

# Strengths Based Approach to Transinclusion in Indian Higher Education: A Way Towards Enhancing Mental Health and Well-Being

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The International Covenant on Civil and Political Rights and the Constitution of India enshrines provisions on safeguarding the right to equality of all individuals. Trickling down to implementation, many are deprived of the same right of equality on the basis of their identities. Across the globe, the transgender community is one group among these vulnerable populations affected by the right to equality as evidenced by societal stigma and discrimination (Willging, Salvador, & Kano, 2006). Currently available research on transgender mental health and well-being suggest that antitransgender discrimination creates a hostile and stressful social environment and is a direct correlate of lower mental health outcomes (Meyer, 2003). This research involving critical social work theory identifies social inclusion in various settings including education as a potential solution to improve mental health outcomes (Leonard & Metcalf, 2014). India's first ever legislation on transgender rights, The Transgender Persons (Protection of Rights) Act, 2019 falls short of including the right to educational opportunities and reservation in educational institutions among its provisions (Padhi & Mohanty, 2019). Failing to keep up with the contemporary global discourse on transgender persons' rights, the legislation took a myopic view, with the problem focused and pathology oriented approach. As an alternative to this approach, the authors of this chapter attempt to integrate a strengths-based approach into policy and legislations to facilitate trans-inclusion in India. Writing form an analytical and descriptive perspective, the authors proposes inclusion as an effective tool to enhance mental health and well-being of transgender persons.



**Key words:** mental health, higher education, transgender, strengths based approach, Transgender Persons (Protection of Rights) Act, 2019, India

#### INTRODUCTION

Every society is structured on a set of social norms that are visible and invisible rules of conduct. These informal rules govern individuals' behaviour in groups. Sociologists have focused on the social function of norms and identified that society's construction of what is acceptable and what is normative have stemmed from these ideas (Durkheim, 1982; Parsons 1968; Hecter & Opp, 2001; WHO, 2009). Individuals and groups who are part of this society but do not adhere to the majoritarian, normative concepts are considered as deviant. Deviance, according to William Graham Sumner (1906), is a violation of established contextual, cultural, or social norms, whether folkways, mores, or codified law.

The functionalist theorists understood deviance as a key component of a successful functioning society (Durkheim, 1893) whereas in symbolic interactionism, deviant activities and identities are considered to be socially defined and then "lived" as deviant. Social groups and authorities first make the rules and then apply them to people who are labelled as outsiders (Becker, 1963). Diverging from functionalists, the conflict theorists do not see normative order and deviance as a necessary function of society. Moreover, it is seen as evidence of inequality in the society. They consider institutions of normalisation as mechanisms to maintain the historically existent power structure for perpetuating the disparity (Mills, 1956). Thus, the already disadvantaged sections are pushed further to the margins. People with non-confirming gender identities are one of the major victims of this system.

Heteronormative constructs of society view sex and gender as binary i.e., female and male, feminine and masculine. Society has further constructed gender norms that are considered to be either biological or natural and generalised it to all people regardless of their circumstances. People not confirming to these norms, like intersex persons, or gay, lesbian, bisexual, transgender or asexual persons, are thereby considered as deviant (Institute of Medicine, 2011).

Sexuality was not a matter of moral, legal or psychological concern up until 19<sup>th</sup> century (Little et al., 2013). Early 1960s witnessed the advent of sociological study of deviance that featured gender variance, specifically homosexuality, as prototypical of the central principles of the discipline (Dennis, 2015). The first wave of sociological research on transgender persons came during 1970s to mid-1990s. This emerged prominently from the social constructionist critiques of medical knowledge, feminist theory, deviance studies, and ethnomethodological approaches to gender. They viewed transgender persons, particularly those who undergo medicalised gender transitions, as objects of study and as theoretically



useful exemplars of gender deviance (Schilt & Lagos, 2017). The psychiatric and biological disciplines that emerged simultaneously categorised gender non-conformance as a psychological deviance (Little et al., 2013). Their basic instincts and desires were considered contrary to nature and a dangerous quality that defined the entire personality and moral being of an individual (Foucault, 1980). They have been facing considerable stigma based over a century on being characterized as "mentally ill", "socially deviant" and "sexually predatory". The faulty and distorted views have changed slightly in recent years for lesbians and gay men. However, transgender people face comparatively higher stigma and are ridiculed by a society that does not understand them (Human Rights Campaign, 2020).

