

Brief supporting Evidence Report 13

**DEVELOPMENT, DISCOURSE AND LAW:
TRANSGENDER AND SAME-SEX
SEXUALITIES IN NEPAL**

Sexuality, Poverty and Law

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July 2013

The IDS programme on Strengthening Evidence-based Policy works across six key themes. Each theme works with partner institutions to co-construct policy-relevant knowledge and engage in policy-influencing processes. This material has been developed under the Sexuality, Poverty and Law theme.

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This brief summarises a report presenting research conducted in Nepal between November 2012 and January 2013 aimed at exploring the legal, social and economic context pertaining to sexual and gender minority rights. The research explored recent legal reform in Nepal, the wider socioeconomic and social context of legal reform, and included work with sexual and gender minority persons, aimed at understanding their life experiences.

Findings of the research emphasise complex connections between law, social context and sexual subjectivity. There is dissonance in Nepal between a progressive legislative environment in respect of gender and sexual minority issues and everyday sociocultural ambivalence toward such sexual and gender minority persons. Such persons may suffer from explicit prejudice, lack of economic opportunity and familial rejection. Other forms of marginalisation may be more tacit, but nonetheless profoundly significant.

Values pertaining to marriage, family and sexuality are changing in contemporary Nepal, especially in respect of the influence of globalisation and the social movements and migratory working practices that are an important component of the remittance economy. Social attitudes toward same-sex sexualities, transgender and 'third gender' are increasingly affected by this evolving social context.

Legal reform in respect of gender and sexual minorities in Nepal has been progressive in promoting an understanding of such genders and sexualities as natural (rather than unnatural). Whilst supportive of this position in respect of law the present research advances an approach to sexuality in social analysis and development work premised on the importance of understanding the relationship between contemporary sexual subjectivities, legal discourse and socioeconomic transformation (as opposed to sexualities being naturally determined). The significance of such a perspective is explored for development work in the context of sexuality and legal advancement.

The present report is organised in respect of four main thematic areas. The first of these, Legal Context, explores some of the current opportunities and threats affecting community-based work with sexual and gender minorities in Nepal. This is also where we consider ways in which an appeal to natural sexualities in law may be at variance with a progressive conceptualisation of sexuality in development work, even as it is important and progressive legally.

Under the thematic area of Networks the report explores ways in which the development of rights-based work for sexual and gender minorities in Nepal has been informed by transnational discourses and practices, and has in turn informed international debates concerning sexuality and rights. This has implications for ways in which sexualities might be conceptualised in rights-based advocacy.

In respect of the theme of Actors we consider ways in which the work of Non-Governmental Organisations (NGOs) in this field relates to the experiences of everyday social actors (from among gender and sexual minority networks). Consequences for the effective representation and potential misrepresentation of such people's needs and experiences are considered.

Finally, through the theme of Institutions, we consider parallels between sexuality politics in Nepal as related to the (constitutional) institutionalisation of caste and ethnicity. Implications for people's understanding of the state and legal representation are explored.

In addition a detailed case study is included of Pant vs. Government of Nepal – the case that brought about legal reform for sexual and gender minorities in the country. This is considered in respect of social change and development.

Recommendations coming out of this research are as follows:

The present research has highlighted the need to understand the lives and experiences of sexual and gender minority people independently from an HIV prevention and/or legal framework as a basis for social analysis, and to build development interventions into the social and economic wellbeing of such people from this basis.

There is a need for examination of gender (including masculinity) and heteronormativity in work on sexuality and development – especially with respect to changing social norms and values. Gender and sexual minorities ought to be the focus of new research and interventions, but the lives of such people must be studied holistically, in respect of the total context of social, cultural and economic transformation in Nepal. This is opposed to research that emphasises the reductive use of sexuality categories as if knowledge of such terms alone represented the most salient framing for sexual and gender minority subjects. Rather, we advocate for closer work with gender and sexual minority peoples, seeking to better understand and represent their life circumstances and experiences.

In Nepal specifically there is a paucity of research on people identified as ‘lesbian, gay, bisexual, transgender or intersexed’ (LGBTI). Despite the evocation of this term in law there is a lack of understanding of the lives of people who actually identify as LGBTI (in those specific terms). Research on these themes might reveal interesting insights into sexuality and socioeconomic aspirations in Nepal.

In terms of policy reform, it is important to de-emphasise (or refocus) mappings and population estimates in research with sexual and gender minorities in favour of social transformation approaches, focused on education, outreach and wider awareness of sexual and gender minority issues. The rollout of a new national sexual health education curriculum in Nepal offers an exciting opportunity to conduct research on these issues.

There is also a need to conduct research on access to healthcare by gender and sexual minority peoples, many of whom may be excluded from mainstream health facilities (especially those who might be explicitly identified as gender-variant in terms of appearance).

Direct funding for advocacy/education campaigns should also continue as well as any programme that engages larger segments of Nepali society in dialogue about sexual and gender minority issues, and with sexual and gender minority peoples, relating such interventions to the larger social/national issues that affect participants’ daily lives.

Finally, it is imperative to conduct future research with sexual and gender minority peoples and engaged participants who can determine frames of study and reference for themselves. This is important for grounding social analysis, development interventions and rights-based advocacy in people’s social and personal realities.