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Implications of (Non-)Representative Bureaucracies

Paper: Outcomes of Underrepresented policy making: Transgender Rights in

India

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Abstract

Transgenders are among the most vulnerable to HIV/AIDS in India. Yet, only a minority of HIV interventions in India target this community. In addition, almost all social services theoretically available to transgenders require legal documentation that is difficult or impossible to acquire due to the migratory nature of this community. Despite the fact that transgenders face heightened risks for violence and HIV/AIDS, the policies in place, along with legislation that openly discriminates against them, fail to consider these circumstances. In order to achieve sustainable health outcomes, policies must make more equitable and accessible for this highly marginalised group.

PART I: Legal Invisibilization of the Transgender Community

“I question this very notion of boxing men and women into such neatly defined exclusive categories. Devara Dasim-ayya, the mystic Kannada poet, says ‘Breasts and long hair - is this a woman? Beard and moustache - is this a man? But what of the soul, which is neither man nor woman?’”

— *A Revathi, A Life in Trans Activism*

“They expect the legalities to transition as fast as they remove their genitals. Madam, meeting of demands takes time.”

— *A personnel in the District Legal Services Authority (Thiruvallur, Tamil Nadu).*

“We are trapped between legality and legalese, between justice and acceptance. We are always in the middle, always stretching out like bridges. Our struggle will continue and we are alright with that.”

— *Malavika, Namakkal CO*

From the day someone is born, gender plays a pivotal role in shaping an individual’s beliefs, experiences, relationships, and opportunities. For most, gender expression aligns with the one’s biological sex at birth, and exists in a relatively simple binary of “man” and “woman.” Each of these two labels carries specific societal expectations, from the type of clothing one should wear to the jobs that should have. But for individuals who do not identify with this binary system, or for those whose gender expression does not align with their biological sex, navigating these social constructs can be both daunting and frightening, rendering them vulnerable and

marginalised. Only till recently did India accept transgender people as citizens just as it recognises its men and women.

Data from the 2011 census indicated that there are about 490,000 self-identifying transgender people in India¹. Three years later, the Supreme Court made a startling and much-celebrated decision in *National Legal Services Authority (NALSA) v. Union of India* (hereinafter, the NALSA judgment), which legally recognised transgender people as a third gender. By confirming equal legal status to transgender persons established on fundamental legal principles of international human rights, the 2014 NALSA judgment not only ensured that more people will come out and self-identify as transgender but also secured for this population the right to enjoy “full moral citizenship” and dignity. In addition, the NALSA judgement opened the doors for the legislature to codify these substantial legal principles into law.²

The biological fact that sexual identity is binary and heteronormative has heavily influenced the traditional, legal practice of conferring rights based on “what is found below one’s belt buckle.”³ The rationale of allocating rights on the basis of sex emanates from two concepts—firstly, that sex is decided at birth; and secondly, that everyone fits into the neat societal boxes labelled male and female. However, the fact that several individuals are self-identifying as transgender, along with the advent of scientific innovations that allow a person’s birth sex to be altered through

¹ <http://www.census2011.co.in/transgender.php>

²

<http://www.firstpost.com/living/transgender-bill-fails-to-incorporate-spirit-of-nalsa-verdict-community-fears-denial-of-rights-3090574.html>

³ Jennifer Rellis

hormones and sex reconstruction surgery, has revealed that the binary of sex is only a social construct. The Indian legal system, however, is not equipped to handle subjects who do not fit in the binary, and this deficiency of the law is becoming more prominent as the years go by. Such collisions of legal, biological and societal norms inadvertently subject the transgender community to major human rights violations which the legal system is, more often than not, unable to protect them from.

During the struggle for recognition as third gender, especially in and around the NALSA verdict, the government and other stakeholders looked forward to a more inclusive environment when it came to the transgender community. For the '*Report of the Expert Committee on the Issues relating to Transgender Persons*' that was born when the Ministry of Social Justice and Empowerment (MSJE) put together an Expert Committee to examine issues and challenges that the transgender community routinely faces. The Expert Committee consisted of central and state government representatives, Lok Sabha representatives, university professors and most importantly, twenty four representatives from the transgender community.⁴ The involvement of a wide range of 'transgender experts' on the committee provided a unique perspective, and brought about a nuanced worldview of the issues at hand. This leadership of the Expert Committee provided for a platform to advocate for issues and impact policy during the NALSA judgment.

