars discrimination based on sex and gender identity.
- **Article 19 (Freedom of Expression)** – Recognizes the right of individuals to express their gender identity.
- **Article 21 (Right to Life and Dignity)** – Affirmed in the NALSA judgment, upholding dignity and personal liberty for transgender individuals.
- **Landmark Judgments - National Legal Services Authority (NALSA) v. Union of India (2014) -** Recognized transgender people as a third gender.
- Directed the government to provide reservations in education and employment.
- Affirmed that gender identity is based on self-identification rather than medical tests.
- **Navtej Singh Johar v. Union of India (2018)** - Decriminalized homosexuality (Section 377 IPC), strengthening LGBTQ+ rights.
- **Legal Framework -** Transgender Persons (Protection of Rights) Act, 2019 - Prohibits discrimination in education, healthcare, employment, and housing.
- Provides the right to self-perceived gender identity.
- Establishes National Council for Transgender Persons for policy oversight.
- **Other Legal Provisions - Mental Healthcare Act, 2017** – Provides transgender persons the right to mental health services without discrimination.
- **SC/ST Prevention of Atrocities Act, 1989 (Amendment, 2015)** – Hijra and transgender Dalits are often victims of caste-based violence.
- **SMILE -** Support for Marginalized Individuals for Livelihood and Enterprise - Welfare measures for both transgender persons and persons who are engaged in the act of begging.
- **Sub-schemes**
    - Central Sector Scheme for Comprehensive Rehabilitation for Welfare of Transgender

Persons' and
    - 'Central Sector Scheme for Comprehensive Rehabilitation of persons engaged in the act of Begging'.

What is the comparison of Transgender Rights in India and the U.S.?

- In Donald Trump's administration, transgender rights faced significant restrictions in the US.
- The federal government recognized only male and female genders, denying transgender individuals the right to change gender on official documents.
- Federal funding for gender-affirming care was banned, and several states criminalized such treatments for minors.
- A military ban on transgender individuals was reinstated but later reversed.
- Transgender girls were barred from women's sports, and discussions on gender identity were restricted in schools.
- Some states allowed businesses to deny services to transgender people, and workplace anti-discrimination protections were rolled back.

Aspect	India	United States
Legal Recognition	Recognized as the third gender (NALSA, 2014)	No uniform federal recognition; varies by state.
Healthcare Access	Govt. schemes announced, but implementation lags	Restrictive policies in some states, blocking gender-affirming care.
Anti-discrimination Laws	The 2019 Act prohibits discrimination	Civil Rights Act does not explicitly cover gender identity in all areas.
Sports Inclusion	Policy evolving but some Restrictions exist	Many states have banned transgender athletes from competing in categories aligning with gender identity.

What are the challenges in implementing initiatives for Transgender Persons in India?

- **Challenges in Accessing Healthcare - Lack of Specialized Medical Training** – Doctors lack training in hormone therapy and gender-affirming surgeries.
- **Social Stigma** – Fear of discrimination in hospitals discourages transgender persons from seeking healthcare.
- **Limited Government Support** – Government hospitals offering gender-affirming surgery are minimal.
- **Mental Health Issues** – Transgender individuals face high levels of depression, anxiety, and suicide risk.
- **What are the Challenges in Transgender Rights Implementation?**

Challenges	Details
Social Stigma	Widespread prejudice, discrimination, and family rejection.
Legal GapsL	The 2019 Act lacks clear provisions on reservation and gender recognition.
Economic Marginalization	Transgender individuals have low employment opportunities, forcing many into begging and sex work.
Healthcare Barriers	Lack of gender-affirming surgeries and insufficient government hospitals offering such services.
Hate Crimes & Violence	Transgender persons are often subjected to violence, abuse, and police harassment.

What is the way forward?

- Strengthening Legal Protections by Amending the 2019 Act to include reservations in education and employment.
- Implement Ayushman Bharat TG Plus scheme effectively.
- Introduce gender diversity programs in schools and colleges.
- Promote transgender entrepreneurship programs.
- Promote India as a medical tourism hub for gender-affirming surgeries.
- Encourage PPP (Public-Private Partnership) in transgender healthcare.

To Solve Mains Questions - **Click here**

Reference

The Indian Express | Transgender Healthcare

