# SUGGESTIONS TO ADDRESS THE NEEDS OF L.G.B.T., AND GENDER NON-CONFORMING STUDENTS AND STAFF IN THE NATIONAL EDUCATION POLICY, 2016.

# 1. BULLYING OF L.G.B.T., AND GENDER NON- CONFORMING STUDENTS AND STAFF

Lesbian, gay, bisexual and transgender (L.G.B.T.), and gender non-conforming student and staff, face bullying in educational institutions (Arvind 2016, Humayon 2013, MINGLE 2011, Mogli, 2016, National Legal Services Authority v. Union of India 2013, Subramanian, et al. 2016). This bullying is verbal, physical, sexual and emotional in natureand from both peers and teachers which results in isolation, depression, fall in grades and educational aspiration, dropping out of school/college, suicidal ideation, lack of school belonging and increased absenteeism (Bondyopadhyay, Khan , & Mulji, 2005-2006, Nevatia, et al. 2012, Transgender 2014, Shukla n.d.) For example, in a recent study of 13,257 transwomen participants it was found that 24% of transgender students were not able to complete schooling beyond 5th Std. This dropout rate is much higher than the 17% dropout rate reported in the Draft National Education Policy. Similar high dropout rates have also been observed with transmen (Nevatia, et al. 2012) and men who have sex with men (SAATHII, n.d.).

We, community members, activists, lawyers, scholars, researchers, students and organizations in the field of sexuality, gender and human rights, propose the following suggestions to the Draft National Education Policy, 2016:

#### 2. GUIDING PRINCIPLES AND LEGAL OBLIGATIONS

Before making these suggestions, we reiterate the dicta of the Supreme Court of India and undertakings in various government documents and government committee reports. They will be our guiding principles as we make these suggestions.

"[d]iscrimination on the ground of sexual orientation and gender identity... impairs equality before the law and equal protection of law and violates Article 14 of the Constitution of India." Para 55, page 62, *National Legal Services Authority v. Union of India and Ors.* (2014) 5 SCC 438. ("NALSA")

"S. 377 IPC does not criminalize a particular people or identity or orientation." Para 38, page 77, *Suresh Kumar Koushal and Anr. v. Naz Foundation and Ors.* (2014) 1 SCC 1.

"Constitution makers, it can be gathered, gave emphasis to the fundamental right against sex discrimination so as to prevent the direct or indirect attitude to treat people differently, for the reason of not being in conformity with stereotypical generalizations of binary genders. Both gender and biological attributes constitute distinct components of sex. Biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one's self image, the deep psychological or emotional sense of sexual identity and character. The discrimination on the ground of 'sex' under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity." Para 59, page 64, *NALSA*.

"[a] prevalent view regarding this is that transgenderism is not a disease at all, but a benign normal variant of the human experience akin to left-handedness." Para 112, page 98, *NALSA*.

"Homosexuality is the sexual relationship between the persons of the same sex. It is no more considered a sexual deviation." *Page 121, Indian Psychiatric Society, Different Strokes 2015.* 

"I request you to do all that it takes to ensure that affirmative action ordered by the Hon'ble Supreme Court of India in its landmark judgment dated 15<sup>th</sup> April, 2014 in W.P. (Civil) No. 400 of 2012 and No. 604 of 2013 are initiated in your university so that the human rights of TG students are safeguarded and their mainstreaming is fast-tracked within university and society at large." <u>Letter No. D. No. 14-8/2014 (CPP-II) sent by the UGC to the Vice-Chancellors of All Universities</u>.

<u>What Constitutes Ragging:</u> "3(j) Any act of physical or mental abuse (including bullying and exclusion) targeted at another student (fresher or otherwise) on the ground of colour, race, religion, caste, ethnicity, gender (including transgender), sexual orientation, appearance, nationality, regional origins, linguistic identity, place of birth, place of residence or economic background." *UGC Regulation on Curbing the Menace of Ragging in Higher Educational Institutions (Third Amendment), 2016.* 

"Youth that suffer from social or moral stigma including but not limited to Lesbian, Gay, Bisexual and Transgender (LGBT) youth..." are marginalized and require "special attention to ensure that they can access and benefit fromgovernment programmes." *Page 66*, *4.10.1 Priority Area 10: Inclusion*, *National Youth Policy*, 2014. "[t]here is need for greater monitoring and media attention to prevent illegal social practices such as dowry, child marriage, honour killings, caste-based discrimination and stigmatisation of LGBT youth." *Page 72, 4.11.1 Priority Area 11: Social Justice, National Youth Policy, 2014.* 

