Sexuality and Social Justice: A Toolkit

Strategies for making sexuality rights real

1. Issues and Debates

This section outlines some of the key issues and academic debates taking place around sexuality, poverty and the law. These summaries give you a brief introduction to what is being talked about, the arguments being made and the evidence being used. They are accompanied by further reading lists and you can also find out more by reading the legal case studies and policy audits [1].

Background

Sexuality and Development: What's the problem?

Development actors have been slow to recognise that not all recipients of policies and programmes are heterosexual couples living in nuclear families. They have been reluctant to acknowledge the diversity that exists in relation to gender and sexuality; how people understand themselves and their desires; and how this alters across contexts, geographical locations and throughout peoples' lives. Sometimes the silence around sexuality occurs because people consider sexuality to be a private matter and thus outside the scope of public policy. Others wrongly believe that sexuality – particularly the pursuit of pleasure – is an issue of little importance to poor people who are struggling to survive.

But evidence is emerging to show that sexuality - and efforts to define and control it - have a profound effect on people's everyday lives. We know that having a sexual orientation or gender identity that does not conform to the majority norm, can affect your ability to: earn a livelihood and gain employment; benefit from community and family support; access education and information; form the family arrangements and personal relationships that you desire; get respectful and appropriate health care; live free from violence and harassment; benefit from social protection programmes; and seek justice through the law.

What should be done?

Increasing knowledge about the links between sexuality and poverty and how they are implicated in policy making and the law, is vital. This includes documenting successful and unsuccessful efforts to improve decision-making in this area and the strategies which are currently being used to increase or shut down the possibility of sexual rights. We need to know more about what works and under what circumstances.

With this aim, this toolkit provides information on the ways in which activists, lawyers, donor agencies and NGOs, amongst others, have used policy and the law to challenge exclusion and marginalisation related to sexuality. It breaks

down legal jargon and outlines the key aspects of policy making and legal processes in an accessible format. It also provides insights into the challenges of working on the law in relation to sexuality, such as the dangers of visibility in sexuality-activism and the risk of more punitive laws or violent backlash when sexuality-related issues are raised.

What do we mean by 'sexuality'?

In this toolkit we use the broad definition of sexuality as defined by the World Health Organisation:

> "Sexuality is a central aspect of being human throughout life and encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviours, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, ethical, legal, historical, religious and spiritual factors." (WHO 2004)

In this toolkit, we approach sexuality as multi-faceted, relating to all people and not any single group. Within this broad understanding, we present the evidence that considers how policies and laws related to sexuality, inhibit people's ability to access equitable health, employment, education and welfare, in the families or unions of their choice. We acknowledge that we cannot and do not consider sexuality from all possible angles.

How is sexuality regulated in law?

Law regulates sexuality in numerous different ways. These include but are not limited to:

- Criminalisation or decriminalisation of particular sexual behaviours
- Granting or restricting autonomy, privacy and capacity of individuals to make decisions about sexual lives and behaviours
- Protections relating to equality and non-discrimination
- Rights protections and recognitions
- Marriage, family and partnership recognition and regulation
- Protection, or lack of protection, from violence, harassment and persecution by both state and private actors.

Different states have different approaches to the way in which sexuality is regulated in law. This means that while it is helpful to consider different legal approaches and create alliances across jurisdictions, it is important to keep in mind the varied operation of law in relation to sexuality.

1. How is sexuality understood in law?

In academic debates, there are a number of different approaches to the analysis of the law. This is significant as different approaches offer different tools to lawyers and activists seeking to bring about legal change. For example, 'black letter' or 'doctrinal' approaches to law focus on the study of already existing legal rules and systems. In contrast, a socio-legal approach focuses more broadly on the relationship between law and society. Both approaches can help to advance legal change and can be complementary rather than oppositional. The narrower and 'black letter' approaches offer a clear framework of rules and systems within which lawyers and activists can work, while the socio-legal focus offers a more contextualised view of the relationship between legal and social change.

1.1. 'Black letter' approaches

A good example of the way in which already existing frameworks can be used to call for changes to the law and sexuality is the Yogyakarta principles [3] (2006). This document outlines a set of international principles in relation to sexual orientation and gender identity. The Yogyakarta principles do not seek to create new rights, simply to show how existing rights protections – particularly those enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights - can apply to sexual minorities. For example, Yogyakarta Principle 4 is concerned with the right to life – a right which is widely protected in national and international documents. This principle outlines steps that states should take to ensure that sexual minorities can fully enjoy the right to life.

Click here to read Principle 4: The Right to Life

Everyone has the right to life. No one shall be arbitrarily deprived of life, including by reference to considerations of sexual orientation or gender identity. The death penalty shall not be imposed on any person on the basis of consensual sexual activity among persons who are over the age of consent or on the basis of sexual orientation or gender identity.

States shall:

1. Repeal all forms of crime that have the purpose or effect of prohibiting consensual sexual activity among persons of the same sex who are over the age of consent and, until such provisions are repealed, never impose the death penalty on any person convicted under them;
2. Remit sentences of death and release all those currently awaiting execution for crimes relating to consensual sexual activity among persons who are over the age of consent;
3. Cease any State-sponsored or State-condoned attacks on the lives of persons based on sexual orientation or gender identity, and ensure that all such attacks, whether by government officials or by any individual or group, are vigorously investigated, and that, where appropriate evidence is found, those responsible are prosecuted, tried and duly punished.

1.2. Socio-legal Approaches

Other legal and activist approaches have attempted to analyse the law and sexuality by looking at the social, historical and political framework in which the law operates. For example, analysis of current legal approaches to sexuality in post-colonial states might consider the particular history and impact of British colonial law on current legal approaches to sexuality (for example see Gupta)

One advantage of focusing on the broader historical and social context of the law is that it draws attention to the varied consequences of legal change. A narrow focus on changing the law or extending rights protections to a particular group

can sometimes miss the multiple effects that legal change might have. For example, some researchers and campaigners have drawn attention to the potential for the increased visibility of sexuality and sexual legal gains in one country to lead to backlash in another (see Cowell, p139). It is notable that while countries in Europe (e.g. the Marriage (Same-Sex Couples) Act 2013 [4] in the UK) and the Americas (e.g. Argentina's protection of transgender rights [5]) are seeing legislation that protects LGBT minorities, other countries have introduced legislation that strengthens criminal penalties for same sex behaviour (for example see Nigeria's Same Sex Marriage (Prohibition) Act [6], recent legislation in Uganda [7] and Russia's Prohibition of 'Homosexual Propaganda' [8]).

