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**RIGHT TO SEXUALITY:
INTERSECTIONS WITH EDUCATION,
EMPLOYMENT, LAW AND CITIZENSHIP**

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INTERSECTIONS WITH EDUCATION,
EMPLOYMENT, LAW AND CITIZENSHIP**

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INTRODUCTION

According to the World Health Organisation’s (WHO) working definition, sexuality is “a central aspect of being human throughout life [that] 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, legal, historical, religious, and spiritual factors.”¹ Thus, sexuality is fluid, encompasses different aspects, including sex, gender, identities, expression, and pleasure, and is capable of affecting people in different ways.

“Sexuality intersects with a number of different axes in a person’s life. The points of intersection and the experiences related to it vary depending on factors such as the person’s sex, gender identity, sexual orientation, marital status, parental status, and HIV status among others.”

Intersectionality theory provides an important lens to study the inter-connected ways in which a person’s multiple social identities intersect and shape the person; this lens is an important one to understand the many different ways in which oppression and discrimination, as well as privileging, affect people in multi-dimensional ways.² On the basis of their sexuality, people may be either accepted or discriminated against in different spheres, including in education and employment. An intersectionality approach therefore offers a good lens for working on sexuality and rights.

Although sexuality is intrinsically connected to many facets of people’s lives, this paper elects to focus on a few aspects. It analyses how sexuality intersects within spheres of education and employment, and the need for enactment and implementation of effective laws and policies that are inclusive and prevent violence and abuse. It also critically looks at the idea of citizenship, who it caters to, and who it could potentially exclude.

SEXUALITY AND EDUCATION

Education forms the building block to leading healthy lives; spaces for education therefore constitute vital spaces in the lives of many children.³ These spaces may be either formal institutions such as schools or centres for non-formal education.⁴ Access to educational spaces that are based on values of equality, diversity, kindness, and respect can shape children and young people’s lives in an affirming manner. For education to be holistic and affirming, they need to nurture safe spaces for children which are free of discrimination, abuse, and ridicule, and help them grow into confident people who are able to make informed decisions about their lives and bodies.

In order to nurture safe spaces, schools must keep in mind the values as enshrined in the United Nations Convention on the Rights of the Child⁵ (UN CRC). Efforts must be made to enact and effectively implement child protection policies to prevent and address violence and discrimination in any form, including bullying. Steps must be undertaken to prevent child sexual abuse and violence whether at homes, school environments, or any other spaces, including cyberspace. Children and young people must be able to learn about ‘safe’ and ‘unsafe’ touch, and be able to seek help from significant others in their families and the school environment.

“Information provided through CSE must be rights-based and not confused with individual or community standards and codes of morality.”

For education to be holistic and to adequately prepare children and young people for their lives, it is important that Comprehensive Sexuality Education (CSE)⁶ be included in the education system. According to the Sexuality Information and Education Council of the United States (SIECUS), CSE includes “age-appropriate, medically accurate information on a broad set of topics related to sexuality including human development, relationships, decision making, abstinence, contraception, and disease prevention.”⁷ CSE focuses on enhancing knowledge about bodies, menstruation, puberty, reproduction, relationships, diverse genders and sexualities, prevention of and addressing sexual abuse and violence, and prevention of sexually transmitted infections (STI), including HIV and AIDS. Information provided through CSE must be rights-based and not confused with individual or community standards and codes of morality.

CSE is important not only because it would help children and young people to prevent sexual abuse and diseases, but more importantly because they have a right to information that deals with their lives, and it allows for important conversations on respect, diversity, and consent. It also helps young people grapple with confusions and fears around sexuality and identity formation, as well as to develop an understanding of and respect for all people irrespective of the sexual or gender identities or their choices in marriages or relationships. Inclusion of CSE ensures that young people are able to make informed decisions about their own bodies, choices, and lives through age-appropriate and accurate information, build and sustain healthy relationships, and develop into confident people in charge of their lives.