The lives of transgender persons in India have traversed through a meandering path. India is home to transgender persons with a range of identities unique to South Asia (Thompson et al., 2019) such as Hijras, eunuchs, Kothis, Aravanis, Jogappas and Shiv-Shakthis. They have been part of the Indian society for centuries and were an integral part of the Hindu mythology, folklore, epic and early Vedic literatures. They held significant positions in the Indian society from 9<sup>th</sup> century B. C. During the Mughal era in Medieval India, Hijras held high positions in royal courts and Islamic religious institutions serving as advisors, administrators, guardians of harems and religious places and guards for women's quarters of royal households. They were considered trustworthy, clever and loyal and had free access to all the spaces playing a significant role in politics and state decision making (Michelraj, 2015).

The emergence of colonial rule in 18<sup>th</sup> century created a drastic change in the scenario. European travellers and British colonial administrators were intolerant of the social position given to Hijras. They introduced legislation such as Criminal Tribes Act, 1871 to criminalise Hijras but later repealed in the post-colonial period in 1952. However, the deteriorated status of transgender community shaped during colonial era existed as a colonial vestige. It still haunts the transgender community in contemporary times (Sharma, 2012).

As years passed by, many countries including the colonisers themselves, retracted from their redundant conceptualisations of gender diversities. Despite this fact the Indian society which carried forward the stigmatised notions from the west still show intolerance toward those who do not conform to heteronormative identities (Nanda, 1999). This intolerance is often manifested in the form of marginalization (Thompson et al., 2019), stigma, discrimination and violence (Willging, Salvador & Kano, 2006). Longstanding exposure to such psychosocial stressors put the transgender community at higher risk of mental health concerns (Gilman, Cochran, Mays, Hughes, Ostrow & Kessler, 2001) and creates an astonishingly elevated mental health disparity (Robles et al., 2016).

The correlation between transgender discrimination and deteriorating mental health outcomes is reflected significantly in the education system (Wilson, Chen, Arayasirikul, Raymond &



McFarland, 2016). Studies report that transgender youth studying at various levels including higher education experience higher gender based discriminations and are prone to depression, self-harm, and suicide behaviors than cisgender youths (Connolly, Zervos, Barone, Johnson, & Joseph, 2016; Veale, Watson, Peter, & Saewyc, 2017; Becker, Roberts, Ritts, Branagan, Warner, & Clark, 2017). Thus, gender based discrimination and exclusion in educational spaces is one of the major contributing factors for poor mental health and well-being among the transgender community.

Realising this inter-linkage between exclusion in education and mental health of transgender persons, studies have suggested that educational spaces, especially higher education institutions, should consider measures to establish a learning environment that is more inclusive for gender minorities (Anderssen, Sivertsen, Lønning, & Malterud, 2020) ensuring that transinclusion in these spaces could thus be an effective measure to enhance their mental health and well-being. Some of the State governments and Non-Governmental Organisations (NGO) in India initiated certain commendable steps in this regard (Ifthika, 2018; Ifthika, 2019; Correspondent, 2018). However, when it came to a national legislation, The Transgender Persons (Protection of Rights) Act, 2019, formulated to protect the rights of transgender community failed to take into concern the voices and experiences of transgender persons. The Act rather took a problem centred and pathology oriented approach which could worsen the lives of transgender persons. Addressing this concern, the present paper aims to propose a strengths approach as an alternative to understand transgender lives and urges a revisit of The Transgender Persons (Protection of Rights) Act, 2019 in the line of inclusion, participation and strengths.

This chapter is formulated based on the insights that emerged from reviewing the literature on transgender education, mental health and related legislations through document analysis. The authors referred books, journals, reports, policy documents, legislations, newspaper articles and other relevant secondary literature to build understanding and construct logical arguments pertaining to the topic. The first author's conversations with transgender persons provided further critical and reflexive insights rooted in their lived experiences.