However, this inclusivity died out during the formulation of the two Bills . A leadership that was needed to drive the work around the Bills was not feasible because the community was not involved by the government stakeholders. The Rajya Sabha Bill was a private member bill, albeit

⁴ [http://www.prsindia.org/uploads/media/Transgender/Expert%20Committee%20Report%20\(2014\).pdf](http://www.prsindia.org/uploads/media/Transgender/Expert%20Committee%20Report%20(2014).pdf)

formulated keeping the spirit of NALSA in mind, and the 2016 Bill was introduced by the Ministry of Social Justice and Empowerment, without inputs from the community.⁵

In 2008, Jennifer Rellis⁶ compared the acceptance of the transgender and intersex communities in the United States of America (USA) and India, stating that while in the USA it could not be conceived that a sexual identity outside of the male-female binary could ever exist, in India, the possibility and recognition of a third gender was never unfounded because of religious underpinnings of the transgender community. However, the legal systems of both countries, Rellis says, were grossly underprepared for the conferring of basic human rights to the transgender community. Since Rellis's commentary, the political landscape for transgender people in India has rapidly changed; efforts by several non-governmental organisations have led to an immense recognition of the violence, stigma and discrimination that transgender individuals experience on a daily basis. In addition, the judiciary in India recently provided equal status in law to all transgender individuals, thereby bestowing on them "full moral citizenship" and iterating their right to life under Article 21 of the Constitution. However, while these legal actions represent a stride forward from a long history of legally sanctioned discrimination against the transgender community, there are still in place restrictive provisions that endanger the rights of this marginalised population.

⁵ <http://orinam.net/lbt-ally-letters-standing-committee-tg-bill-2016/>

⁶ <http://repository.law.umich.edu/cgi/viewcontent.cgi?article=1072&context=mjql>

Background of Legally Sanctioned Discrimination

In the midst of British colonisation in the 1850s, there was systemic state-sanctioned discrimination of the transgender populations. This discrimination was expressed through provisions in legal instruments such as (i) Article 26 of the Criminal Tribes Act of 1871: An Act for the Registration of Criminal Tribes and Eunuch; and (ii) Section 377 of the Penal Code, which criminalised sexual acts “against the order of nature.” The Criminal Tribes Act—now repealed—was a heinous piece of legislation that mandated all members of so-called criminal tribes to register with authorities—in some cases, the designation of criminality can be attributed to the prevalence of the caste system. Article 26 of the Act read: “Any eunuch so registered who appears, dressed or ornamented like a woman, on a public street or place, or in any other place, with the intention of being seen from a public street or place, or who dances or plays music, or takes part in any public exhibition, on a public street or place or for hire in a private house may be arrested without warrant, and shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.” The objective of the provision was to suppress and marginalise the transgender community by criminalising its members, an agenda furthered by Article 29 of the Act, which stripped transgender individuals of their legal identity and prohibited them from making a gift or will. A remnant of the discriminatory tone of the Criminal Tribes Act could be found in Section 36A of the Karnataka Police Act of 1963. The provision—put into effect on April 26, 2011— gives the Commissioner the power to “prevent, suppress or control undesirable activities of eunuchs.” It also allows the preparation and maintenance of a “register of the names and places of residence of all eunuchs residing in a

particular area who are suspected of ‘kidnapping and emasculating boys or of committing unnatural offences or any other offences or abetting the commission of such offences.’” The petition in *Karnataka Sexual Minorities Forum v State of Karnataka & Ors.* (2017) challenged the constitutionality of Section 36A, contending that it disproportionately criminalises the transgender community, and is thereby arbitrary, discriminatory and in violation of the rights to equality, liberty, life and dignity guaranteed under the Constitution. It was thereafter held that the provision is unconstitutional as it is ultra vires Article 14, 15, 19, and 21 of the Indian Constitution, and goes against the principles enshrined in *NALSA v. UOI*.

Section 377 of the Indian Penal Code is an example of another colonial legal provision used against the transgender community, and of one that continues to be in operation despite widespread advocacy against it. The provision criminalises consensual sexual contact or “carnal intercourse against the order of nature.” Various case laws, over the years, have broadened the scope of interpretation of the provision to include a plethora of sexual acts that is not procreative intercourse, defined by a report from People’s Union of Civil Liberties as “basically any form of sex which does not result in procreation comes within the rubric of Section 377.” The existence of this provision threatens and stigmatises the sexual expression of the transgender community, and has in turn been used, even in the extant times, to criminalise, imprison and prosecute individuals on the basis of their real or perceived gender identity. This provision is also inconsistent with the basic human rights to life, dignity, privacy, equality, freedom of expression and movement, and access to justice and health care. The legislative intention behind the provision was clearly to criminalise individuals whose real or imputed sexual relations were

found by the colonial government to be “unnatural and undesirable.”

The constitutionality of Section 377 was challenged before the Delhi High Court in 2001 as a hindrance to HIV/AIDS prevention groups working with key vulnerable populations. It was argued that the right to equality as well as the privacy of LGBTQI individuals was violated under the pretext of a seemingly benign legal provision. In 2009, in *Naz Foundation v Govt. of National Capital Territory of Delhi*, the Delhi High Court held that “[...] Section 377 IPC, insofar it criminalises consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Constitution.” The Court stated that there should be acceptance of the fact that sexual conduct and privacy are integral parts of an individual’s identity, and that “the sense of gender and sexual orientation of the person are so embedded in the individual that the individual carries this aspect of his or her identity wherever he or she goes.” The Court’s rationale was that Section 377 criminalises an individual solely on account of their sexuality, leading to a stigma that can impact lives even when the provision was not enforced. The Delhi High Court analysed the situation for the LGBTQI community and compared it to those who were scrutinised under the Criminal Tribes Act, 1871: “These communities and tribes were deemed criminal by their identity, and mere belonging to one of those communities rendered the individual criminal.”

