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Possible entry of transgender persons in army

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Why is in news? Talks on in Armed Forces on possible entry of transgender persons, study group formed

The Indian Armed Forces are looking at possible employment opportunities for transgender persons and the roles they could perform, while examining the Transgender Persons (Protection of Rights) Act, 2019, and its implications.

News Summary:

The Armed Forces, at present, **do not recruit transgenders or people identifying as homosexuals**.

A report presented by the **Standing Committee on Personnel, Public Grievances** proposed that the Ministry of Home Affairs should **consider extending reservation benefits to transgender people in the Central Armed Police Forces (CAPFs)**.

The **joint study group**, which comprises top officers of the three services and the Armed Forces Medical Services (AFMS), recently **sought comments on the feasibility of employing transgenders** in the force.

As employment in defence forces is **selection and merit-based**, it will **remain equally applicable to transgenders** if recruitment to the military is opened to them at any given point.

It is learnt that a range of suggestions have been received, with some **insisting on not providing any special concessions** to transgenders, while others pointed to **administrative and logistical difficulties** (such as their housing).

There have also been **questions about how they and their spouses** (if any) would be identified in the military and their cultural integration with other serving military personnel.

Therefore, **multiple issues will have to be factored** in before any decision is taken as the military cannot be looked at as just an employment opportunity.

Employment rates of transgenders in India:

According to the 2011 census, India has **approximately 4.88 lakh transgender individuals**, but a significant number of them **struggle to secure employment opportunities**.

A study conducted by the **National Human Rights Commission in 2018** revealed that a staggering **96% of transgender individuals face employment discrimination**, severely limiting their access to decent career prospects.

Consequently, many transgender individuals are **forced into low-wage occupations or resort to undignified means of livelihood**, such as sex work and begging.

Approximately **23% of transgender individuals** are coerced into **participating in sex work**, a profession associated with significant health hazards. Consequently, transgender individuals face a 49-fold higher likelihood of

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Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

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HIV infection compared to the general population.

Around **92% of transgender individuals** experience a **lack of access to economic activities**, even if they possess the necessary qualifications.

Between **50% to 60% of transgender individuals did not receive formal education**, and those who did faced substantial levels of prejudice.

The NHRC reported that **52% of transgender individuals** faced **harassment by their classmates**, while 15% encountered harassment from their lecturers, leading to the discontinuation of their education.

During the same period, the employment rate of transgender individuals in private sectors or non-governmental organizations (NGOs) was **only 6%**.

Additionally, it was observed that only 1% of transgender individuals had a monthly salary exceeding Rs. 25,000, while the rest, specifically 26.35 percent, earned between Rs. 10,000 and Rs. 15,000.

Legal Recognition:

In the **2014 National Legal Services Authority vs. Union of India** ruling, the Supreme Court officially recognized transgender individuals as the third gender within the Indian Constitution.

In September 2018, the Supreme Court **nullified Section 377 of the Indian Penal Code**, decriminalizing homosexuality.

Transgender Persons (Protection of Rights) Act, 2019 defines a transgender person as someone whose gender identity does not align with the gender assigned at birth. It includes various gender identities, such as trans-men, trans-women, individuals with intersex variants, gender-queer, kinnar, and hijra.

Due to the absence of specific legislation for transgender individuals in India, the **Supreme Court issued directives to both central and state governments**, ensuring the protection of their rights until the enactment of appropriate legislation.

International Framework:

The Supreme Court referenced the **Yogyakarta Principles**, recognized by the United Nations and other international platforms, providing a comprehensive framework for gender-related human rights.

The Yogyakarta Principles were **outlined in 2006 in Yogyakarta, Indonesia**, by a group of eminent human rights experts. They are a **set of principles** that pertain to the application of international human rights law **with respect to sexual orientation and gender identity**.

Multiple provisions from international documents such as the **Universal Declaration of Human Rights (1948)**, **International Covenant on Economic, Social and Cultural Rights (1966)**, **International Covenant on Civil and Political Rights (1966)**, were cited.

Transgender Persons (Protection of Rights) Act 2019:

The Transgender Persons (Protection of Rights) Bill, 2019 was introduced in Lok Sabha on July 19, 2019 by the Minister for Social Justice and Empowerment and the bill was passed by LS on Aug 5, 2019 and RS on Nov 26, 2019 and becomes an act.