# EXCLUSION, DISCRIMINATION AND MENTAL HEALTH NEXUS IN TRANSGENDER LIVES

Social exclusion is defined as a combination of interconnecting factors including low income, poor housing, low skills and poor education but the word 'exclusion' means more than these disadvantages. Duffy (1995) talks of exclusion as "a broader concept than poverty, encompassing not only material means but the inability to participate effectively in economic, social, political and cultural life, and in some characterisations, alienation and distance from the mainstream society" (Sayce, 2001, p. 121). Social exclusion generally involves exclusion in multiple dimensions, and these can reinforce each other (Khan, Combaz, & Fraser, 2015).



The Indian society is stratified on the basis of language, caste, class, education and more. Gender plays a significant role in this system of stratification. Social exclusion based on these stratifications occurs largely in the society. The diverse social and cultural background of the Indian society give way to accommodation of many of these difference, especially those based on language, region, customs. However, gender based differentiations particularly of gender non-confirming individuals is highly stigmatised. Gender expression the core element of their 'being', becomes the cause for exclusion and discrimination (Vanitha, 2017).

Transgender persons in India experience multisystemic structural violence (Chakrapani, Newman, Shunmugam, McLuckie, & Melwin, 2007). This manifests different forms of discrimination and oppression. Some of the discriminatory practice occurs outside the conscious awareness of persons who constitute the key institutions of society. These individuals utilise their inherent power positions to exert indirect forms of oppression like stigmatization on certain sections within the society who are deemed powerless based on their gender, caste, class, religion, disability etc. They use this as a method of social control to prioritize and enforce their beliefs, world views, and their power within a society (Galtung, 1969). When the stigmatised and excluded populations cease to adhere to the normative notions set by the oppressors and do not accept non dominant status assigned to them, the indirect forms of oppression transform into direct forms like abuse and violence (Link & Phelan, 2001). Transgender persons being the most visible group within people with gender non-confirming identities thus face higher risk and vulnerability. Studies revealed multiple intersecting social and institutional contexts and experiences of stigmatization, discrimination, and violence across police, community, family, health care (Chakrapani et al., 2007) and education systems throughout their lives (Vs & Nagaraj, 2015).

# LINKAGES BETWEEN TRANSEXCLUSION IN EDUCATION AND MENTAL HEALTH

Education is one of the major domains in which transgender persons face high discrimination and exclusion. According to Census 2011, 27% of transgender persons in India completed primary education and middle school, 10% each completed higher secondary and high school. Another 27% pursued Under Graduation and 26% studied to Post-Graduation. The literacy level of transgender persons (46%) is comparatively lower than the cisgender population (74%) (Census of India, 2011).

The harassment and discrimination faced by the transgender community is one of the prominent reasons for this disparity (Das, 2019). They face neglect, and physical, sexual and emotional violence in schools. Often experience isolation, abuses, and are denied equal opportunity in comparison to cisgender students. They face accusations from teachers for violating dominant educational and societal etiquette. Deprivation from family and



educational institutions often leads them to drop out of education (Virupaksha & Muralidhar, 2018) and they experience a state of forced illiteracy (Vs & Nagaraj, 2015).

Estimates of the study titled 'Separation and Stigma: Transgender Youth & School Facilities' indicate that about 75% of transgender students report feeling unsafe in high school because of their gender expression. Almost half of the participants reported that either school authorities or other staff prevented them from using the name or pronoun that matched their gender. This evidently shows the intersection of structural and interpersonal forms of stigma (Movement Advancement Project & GLSEN, 2017). These experiences of harassment in schools and its impact on the transgender persons are extended into their higher education.