However, in *Suresh Kumar Koushal & Anr. v. Naz Foundation* of December 2013, the ruling by the Delhi High Court was reversed after the Supreme Court found its declaration to be “legally unsustainable,” resulting in the recriminalization of homosexuality. The Apex Court maintained that “Section 377 does not criminalise a particular people or identity or orientation. It merely

identifies certain acts which if committed would constitute an offence. Such a prohibition regulates sexual conduct regardless of gender identity and orientation.” Perhaps the gravest mistake made by the Supreme Court in its review of the Delhi High Court ruling was when it stated that only “a minuscule fraction of the country’s population constitute lesbians, gays, bisexuals or transgenders.” In making this statement, the country’s highest court of appeal rendered invisible an entire community of people by criminalising their identities and way of life.

From the Shadows into the Light

Constitutional acceptance of the transgender and greater LGBTQI communities began in April 2014 when the Supreme Court of India ensured the legal recognition of transgender identity in the landmark case of *NALSA v. Union of India*. The Court’s bench, consisting of Justices KS Radhakrishnan and AK Sikri, challenged the heteronormative, binary gender constructs of ‘man’ and ‘woman’ that are deeply ingrained in Indian law, and affirmed that the constitutional rights and freedoms of the transgender community are absolute. This path-breaking verdict recognised a spectrum of different gender identities and provided a sound rationale for upholding the rights of the community. In stating that “[...]the gender to which a person belongs is to be determined by the person concerned,” the Court also confirmed the right to personal identity, autonomy, and self-determination under Article 21 (the right to life) of the Indian Constitution. In addition, under Article 19 (1)(a)—the freedom of speech and expression—the court also secured the rights of gender expression for every transgender person, regardless of medical, legal or surgical intervention. Lastly, the court stated that all transgender persons shall have the right to equality

and equal protection under Articles 14, 15 and 16 by prohibiting discrimination on the grounds of gender identity.

Additionally, as part of the 2014 verdict, the Court directed the state and Central governments to,

- (i) provide for affirmative actions measures and quotas in educational institutions and public appointments for the transgender community to increase their visibility in mainstream society;
- (ii) make separate HIV sero-surveillance centres for transgender individuals;
- (iii) make it illegal to mandate sex reassignment surgery (SRS) and allied medical procedures to assert gender identity;
- (iv) address violence, stigma, discrimination, mental health issues and other problems that the community faces;
- (v) mandate proper medical care for transgender persons in hospitals and provide for separate toilets;
- (vi) establish social welfare schemes specifically for the transgender community; and
- (vii) provide for awareness schemes for the public so that the community feels “that they are also part and parcel of the social life and be not treated as untouchables” and take measures to “regain their respect and place in the society.”

The Supreme Court’s acknowledgement of the rights of the transgender community paved a way for the community to be free from violence, discrimination and stigma. However, many of the protections allocated in the 2014 Bill would be challenged—and in some instances, entirely revoked—by subsequent legislation in the coming years.

In April 2015, a year after the NALSA judgment, a private member’s bill—the Rights of Transgender Persons Bill, 2014 (hereinafter, ‘Tiruchi Siva Bill’)—was passed unanimously by voice vote in the Parliament of India. The Tiruchi Siva Bill articulated a spectrum of codified human rights for the transgender community based on the NALSA judgment. It proposed two

percent horizontal reservation for transgenders in education and employment and sought affirmative actions in the present system in response to the community's historical struggle with violation of rights and social entitlements. Along with this, the Tiruchi Siva Bill upheld the requirement of legal aid, medical help and special fast-track courts for members of the transgender community. However, these provisions, though beneficial in the moment, neither adequately addressed the issue of self-identification faced by members of the transgender community, nor were eventually incorporated into the Transgender Persons (Protection of Rights) Bill of 2016.

This 2016 Bill is a diluted version of the Tiruchi Siva Bill and dangerously undermines the principles laid down in the NALSA judgment by conflating the concepts of gender and biological sex and, in turn, blurring the distinct difference between a social construct and an inherent anatomical characteristic. The definitions employed in the 2016 Bill are based on a binary and heteronormative exposition of gender; Section 4 of the Bill reads, "Neither wholly female nor wholly male; or a combination of female or male; or neither female nor male; and whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes transmen and transwomen, persons with [themselves] intersex variations and gender-queers." This definition is limiting, archaic and exclusionary—a blatant contravention of the NALSA judgment.

While the 2016 Bill does provide for the right to perceived gender identity, it does so by mandating that each transgender-identifying person apply to a medical committee comprised of a

Chief Medical Officer (CMO), District Social Welfare Officer, a psychologist or psychiatrist, a representative of the transgender community and an officer of the relevant government. This committee would conduct an inquiry and ‘certify’ transgender identities for applicants. In addition to being a gross violation of human rights and constitutional principles, the involvement of a medical committee subjects members of the third gender to arbitrary medical examinations and humiliation. None of the provisions outlined in the 2016 Bill has been at par with the NALSA judgment that expounds these rights under the right to life under the Constitution.