CSE should also be made accessible for all; thus information related to CSE must be made available and accessible in different languages and available in education systems irrespective of geographical location, caste, and class. It should also be made accessible for young people and children with disabilities through braille, sign language, and other creative models of education.

Implementing CSE is also dependent on facilitators who impart such education. Teachers and facilitators must therefore undergo rigorous training on the content of CSE, and attend refresher courses to stay updated on new information and knowledge. This is especially important to address traditional, religious, and cultural beliefs that look at sexuality as taboo. Trainings must focus on teachers and facilitators gaining knowledge and addressing their own concerns with regard to sexuality, and getting more comfortable and confident discussing these issues with young people who would be looking up to them for information and guidance. This should also be made available to special educators, including those reaching out to young people with disabilities.

Educational spaces must thus work towards enabling an affirming language and environment among people about diversities in bodies, identities, expressions, and desires. It is therefore important that schools are accepting of diversity, including of children with different sexual orientations and sexual and gender expressions and identities. This could also be reflected through the presence of anti-discrimination and anti-harassment policies in school.

“Educational spaces must thus work towards enabling an affirming language and environment among people about diversities in bodies, identities, expressions, and desires. It is therefore important that schools are accepting of diversity, including of children with different sexual orientations and sexual and gender expressions and identities.”

An intersectional approach would ensure that there is a commitment to making schools safe especially for girls, children with disabilities, trans children, and other vulnerable children. This could be achieved in various ways, including availability of counselling services for all children, and enforcement of rules against violence, abuse, and bullying. Trans children may experience specific disadvantages in accessing toilets that are for either males and females,⁸ which must be addressed through provision of trans-friendly toilets, as well as facilitating an environment of non-discrimination and respect for diversity.

Sexuality related barriers that often may have an outcome on school drop-outs must also be addressed. Examples include provision of sanitary and hygiene kits for young girls who are menstruating, availability of clean and accessible toilets for all children including girls, children with disabilities and trans children, and addressing school drop-outs due to adolescent pregnancies.

SEXUALITY AND EMPLOYMENT

When looking at issues of sexuality within employment, an intersectional approach would recognise that one must pay attention to all forms of employment, addressing issues not only within the public sector but also in the private sector, focusing not only on formal but also on informal modes of employment. While the public and the formal sectors are usually required to adhere to certain conditions, rules and regulations by the government, the private sector may not be uniformly and/or adequately regulated for human rights, labour laws, and policies on environmental concerns.

On the other hand, informal forms of employment typically fall outside the purview of regulations because

of multiple factors including, but not limited to, the size of the enterprise, not being registered, atypical jobs (casual, part-time, or home-based).⁹ This makes those employed in the informal sector, particularly minority and marginalised communities, more vulnerable. Informal sectors of employment often function without regard for human rights, work and health safety regulations, labour laws, health and hygiene regulations, policies and programmes on prevention and addressing of sexual and others forms of harassment at the workplace, as well as policies and programmes on prevention and addressing of any kind of discrimination against people. Various research studies highlight the over-representation of women employed within the informal sector, as well as unfair compensation and the lack of benefits towards women within this sector.¹⁰

“The choice of sex work as a legitimate form of work must also be recognised and respected. Sex work and soliciting of clients for sex work must not be criminalised, as is the case in many countries within Asia and the Pacific.”