Objectives of the Act:

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It protects the rights of transgenders and prevents their marginalisation and discrimination in healthcare, education, employment, public services and benefits, among others.

Thus, the Act is an equal opportunity provider to the transgender community.

Features of the act:

Definition of a transgender person:

The act defines a transgender person as one whose gender does not match the gender assigned at birth

It includes trans-men and trans-women, persons with intersex variations, gender-queers, and persons with socio-cultural identities, such as kinnar and hijra

Intersex variations is defined to mean a person who at birth shows variation in his or her primary sexual characteristics, external genitalia, chromosomes, or hormones from the normative standard of male or female body.

Prohibition against discrimination:

The act prohibits the discrimination against a transgender person, including denial of service or unfair treatment in relation to: (i) education; (ii) employment; (iii) healthcare; (iv) access to, or enjoyment of goods, facilities, opportunities available to the public; (v) right to movement; (vi) right to reside, rent, or otherwise occupy property; (vii) opportunity to hold public or private office; and (viii) access to a government or private establishment in whose care or custody a transgender person is.

Right of residence:

Every transgender person shall have a right to reside and be included in his household

If the immediate family is unable to care for the transgender person, the person may be placed in a rehabilitation centre, on the orders of a competent court.

Employment:

No government or private entity can discriminate against a transgender person in employment matters, including recruitment, and promotion

Every establishment is required to designate a person to be a complaint officer to deal with complaints in relation to the Act.

Education:

Educational institutions funded or recognised by the relevant government shall provide inclusive education, sports and recreational facilities for transgender persons, without discrimination.

Health care:

The government must take steps to provide health facilities to transgender persons including separate HIV surveillance centres, and sex reassignment surgeries

The government shall review medical curriculum to address health issues of transgender persons, and provide comprehensive medical insurance schemes for them.

Certificate of identity for a transgender person:

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A transgender person may make an application to the District Magistrate for a certificate of identity, indicating the gender as 'transgender'.

A revised certificate may be obtained only if the individual undergoes surgery to change their gender either as a male or a female.

Welfare measures by the government:

The act states that the relevant government will take measures to ensure the full inclusion and participation of transgender persons in society

It must also take steps for their rescue and rehabilitation, vocational training and self-employment, create schemes that are transgender sensitive, and promote their participation in cultural activities

Offences and penalties:

The act recognizes the following offences against transgender persons: (i) forced or bonded labour (excluding compulsory government service for public purposes), (ii) denial of use of public places, (iii) removal from household, and village, (iv) physical, sexual, verbal, emotional or economic abuse Penalties for these offences vary between six months and two years, and a fine.

National Council for Transgender persons (NCT):

The NCT will consist of: (i) Union Minister for Social Justice (Chairperson); (ii) Minister of State for Social Justice (Vice- Chairperson); (iii) Secretary of the Ministry of Social Justice; (iv) one representative from ministries including Health, Home Affairs, and Human Resources Development

Other members include representatives of the NITI Aayog, and the National Human Rights Commission State governments will also be represented

The Council will also consist of five members from the transgender community and five experts from non-governmental organisations

The Council will **advise the central government** as well as monitor the impact of policies, legislation and projects with respect to transgender persons. It will **also redress the grievances of transgender persons**.

LGBT Rights in India:

There are approximately 480,000 transgender people in India **as per Census 2011**.

The Constitution of India **under Article 15** (prohibition of discrimination on grounds of religion, race, caste, sex or place of birth) guarantees fundamental rights and prohibits discrimination on the basis of sexual orientation and gender identity.

Though Lesbian, gay, bisexual and transgender (LGBT) rights in India have been evolving rapidly in recent years, they still face social and legal difficulties not experienced by non-LGBT persons.

The country has repealed or modified or read down its colonial-era laws (for example, **Section 377 of the IPC**) that directly discriminated against homosexual and transgender identities.

In 2018, in the landmark decision of **Navtej Singh Johar v. Union of India**, the Supreme Court of India (SC) decriminalised consensual homosexual intercourse by reading down Section 377 of the IPC.

Conclusion:

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There is a lack of factual data that proves that transgender individuals are unsuitable for military service.

A more inclusive and supportive atmosphere, where transgender individuals can openly serve without being discriminated against or marginalized could mitigate some of their social discomfort.

The broader societal shifts towards inclusivity and equality must be recognized alongside the cultural and operational challenges involved in India modernizing its armed forces by including transgenders in the armed forces.