A survey of transgender adults found that 24% of the participants who publicly identified themselves as transgender or were perceived as transgender experienced verbal, physical or sexual harassment in their colleges. As a result, 16% of them dropped out of college (James, Herman, Rankin, Keisling, Mottet, & Anaf, 2016). Transgender persons attending college, graduate school, professional school, or technical school reported high rates of negative treatment by students, teachers and staff, including harassment and bullying (Grant, Mottet, Tanis, Harrison, Herman, & Keisling, 2011). Literature from various countries indicates that irrespective of the country of origin transgender students experience higher distress (Effrig, Bieschke, & Locke, 2011), self-harm (Connolly et al., 2016) and suicidal ideation (Becker, Roberts, Ritts, Branagan, Warner, & Clark, 2017) than their cisgender counterparts. They also face higher risk of victimization and substance use (Johns et al., 2019). Transgender students reported comparatively more psychosocial burdens regarding satisfaction with life, loneliness, mental health problems and disorders, and suicide-related measures (Anderssen, Sivertsen, Lønning & Malterud, 2020). Many higher educational institutions also struggle to address the needs of students who identify as transgender or gender nonconforming (Beemyn, 2016; Goldberg, 2018).

There is minimal literature regarding the status of higher education among transgender persons in India. The data shared by Ramesh Pokhriyal 'Nishank', Cabinet Minister of Human Resource Development on 2<sup>nd</sup> December 2019 regarding the number of transgender students in the central universities is a clear reflection of the situation. According to the Minister's statement there were no transgender students studying in the central universities under the administrative control of Ministry of Human Resource Development. The exception here is the 814 transgender students enrolled for distance education in Indira Gandhi National Open University over the last 5 years. He also shared that the number of transgender teaching and non-teaching staff in the central universities was also nil. However, these numbers may not give the real picture due to many reasons. Professor Rajesh Kumar of Delhi University, who leads the Transgender Resource Centre, reported that many transgender students do not identify as 'other' gender due to the fear of stigma (Agha, 2019). A transwoman student, Ray (2019), writes in response to the Minister's statement that, "Then



who am I? I am a trans person, who identifies herself as a trans woman, but I did not declare so in my form. HRD minister, I am studying in the Delhi University. Count me! Sadly, the Bill in current form will ensure more of our stigmatisation."

Thus, social exclusion and deep rooted structural inequalities serve as core reasons for the mental health disparity experienced by the transgender community. This suggests that social exclusion and inclusion are potentially powerful concepts in relation to the deterioration of mental health among transgender persons. Interventions formulated for facilitating better mental health and well-being should thereby be based on the principle of social inclusion of transgender persons i.e., trans-inclusion.

#### IS TRANS-INCLUSION THE WAY FORWARD?

Social inclusion in diverse domains of life plays a significant role in facilitating better mental health and well-being of many vulnerable communities including the transgender community. An empirical research on transgender mental health revealed that anti-transgender discrimination and lower mental health outcomes are directly correlated (Riggs, Ansara, & Treharne, 2015). Another study on 'Mental Health of Transgender Children Who Are Supported in Their Identities' conducted with socially transitioned transgender children reported that depression level of trans-children receiving support in their gender identity fall within normative levels for their developmental age group. Their anxiety levels are only minimally elevated (Olson, Durwood, DeMeules, & McLaughlin, 2016).

Similarly, studies on education and mental health of transgender persons demonstrate that transgender persons who studied in schools with affirming and protective environments, and have anti-bullying laws that include sexual orientation and gender identity experienced less homophobic victimization and harassment than transgender persons who lacked these transinclusive measures (Kosciw, Greytak, Palmer, Boesen & Palmer, 2014). Transgender students with access to inclusive spaces often reported feeling safer and are less likely to report depressive symptoms of substance use, and suicidal thoughts and behaviors in comparison with students who lacked such trans-inclusive resources (Poteat, Sinclair, DiGiovanni, Koenig, & Russell, 2012).

Furthermore, the improved mental health outcomes through trans-inclusion in education are also seen at later developmental stages. Toomey (2011) found that LGBT persons who were exposed to trans-inclusive education perceived that it encouraged safety and better psychological health during young adulthood. These experiences reduced the negative effects of LGBT victimization on their well-being. Thus trans-inclusive services in education and trans-inclusive policy and curriculums improve transgender persons' a sense of safety (Toomey, McGuire & Russell, 2012) and feelings of acceptance (GLSEN, 2011). This education was identified as reducing gender based victimization in schools (Kosciw, Greytak,



Bartkiewicz, Boesen, & Palmer, 2012) and facilitating better psychological adjustments and better mental health outcomes (Black, Fedewa & Gonzalez, 2012; Russell & Fish, 2016). One study conducted among transgender persons in Southern India identified that access to higher level of education strengthens their resilience, reduced psychological distress and promotes mental health in the transgender community. Findings indicated the transgender persons' dire need for social inclusion and education (Virupaksha & Muralidhar, 2018).