Similarly, Francoise Girard has drawn attention to the way in which campaigning around sexuality at the UN in the mid-2000s achieved some success and recognition, particularly in relation to a resolution recognising sexual orientation and gender identity rights that was adopted by the Human Rights Council in 2004. However, this recognition was also linked to the politicisation of issues that may have had some link to sexuality, but had previously been relatively uncontentious. For example, in 2010, a resolution condemning extra judicial killings of minorities was amended by the General Assembly's Third Committee to remove specific reference to sexual minorities. The resolution, which has included a reference to sexual orientation since 2002, was voted on each year until 2010, when the specific reference to sexual orientation was removed.

These examples highlight the importance of understanding the complex way in which legal systems operate, particularly in a context of increasingly international conversations about sexuality and rights. Legal change can advance unevenly and can have unexpected effects:a change to the law may only be the first step in bringing about wider change and for lawyers and activists working in the area of sexuality and the law, it may be useful to consider the broader context in which the law operates

2. How is law used to advance sexual rights?

2.1. Right to Privacy

There is an ongoing debate about the role of the state in regulating people's intimate lives. One way this has been approached is through the law on privacy. While privacy has been a useful concept for some sexual rights claims, some scholars have criticised the excessive focus on privacy as too narrow and restrictive.

Traditionally, states have been reluctant to interfere in matters concerning the private sphere – that is, the family and domestic life. A recent World Health Organisaition study [10] has shown that 30% of women worldwide have experienced physical and/or sexual violence at the hands of an intimate partner. Yet progress on the issue of domestic violence or abuse committed in the private sphere has been inconsistent (WHO study [10]). The special rapporteur on violence against women, has noted that 'Even in societies where there is seemingly a highlevel of gender equality, violence occurring in the private sphere continues to be regarded as a matter undeserving of public policy attention.'(UN Docs – Special Rapporteur on 'Due Diligence Standard', p 14). The law is often slow to intervene in certain forms of coercive behaviour that can limit individuals' control over their own sexuality (such as FGM, forced or early marriage and lack of access to reproductive health care). Many of these injustices are perpetuated wholly or in part by private individuals rather than state agents, and as a result, there is an ongoing debate about the extent of state responsibility to prevent harmful practices and to investigate such practices when they do occur.

This is illustrated in the European Courtn of Human Rights (ECHR) case of MC v Bulgaria (2005) 40 EHRR 20, where the court found that Bulgarian authorities had not taken sufficient steps to investigate the rape of a 14 year old girl. Similarly, in the case of Opuz v Turkey (2010) 50 EHRR 28, the court found that Turkey had failed in its responsibility to protect Mrs Opuz and her mother from years of domestic abuse and violence. In these cases it was argued that although state actors (such as police or army officers) did not themselves commit either the rape or domestic violence, Bulgaria and Turkey respectively were still responsible for the violation of the rights of MC and Opuz. The Court held that states have a positive duty to ensure that individuals were able to enjoy rights to safety, security and autonomy – in all areas of their lives.This means that states must protect individuals from sexual and domestic violence and investigate when such violence takes place. Turkey and Bulgaria failed to do this and as a result were in violation of their European Convention obligations.

The relationship between privacy and violence in the domestic sphere has been at the forefront of much feminist campaigning and is linkedto wider debates about privacy and the family. In some family law systems women have traditionally lost all legal rights on marriage – in essence, marriage rendered women invisible or as perpetual legal minors (for example see Phillipsp14). A lack of recognition as a fully independentindividual, separate from her husband,made it very hard for women to demand rights and protections as full citizens, or to make claims for sexual independence. As the case law from Europe suggests, such traditional legal approaches to privacy and the family have often made it difficult to

find redress for injustices that occur behind closed doors.

However, demands for change have gained some momentum and recognition - the UN has attempted to impose standards of 'due diligence' to protect, investigate, prevent and provide reparations for acts of violence that are perpetrated by private actors in the private sphere. Nevertheless, there is still a reluctance on the part of many states to address issues that are seen to be either a private matter or a matter pertaining to culture or religion (full document [11]).

Privacy and non-normative sexual behaviours

There are some 'private' areas in which state intervention is still considered by some to be acceptable. In particular, many states regulate and sometimes criminalise private same-sex sexual activities and commercial sex work. Reproductive rights to abortion as well as rights to marriage and partnership are also subject to regulation and control. Examples of cases concerning these issues include the landmark case of Roe v Wade which extended a right to abortion on the basis of the right to privacy in the US, and the case of Toonen v Australia [12] in which the UN Human Rights Committee held that Tasmanian law criminalising same sex activity breached the privacy rights of the Tasmanian gay rights campaigner, Nicholas Toonen.

Although decriminalisationon the basis of a right to privacy can often be an important first step in relation to sexual rights, the wider issue here is concerned with the conceptual tools that are used to think about sexuality. Queer theorists such as Eve Sedgwick have noted that the metaphor of the closet and the freedom of 'coming out' have been part of the overarching structure through which gay oppression has been understood this century, particularly in the west. Implicit in the notion of the closet is the concept of privacy. Some scholars (Henderson, Johnson) have criticised this focus on privacy, suggesting that there are disadvantages to associating same sex behaviour with privacy in this way. First, such associations may reinforce the idea that same sex attraction or identity can only be expressed in private – any discussion or public expression of 'other' sexual identities will not necessarily be tolerated (commonly expressed along the lines of 'I don't care what they do in private, but I don't want to see or hear about it'). Second, and relatedly, decriminalisation of same sex sexual activity in private, does not necessarily lead to public acceptance or state protection of expressions of same sex attraction in public. Indeed the case of Toonen saw some backlash against the LGBT community in Tasmania as it was felt by a number of Tasmanians that an external international body had been used to impose 'non-Tasmanian' behaviours and laws. Third, a right to privacy assumes that individuals will have space in which to enjoy that privacy – which is not always the case. Thus tolerance of private behaviour does not necessarily secure wider public protections relating to equality, non-discrimination or protections from harassment or violence.