Employment opportunities must therefore be open, accessible, and non-discriminatory towards all people irrespective of age, caste, class, ethnicity, religion, (dis)ability, citizenship, sex and gender identity, sexual orientation and gender expression, HIV and other health status, and/or marital status among others. Women in reproductive age are often discriminated against with employers denying women jobs for fear of them getting pregnant once employed, and therefore claiming maternity entitlements (including maternity leave, breastfeeding breaks, space, and others). Studies conducted between mid-80s to mid-90s also point towards discrimination in employment towards LGBT people, with 16-68% individuals reporting some form of discrimination during their lives, including being fired or denied employment, denied promotions, or given negative employment appraisals, being subjected to verbal and/or physical abuse, and being paid unequally.¹¹

Discrimination must be prevented and addressed not only during a person’s employment but also during processes of recruitment and termination. Efforts must be made through the enactment and implementation of effective anti-discrimination policies to prevent discriminatory

practices of rejection on the basis of one’s gender, caste, disability, HIV status, marital and/or parental or pregnancy status, as well as on the basis of one’s perceived or stated sexuality. In addition, there must be legal avenues for aggrieved people to seek redressal for unfair treatment during these recruitment and selection processes.

The choice of sex work as a legitimate form of work must also be recognised and respected. Sex work and soliciting of clients for sex work must not be criminalised, as is the case in many countries within Asia and the Pacific. Choice of sex work as work must also not prevent them from accessing other means of employment and legal aid.

Efforts must also be made to ensure that no one suffers sexual or any other forms of harassment at the workplace. The US Equal Employment Opportunity Commission (EEOC) defines sexual harassment as “unwelcome sexual advances, requests for sexual favours, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment.”¹² Sexual harassment at workplaces must be strictly addressed with proper and adequate redressal mechanisms to address such abuse. This must be done specifically ensuring rights of marginalised communities, such as women, transgender people, and people living with HIV and AIDS are protected.

Conditions during employment must also be made fair for all through the introduction of policies on leaves and compensatory allowances, including maternity and paternity leaves¹³ irrespective of their marital status and/or sexual identity; adoptive parents including single parents and gay parents could also be included within the purview of this policy. Health, including sexual health, and wellbeing of all employees must be a focus area for the organisation including attention to allowances, leaves and employment benefits. This includes among others access to a healthy and hygienic work atmosphere with clean and accessible toilets for all people, spaces and time for breast-feeding women, sanitary kits for menstruating women, and health insurance with coverage for sexual and reproductive health issues including for abortion, contraception (including vasectomy and tubectomy), childbirth, hysterectomy, and treatment for reproductive cancers. These insurance and health policies should, however, not be restrictive in terms of people’s marital status and/or gender identity and sexual orientation.

It is necessary for organisations to draw up a mechanism for grievance redressals for people working within the organisation, in case they perceive a violation of their rights. While all benefits and compensatory measures would need to be commensurate with the organisation's overall policies and availability of funding, it is important that the overall work environment should be inclusive, respectful, and non-discriminatory for all.

SEXUALITY AND THE LAW

While the existence of progressive laws and policies is not, in itself, indicative of the absence of discrimination and marginalisation, it is a good indicator of the state's intent to prevent and address discrimination of any kind, including on the basis of one's gender identity or sexual orientation. The intersection of sexuality with the law is therefore an important one.

Anti-sodomy laws—a legacy of the colonial past for many nations in Asia and the Pacific—continue to criminalise adult consensual same-sex sexual activity, thus impinging on the rights of many individuals and negatively affecting people who do not conform to the heteronormative framework, including people who are gay, lesbian, bisexual, and transgender people. People of diverse genders and sexualities have been negatively affected by this law in countries such as Bangladesh, India, Malaysia, Myanmar, Pakistan, Sri Lanka, and Singapore.¹⁴ A similar law also remains in force in Brunei, thus resulting in not just arrests and punitive action but also affecting access to safe, confidential health services that are sensitive to their needs. It is of utmost importance to repeal such laws that continue to discriminate and penalise people on the basis of their sexuality. Several groups and voices, such as in India¹⁵ and in Singapore¹⁶ have been demanding for the repeal of such laws or the removal of adult same-sex sexual activity from the purview of such law.

“While the existence of progressive laws and policies is not, in itself, indicative of the absence of discrimination and marginalisation, it is a good indicator of the state's intent to prevent and address discrimination of any kind, including on the basis of one's gender identity or sexual orientation.”