The literature discussed this far indicates that reducing gender based discrimination and ensuring transinclusion in education is a potential measure for enhancing mental health and well-being of transgender persons throughout their lives.

#### TRANS VOICES AND OTHER INITIATIVES ON INCLUSION

Many women's groups, queer collectives, NGOs, students, activists and academicians working in the field of gender, sexuality and education, across India have strongly voiced out the need to make educational institutions inclusive for people identifying to all gender diversities. Many advocated for proactive measures to strengthen the democracy within these institutions ("Recommendations on Draft New Education Policy", 2019).

Certain state governments independently and in collaboration with some NGOs have taken efforts on ground and at policy level to ensure transinclusion in education. The Delhi government in 2018 initiated a plan to introduce guidelines on trans-inclusion in 1,100 state run schools. Delhi based NGO SPACE in collaboration with the Directorate of Education (DoE) developed anti-bullying policy for schools (Ifthika, 2018; Ifthika, 2019). The first state to announce a transgender policy in 2015, Kerala in 2018, introduced trans-reservation in universities for pursuing under-graduation and post-graduation (Correspondent, 2018). In 2015, Loyola College in Trivandrum, Kerala took initiatives to make its campus inclusive for transgender persons and became the first transgender friendly college in India. While steps are taken towards inclusion, some States took initiatives to build segregated educational spaces. Uttar Pradesh is taking the lead to make the country's first university for transgender community (PTI, 2019). These initiatives by individual state governments and NGOs can contribute towards facilitating trans-inclusion and improve their mental health and well-being. However to make trans-inclusion a national agenda the country needed a central legislation.

The National Legal Services Authority (NALSA) judgement (2014), following a writ petition filed by NALSA supported by leading transgender activists like Lakshmi Narayan Tripathi was a landmark step in this regard. It was a vindication of the centuries old movement forcing the state to recognise and uphold gender identities. The directives for the legal recognition of transgender persons' identities and provision of reservations in jobs and education were the significant elements of the judgement (Radhakrishnan, 2014). Following the judgement, The



Transgender Rights Bill (2014) was introduced in Rajya Sabha by parliamentarian Mr.Tiruchi Siva. This was a draft of rights and a clear dismantling of the historical structures built to oppress and invisibilise sexual minorities. The bill, passed in 2015, gave a sense of hope that the Supreme Court verdict would be followed by legislative action. However, the series of bills that came up in 2016 and 2018 were clear retraction of the claims made, and assurances given. The bill finally passed as the Transgender Persons (Protection of Rights) Act on 5<sup>th</sup> August 2019 which became nothing but a death knell for the transgender community (Mudraboyina, Jagirdar, & Philip, 2019).

An Act that aimed at systematically eradicating social stigma and ostracism faced by the community ended up perpetuating the same. It did not keep up with contemporary global discourse on transgender persons' rights. It adopted a highly discriminatory, unscientific and regressive stand towards the issue (Krishnan, 2019). With its problem-centered approach it is not cognisant about the views and perspectives of transgender community. In the larger debate concerning the faults of the Act, there seems to be a myopic view on a specific set of rights (Padhi & Mohanty, 2019) and a purposive invisibility of many intersections. This raises wide spread criticisms and protests from the transgender community, activists, academicians and people from diverse domains. Process for gender identification, mandating Sex Reassignment Surgery (SRS) and lack of reservation in education were some of the concerns unveiled by the critiques (Mohan, 2020). These issues equivocally point towards the redundant pathology oriented approach on which the Act is based.