These debates are pertinent to both the questions of legal approach raised above and to the wider issue of activist approaches to the politics of rights. Scholars such as Martin F. Manalansan have suggested that an excessive focus on privacy works to domesticate and depoliticise sexual rights activism: 'freedom' is reinterpreted as 'privacy, domesticity, and consumption', closing down broader debates about challenging larger injustices.

2.2. Human Rights

Human rights have been a key means of advancing issues of sexuality, in both international and domestic legal arenas. LGBT rights and sexual rights are drawn from a broader human rights framework and offer both significant opportunities and potential challenges for lawyers and activists.

Rights are claims against the state and have increasingly been used by different groups to secure protections and freedom such as –

- Reproductive rights

- Sexual orientation rights
- Gender identity rights and recognition
- Children's rights
- Women's rights
- Sex worker rights
- Citizenship and civil rights (including rights such as freedom of expression and assembly).

Beyond specific legal victories, rights have to some extent become an aspirational language of belonging, recognition and citizenship.

However, some scholars have criticised the exclusive reliance as a vehicle for change, suggesting that it is too narrow and confining (for example see Robinson). The law is generally concerned with regulating behaviour (sexual activity, partnerships, reproduction etc.) but much of the campaigning that has sought to change the law has also made reference to identity (LGBT rights, women's rights etc.). This creates a question of how we deal with the multiple different groups that are seeking rights recognition or redress in law. LGBT rights could encompass a broad umbrella of individuals, identities and behaviours – lesbians, gay men, transgender men and women, bisexual men and women as well as those who identify with place- or culture- specific identities – hijrain India ortakatapui in New Zealand. It might also refer to those who engage in same sex activity but do not adopt a particular identity – such as men who have sex with men (MSM). There is some criticism that the broad language of LGBT rights hides this diversity and foregrounds the experiences of some individuals (often white western gay men) at the expense of others (see section on the use of LGBT).

It has been argued that this can obscure the voices of those who are marginalised and fuels the argumentthat LGBT rights are a 'western' or imperial invention that are being imposed on unwilling states. As one African activist commented when asked why he used the language of LGBTI rights in his activist work –

> Well I am using it because it is the international language. I have been going to regional meetings and it is their language… [It] makes us part of the larger [international] group for the possibility of funding and support when we need it. But people, no, they don't really use LGBTI…it takes sometime before they call themselves gay. (Seckinelgin, 2009 p.104)

This quote suggests that there is a danger that LGBT rights might become the only possible means of advancing the concerns of LGBT minorities, regardless of their appropriateness.

It has also been argued that the compartmentalisation of issues into 'LGBT rights' or 'sex-workers rights' or 'women's rights' may obscure the chance for alliances or even mean that gains for one group come at the expense of another. For example, in Ireland in 1993, the Criminal Justice Act was passed in the wake of the ECHR case of Norris v Ireland (1991) 13 EHRR 186, in which the criminalisation of same sex activity was held to be an unjustified interference with the right to privacy. The Criminal Justice Act decriminalised same sex activity, but at the same time, introduced tighter controls on sex work. In this case therefore, decriminalisation was part of a 'trade-off' with the more conservative elements of Irish society, which allowed the successful passage of the bill through parliament.

Thus while rights have undoubtedly been a powerful vehicle for advancing the protection of some sexual minorities, there is a question of whether the way they 'frame' issues of sexuality can prevent alliances or draw attention to the concerns of particular groups over the concerns of others.

2.3. Citizenship

Traditionally citizenship is associated with public life, political action and political rights. Recently, however, there has been some discussion of 'sexual citizenship', focusing on the relationship between public and private lives and

challenging the assumption that all citizens will be 'unsexed' or at best, heterosexual. Early discussions of sexual citizenship linked it to ideas of:

> 'the control (or not) over one's body, feelings, relationships: access (or not) to representations, relationships, public spaces, etc; and socially grounded choices (or not) about identities, gender, experiences'. (Weeks, 1998)

Thus, sexual citizenship, rights and law are intimately linked. Sexual citizenship is concerned with belonging in society, particularly with how those who might once have been excluded as 'deviant' or 'other' might claim to be part of a political community.

Sexuality, Citizenship and Nationalism

Citizenship is about the capacity to define insiders and outsiders within a state. Historically, sexual 'others' – queers, sex workers, non-gender conforming individuals - have been excluded or marginalised from claims to citizenship, and in many states this marginalisation continues. Often, political leaders will claim that a form of sexual identity or behaviour doesn't exist or is not indigenous to a state or culture – such as when President Mugabe claimed that homosexuality was un-African and LGBT people were 'worse than pigs and dogs'. In making such statements, Mugabe emphatically places the sexual 'other' outside of the Zimbabwean political and social community. In such circumstances, sexuality is often used for political purposes –to denote insider or outsider, to shore up approval ratings, or to discredit a political rival. In some cases, such as the prosecution of Anwar Ibrahim in Malaysia [13], the law may be used directly, but in others, the mere mention of sexual difference or impropriety, rather than specific engagement with legal mechanisms is sufficient (example [14])

Questions of nationalism, citizenship and belonging are not necessarily confined to discussions of homosexuality.In relation to nationalism in particular, questions of community cohesion and purity have long been linked to reproduction and to control of women's sexuality, often couched in terms of morality or sexual purity.