People must also not be criminalised on the basis of their choice of work, including the choice of sex work. Sex work or certain activities related to sex work (such as soliciting of clients) is criminalised in all countries of the Asia and the Pacific region, except for New Zealand and New South Wales (Australia).¹⁷ Criminalisation pushes sex workers underground and increases their vulnerability to sexually transmitted infections, including HIV and AIDS, and makes it difficult for them to access health services.¹⁸ Aside from decriminalisation of sex work and related activities, efforts must be made to curb violence and abuse within sex work, enable and ensure better access to education, good quality health services and interventions, and take adequate measures to reduce stigma and discrimination towards those involved within sex work. Laws and policies must work towards addressing violence including rape, sexual abuse within sex work.

“While the law of the land must cater to all people, including men and boys, an intersectional approach would ensure that these laws are enacted with an understanding towards how such violence and abuse is specifically targeted on marginalised populations on the basis of gender, age, sexual orientation, and gender identity. Women, transgender people, and those that do not fit into the heteronormative domain are disproportionately affected.”

The state must also focus on the enactment and implementation of laws preventing and addressing issues of violence and abuse, sexual assault, rape, harassment and trafficking, including violence and abuse in cyberspace. While the law of the land must cater to all people, including men and boys, an intersectional approach would ensure that these laws are enacted with an understanding towards how such violence and abuse is specifically targeted on marginalised populations on the basis of gender, age, sexual orientation, and gender identity. Women, transgender people, and those that do not fit into the heteronormative domain are disproportionately affected. States must look into the specific nature of assaults on women including rape, sexual assault, and acid attacks; laws must also be enacted and implemented to tackle rape within marriage and other intimate relationships. In Asia and the Pacific,

INTERSECTIONS OF SEXUALITY WITH EDUCATION, EMPLOYMENT, LAW AND CITIZENSHIP

SEXUALITY AND EDUCATION

Enact child protection policies; enact and implement anti-discrimination and anti-harassment policies; provide safe, clean and accessible facilities for all; introduce and integrate CSE in curricula

SEXUALITY AND EMPLOYMENT

Enact anti-discrimination and anti-harassment policies for all; provide and implement employment benefits for all; focus on health including SRH for all; provide healthy, clean and accessible facilities for all



SEXUALITY AND LAW

Decriminalise same-sex sexual behaviour and expression; decriminalise sex work and related activities; enact & implement laws and policies preventing violence and abuse including rape, harassment, trafficking; enact anti-discrimination laws

SEXUALITY AND CITIZENSHIP

Must include and provide for all 'legal' citizens, migrants and refugees; and affirming of all people including marginalised populations, such as women, children, older people, people with disabilities, people of diverse genders and sexualities, people living with HIV

there is also a high incidence of child sexual abuse; laws must be enacted to address such abuse.

Additionally, laws must enable the equal treatment for all people and must therefore not be restrictive to certain communities. For example, affirmative laws must enable and ensure adoption of children for all people irrespective of their gender (men should be able to adopt), marital status (unmarried or divorced people should be able to adopt), and/or sexual orientation and gender identities (same-sex desiring people should be able to adopt). Effective laws and policies must be enacted and implemented to regulate and reduce abuse within surrogacy whether to the surrogate or to the commissioning parents; this is especially important in relation to the expanding nature of surrogacy as an industry, rights of surrogate women not being taken care of, lack of or inadequate regulation on surrogacy between different countries and the denial of surrogacy depending on one's gender identity or sexual orientation.

