



Brief supporting Evidence Report 106

LIVELIHOOD, EXCLUSION AND OPPORTUNITY: SOCIOECONOMIC WELFARE AMONG GENDER AND SEXUALITY NON-NORMATIVE PEOPLE IN INDIA

Sexuality, Poverty and Law

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February 2015



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The material has been funded by UK aid from the UK Government, however the views expressed do not necessarily reflect the UK Government's official policies.

AG Level 2 Output ID: 235

LIVELIHOOD, EXCLUSION AND OPPORTUNITY: SOCIOECONOMIC WELFARE AMONG GENDER AND SEXUALITY NON-NORMATIVE PEOPLE IN INDIA

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February 2015

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First published by the Institute of Development Studies in February 2015
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Overview

In 2014, its 67th year as a sovereign country with a population of 1.21 billion (Government of India 2011a), India is the second most populous country in the world, the most populous democracy and has the longest written constitution among all sovereign countries. Its gross domestic product (GDP) is ranked tenth in the world (out of 184 countries) when measured through current prices (2014) and third on the basis of purchasing power parity (IMF 2014). In 1990, just before India embarked on an unprecedented economic liberalisation, the ranking by current prices was eleventh but by purchasing power parity it was ninth, indicating a significant jump forward in a 25-year period. Commensurate with the GDP growth (from around 5.5 per cent in the early 1990s to a peak of 10.3 per cent in 2010) (World Bank 2014), in spite of differences in poverty measurement between the Government of India, World Bank and the United Nations Development Programme (UNDP), it is widely believed that there was significant reduction in poverty and that the government's emphasis on economic growth was responsible for this (Aiyar 2011).

Against this background, this case study explores the socioeconomic experiences of gender and sexuality minority peoples in India, especially in respect of ways in which sexual and gender 'difference' may be correlated to economic hardship and restricted opportunities for livelihood in the context of Indian socioeconomic 'modernity'. Growth of economic opportunity through neoliberal models of economic expansion is typically achieved via the extension of economic opportunity for some people amidst the endurance of ongoing socioeconomic precarity for most others. In this report we consider these issues in the context of livelihood, poverty, economic opportunity and restraint in the lives of gender and sexuality non-conforming people in India, with a specific focus on the eastern Indian states of Odisha and Manipur. These sites were chosen because in the last five years they have been among the states that have witnessed a number of community, government, non-governmental organisation (NGO) and donor-backed initiatives undertaken on economic inclusion for people with non-normative genders and sexualities.

While this case study does not have the mandate to investigate at length into the rich tapestry of non-normative sexual orientations, gender identities and sexual practices in India, one has to be mindful of the tension that exists between many of the identity formations (and 'non-identity' formations) implicated in the present study. This is not just borne out of which identities have greater cultural authenticity, but also a struggle for access to a common resource pool that holds promises of a better standard of life (Das and Dhall 2012; Boyce 2012).

Methodology

The study aimed at gaining a qualitative understanding of the economic inclusion status of people with non-normative genders and sexualities in India, the barriers and facilitators to such inclusion, and strategies to improve inclusion. To this end, the study examined government poverty alleviation programmes, their capacity to include people with non-normative genders and sexualities, and the responses of the people affected. The study adopted a mix of primary and secondary research methods to find answers to a set of broad and specific research questions. It started with a preliminary literature review, which informed subsequent semi-structured interviews with people with non-normative genders and sexualities, government officials, NGO representatives and donor officials involved in social security provision. Parallel to the interviews, focus group discussions (FGDs) were conducted with people with non-normative genders and sexualities. The data from all three methods were triangulated for the purpose of assessment. Furthermore, the lived experience of the authors of this report as development professionals and activists contributed to the analysis of the data collected.

Findings and conclusions

The Indian legal environment, in spite of its contradictions and uncertainties, provides a good opportunity for the government to strengthen and demonstrate its commitment to social welfare and economic inclusion of people with non-normative genders and sexualities. Leaving aside contentious issues such as Section 377 and its criminalising impact for the long term, the government can build up on a number of progressive developments and legislations such as the Supreme Court’s NALSA (National Legal Services Authority) judgement, the Census of India’s inclusion of transgender persons, the Legal Services Act and the Right of Children to Free and Compulsory Education Act 2009 to scale up social security access for people with non-normative genders and sexualities, both quantitatively (improved coverage) and qualitatively (reduced stigma). It can even justifiably commence the scale-up with trans women, trans men and intersexed persons, given the urgency of translating the Supreme Court NALSA judgement into action.

Similarly, targeting socioeconomically poorer MSM (men who have sex with men) – irrespective of femininity, masculinity or sexuality identity – can be prioritised on the grounds of greater vulnerability to HIV infection. Specific provisions of the Mental Health Care Bill, 2013, if applied carefully, may also provide grounds to enhance social security access for people with non-normative genders and sexualities, including females with non-normative genders and sexualities. Of course, conflation between mental ill health and specific sexual orientations or gender identities must be avoided, and the mental health needs of people with non-normative genders and sexualities have to be seen as potential outcomes of stigma, discrimination and violence, rather than as inherent to their sexualities.

According to government and donor officials engaged in HIV mainstreaming issues in Odisha, economic inclusion efforts for people with non-normative genders and sexualities need to focus on not just supply of social security but also demand generation. They also foresee a sustained role for NGOs and community-based organisations (CBOs) in both demand generation and supply assurance. Together, the immediate-term recommendations from the respondents and authors of the study for policymakers and donors are summed up in the following section.

Recommendations

Table 0.1 Immediate-term recommendations

No.	Demand generation	No.	Supply assurance
1	Support community discourse ¹ on issues of gender, sexuality and human rights to generate awareness and address self-stigma among people with non-normative genders and sexualities through community meetings/events/other forums.	1	Ensure the establishment of state-level welfare boards for people with non-normative genders and sexualities with community engagement – to begin with, at least for trans women and trans men as directed by the Supreme Court NALSA judgement.