Citizenship, Recognition and Regulation

While citizenship may be a useful tool for understanding dynamics of inclusion and exclusion, it also raises questions about state power. As citizenship rights are primarily granted by the state, the obtaining of citizenship can lead to more state regulation and less freedom to transgress and challenge state power.Once individuals or groups are brought 'inside' rather than 'outside' they may then face the ethical question of how to deal with and potentially compromise with official channels that seek to regulate, control and normalise their behaviour. For example, there may be pressure to conform to a notion of the 'good gays', recognised but also regulated by the state, rather than 'unruly queers', who might challenge larger oppressive regulatory structures. Terms such as 'homonationalism' and 'pink washing' are increasingly used to describe the way in which support for LGBT rights has become part of a larger political project. Homonationalism is a relatively new and widely debated concept that refers to the co-option of LGBT rights into nationalist projects. For example, tolerance for LGBT rights is increasingly used as a 'marker' of a 'developed', civilised state. Perceived antipathy to LGBT rights becomes a marker of intolerance and backwardness. Thus homonationalism can both shore up a sense of patriotic exceptionalism in those states that view themselves as 'tolerant', but can also become a justification for imperialist projects – interference in other states because they are 'uncivilised' and intolerant. Similarly pink washing is a PR technique by which a state (or an organisation) uses their 'tolerance' of homosexuality and condemnation of homophobia to attempt to draw attention away from other policies that may be harmful. In both cases therefore, inclusion of LGBT individuals within a citizen body may have both a regulating effect on individual LGBT citizens, but may also lead to the co-option of LGBT concerns into imperial or nationalist actions. The question therefore is how far does cooperation with a tolerant state risk that sexual minorities become complicit or implicated in that state's less laudable actions (see Puar [15]

for further discussion).

As shown by a number of scholars, this dynamic can play out in many different legal spheres. For example, Alice Miller has discussed her simultaneous pride and reservations in relation to her work on the recognition of rape as a war crime. Miller noted that in order to gain attention from the relevant international legal bodies, women's activists were required to present those women who had suffered sexual violence as weak and in need of protection, rather than as strong survivors demanding legal change: 'women make demands and ladies get protection'. Women's rights activists were forced to 'frame' their concerns in a particular way that could be recognised by and integrated into an already existing framework of law. This is a key issue of law and sexuality - what compromises might have to be made in order to win particular legal concessions?

Discussion Points

- Do you think the state should be responsible for and able to protect us from injustices committed in private?
- How far should the law be able to interfere with 'private', 'family' or 'cultural' matters?
- How useful is the concept of privacy for protecting sexual minorities?
- What are some of the advantages of using rights and citizenship-based approaches to support the needs of sexual minorities?
- What are some of the disadvantages of using rights and citizenship-based approaches to support the needs of sexual minorities?
- How can lessons from previous legal battles in other jurisdictions be usefully adopted to your current work?
- Should the law focus on behaviour, identity or both in relation to sexuality?

Further Reading and Resources

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- Homosexuality: Criminal aspects [18]
- Gender Identity issues [19]
- Reproductive Rights [20]
- Parental rights [21]
- Children's rights [16]
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What's wrong with labels?

It is clear from the number of LGBT advocacy organizations around the world that the fixing of particular labels of identity – like lesbian, bisexual, gay and transgender – can be useful for establishing global networks and mobilizing people to claim their rights. But when the use of labels like LGBT come to be seen by those working in development as markers of 'modernity', or of 'western' intervention by those in receipt of funding for development interventions, they can also be dangerous and can harm rather than advance the realisation of sexual rights. This case explores some of the issues being debated in relation to the use of fixed labels of sexual identity in advocacy efforts.

A Global Language

> "I take as a given that power inheres in the ability to name, and that what we call ourselves has implications for political practice."

Steve Epstein, 1992, p. 241

The identity categories Lesbian, Gay, Bisexual and Transgender have been instrumental in raising awareness of sexuality issues and of bringing them onto national and international policy agendas. The acronym 'LGBT' (with the addition of Intersex and sometimes Queer and Questioning), is now recognised around the globe and provides a common language for talking about sexual rights and for bringing together individuals and organisations working for social justice. Understanding identity in terms of fixed categories has helped to make same-sex desire and gender non-conforming people visible to policy makers and development actors where they were not before. It has also helped to facilitate dialogue around citizenship and in some cases, enable legal reform.

LGBT identity categories have also been embraced by organisations and individuals around the world for strategic purposes. For example, in order to access funds from international donors; to fight for legal recognition; or to make themselves understood to local researchers or journalists. In this respect, using a global language of sexual identity can be very useful, especially where sexuality is rarely talked about by policy makers or discussed in public forums. It can also make a complex, diverse and generally little-understood aspect of human experience, easier to understand. This is important when it comes to building alliances and forming a cohesive argument to campaign for equal rights or legal redress. As many have pointed out, when it comes to fighting for social justice, such short-hand is imperative.

A 'Western' Model?

The dominance of LGBT categories as a way to understand and define same-sex desiring and gender non-conforming people has come under criticism for a number of different reasons. One is that it is based on a 'Western' understanding of sexual identity which cannot simply be applied in other settings. For example, the LGBT model has been criticised for being too individualistic, for focusing on the identities and rights of individuals rather than of communities. The labels themselves are also seen to reflect particular 'western' identities that do not speak to the diversity of meanings attached to same-sex desiring and gender non-conforming people in other parts of the world .

A further criticism is of the way that the recognition of LGBT rights has come to be seen as a marker of modernity. In development discourse, those countries that recognize the rights of LGBT persons are increasingly seen to be more developed, enlightened and even more civilized. This is set against those that do not recognize LGBT rights, or criminalize same-sex or non-normative sexualities, who are seen as undeveloped, backward and barbaric. It has been pointed out that this is based on a false assessment, as many Western nations still do not recognize the rights of LGBT people, or do so inconsistently, and continue to discriminate and oppress citizens on the basis of sexual orientation and gender identity.

An often cited attack on 'Western' categories of sexual identities comes from the Palestinian scholar Joseph Massad who describes the defence of human rights on the basis of sexual orientation as a 'missionary task'. The need to adhere to Western definitions of sexual identity is cited as an example of imperialism, where same-sex relations are ascribed particular meanings and identities by the West. This has prompted significant debate around the role of development agencies and multilateral organisations in protecting and promoting LGBT rights, particularly in post-colonial nations.