Most importantly, the Bill of 2016 does not provide specific provisions for transgender health care —such as free SRS surgery and allied medical treatment for transgender individuals, which were mentioned in the Tiruchi Siva Bill. It is clear that the construction of the 2016 Bill was not done with the conscious and sincere inclusion of the transgender community. This mistake cannot be overlooked when dealing with socially isolated populations, especially those groups that are plagued with the compounding stressors of violence, disease and economic disenfranchisement. In failing to create effective social protection programs for transgender individuals, policy makers not only hinder the development of positive health outcomes for this community but also condone an agenda of social, political and economic marginalisation that has been exercised throughout history.

Part II: Implications of Exclusionary Policy Making

Swasti Health Resource Centre is an international health resource center headquartered in Bangalore, India, which seeks to achieve public health outcomes for vulnerable and marginalised communities through action research with vulnerable communities, technical assistance, knowledge management and policy shaping. Since its establishment in 2004, Swasti has been involved in various global and national projects and studies focused on sectors such as gender based violence, water sanitation and hygiene, life skills trainings, social protection, and HIV/AIDS prevention.

This paper is based on several studies undertaken by Swasti since 2014, through opportunities gained through on-going grants and studies commissioned with a different objective. This paper is a synthesis of the research findings and analysis of several different studies (both formative and action research) using the analytical lens of “implications of public policy for underrepresented populations.” The aegis under which three of the studies were conducted are the Phase III of the Avahan India AIDS Initiative, a large-scale HIV/AIDS prevention programme supported by the Bill and Melinda Gates Foundation. Another two studies were conducted with the support of United Nations Development Programme India (UNDP India) with the objectives of understanding and exploring the uptake and utilisation of social protection schemes and livelihood options by the transgender people across the provinces of Gujarat, Uttar Pradesh, Maharashtra, Karnataka and Tamil Nadu. The studies provided a clearer understanding of the extent of utilisation of the various social protection schemes and entitlements available in India for this population, and of the enablers and barriers to accessing these schemes by

transgender people. Through these studies, we reached 1981 transgender populations across five provinces in India.

These studies deployed both qualitative and quantitative methods including dreaming exercises, art projects apart from the usual group discussions, key respondent interviews and observations. These have highlighted the experiences of the transgender community and marginalised gay men. From these studies, significant evidence has been gathered that demonstrates the glaring implications of not only exclusionary policy making, but also of ineffective program design, which however well-intentioned fails to address the actual needs and realities of the transgender community.

A significant part of the NALSA judgment was to implement social protection programs for transgender individuals in India. The stabilising effects of social protection policies can help to minimise the negative impact of vulnerabilities and prevent violence and stigma for groups who have been discriminated for years. Over the years, there has been a significant change in the way the world views the importance of spending on social protection. As Harmer and Macrae (2004) state, there is a growing need for focus on the part of development actors around the need to pay greater attention to the basic welfare needs of populations living in difficult environments.⁷

While most of the Indian population still live in difficult circumstances, a 2011 World Bank report states that India spends, on average, approximately 2% of its GDP on social protection initiatives.⁸ Despite the fact that a major portion of the 2016-2017 budget was allocated for defence (17.24%), only a mere 4.43%, 0.88% and 1.92% were respectively allocated for rural development, women and child welfare, and health and family welfare. The transgender

⁷ <https://www.odi.org/sites/odi.org.uk/files/odi-assets/publications-opinion-files/4547.pdf>

⁸ <http://www.worldbank.org/en/news/feature/2011/05/18/social-protection-for-a-changing-india>

population in India is amongst the most vulnerable; individuals from this community live in extremely difficult circumstances and face challenges because of the stigma attached to their gender identity and sexual orientation. Yet, a report by Swasti found that more than 74% of transgender people have never applied for any social protection schemes at all. These statistics point to the fact that despite a perceived global progress in the welfare of the LGBTQAI+ community, transgender people continue to be ostracized in the Indian society and alienated by the policies in place. This is either because awareness of these policies is limited, or because the schemes in place are ineffective in addressing the needs of this community. This point, in light of the re-criminalization of homosexuality and the recent release of a derogatory transgender bill, demonstrates that policymakers have far to go in ensuring justice and equity for the transgender community.