"The health policy must focus on the special requirements of different groups, e.g., integrated geriatric health care and other needs specific to the elderly, 'adolescent friendly' health support services (and counselling) for victims of sexual or substance abuse, those infected with HIV/AIDS, those who are differently-abled, and those who belong to the lesbian, gay, bisexual, and transgendered (LGBT) community." *9.14, Health, <u>Approach Paper to the 12<sup>th</sup>Five Year Plan (2012-17), Planning Commission of India.</u>* 

"Sections of the population who suffer discrimination because of their social and cultural identity like manual scavengers, DNTs, LGBT groups, sex workers, etc." need a special plan: *11.6, Social and Regional Equity, <u>Approach Paper to the 12<sup>th</sup> Five Year Plan (2012-17), Planning Commission of India.</u>* 

"...hostile or abusive peers and school environment are the reasons many gender-nonconforming children drop out of the educational system entirely, foreclosing opportunities for gainful employment during adulthood." Page 44, Chapter 7, <u>Report of the Expert Committee on Issues Relating to Transgender Persons ("Expert Committee Report").</u>

"Ensure safety of transgender children in educational institutions: Transgender childrenface physical, mental and emotional violence forcing them to leave. Proper mechanism has tobe evolved to ensure their safety. This also requires fixing the responsibility." *Page 52, Chapter 8, <u>Expert Committee Report.</u>* 

"Contents on transgender can be included in the curriculum of adolescent education in schools to sensitize children." *Page 53, Chapter 8, <u>Expert Committee Report.</u>* 

"Sensitization towards transgender community should be an integral part of student counselling at schools." *Page 53, Chapter 8, <u>Expert Committee Report.</u>* 

"Establishment of anti-discrimination cell: All the educational institutions/universities should establish an anti-discrimination cell to monitor any form of discrimination/harassment against the transgender students." *Page 53, Chapter 8, <u>Expert Committee Report.</u>* 

Provisions of the Rights of Transgender Persons Bill 2015.

"...transgender may be included as third gender in the guidelines of Gender Champions in educational institutes." <u>Letter No. No.F.91-</u> <u>712016(GS) from the UGC to the Vice-Chancellors of All</u> <u>Universities.</u>

## 3. THE DRAFT NATIONAL EDUCATION POLICY, 2016

The words L.G.B.T., gender non- conforming or gueer are nowhere mentioned in the Draft National Education Policy, 2016 (hereinafter "draft"). In the light of the abovementioned principles and constitutional obligations, we propose that the concerns of L.G.B.T.; and gender non-conforming students and staff be met through the various clauses of the final policy in the manner suggested. Additionally, in the spirit of the Charu Khurana v. Union of India (Supreme Court, 2014) case which prohibited a private body from discriminating on the basis of sex, extending the constitutional mandate of non-discrimination to private bodies as well, we propose that the following recommendations be made applicable to both public and private educational institutions. The final policy must also require educational institutions to make their commitment to non-discrimination against L.G.B.T. and gender non-conforming youth known to workplaces that are affiliated with it for placements and training. The clause numbers and the sub-headings mentioned hereinafter correspond to the draft policy and the suggestions call for the proposed manner of reading the clauses.

## 4.2Protection of Rights of the Child & Adolescent Education

Clause 4.2 of the draft has envisaged the "absence of emotional and physical harassment" of students. It has also envisaged an environment that is both "sensitive and receptive to child rights." <u>The final policy must require public and private schools to develop</u> <u>a mechanism to address the concerns of students who are L.G.B.T.</u>, and gender non-conforming.

**4.2.1**calls for developing a <u>framework for school safety</u> and security of children. This framework must include provisions for addressing <u>bullying of L.G.B.T.</u>, and gender non- conforming <u>students</u>ensuring that they experience <u>equality of access</u> and <u>freedom from discrimination</u> in all aspects of school life.

**4.2.2**calls for <u>educating teachers and principals</u> about child rights and various enactments that relate to this topic. This must include the <u>Supreme Court holdings</u> that discrimination on the basis of gender identity and sexual orientation is unconstitutional, that <u>S.</u> <u>377, I.P.C. does not criminalize any sexual orientation</u>, the <u>U.G.C.</u> <u>definition of ragging</u> and information about the other principles mentioned above.

**4.2.3**calls for an <u>Adolescent Education Programme</u>. This programme must have a component on sexuality education which must provide <u>true and accurate information about gender identity</u> and sexual orientation in line with the abovementioned principles. Such an education must teach the <u>distinction between sex and</u> gender, educate about <u>sexual rights and not just sexual diseases</u>, must portray sexuality as an aspect of human development to be understood in a safe and open manner and not a thing to be feared or be ashamed of.