Laws related to inheritance rights to property must not be restrictive on grounds of gender, marital status, and sexual orientation or gender identity. Also, many countries in Asia and the Pacific allow for the name of only the father on the birth certificate, thus adhering to patriarchal norms. In addition to rendering the mother invisible, this also poses additional difficulties for single or divorced mothers. This must therefore be done away with and birth certificate and other such official documents must allow for the names of either parent. This is slowly changing in a few countries, for example with the landmark supreme court decision establishing the mother's nationality as a basis for granting citizenship in Nepal¹⁹ or the Delhi high court ruling that in certain cases the mother's name was sufficient for a child to apply for a passport.²⁰

Evaluation of a state's response at these intersections of sexuality with law includes not only looking at whether the state has good laws and policies enacted to counter violence and abuse, including sexual abuse and violence. It also includes checking if there are proactive and affirmative laws that address these issues at the root, such as the presence of comprehensive anti-discrimination laws and policies. There is thus a need to enact and implement anti-discrimination laws that would address issues of discrimination within education, employment, and other public and private spheres on the basis of sexuality, and address discrimination against trans people, people living with HIV and AIDS, and people of diverse genders and sexualities. Non-discrimination as a value could also extend through the inclusion of non-binary genders on

all official documents, thus giving people the option to choose a gender identity other than 'man' or 'woman.'²¹ This should be accompanied with non-discriminatory laws and interventions that safeguard and protect such rights and do not lead to additional discrimination. All public sector services must also be made accessible to all people including, for example, the provision and access to public distribution systems and welfare services for trans people.

SEXUALITY AND CITIZENSHIP

The concept of "sexual citizenship" works on the broad view of the government granting its citizens certain rights, including the right to be protected from discrimination and access to government welfare and services.²² Diane Richardson's (2000) enumeration of three kinds of sexual rights is also helpful in this regard—a) rights involving sexual practice, b) rights of self-definition, and c) rights gained from social and political institutions, thus including right to marriage, family, adoption amongst others.²³

“Citizenship or determining the ‘legitimate’ people of a nation can also be used to discriminate against particular communities, and must therefore be viewed more broadly to not just cater to all ‘legal citizens,’ but also to prevent exclusions on the basis of gender, sexual orientation or gender identity and expression (SOGIE) status, marital status, and HIV status, among others.”

According to the Merriam-Webster dictionary, a citizen is “a person who legally belongs to a country and has the rights and protection of that country.”²⁴ The idea of citizenship thus includes determining the legitimate people who comprise the nation and adhere to the laws enacted by the government, and have the right to be protected within the boundaries of the country.

However, citizenship or determining the 'legitimate' people of a nation can also be used to discriminate against particular communities, and must therefore be viewed more broadly to not just cater to all 'legal citizens,' but also to prevent exclusions on the basis of gender, sexual orientation or gender identity and expression (SOGIE)

status, marital status, and HIV status, among others. In looking at issues of citizenship, it is additionally important to cater to those who are considered marginalised within society—women, children, people with disabilities, people of diverse genders and sexualities, and people living with HIV, among others.

Migrants (both legal and undocumented), refugees, stateless people, and those who governments sometimes refuse to recognise as citizens, also need a specific mention here. Issues of citizenship must also look into issues of migration and especially women and trans migrants (who may or may not be documented) and address deeper issues of violence and discrimination within migrant and refugee communities. In an ever-changing world of migration, this includes doing away with discriminatory screening practices at the port of entry for a variety of reasons including HIV status and pregnancy. It is important to recognise that people who fall at the intersections of more than one kind of marginalisation category face more enhanced degrees of discrimination. Thus, women migrants face additional degrees of marginalisation in different countries having to face discrimination on the basis of their gender and citizenship status.

Looking at issues of sexual citizenship and paying particular attention on marginalised communities would include getting rid of discriminatory laws and policies that criminalise people of diverse genders and sexualities. For example, this would include doing away with anti-sodomy laws within countries that criminalise certain people for their sexual behaviour and expression. This would also include setting up equitable laws and policies that focus on (but not limit to) women and trans people and protect their interests thus extending to gender-just laws and policies, access to health including sexual and reproductive health services, prevention of gender-based violence and abuse, and recognition of women as citizens with equal rights to education, employment, vote and be elected as a government representative.