Firstly, the policies in place largely ignore the lack of autonomy that many transgender individuals have over their own bodies. In many instances, members of this community are controlled and coerced by a family member, a spouse or partner, or community member. One of the reports by Swasti showed nearly 65% transgender women expressing that every decision they make was controlled by their spouses and partners. As a result of this lack of autonomy, many transgender individuals make choices regarding their reproductive and sexual health based on orders from a partner, family member or community leader. For example, a partner may refuse to engage in sexual relations with a transgender person if a condom is used during the activity. When faced with the choice of satisfying a partner or using resources provided, the transgender individual is, for understandable reasons, likely to select the former. Thus, for these individuals, policies and schemes that provide government-sponsored condoms and other contraceptives,

though well-intentioned, are likely to remain inaccessible and irrelevant in the eyes of the consumer. It is essential to note, however, that the problems associated with this lack of bodily autonomy deeply intersect with the high prevalence of violence experienced by transgender individuals; one of the studies conducted by Swasti, shows that, on average, 27% of transgender individuals report facing at least one form of violence in the last six months. Specifically, more than 12% of transgender individuals report experiencing sexual violence from police, 21% from partners or spouses, and 44% from sex work clients. In addition to sexual violence, transgender individuals also experience high rates of physical, emotional and psychological violence—again, with partners and sex work clients perpetrating a significant portion of the violence. Yet, despite these disturbing statistics, the 2016 Bill does not provide an adequate definition of discrimination towards transgender individuals. Naming and addressing the issue of discrimination is necessary when public spaces —namely jobs, education, and the aspect of having families— are being made available for the transgender community. In failing to recognize and act upon the prevalence of violence observed in this community, the 2016 Bill not only defies other laws that seek to address the needs and vulnerabilities of the transgender community—such as, but not limited to, the Protection of Women from Domestic Violence (PWDVA), 2005, Sexual Harassment (Prevention, Prohibition and Redressal) at Workplace, 2013, the clauses on rape and sexual assault in the Indian Penal Code, 1860, and the relaxing of gender barriers in laws that determine marriage. Policies that fail to recognise the ways in which violence degrades, traps and isolates an individual are highly exclusionary in that they overlook one of the gravest stressors experienced by this community. That is, accessing the schemes set forth from these policies carries the risk of heightening a transgender person’s exposure to violence, and serves as less of

an asset and more of a liability. The 2016 Bill is, therefore, an example of legislation that creates rather than eliminates obstacles for groups from government, medical and/or policy sectors that seek to empower transgender people.

There are a plethora of schemes available for the transgender community to avail and access across different categories. The Indian government has also taken certain measures to uplift the transgender community and increase individuals' accessibility to national and state schemes by giving members of the community a right to vote, presence in the national census, and the ability to indicate their gender in passports and Unique Identification Cards. Among the total number of national and state social protection schemes, however, less than 20% explicitly list transgender people as beneficiaries. Most of these schemes concentrate on skill and income development, and provide interest subsidies and/or loans to help individuals set up self-sustaining businesses. Uttar Pradesh and Tamil Nadu, in particular, have schemes that provide direct employment opportunities, thereby allowing transgender people to find opportunities for livelihood; as of today, only 25 percent of transgender individuals have found formal employment in mainstream society. In addition, 32 percent meet their survival needs through begging and an astonishing 67 percent through sex work. At least 20 percent are involved in both. The focused group discussions and Key interviews reveal the priority schemes to include "Housing, Economic Development, Health, Financial Security and Proof of Identity." As one unidentified transgender individual says: "Housing is most important. I don't believe when others say there are things more important than that. We need a place to live first."

Proof of identity is a non-negotiable, mandatory document for accessing any social protection scheme. In December 2014, it was found that only 9% of the transgender population in India possessed Unique Identification Card (UID) with their names after the transition. While transgender individuals are allowed to state their gender as Eunuch in passports, one must submit documents of proof of identity, among the many acceptable documents, in order to obtain a passport. Many transgender people are forced out of their homes and communities because of their identity and as a result often do not have these documents and face great difficulties in acquiring documentation that accurately describes their gender expression. Another commonly availed social entitlement by members of the transgender community concerns voting identification documents. While transgender people were given the right to vote in 1994, it was not until the 2013 election that the demand for a third gender option to be made available on voter identification documents was met. The longstanding refusal of the democratic process to recognise the identities of transgender individuals contributes to poor political participation and greater social isolation—a set of figures released by the Election Commission of India has shown that just 4% of the transgender community are enrolled in voter lists.

In light of the difficulties associated with acquiring the documents needed to access many social protection schemes, very little data was available regarding the uptake of social protection schemes and entitlements. For instance, in the category of education, only two national schemes existed from the Ministry of Social Justice and Empowerment. While the data suggests that during the year 2014-15, 57 transgender individuals accessed the “National Means cum Merit Scholarship” that is provided to selected students from an economically weak background, gender disaggregated data was not found for the other categories. The research also revealed that

the Maithri scheme, which provides a monthly pension of Rs. 500 for those above the age of forty, was issued under the category of Financial Security was availed by 1021 Transgender people in Karnataka.

