



## Mains Marathon

**Day 1:** As a result of the Transgender Persons (Protection of Rights) Act, 2019, has the transgender community been given equal standing with other sections of society? (250 Words)

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### Approach / Explanation / Answer

- Briefly explain Transgender as per the act.
- Discuss the various provisions in the Act that try to ameliorate the social condition of the community
- Also point out defects in the Act that perpetuate the status of the community that is 'different from the other gender in India'.
- Conclude by giving some suggestions to bring communities' social and educational upliftment in the interest of community, society and country.

### Answer

The Act defines a transgender person as one whose gender does not match the gender assigned at birth. It includes transmen and trans-women, persons with intersex variations, genderqueers, and persons with socio-cultural identities, such as kinnar and hijra.

### Provision of the act that provides equal ground to all citizens including transgender:

- Certificate of identity that indicating the gender as 'transgender', recognised hitherto unknown gender.
- The Bill prohibits discrimination against a transgender person, including denial of service or unfair treatment in relation to various public and market driven activities as given to others in constitution of India.
- The Bill also seeks to provide rights of health facilities to transgender persons including separate HIV surveillance centers, and sex reassignment surgeries due to recognition of their special need vis-a-vis other gender.
- It also states that the government shall review medical curriculum to address health issues of transgender persons and provide comprehensive medical insurance schemes for them.
- It calls for establishing a National Council for Transgender persons (NCT) to provide strength to their voice and interest like interest of other sections like child, women etc.
- Act states that the offences against transgender persons will attract imprisonment, it provides legal security in social sphere.
- These are the several provisions in the act that provides equal standing to transgender community in the society among other stakeholders.

- In Spite of a groundbreaking provisions in the act for transgender, there are several provisions in the act which bring in question the concept like equality before law and provides a distinct identity to the community.

### **Concerns about provisions in act:**

- The Bill does not have any provision for self-determination of gender. The transgender community has questioned the certificate of identity.
- It fails to address the lack of an effective mechanism to enforce the legal prohibition against discrimination on the ground of gender identity.
- It does not make provision for affirmative action in employment or education despite the Supreme Court's mandate in National Legal Services Authority NALSA v. Union of India (UOI) case (2014). As SC said that the community should be treated as a 'socially and educationally backward class.'
- The Bill sets out lighter sentences for several criminal offences, such as "sexual abuse" and "physical abuse", when they are committed against transgender people.
- Definitions of 3<sup>rd</sup> gender do not differentiate between categories of people among them.

### **Need to be done in interest of community:**

- Provide them self-determination of their gender and also ensure affirmative action in health, education, job at par with other socially and educationally backward class.
- Need to frame gender neutral law for rape (gender neutral penal code) and also ensure legal provisions for property inheritance, marriage, adoption, etc.
- A Constitutional commission like child, women shall be set up to provide strength to their voice and interest.
- Exclusive health preparation must be there because of unique health issues of the community.

Although there are number of issues with Act from Transgender community's point of view. But the Act paved a progressive move by recognising the community's issues and interests that will provide many successive voices in interest of community from every stratum of the society.

In the future, sooner or later progressive democratic society like India will serve the interest of every section of society on proportional equal footing.

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