Another ongoing debate relating to the global advancement of LGBT rights relates to the term 'Pinkwashing'. Pinkwashing refers to the use of LGBT rights discourse by governments for strategic rather than humanitarian purposes. It is often claimed that governments use the LGBT rights agenda to gain popular support, to give the impression that they take human rights seriously, or in some cases, to obscure or downplay other human rights abuses or conservative policies. For example, pinkwashing is often debated in relation to the Israeli state who have publicly championed their achievements in securing and protecting the rights of LGBT citizens. Many argue that this is a strategic move to obscure ongoing human rights violations in relation to Israel's policies and actions towards Palestine (See Tukkun [31] for further discussion).

Who is Included/Excluded?

Another key criticism of the use of 'LGBT' categories to describe same-sex desire and gender non-conformity is that they are too simplistic and cannot account for the diversity of lived experience across space and time. For example, research has shown the huge variation in the terms used to describe different forms of sexual orientation and gender identity around the world. Many of these terms do not translate neatly in to 'LGBT' and the meanings and significance of those identities are often lost in the process. Evidence has also shown that while many individuals do not see or describe themselves as 'lesbian' or 'gay' in their daily lives, they may be ascribed, or forced to adopt such identities, by others (for example, through their interactions with NGOs, local officials, health professionals or researchers).

A 'Kothi' named Seethal in Pondicherry. Image courtesy of Candace Feit [33]

Because identity categories such as LGBT do not allow for the subtle differences in sexual subjectivities (the experience of being a sexual person as understood by the individual), or for people to determine their own identities, they can misrepresent or fail to capture the lived experience of those marginalised because of their sexuality. Gender identity and sexual orientation, for example, are often conflated, where effeminate or transgender men are assumed to be gay or described as 'MSM' (Men who have Sex with Men) because their behaviour is understood to mean they are homosexual. While fixed identity categories may allow funds to be directed towards certain groups of persons, or global campaigns to be launched, evidence suggests that it can also be oppressive and in some cases, may lead to increased persecution.

Research has also pointed to the resentment that many feel of being identified only in terms of their sexual orientation or gender identity, as if they are not also fathers, market-sellers, Muslims, etc. For those who practice non-normative sexualities, sexual identity categories may become the primary marker of identity in their interaction with employers, health providors, NGOS and donor agencies, etc. This is not the same for heterosexual individuals who are not required to define themselves in terms of their sexuality.

Some groups may remain invisible to development actors because they are not considered to be 'high priority' in terms of funding. This is particularly the case in relation to funding for HIV prevention, where, for example, lesbians - who are not considered to be a 'high risk' group in terms of contracting HIV (and other sexually transmitted diseases) - are excluded from certain interventions, funding and research. As a result, there is very little known about the lived realities of same-sex sexuality amongst women and how they relate to donor priorities such as HIV transmission, maternal health and gender based violence.

An Uncritical Approach

Some have criticised not the use of LGBT per se, but the uncritical way in which it is applied. For example, advocacy organisations or health initiatives who describe themselves as supporting LGBT persons, often work only with gay men or only target those who identify as transgender. Using the label 'LGBT' is therefore misleading as it gives the impression

that all population groups are targeted equally, when this is very rarely the case. It can also encourage the assumption that the needs and experiences of Lesbian, Gay, Bisexual, Transgender persons are the same and require similar interventions.

Discussion points:

- Does using terms such as SOGI (Sexual Orientation and Gender Identity) help to avoid some of the issues described?
- What kind of terms are used most by the people you work with?
- What kinds of terms are used most by the donors you work with?
- What are some of the uses and dangers of using terms like 'LBGT' in your work?
- What are some of the values of using the term 'LGBT' in your work?
- What terms would you advise policy makers to use when drawing up development programmes and why?

Further Reading

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What is the link between sexuality and gender?

Gender refers to the widely shared set of expectations and norms linked to how women and men, and girls and boys, should behave. Unlike 'sex' which refers to the biological and physiological characteristics that define men and women, gender refers to the socially constructed roles, behaviours, activities, and attributes that are assigned to men and women in any given society. These expectations are are not fixed but are continually being constructed and reinforced through social relationships and economic and political power dynamics.

IDS partner organisation, Nirantar [38], works to empower girls and women from marginalised communities in India. Nirantar understands gender as

> "a continuum in which there are different degrees to which one transgresses or breaks the social norms related to the 'ideal' woman and man. According to our understanding, everyone is assigned a gender (either male or female) at birth. Society creates strict norms that are meant to be followed by the two genders. These norms are upheld by a system of punishment and privileges. The norms are not only policed, they are also internalised." (Link to case study below)

Researchers, like those in Nirantar, who have explored the relationship between gender and sexuality argue that gender and sexuality cannot be thought of as distinct and separate categories but as intimately related. The societies we live in construct the right and wrong way to behave as men and women and these are mapped onto 'right' and 'wrong' sexual practices, beliefs and behaviours:

> "Ideologies claiming that women should be pure and chaste can lead to female genital mutilation, honour killings, and restrictions on women's mobility and economic or political participation. Ideas that men should be macho can mean that sexual violence is expected rat
>
> her than condemned. In many places, to be considered a 'proper man' or 'proper woman', you need to act one hundred per cent heterosexual, and stay in line with gender stereotypes." (Ikkaracan and Jolly 2007: 3)

There are many ways to explore the relationship between sexuality and gender; in this section we outline three ways that gender is related to sexuality that are useful for thinking about sexuality and development.

1. Sexuality is influenced by gender norms

Social expectations linked to gender influence how women and men behave and this includes their sexual behaviour, attitudes and feelings. These expectations tend to be based on the assumption that there are two categories of people, men and women and that they behave differently based on their biological sex. There is also a basic assumption in

development policy and programming that gender is linked to biological sex and that the recipients of development interventions are heterosexual. The assumption that the normal and natural sexual relationship and basis for the family is a man and a woman in a heterosexual marriage is sometimes described as heteronormativity. [40]

There is huge variation in the gendered norms and expectations relating to sexuality. The pressures to conform to the norms of any given society can have negative consequences for both wommen and men. In some contexts, women may be forced to enter marriages against their will and some may be subject to marital rape; or they may be compelled to undergo female circumcision in order to be perceived by society as an 'adult woman'. Boys too are told how to behave as men, how to be taken seriously by their family and their community; this may entail being bullied or punished if boys are not 'macho' enough, or if they express same-sex desires.