Challenges Across the Life Cycle

From a young age, transgender individuals face rejections from family, friends, peers and society, and are often exploited by the existing social and cultural institutions. Across different states, there remains a general lack of education about gender fluidity in both the home and classroom. This lack of education can greatly diminish one's understanding of their identity and self-worth. Families are reportedly reluctant to engage in any conversation about a child's gender related queries and difficulties, and instead seem likely to withdraw support entirely by excluding children from the family inheritance, depriving them of property rights and in some cases, even disowning them. In addition, many transgender children experience physical, sexual and emotional violence from their immediate family and community. These accumulating challenges can drive transgender and gender-inquiring children out of their homes into a world of uncertainty, where they are often unable to complete their education resulting in subsequent lack of job opportunities as well as lack of healthy, sustainable relationships.

It was found that nearly 63% of transgender persons were reported to have left their homes because of conflicts resulting from issues of gender and sexual identity. The diagram below explains the vicious cycle of events that transgender individuals experience during their lifetime. These factors act as hindrances to access to social protection schemes and programmes resulting in inadequate support for growth of the transgender community.

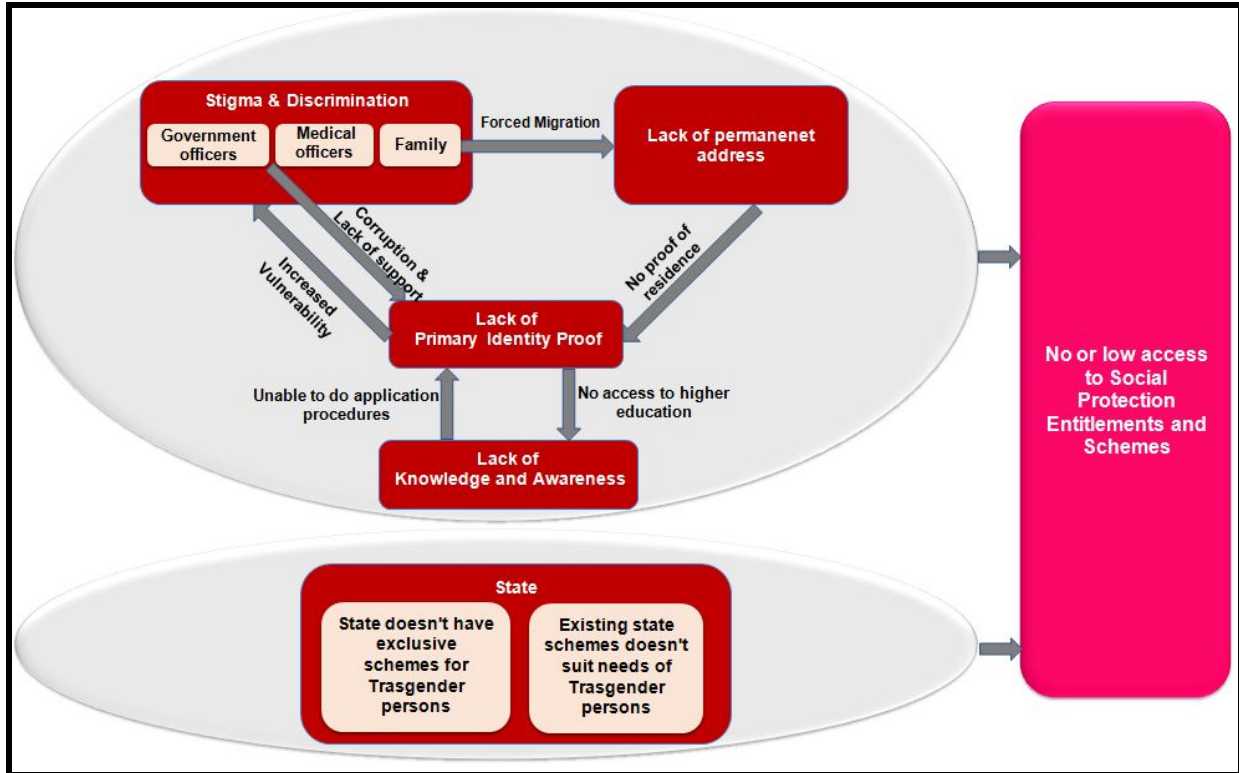


Diagram 1: Factors influencing access to social protection

Transgender children who complete their secondary education are often denied admissions in higher education despite being qualified. If enlisted, these individuals often drop out because of the level of abuse they face in the school premises. Outside of the classroom and home, these individuals may have little to no knowledge of resources available to them. Among the transgender women we work with, 63.4% of them reported to not have knowledge of any existing social schemes. Lack of proper education and low awareness with regard to social protection schemes and citizenship rights makes it difficult for people to fully avail the benefits of the social protection schemes in India.

As adults, transgender individuals face immense stigma and discrimination; many employers are hesitant to hire transgender people because of the stereotype that all transgender people are involved only in begging and/or sex work. In government offices, transgender people are made to stand separately and wait long hours. In many cases, transgender people are not addressed and are asked to return day after day. They face extreme verbal abuse and are often barred from accessing below poverty line schemes by institutions that perceive sex work as a sustaining and fulfilling source of income.