**4.2.5**calls for <u>self- learning and online programmes on child rights</u>. These programmes must also be designed in light of 4.2.1-4.2.3.

**4.2.6**requires schools to <u>"engage trained counsellors</u> to confidentially advise parents and teachers on adolescence problems faced by growing boys and girls." The counselors must in trained in light of the principles mentioned above especially, the principle of non-discrimination, the principle of non-criminalization and the principle of absence of disease.

#### 4.4 School Education

**4.4.7**calls for setting up of <u>helplines</u> to address course selection and employment related concerns. These helplines must also be equipped to address other needs of the students. For example, if a student is being bullied or harassed in school and calls the helpline, the helpline must be in a position to connect the student to an organization that can provide help to the student. Sampark, the school helpline started by the Department of School and Mass Education in Odisha can be looked at as a model. This helpline has also been referenced by the NitiAayog in their 2015 edition of the Social Sector Service Delivery Good Practices Resource Book (NitiAayoug and UNDP 2015).

**4.5.1**.envisages curricular reform with the view to teaching students about fundamental rights and fundamental duties. Any such reform must educate about the abovementioned governmental undertakings.

**4.5.6.**calls for spreading"<u>constitutional literacy</u>", laying emphasis on "<u>unity in diversity</u>" and addressing issues of "<u>gender</u>" with a

view to "avoid social discrimination." Any such curriculum reform must, "critically assess notions of masculinity and question prevailing gender inequities" as per the Gender Champions Guideline. It must also educate about the abovementioned principles but at the veryleast about that discrimination on the basis of sexual orientation or gender identity violates Article 14 of the constitution; that the prohibition against sex discrimination in Article 15 and 16 of the constitution includes biological and gender identity and no gender identity or sexual orientation is either a mental disease or a criminal attribute.

#### 4. 6 Inclusive Education and Student Support

**4.6**. seeks to address<u>the needs of socially backward classes</u>. The National Youth Policy, 2014, the 12<sup>th</sup> Planning Commission Approach Paper has identified L.G.B.T. population as marginalized. Therefore, the inclusive education and student support systems must be developed keeping in mind the concerns of this population of student and staff. Additionally, transgender staff and students must be accorded reservations in educational institutions and public appointments as per the NALSA judgment.

**4.6.13**calls for a "zero tolerance approach to gender discrimination and violence." Any zero tolerance policy must address bullying faced by L.G.B.T., and gender non-conforming students and staff in educational institutions. However, such a policy must also incorporate a module on educating persons in educational institutions about sexual orientation and gender identity. A teaching based approach as opposed to a punishment based approach must be adopted for students.

#### 4.10. Teacher Development and Management

4.10 calls for "<u>improving teachers' motivation</u>." This requires addressing issues of discrimination and inequality faced by teachers and staff owingto theirsexual orientation, gender identity, expression and/or gender non- conformity.

# 4.11 Language and Culture in Education

4.11.4calls for the integration of ethics in education: <u>"[E]thics</u> education will be integrated at all levels for inculcating values of equality and equity, social justice, fraternity, democracy, responsible freedom and liberty..." Such an education must not omit the abovementioned legal obligations and principles which are the embodiments of all the values mentioned here.

# 4.13 School Assessment and Governance

4.13 seeks to assess "satisfaction of pupils" as a component of school assessment. Higher educational institutions must also be so assessed with satisfaction of staff being tested in addition to pupils. Moreover, the parameter for satisfaction must include mental and emotional well-being, freedom from discrimination, equality of access and freedom of expression.

# 4.16 Quality Assurance in Higher Education

4.16 seeks to correct "gender and social imbalances within the sector."Inequity faced by L.G.B.T., and gender non-conforming students and staff must be corrected in light of the above principles.

#### 4.19 Faculty Development in Higher Education

4.19.3 proposes the establishment of National and State Training Academies to train teachers in issues of curricula but also for their "<u>sensitisation to gender and social diversity.</u>" Any such sensitization must be carried out in light of the abovementioned legal obligations and government undertakings.

#### 4. MISCELLANEOUS

1. 1. Admission forms and bathrooms in educational institutions to have a third gender option, while continuing to respect the selfidentification of transgender students as male, female or third gender, in accordance with NALSA.

2. These suggestions are also in conformity with Themes V, VI and X of the school education themes (addressing the needs of minority teachers and students) of the Themes for Revisions of the National Education Policy, theme XII (ethics) and theme XIII (health) of the school education themes and theme X (bridging gender and social gap) of the college education theme.

3. Recognition that students may be bullied or harassed on account of several factors including, but not limited to sexual orientation, gender identity and expression; and taking cognizance of such other factors as disability, caste, class, religion and region of origin that may result in discrimination.

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