# A STRENGTHS APPROACH TO THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

Social policies and legislations are societal responses to social problems. Methods of social policy formulation and analysis, like methods of social work intervention have typically been problem focused and pathology oriented (Chambers, 1986 as in Chapin, 1995). In the haste of defining the problem, the capacity of people to address their own needs is trivialised. As the problem is defined, the labelling process and a societal predisposition creep in to facilitate a social construction of reality to fit the needs of the people in power. This may transform people into problems (Chapin, 1995). The Transgender Persons (Protection of Rights) Act, 2019 has been formulated on similar foundations.

In sharp contrast with approaches that focus on assessment, correction of problems, deficits, and pathology stands the strengths-based approach. The pioneers of the 1980s Dennis Saleebey, Charles Rapp, and Anne Weick advocated for a dramatic departure from conventional social work practice (Francis, 2014). According to Saleebey (2001) strengths-based approach to social work demands a different way of seeing clients, their environments, and their current situations. This approach seeks to explore and exploit the strengths and resources of clients and environments support them to achieve their goals (Taylor, 1997). It



proposes a lexicon of key words and concepts based on plasticity, empowerment, membership, resilience, healing and wholeness. It gives importance to dialogue and collaboration between the client and the social worker (Saleebey, 2009). Importantly, the new millennium has witnessed a broadening of global interest in strengths based approaches (Francis, 2014; Pulla, Chenowith, Francis & Bakaj, 2012; Rapp & Sullivan, 2014).

In 1995, Rosemary Kennedy Chapin introduced the concept of strengths approach to the realm of social policy development. It was taken as a more inclusive approach to policy formulation and expected that an expanding array of empowering policy options would arise from it (Chapin, 1995). Strengths approach brings attention to the inconsistencies and incongruences within a policy which often becomes additional barriers upon target beneficiaries rather than creating opportunities. It encompasses the values of social work profession such as, encouraging informed participation, advocacy to improve social conditions and promoting social justice into the realm of policy formulation (Rapp, Pettus & Goscha, 2006). The approach emphasises equal access to resources and services for every individual and provides expanded choices and opportunities to all, especially to the disadvantaged or oppressed communities (Pulla, 2017). This has repercussions for the transgender community in India as they have historically held a highly disadvantaged and vulnerable social position. When legislations meant to protect their rights end up doing the contrary, the strengths approach could serve as an effective alternative to relook and revisit at the legislation.

One avenue of approaching this is through Rapp, Pettus, and Goscha's (2006) six principles of strengths-based policy development (see Figure 1). Understanding the Transgender Persons (Protection of Rights) Act, 2019 in the light of these principles may offer a better standpoint to critically analyse the Act through the values of equity and social justice.

#### PRINCIPLES OF STRENGTHS BASED POLICY DEVELOPMENT

Principle 1: Strengths-Based Social Policy Is Congruent with Target Population Experience/Agenda

Principle 2: Strengths-Based Social Policy Puts Problems in Their Place

Principle 3: Strengths-Based Social Policy Emphasizes Equal Membership and a Positive Perception of the Environment

Principle 4: Strengths-Based Social Policy Is Voluntary for Beneficiaries

Principle 5: Strengths-Based Policy Emphasizes Choice

Principle 6: Strengths-Based Policy Provides for a Client Well-Being Incentive Structure

Figure 1. The principles of strengths based policy development as proposed by Rapp, Pettus and Goscha's (2006).



The first principle of strengths based policy development emphasises the significance of target population's experiences. Every policies and legislations should be congruent with the goals, perception of barriers, and the nature of desired assistance preferred by the target population (Early & GlenMaye, 2000). The process of gender identification prescribed in the Act is one of the major points of contest that stands in contradiction to this principle. NALSA judgement emphasised that "Non-recognition of the identity of Hijras/Transgenders in the various legislations denies them equal protection of law and they face wide-spread discrimination" (Radhakrishnan, 2014). Section 4 to 7 of the Act on recognition of identity of transgender persons puts this very basic construct of gender into question. Section 4 (2) of the Act recognises the right to self-identified gender but the power to recognise a person as transgender or not, rests with the District Magistrate (DM) and not the person themselves. The Act further mandates a proof of Sex Reconstruction Surgery (SRS) and psychologist's certificate for being identified as male or female. Many transgender persons do not consider SRS necessary or have undergone surgery years ago. Mandating SRS certificate is unjustified and thus violates the act itself (Mohan, 2020).