(Cont’d)

¹ This may be a term preferred over ‘community education’, which may carry patronising overtones.

Table 0.1 (cont'd)

No.	Demand generation	No.	Supply assurance
2	Support efforts to inform and educate people about social security issues: (a) key policies that form the basis for government social security or poverty alleviation programmes; (b) legal developments such as the Supreme Court's NALSA judgement; (c) benefits and limitations of different social security schemes.	2	Facilitate discourse, sensitisation, training on gender, sexuality, human rights, social security policies and legal developments to generate awareness and address stigma among government officials at all levels of the hierarchy, health and legal service providers, educational institutions and media agencies.
3	Facilitate continuing initiatives that train and handhold people in negotiating the rules and regulations (paperwork) in applying for and accessing social security schemes, including timely follow-up.	3	Engage legal service providers (especially the government legal services authorities) in facilitating gender identity change and associated changes in relevant identity proof and citizenship documentation. ²
4	Facilitate awareness-generation sessions on psycho-social, medical and legal processes involved in feminisation/masculinisation (gender identity change, sexual reassignment surgery, hormonal therapy) for transgender people with linkages to sensitised, inexpensive and suitably trained and equipped legal and health service providers. ³	4	Facilitate widespread availability of quality (unbiased, state-of-the-art) and affordable feminisation/masculinisation medical services in government health centres and ensure that these services are covered by insurance schemes for the poor; in parallel, facilitate discourse on instituting protocols for feminisation/masculinisation procedures relevant to the Indian context among apex health-care associations (including those dealing with mental health).
5	Ensure one-stop windows to streamline and reduce the paperwork required for access to different social security schemes (similar to the Sanjog scheme of OSACS or the 'out-of-court dispute settlements' facilitated by the government legal services authorities to avoid lengthy and expensive litigation).	5	Improve public health programmes around HIV to better align them to vulnerabilities of all sections of people with non-normative genders and sexualities; around mental health to delink gender and sexuality non-normativity with mental ill health and ensure easy access to mental health services for people with non-normative genders and sexualities; around disability to ensure sensitivity to the specific needs of people with non-normative genders and sexualities.
6	Ensure effective and unbiased complaint mechanisms that address stigma in social security services as well as educational, health and legal settings in an inexpensive and speedy manner (similar to the alternate dispute redressal systems of government legal services authorities that help avoid lengthy and costly litigation).	6	Run comprehensive and sustainable livelihood and entrepreneurial skills-building programmes that are based on an in-depth understanding of interest levels of the trainees, their sociocultural realities and market research; extend this learning also to other economic inclusion initiatives such as self-help groups to ensure durability
		7	Ensure workplace security by sensitising organisations across all sectors to adopt inclusive and non-discriminatory human resources policies.

(Cont'd)

² Other than the birth certificate, which records the 'official' gender status at birth.

³ A key element of such awareness-generation efforts should also be to inform people of the wider range of options available under feminisation or masculinisation. For example, the possibility of opting for only a gender identity change without sexual reassignment surgery or hormonal therapy (both collectively often referred to as 'sex change'); or of hormonal therapy without sexual reassignment surgery (though the reverse may not be possible); or of various genital change possibilities within the context of sexual reassignment surgery.

Table 0.1 (cont'd)

No.	Intermediary actions
1	Adoption of a gender and sexuality education framework that infuses gender and sexuality equity in the entire syllabi of schools and colleges (rather than the introduction of just a standalone subject on 'sex education') and encourages appreciation and respect for people with non-normative genders and sexualities among students and faculty alike in educational institutions (Walikhanna 2012).
2	Facilitate a long-term mass media campaign to address negative social attitudes against people with non-normative genders and sexualities and bring about a lasting 'image overhaul' that reduces stigma.

Source: Authors' own.

The long-term recommendations for facilitating economic inclusion typically focus on further discourse around non-normative genders and sexualities leading to continuing policy and legal reforms. While decriminalisation of people with non-normative genders and sexualities (primarily through a repeal of Section 377) is now a long-standing matter (the campaign against it started in the mid-1990s) and should be seen as an immediate measure to facilitate economic inclusion, the positive spin-offs of decriminalisation are likely to take longer. The spin-offs can be in the contexts of legal recognition of queer marriages,⁴ non-normative family structures, property inheritance by queer romantic partners (live-in or marital), and child adoption by queer couples. However, these will require changes in the legal definitions of marriage and family, which understandably will have to engage law-makers through a due process and will therefore take time. Yet, government and donor agencies can at least initiate a wide discourse on these matters in the context of legal developments such as the Supreme Court's NALSA judgement.

Another legal issue that needs reform is sexual assault. Again, the NALSA judgement provides a crucial opening to revisit India's laws against sexual assault and at the very least extend them to provide protection to trans women, for many of whom sexual assault in various forms is a day-to-day experience.

Finally, the government's poverty alleviation efforts can become far more accessible for people with non-normative genders and sexualities if there is a comprehensive anti-discrimination law in place. Civil society discourse in this regard is under way in the contexts of gender, caste, religion, disability and mental health, and efforts to include the issue of non-normative genders and sexualities are also under way. Activists argue that decriminalisation of people with non-normative genders and sexualities is only part of a larger battle against discrimination that needs to be bolstered with a strong legislation in line with constitutional values. Government and donor support in this regard will strengthen and speed up the process of economic inclusion.

⁴ The term 'queer' has been used to indicate not just same-sex relationships, but also mixed gender identity relationships, say, as between MSM and trans women, a 'common' phenomenon in India (in the context of people with non-normative genders and sexualities).