Transgender Persons (Protection of Rights) Bill, 2019

Introduction

- Parliament passed the Transgender Persons (Protection of Rights) Bill to protect rights of transgenders
- It seeks to provide a legal framework and institutional mechanism for social, economic and educational empowerment of transgenders.

Background

- Supreme Court Judgment (2014): In National Legal Services Authority versus the Union of India case, SC recognised the rights of transgender persons to decide their own gender identity and to be treated as the 'third gender'
- Supreme Court had also directed the Central and State Govts. to frame welfare schemes, extend reservation to them and take mesures to provide medical care to the transgender community.
- A Private members' bill was brought by DMK leader Tiruchi Siva, in the Rajya Sabha in 2015. It was passed in Rajya Sabha but was pending in Lok Sabha and thus lapsed in 2019 with the formation of the new Lok Sabha.
- Government bill was introduced in 2016, after being scrutinized by parliamentary standing committee it is finally passed with 27 amendments.

Objectives of the bill

- To uplift and empower transgender persons by mitigating social stigma, social exclusion, abuse and crimes against them.
- To bring this marginalised section into mainstream society in order to build an inclusive society
- To make all stakeholders more responsive
- To make enforcement agencies more accountable for their actions especially when they are dealing with transgender persons.

Key provisions of the bill

- It defines a transgender person as one whose gender does not match the gender assigned at birth, which includes trans-men, trans-women, persons with intersex variations and gender-queers.
- It prohibits discrimination against transgender persons in educational institutions, government establishments, and while renting or purchasing property, receiving healthcare and using public services.
- Right of residence is granted to every transgender person. If immediate family is unable to provide care then on court orders a transgender person may be placed in a rehabilitation centre.
- A transgender person may make an application to the District Magistrate for a certificate of identity. In case person undergoes a sex reassignment surgery, then one must apply for another certificate to change their gender identity.
- Causing harm of any kind, including physical or sexual abuse, to a transgender person, could attract punishment from six months and extend up to two years.
- National Council for Transgender Persons will be formed to advise the government on formulating policies for the community, monitor its implementation and will address grievances.
- Centre will provide healthcare services, including sex reassignment surgery and hormonal therapy.
- Educational institutions funded or recognised by the relevant government shall provide inclusive education, sports and recreational facilities for transgender persons

Pros of the bill

- It will provide a dignified life to the community members, which is guaranteed under Article 21 of Constitution.
- It will help in reducing social discrimination, social exclusion and atrocities against transgenders and will lead to their holistic development
- Transgender persons will be able to avail the benefits of government welfare schemes.
- It is a progressive step as it allows self perception of gender identity among transgenders.
- National Council for Transgender Persons, which have representation from transgender person, this move will allow incorporating more genuine demands
- Provisions of healthcare facility will help to reduce the HIV AIDS prevalence among transgenders and overall burden of the disease.

Cons of the bill

- It fails to define what constitutes discrimination in the context of the transgender community and punishment for those who discriminate.
- It rejected Standing Committee recommendation of setting up a screening committee. With this there are no avenues open to appeal in case a magistrate refuses to hand out a certificate.
- It does not make any mention of reservation in education and employment for the transgender community.
- The process of applying for a "Certificate of identity" is contrary to SC judgment, which identifies privacy, self-identity and personal integrity as fundamental rights of transgender persons.
- It did not provide extensive penalties for crimes such as rape committed against transgender persons and for other crimes or violence light punishment is given.
- Bullying in schools and at the workplace is frequent but there is no discussion about this issue in the bill
- Medical community lacks capacity and knowledge of transgender bodies.
- Due to high illiteracy among transgenders, they are more prone to face bureaucratic discrimination or delay in getting identity certificates or welfare schemes benefits.
- It recognised biological family and is silent on adopted family

Way forward

- There is need to spread awareness about this law among transgender and NGO's and civil society can play an active role in this direction
- There is need to educate and sensitise society about the violence and discrimination transgender people face, as these people seek equality not just rehabilitation.
- Government should conduct a survey to get accurate data about the socio-economic conditions of trans-people as it will help government to make effective policies for them.
- There is an urgent need to enhance law enforment response and training
- Other states should also adopt Kerala 's progressive model under which seats are reserved in higher education institutions for trans-people and Tamil Nadu model of setting up transgender welfare board.
- New infrastructure like separate hostels, bathrooms are required across all educational and workplaces

Conclusion

- Law alone is unable to empower the persecuted transgender community or to do away the social prejudice and trans-phobia, as it is an issue of inclusiveness, thus it needs to be addressed at various levels of society.