Viewing these sections of the Act through the strengths approach paradigm raises both points of contest and opportunity. Concerning the section on identification of gender, the strengths approach proposes the need for a more inclusionary process. The first principle of the strengths approach seeks that the goals should be defined by the target population who are directly affected by the potential policy or legislation.

The formulation and implementation of policies and legislations are mostly dominated by those in society with professional status. This privileges the professionals and gives them power to set goals, define problems, propose solutions and interpret the experience of another person's life without living that person's reality (Rose, 2000). The DM, medical professionals, psychologists and other officials who have the power to decide the transgender persons' gender identity are experiencing the same privilege. Thus, rather than the transpersons' lived reality of their gender, the assumptions and criteria of the so called professionals is considered significant. Taking a strengths approach, the Act should make the process centred on the transpersons' lived experiences. It also necessitates the participation and leadership of the target population in the process. This would safeguard the Act from being based on inaccurate goals and misguiding solutions.

The second principle focuses on locating the problems appropriately, rather than blaming the target population for their situation. Most policies and legislations begin by defining a problem considered inherent to the target population. They are blamed and the social problem is often attributed as their deficiency in motivation, capacity, or opportunity. Strengths approach takes a different language here. Instead of problem, it begins with a statement of goals. The problem is considered as a barrier or an identifiable hurdle in attaining the decided goals (Weick & Chamberlain, 2002). The criminalisation of what the Act calls 'false claims' is an example.



Trans rights activists like Meera Sanghamitra raised their voice against the whole process. According to her, the Act is likely a product of colonial hangover. It is intrusive and gave bureaucracy too much power over human life. She points out that due to the lack of education among transgender persons there is the likelihood of confusion and errors. This could be considered as 'false claims', evoking penal action against the person (Mohan, 2020).

Adopting a strengths approach, an appropriate measure should be to relook into the concept of gender identification from the transgender persons' lens and formulate a process which could meet the goals defined by the transgender community. This would bring to light the hindrances in the current process like procedural complexities and mandatory SRS. Thus steps could be initiated to solve these issues and make the process more accommodative, rather than punishing the transgender persons for 'false claims'.

The third principle emphasises equal membership and positive perception of the environment. Section 3 (1) of the Act on prohibition against discrimination and Section 18 on offences and penalties could be understood in accordance to the principle. The equal membership mentioned here is based on three dimensions namely, resources, options and opportunity, and location. It aims to foster integration of all the individuals into the society. This principle also refers the need for taking a positive perception of the environment. It views every individual community as an oasis of resources with vast, often untapped and frequently unappreciated reservoirs of physical, emotional, cognitive, interpersonal, social, and spiritual energies, resources and competencies (Saleebey, 1992).

Reservation in India, as mentioned in the Articles 15 and 16 of the Indian Constitution, allows the State to set quotas for "socially and educationally backward classes of citizens" (Bakshi, 2015). It intends to ensure equality in representation and participation of various sections of society including Schedule Caste (SC), Scheduled Tribe (ST), Other Backward Class (OBC), Persons with Disability (PwD) etc. Unfortunately, the transgender persons were never mentioned in any of the reservation policies. Reservation of transgender persons in admissions to educational institutions and public appointments by treating them as socially and educationally backward classes of citizens was a prime demand from the trans community. However, the Act which was expected to fill this gap failed to do so. Considering the principle of equal membership in formulation of the legislation could have bridged this gap at the initial stages itself.

The lack of any sort of punishment for trans-discrimination and the highly biased penalty for sexual abuse (including rape) of transgender persons have institutionalises legal discrimination and raised questions on equality. Under section 18 (d), the punishment for sexual abuse against transgenders is imprisonment of "not less than six months but which may extend to two years and with fine". This is much less than the punishment for rape against women under the Indian Penal Code (IPC), which is imprisonment of "not less than



seven years but which may be for life or for a term which may extend to ten years and shall also be liable for fine" (Indian Penal Code, 1860). Taking a strengths-based approach these sections of the Act could be revamped by emphasizing equal membership.