The medical community's reluctance to treat transgender individuals is especially problematic because many social schemes and government documents require that individuals first acquire a medical certificate from a chief medical officer proving their gender to be transgender. Delays and errors in application processes make it difficult to get identity proofs, and while there are services to assist in changing the gender in all existing documents, this process is long, tedious and tiresome. Next, a proof of permanent residence is also needed in order to change gender and/or avail most schemes. The migratory nature of living after leaving home results in the lack of permanent proof of residence. Families that have disowned transgender individuals often refuse to hand over any documents in their name. Without any documents proving residence and citizenship, it is nearly impossible to acquire other essential forms of identity, such as a Voter's ID, a PAN Card⁹, which is necessary to obtain bank loans, a Unique Identity Card, or a ration card.

In addition, this refusal to provide holistic care for transgender individuals promotes community-wide mistrust of the medical community and a general reluctance to seek

⁹ Permanent Account Number (**PAN**) is a ten-digit alphanumeric number, issued in the form of a laminated **card**, by the Income Tax Department, The number acts as an identifier for the person with the national tax department.

consultations from medical professionals for sexually transmitted infections and other diseases. HIV/AIDS, in particular, continues to impose a vice grip upon the transgender community, contributing to as many as 68,000 deaths annually. In order to effectively tackle this disease and empower communities to be active in achieving sustainable, long-term health outcomes, the medical and policy sectors must alter their approaches to transgender welfare. As the interviews and focused group discussions reveal, a disturbingly low percentage of transgender individuals—less than 26%—are accessing the schemes currently in place. This points to a fundamental disconnect between policy and praxis, which may be due to a combination of factors such as lack of awareness and the inaccessibility or irrelevance of the schemes themselves. As mentioned earlier, issues of reproductive autonomy and high rates of violence compromise transgender individuals' abilities to engage with contraceptive education programmes and participate in healthy sexual or romantic relationships. In addition, many of the schemes cannot be fully utilised by individuals because many transgender individuals lack the educational background and skills that these schemes require. Next, the schemes that focus on financial security and aim to provide pensions—such as the the Mythiri Scheme, a pension scheme under which transgender people between the ages of 18 and 64 with annual income less than Rs.12,000 are eligible to receive Rs. 500 per month—are unrealistic, and are not enough to meet one's basic economic necessities.

The schemes designed for the transgender population, although useful in theory, largely fail to take into consideration the ground realities and hardships faced by this community. Government bodies, medical offices and financial institutions regularly discriminate against transgender individuals and create structural barriers that make it difficult to acquire basic citizenship

documents such as voter's identification and ration cards. While it is recognised across the medical, nonprofit and government sectors that individuals from the transgender community face aggravated rates of violence, HIV/AIDS and other sexually transmitted infections, the policies in place today provide a poor infrastructure to achieve sustainable and positive health outcomes. The movement to eliminate these stressors and progress to a society in which transgender individuals are empowered and able to embrace the fundamental rights to citizenship, personal liberty and having a family—one that is not limited to the constructs of one man and one woman living together under one roof—can only take place if policy is informed by the needs of this community. Ignoring the unique needs of this population is a violent act in and of itself, and cannot be tolerated by any group striving for tangible social change.

Part III: Recommendations for Policy Change

Transformative social protection policies are distinguished by their ability to extend social entitlements to areas of equity, empowerment and cultural rights, rather than limiting them to the confinements of economic consumption and transfer. In moving forward to improve the social standing and health outcomes of marginalised groups such as transgender people, complacency cannot occur. There is vast progress to be made before justice is achieved for the transgender community; even in 2017, no concrete anti-discrimination bill exists to protect the transgender community. This clear deficit in the law presents a significant obstacle for various advocacy groups, which despite identifying the various stressors experienced by transgender communities have yet to adopt new approaches to policy and achieve sustainable health outcomes. High rates of HIV/AIDS and other sexually transmitted infections, poverty and violence demand an urgent

mobilisation of government resources and a significant revamping of current policies that have proven to be short-sighted and ineffective.

Firstly, in recognising that primary health care is the most common means through which transgender individuals access the medical community, it is essential that primary providers receive comprehensive training that allows them to better address the unique needs and stressors of the transgender community. In addition to mandating that primary care professionals discuss sexually transmitted infections with patients and provide accessible screenings for HIV/AIDS, they should also be required to assist patients in acquiring legal documentation that is in turn necessary to access many of the government-sponsored schemes described earlier in this paper. In addition, transgender people should be able to acquire the necessary documentation without needing to have their gender identity affirmed through a medical committee. Improving access to legal documentation is especially important because many transgender people lack all forms of legal documentation that are accepted by the current schemes. In light of the high rates at which transgender people are disowned from their immediate families and communities, policies should be designed to remove barriers in accessing the necessary documentation. Along the same vein, the current processes for changing one's name and gender on legal documentation must also be changed to expand opportunities for transgender people. In many instances, the disagreement between legal documentation and an individual's actual or perceived gender expression denies them access to certain opportunities, such as educational and vocational courses.