2. Ideologies around sexuality work to control women

In many contexts, girls and women are seen as vulnerable and in need of 'protection' from men's sexual advances. Virginity is often highly prized and is linked to a family's ability to arrange a marriage and maintain social status. Controlling girls' and women's sexuality is also linked to material resources such as education and whether or not girls are able to attend school. Where virginity is important, parents may fear the increased possibility of sexual encounters between boys and girls at school (as shown by the study conducted by our partner organisation, Nirantar) or are concerned that, with education, girls may be more likely to challenge the patriachal structures that are reinforced through historic family customs, like arranged marriages.

Sexuality is often used to control women who are seen to step outside of the norms of feminity:

> …from the United States to Namibia to Poland, accusations around sexuality are used to attack women's organising. Women mobilising for gender equality are sometimes accused of being 'not proper women', lesbians, or promiscuous. Such attacks aim to undermine such women and curb their political power and impact, as well as reinforce ideas about what is proper behaviour for women. (Ikkaracan and Jolly, 2007: 5)

As IDS member Mariz Tadros demonstrates in her case study [41] of politically motivated sexual assault in Egypt (2013), women who entered the public sphere of protest rather than remaining within the private sphere of the home were 'punished' through sexual assault. As Tadros points out, men were also the victims of sexual assault but because of gendered assumptions about who is the victim and who is the perpetrator these cases were less likely to receive attention both domestically and internationally.

3. Gender norms related to sexuality can affect health and access to basic services

In many societies women are expected to remain silent around issues related to sex and sexuality. For this reason, it can be difficult for women to learn about risk reduction, or even if informed, it may be difficult for women to negotiate safe sex within their sexual relationships. Because of the strong norms that encourage women to remain virgins until they are married, studies have shown that it is difficult for unmarried women to access treatment services for sexually transmitted diseases as they may be subject to stigma within health care centres.

Research has shown, too, that in heterosexual relationships women's economic marginalisation can result in women entering sexual relationships where they have less economic power than their partner. This can impact on their ability to set the terms of their sexual relationship. Gendered expectations that young women cannot 'manage' or 'protect' their sexuality also has implications for women's access to education and employment. In their policy audit of the Rashtriya Madhyamik Shiksha Abhiyan (RMSA) education policy in India, Nirantar show the importance of considering the

gendered dynamics of sexuality in relation to girls' ability to access education:

> "the data indicate that fears related to girls' sexuality – namely that girls might express their desires or that they might experience sexual violence in the process of going to school – are a significant reason for pulling girls out of school. This is important in a context where girls' access to higher levels of school education is seen primarily as a gender issue. In the absence of evidence and without an acknowledgement of the key role of sexuality as a determinant, we are left with an incomplete understanding of this critical issue." (Nirantar, 2014: 2)

It is often assumed that gender applies only to women and girls but it is equally important to engage with the ways that men's health and access to services can be affected by expectations linked to masculinity. For example, in many parts of the world men are expected to have more experience and knowledge about sex than women; this discourages men from learning about safe sexual practices and may make them more vulnerable to contracting HIV or other sexually transmitted diseases. Notions of 'macho' masculinities that emphasise men's domination over women – socially and sexually – not only contribute to high rates of violent crime against women (as we see in places like South Africa – link to Case Study) but also to the stigmatization of men who fail to conform to these gendered expectations, including those who have sex with other men. As men are generally positioned as the perpetrators of sexual violence and not the victims, men's vulnerability to and experience of sexual violence also tends to be ignored (see the IDS bulletin on Patriachy [42] for further discussion).

Gendered norms around sexuality affect how sexual behaviour and sexual health issues are reported, researched and funded. Assumptions about women as the victims of sexual violence, for example, restrict our knowledge about how women negotiate risk and exert control in their sexual relationships. As men are considered to be strong and capable of managing sexual relationships, there is very little research into mens' experience of vulnerability, in both same-sex and heterosexual relationships. The lack of knowledge about the sexuality of transgender people often leads to the assumption that transgender men and women are homosexual. Gendered expectations of sexuality, therefore, also determine what we know about the sexuality of men and women, which in turn informs decisions about development programming, funding and research.

Further issues to consider

While gender is often talked about in terms of masculinity and femininity, gender theorists have sought to expose the plurality of gender expression and the way in which gender identities and forms are accorded different social value. In response to feminist critiques, for example, gender theorists have pointed to the fact that there is no singular masculinity but a range of masculinities that are ordered hierarchically. The dominant or 'hegemonic' masculinity is that which epitomises the patriarch, or alpha male, typical of Hollywood action films. This dominant form of masculinity is something which is valued in many societies, and to which many aspire. However, such 'ideals' of gender can have the effect of 'disciplining' the body and punishing those who do not conform. Heterosexual men, for example, who identify with their sex but not the social characteristics typically associated with dominant masculinity, may find that they are bullied and not considered to be 'proper' men. Halberstam writes about being called out of the 'Women's toilet' by airport security because the guard expected women to look 'feminine' and not, in Halberstam's terms, like a 'masculine female'. This 'disciplining' of the body reinforces the notion that there is a right and a wrong way to be a male or female and has implications for the sexual relationships, behaviour, experience and attitudes of men and women of all sexual orientations and gender identities.

It is commonly assumed that your gender is determined by your biological sex. You are masculine because you are male,

for example. The separation of gender and sex is most apparent in the experience of people who feel that their ascribed gender-identity is not aligned with their biological sex. Those people, who may identify as transgender, some will opt to change their biological sex while others may change their gender-identity but not their sex. The sexual orientation of those whose gender identity does not match their biological sex is not self-evident. Biological males who live as females may be attracted to males, females or other trans individuals. This is evident, for example, among travestis In Brazil, as Mountian observes in the policy audit conducted on the country's 'Brazil without Homophobia' education policy, launched in 2004. Mountian found that travestis were discriminated against because they challenge the idea that gender identity is directly related to biological sex. Not all biological males feel themselves to have a masculine identity, and vice versa.