The fourth principle of strengths approach is on ensuring voluntarity of beneficiaries. Policies and legislations are tools to create opportunities for target population to utilise their strengths, talents, and skills to achieve a desired goal. The freedom of choice and consent of the individuals should be prominent and accessing the benefits should be voluntary. The person must have the option to decide whether they want to access the benefits or not and to decide whether the mechanisms built in are desirable in achieving the goal (Rapp, Pettus, & Goscha, 2006).

Furthering the principle of voluntarity, the fifth principle focuses on availability of choices. The principle of voluntarity dealt with the person's freedom to opt in or out of the benefits whereas the principle on choices ensures that the policy and legislations offer the person a wide range of meaningful options to choose from. Empirical research suggest that 'choice is not only a value preference but is related to positive outcomes' (Ridgway & Rapp, 1997). This principle is also interlinked with the third principle on full membership and viewing the community as an oasis of resources. Taking such a stance towards the transgender community is an inevitable way to improve their choices in life.

Welfare provisions and benefits mentioned in the Act are minimal and for accessing the welfare schemes, identification as transgender by the concerned authority is mandatory. This hinders the access to services for many transgender persons. Thus, rather than voluntarity and choice, it is the inaccessible processes which compel many transgender persons to opt out of the services.

The fifth principle on choices holds relevance in the section on gender identification, too. Though the Act moves ahead from the binary classification of genderism, it fails to recognise many other gender variations. The form prescribed by the Act includes only 'transgender,' thereby failing to recognise multiple gender identities including culture specific identities. Adopting the strengths principle on choices could expand this classification to include persons with intersex variations and gender-queers. It would also open doors to persons with socio-cultural identities like kinner, hijra, nupi manbi/nupi manba, thirunambi/tirunangai, jogta/jogappa, mangalamukhi, aravani and shivashakti among others (Mohan, 2020).

The success or failure of social policies and legislations resides in its incentive structure. The sixth principle focuses on providing a client well-being incentive structure. An incentive structure comprises of the nature of the incentive (consequences) and the behavior or performance to be consequated (Rapp, 2002). The incentives could be both financial and non-financial. Strengths approach suggests that the financial incentives are in alignment with the



outcomes set by the target population and programs that are most effective at reaching these outcomes. Such an incentive structure will provide stipulations and expectations on service providers rather than imposing a myriad of compliance standards on the targeted population (Rapp, Pettus & Goscha, 2006). With regard to the Act, there is not much focus on any client incentive structure. Moreover, the focus on welfare itself is minimal. Thus, including more welfare provision with effective client incentive structure could be a progressive step.

Thus, strengths approach enables the Act on the foundational belief that transgender persons have inherent strengths, skills and abilities, and they are the experts knowledgeable about their lived realities. The right to self-identification of gender, which is the basis for all the other provisions, should rest with the transgender person and not any other authority. Equality and equity in accessing educational opportunities should be ensured and reservation should be mandated. Government and educational institutions should have guidelines and directives against gender based discriminations. Discrimination of any form against transgender persons should be considered as a punishable offence. Lastly, the focus on welfare schemes should also be broadened with a specific focus on the higher education sector.

#### **CONCLUSION**

Gender diverse persons belonging to a range of identities including transgender persons have been historically excluded in the Indian society. Direct and indirect manifestations of exclusion in the form of marginalisation, discrimination, abuse and violence have highly impacted their mental health and wellbeing. The need for transinclusion in various domains including education has been one of their major demands by transgender community for years. India's first ever legislation aimed at safeguarding the rights of transgender community, The Transgender Persons (Protection of Rights) Act, 2019 failed to address these concerns. The voices and experiences of the transgender community was not given due consideration. Instead, the Act took a problem focused and pathology oriented approach. The Act thus needs to be revisited from alternative perspectives that could make transinclusion a reality. Adopting a strengths based approach towards the Act could be a possible way forward. Analysing the Act through the strengths approach opens up many points of improvement. It offers a multitude of intervention points pertaining to higher education which could ensure transinclusion in Indian higher education system. This would in turn lead to opportunities that would facilitate better mental health and well-being of transgender persons.



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