Ideas of citizenship could also extend to doing away with restrictions on people to move into their partners' countries; right to asylum in a safe country on grounds of gender, HIV status, SOGIE status and others; and right to visit and consent to treatment of a partner for same-sex desiring people and people who may not be married and others. It must additionally enable people to access benefits related to health, education, employment, and decent living conditions in a safe environment. The idea

of citizenship must be used not necessarily to penalise people, but to actively support people in living lives which are safe, healthy, and promotes their wellbeing.

CONCLUSION

This paper examined sexuality and its intersections with laws, citizenship, education, and employment. While sexuality can be a tough terrain to negotiate for almost all people, for certain groups it is fraught with all kinds of pitfalls and dangers—exclusion and discrimination to name a few. Sexuality must therefore be approached from a perspective that appreciates and understands intersectionalities that exacerbate vulnerabilities and produce compounded adverse effects.

At the level of education, one's sexuality impacts if and how one is treated with respect, equality, and non-discrimination, and thus it is important that educators acknowledge, assess, and address issues of sexuality in an educational environment from the beginning. At a minimum, this encompasses nurturing schools and other educational spaces as safe for all children, ensuring no child or young person is discriminated against or marginalised, and could extend to the inclusion of CSE for all.

At workplaces, taking into consideration issues of sexuality consists of having in place effective policies on recruitment and termination, anti-discrimination policies, as well as the enactment and implementation of sexual harassment policies with specific attention to marginalised communities.

Enactment and implementation of effective and progressive laws related to sexuality and repealing of discriminatory ones are a significant step towards ensuring inclusion, dignity, and non-discrimination for all. This paper therefore pushes for the need for the enactment and implementation of different policies, such as child protection policy in educational spaces, anti-discrimination policy, and anti-sexual harassment policies in spheres of education and employment in order to be truly inclusive and diverse. Laws and policies related to sexuality are a vital ingredient to ensure that people are not marginalised and are treated equally and justly in all spheres. Apart from laws in the education and

employment sectors, laws related to sexuality must ensure that people are not criminalised on the basis of their SOGIE status, as well as prevent gender-based violence in all forms.

“The idea of citizenship must also cater to the idea that all people in the country must be treated equally, and therefore must not be discriminated against on grounds of gender, SOGIE status, HIV status, and migrant status. A true concept of sexual citizenship would therefore emerge with its foundations on values of equality, respect, and acceptance of diversity. ”

A state’s progress could be measured to a certain extent by the presence of good and effective policies that take care of all people, who are not necessarily only the ‘legitimate citizens’ of the country but extends to all irrespective of their citizenship status. Provision of the best laws and policies, as well as access to services related to health, education, and employment is not very helpful when people within the same country are either treated unequally or as ‘non-citizens,’ thus leaving them bereft of rights and equal opportunities that are meted out to the ‘better citizens.’ As much as the idea of citizenship is meant to cater to all ‘legitimate people’ and protect them, this is often viewed as a point of exclusion as well. Thus, non-citizens such as migrants who may be documented or not could be left outside the ambit of such laws and policies within a country thus increasing their experience of marginalisation. The idea of citizenship must also cater to the idea that all people in the country must be treated equally, and therefore must not be discriminated against on grounds of gender, SOGIE status, HIV status, and migrant status. A true concept of sexual citizenship would therefore emerge with its foundations on values of equality, respect, and acceptance of diversity.

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ARROW is a regional non-profit women's NGO based in Kuala Lumpur, Malaysia, and has consultative status with the Economic and Social Council of the United Nations. Established in 1993, it envisions an equal, just, and equitable world, where every woman enjoys her full sexual and reproductive rights. ARROW promotes and defends women's rights and needs, particularly in the areas of health and sexuality, and to reaffirm their agency to claim these rights.

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