Discussion Points

- How do gender norms relating to sexuality affect the people that you work with?
- What does the experience of being a trans person tell us about gender?
- Can you think of examples of womens' sexual expression that you would describe as masculine?
- What are the positive and negative impacts of gender norms relating to sexuality for men and women?
- How many different models of masculinity can you identify?

Related resources:

Bridge Cutting Edge Pack: Gender and Sexuality [43]

Bridge Gender and Sexuality: Supporting Resources Collection [44]

Gupta, R. 2000. Gender, Sexuality and HIV/AIDS: The What, the Why and the How. [45] International Center for Research on Women (ICRW)

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Why is sexuality a development issue?

Over the past 13 years, the Sexuality and Development Programme [51] at the Institute for Development Studies [52] has been developing a portfolio of evidence from scholars, activists and practitioners around the world to challenge the inadequate treatment of sexuality in development theory and practice. Authors from a range of backgrounds and disciplines have questioned the assumption that sexuality is not a development issue and have introduced new ways of understanding the links between sexuality, poverty and citizenship.
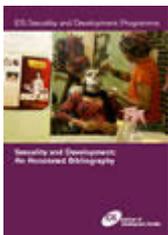
This cutting edge work has been brought together by Kate Hawkins in an Annotated Bibliography [54] (2013) which summarises each of the contributions commissioned by IDS to this diverse and growing body of work. This bibliography provides useful background information for those who want to understand more about the theoretical context of their work and how the debates have developed over time.

The following text summarises learning from the Sexuality and Development Programme [51] at IDS. The issues and debates outlined here are explored in more depth in the nearly 100 articles brought together in Sexuality and Development: An Annotated Bibliography [55].

The Development Industry

This section of the Annotated Bibliography shows that one of the key issues for development theorists interested in sexuality has been the relative invisibility of sexuality in development theory and practice. Scholars have shown that while sexuality relates directly to development interventions to tackle issues such as population growth, health, and

poverty - including those dating back to colonialism - these links remain hidden and are rarely made explicit in programme documentation, policy or public debate. For example:

- Many contemporary policy debates on maternal health avoid any mention of conception; bypassing culturally and politically sensitive questions about sexuality, abuse, responsibility, contraceptive use and access to abortion.
- The sexual health and rights of lesbian and bisexual women are often completely missing from sexual and reproductive health and rights policies, materials and documents.
- Sexuality and gender non conformity can restrict access to employment and other forms of economic and social support and this is rarely addressed in analyses of economic growth and the distribution of the benefits of development.

Even where sexuality is addressed directly, the terms of the debate are often very narrow. For example:

- There is a tendency in development interventions to view sexuality as a source of danger, harm and disease which means that the positive aspects of sexuality are ignored.
- Sexuality is often addressed through fixed epidemiological categories or population groups such as 'sex workers' or 'men who have sex with men' (MSM), which may not reflect how sexuality is lived or understood by individuals and communities themselves.

With these examples (and many others) in mind, development theorists interested in sexuality have worked to make sexuality more visible and to show how it is intertwined in all aspects of development. Programmes on sexual health and HIV, for example, have been seen to provide important entry points for a wider discussion of sexuality and development.

Human rights, law and policy

In this section, the summaries indicate that using the language of sexual rights is one way that scholars and activists have attempted to challenge discrimination on the basis of sexuality and to prevent abuse and gain legal redress. This strategy is often underpinned by the notion that sexual rights are human rights in and of themselves and that they are, therefore, vital to the attainment of all development goals. Activists and researchers are increasingly looking at how the invisibility of people marginalised because of their sexuality in development makes interventions less effective. There is now research to show that breaking norms related to sexuality can affect people's basic human rights such as access to health and education services, work, housing, political participation and many other spheres of development intervention.

The sexual rights as human rights approach has been met with resistance by those who see it as a foreign or 'Western' imposition which is at odds with 'traditional culture'. This has been disputed by those who reject the notion that culture is static or homogenous and that sexuality is not a concern of poor people in low- and middle-income countries. Some authors have looked to popular culture – such as TV programmes, storytelling, and pop music – to demonstrate counter narratives about sexuality which show how ideas about sexuality shift over time creating new ideas about accepted roles and behaviour.

Others have cautioned that rights language and legal approaches on their own may be insufficient. They argue that changes in law and policy alone will not necessarily alter social, political and economic norms. For many, sexuality cannot be separated from the economic conditions of everyday life which need to be tackled in conjunction with efforts to achieve sexual rights.

Evidence suggests that efforts towards law reform are often the starting point for discussions, awareness raising and challenging norms around sexuality rather than the end point itself.

Gender and Women's empowerment

This section of the Annotated Bibliography brings together the growing body of work on the ways in which sexuality is linked to women's empowerment. For example, in the ways sexuality is linked to how women are treated and respected (or disrespected) in the workplace and in public, and how families and communities place expectations on how women should behave. Being exposed to sexual harassment and sexual violence and not being able to exercise choice in their sexual relationships affects women's wellbeing and ultimately undermines their political, social and economic empowerment. Women's sexual rights are one of the most contested areas of human rights and are often under attack in national and international policy spaces. Some have argued that sexual rights are a lightning rod for negative reactions because they constitute a direct threat to patriarchal power, conservatism and male privilege.

Pleasure

In response to criticisms of development theory's focus on the negative aspects of sexuality, there has been a move to understand how to harness the positive aspects of sex and sexuality - 'love', 'desire' and 'pleasure' in development interventions. Some researchers and practitioners have suggested that a pleasure-based approach to sexuality can provide new ways of organising interventions and policy. This approach acknowledges people's agency to choose the type of sex that they want and challenges the predominant idea in development that women are victims within all sexual encounters. These authors argue that if women are taught to be fearful about sex it leaves them with little space to negotiate their own desires.