Next, steps should be taken to ensure that national health policies are as inclusive as possible in regards to transgender health care. That is, health care specifically accessed by transgender people, such as hormone therapy and sex reassignment surgery, should be funded by federal institutions on the same basis as other health services. While many sensitisation training programmes are provided by independent civil societies and intervention groups, the movement to promote cultural sensitivity for the transgender community in health care should be a national initiative. Medical professionals should be trained to provide these services and should be held to the same anti-discriminatory standards that apply for other health services.

Reproductive and sexual health, however, are not the only areas in which transgender individuals are particularly vulnerable; primary health care providers must be willing and able to provide or refer transgender patients to holistic mental health services. As a result of frequent exposures to violence, poverty and discrimination, rates of depression and suicide are highly prevalent in the transgender community. Primary providers have the ability to function as links between transgender patients and mental health services that, when accessed, can help address mental health issues. However, mental health services themselves must also be refined; as of today, mental health counselling services are often combined with HIV counselling for transgender people. This approach, though integrative in theory, inherently establishes a correlation between unhealthy sexual activity and poor mental health outcomes and inadvertently blames patients for their illnesses. While it is true that transgender youth and adults alike face higher risks of acquiring HIV/AIDS and other sexually transmitted infections, counsellors must consider the intersections between other factors—such as violence and poverty—and poor mental health. Establishing mental health services that are accessible and equitable for transgender people is

essential to combat the high rates of emotional, physical and sexual violence endured by this community. Even though the Parliament of India recently passed the Mental Healthcare Act in 2017, this piece of legislation does not explicitly target the transgender community, and may not adequately address the discriminatory practices that prevent transgender people from accessing the health care system.

In addition, policies must be enacted to improve the financial security of many members of the transgender community. Firstly, policy makers must promote anti-discrimination legislation that prevents employers, educational institutions and federal bodies from stigmatising transgender applicants. As mentioned earlier, the 2016 Bill includes no definition of discrimination against this community and therefore does not address practices that compromise their fundamental liberties. Affirmative action laws are especially important because they mitigate the disparities that otherwise prevent transgender individuals from achieving socioeconomic success. In addition, affirmative action laws confirm the rights of the transgender community to exist in mainstream spaces that for far too long have been limited to those who obey the binary construct of gender. Opening these doors for transgender individuals also increases the likelihood that they will rise to policy making positions and thus be able to shape social protection programs. According to the United States Agency for International Development's LGBT Vision for Action, representation of LGBT people in higher policy positions is essential for effective policy enactment, and "has been associated with the development of more 'just' policy prescriptions for society at large" (USAID, 2014).

Next, an essential component of improving the financial security of transgender people involves establishing schemes that educate transgender youth and about financial wellness. These

workshops will not only empower and motivate transgender people to seek opportunities that provide sustainable financial wellness but will also teach them how to monitor their spending, access services at a bank, create a resume and maintain a healthy credit score. In turn, these opportunities will challenge stereotypes about transgender people only being involved in sex work and begging. Finally, schemes that provide pensions to transgender people must be revamped to better meet individual needs. While initiatives such as the Maithri scheme seek to provide sustainable financial resources, a monthly stipend of Rs. 500 is hardly enough to support an individual. Yet, even if pensions are increased and financial skills are taught to members of the transgender community, acquiring a permanent residence still has several barriers. Even for those who can afford a permanent living address, the lack of anti-discriminatory statutes for this community makes them liable to discrimination and prejudice from various housing institutions. Thus, policies must address not only the medical and government sectors but must tackle every major body of power that transgender individuals interact with.

Given the wide scope with which policies must act to truly and tangibly benefit the transgender community, it is necessary to establish a centralised advocacy group for transgender youth and adults, which can oversee the protection and empowerment of this group. This group can exist as a collaboration between different public health, policy and human rights organisations that share the goal of improving the social conditions and health outcomes for this marginalised population. Perhaps most importantly, annual needs assessment programs for the various policies serving transgender communities need to be created and implemented on a national scale to bridge the gap in knowledge about the political and socio-economic realities faced by these populations. Policies and intervention programs must evolve alongside populations and must be able to adapt

to new grievances and needs that marginalised groups experience across time. While studies have been designed to determine the disparities experienced by transgender communities, these have largely been limited to particular states in India and have yet to reach a national scale. And though there are several private organisations across the world that focus on wellness for transgender communities, a nationally-sponsored group has the potential to reach a wider population and promote a more sustainable impact.

Any nation, civil society or private organisation working to improve the health outcomes of marginalised populations must be driven by a fundamental goal of inclusion. Both policies, along with the bodies that construct them, must be opened to include individuals from the marginalised communities for whom the policies are meant to serve. Representatives from these backgrounds can provide necessary insight into the realities faced by these communities. As long as policies continue to exclude members from the most vulnerable groups, and as long as legal institutions fail to pass laws protecting transgender communities from discrimination, violence and harassment, true justice for all will remain a dream. Without taking the necessary steps to ensure that any person, irrespective of gender and sexuality gets equal opportunities for growth, the transgender community will continue to live in the shadows hidden, invisible and unprotected.

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