This critical engagement with the pleasurable aspects of sexuality has prompted debate about the ways that pleasure is constructed and mediated by power structures such as gender, class and race. It has shown that pleasure is shaped by technology and market forces, for example, by pornography and the pharmaceutical industry, in ways that can be both oppressive and empowering. Some point out that the heteronormative idea that the only good and proper sex is penis/vaginal intercourse excludes other forms of sexuality from the debate and can contribute to feelings of guilt and shame when people cannot, or do not want, to conform to the heterosexual norm. Research has shown that some people, such as those who are HIV positive or disabled, may be considered ineligible for pleasure and that this is also an important area to be challenged.

Others have cautioned against an uncritical acceptance of the 'pleasure approach' arguing that the levels of danger and abuse related to sexuality mean that it is critical that these harms are addressed as a priority. Others suggest that pleasure and danger are often intertwined and that both elements of sexuality need to be addressed at the same time.

Heteronormativity

Evidence has been used to show that the failure of development actors and policy makers to address sexuality in their

poverty reduction strategies, can actually cause or compound poverty for certain groups. Some have argued that this is because sexuality is seen as 'trivial' or irrelevant by those working to meet basic economic needs. This section illustrates that this approach has also been developed through a focus on heteronormativity, a term used to describe the social and power dynamics which privilege, support and reinforce the heterosexual, nuclear family as the basis for development interventions. For example, research has highlighted the way that economic and social assistance programmes tend to be structured around a certain family type which means that households headed by single parents, or containing same sex couples, may not be able to access the same entitlements. Conversely, research also indicates that breaking sexual norms does not always leave people worse off. For example, people who choose to sell sexual services may earn more than their peers. Also, those who adhere to norms may incur negative consequences. For example, people may stay in unhappy marriages because they provide them with certain financial advantages or social acceptance.

In recent years, activism on sexual rights has opened up greater spaces for the analysis and discussion of sexuality, illustrating the importance of viewing development interventions through a sexuality 'lens'. Queer Theory has stimulated new ways of looking at sexuality and poverty and how not fitting into 'norms' around gender and sexuality can affect people's access to basic resources. Feminist analysis has demonstrated how sexuality intersects with other axis of oppression. Understanding poverty as multi-dimensional and relating not just to economic goods but also to areas such as insecurity and physical ill-being (see Web of Poverty [57] for more details), has also been used to show the multiple levels of disadvantage experienced by those whose sexuality does not conform to the norm.

Scholars have challenged the assumption that norms govern us entirely. By creating a binary between the 'normative' and the 'non-normative' there is a danger of privileging certain identities and overlooking the different ways that people navigate those norms. Furthermore, we may overlook the strategies that people marginalised because of their sexuality use to reject or resist norms.

Further issues to consider

The social justice issues relating to sexual orientation and gender identity (SOGI) are currently receiving significant attention from development theorists, practitioners, donors and NGOs, as well as the international media. The political and social implications of focusing on fixed categories of sexual and gender identity are discussed further in the section ' What's wrong with labels [58]?'. In addition, there is a concern that the current focus on SOGI or LGBT issues has meant that they are increasingly being 'siloed' or separated off from broader sexuality and social justice issues. One implication of this is that the negative effects of norms around sexuality on heterosexual women and men, are obscured. In addition, a politics of sexuality and development which only focused on LGBT issues would ignore the laws and policies that: leads to women being married to the men who rape them, sterilised because they are HIV positive or arrested for wearing a mini skirt; deprive men and women of basic citizenship rights for selling sex; criminalise consensual sex between people with disabilities; enshrine notions of shame and honour in relation to women's sexuality; fails to recognise men as victims of rape and sexual assault. These issues are raised in the Annotated Bibliography and also in the Case Studies and Policy Audits featured in this toolkit and the ongoing work of the Sexuality, Poverty and Law Programme at IDS.

Discussion Points

- How do you understand the links betwen sexuality and develop issues such as poverty reduction?
- What are the benefits and challenges of forming coalitions with other rights-based groups for your organisation?
- What obstacles have you encountered when trying to raise sexuality issues with development actors or policy makers?
- In what ways have western notions of sexuality enabled or impeded your work?

To read more about these issues and debates please see the Annotated Bibliography [59] (2013)

Related Documents

Sexual Pleasure Empowers Women! [60]

Contestations, Issue 2

Pathways: Sexuality and Women's Empowerment [61]

Eldis, Resource Guide

Heteronormativity [62]

Eldis, Key Issues Guide

Source URL: http://spl.ids.ac.uk/sexuality-and-social-justice-toolkit/1-issues-and-debates

Links

[1] http://spl.ids.ac.uk/sexuality-and-social-justice-toolkit/5-information-and-resources/our-work

[2] http://spl.ids.ac.uk/file/badguyjpg-0

[3] http://www.yogyakartaprinciples.org/

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[21] http://www.echr.coe.int/Documents/FS_Parental_ENG.pdf

[22] http://www.echr.coe.int/Documents/FS_Violence_Woman_ENG.pdf

[23] http://commonwealth.sas.ac.uk/publications/house-publications/lgbt-rights-commonwealth

[24] http://www.sxpolitics.org/frontlines/book/index.php

[25] http://www.hrw.org/sites/default/files/reports/lgbt1208webwcover.pdf

[26] http://www.icj.org/sogi-casebook-introduction/

[27] http://www.hhrjournal.org/wp-content/uploads/sites/13/2013/07/4-Miller.pdf

[28] http://www.opendemocracy.net/5050/maggie-murphy/traditional-values-vs-human-rights-at-un

[29] http://www.ids.ac.uk/files/dmfile/Globalgay.pdf

[30] http://sas-space.sas.ac.uk/4836/1/04_12_Opinion_v6a.pdf

[31] http://www.tikkun.org/nextgen/debating-pinkwashing

[32] http://spl.ids.ac.uk/file/kothicandicefeitjpg

[33] http://feitphoto.com/

[34] http://participationpower.wordpress.com/2013/01/22/julie-burchill-silo-mentalities-and-international-transgender-equality-2/

[35] http://www.tikkun.org/nextgen/about

[36] https://repository.library.georgetown.edu/handle/10822/557954

[37] http://opendocs.ids.ac.uk/opendocs/handle/123456789/2839#.UuFZhbTFKM8

[38] http://www.nirantar.net/

[39] http://spl.ids.ac.uk/file/genderqueer-cccharleshutchinsjpg

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