



Home Office

# **Country Policy and Information Note**

## **India: Sexual orientation and gender identity and expression**

**Version 3.0**

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# Preface

## Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in [the basis of claim](#) section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

## Assessment

This section analyses the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment on whether, **in general**:

- A person is reasonably likely to face a real risk of persecution or serious harm
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- Claims are likely to justify granting asylum, humanitarian protection or other form of leave, and
- If a claim is refused, it is likely or unlikely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case’s specific facts.

## Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation’s (ACCORD), [Researching Country Origin Information – Training Manual, 2013](#). Namely, taking into account the COI’s relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a [terms of reference](#) which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the ‘cut-off’ date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available, and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion.

Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the [bibliography](#).

## Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email [the Country Policy and Information Team](#).

## Independent Advisory Group on Country Information

The [Independent Advisory Group on Country Information](#) (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. The IAGCI may be contacted at:

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Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the [gov.uk website](#).

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# Assessment

Updated: 21 September 2018

## 1. Introduction

### 1.1 Basis of claim

1.1.1 Fear of persecution or serious harm by the state and/or non-state actors due to the person's actual or perceived sexual orientation and/or gender identity.

### 1.2 Points to note

1.2.1 This note provides policy guidance on the general situation of gay men, lesbians, bisexuals and transgender persons (including hijras). They are referred collectively as 'LGBT persons', though the experiences of each group may differ.

1.2.2 The experience of Hijras, who have had a distinct position in South Asian culture for thousands of years and are regarded as a third gender in India, may be different from other LGBT groups.

1.2.3 Where a claim is refused, it must be considered for certification under section 94 of the Nationality, Immigration and Asylum Act 2002 as India is listed as a designated state (see [Certification](#)).

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## 2. Consideration of issues

### 2.1 Credibility

2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](#)).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](#)).

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### 2.2 Exclusion

2.2.1 Decision makers must consider whether one (or more) of the exclusion clauses is applicable. Each case must be considered on its individual facts and merits.

2.2.2 For further guidance on the exclusion clauses and restricted leave, see the [Asylum Instruction on Exclusion: Article 1F of the Refugee Convention](#) and the [Asylum Instruction on Restricted Leave](#).

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### 2.3 Convention reason

2.3.1 LGBT persons form a particular social group (PSG) in India within the meaning of the Refugee Convention because they share a common

characteristic that cannot be changed and have a distinct identity which is perceived as being different by the surrounding society.

- 2.3.2 Although LGBT persons form a PSG, this does not mean that establishing such membership will be sufficient to be recognised as a refugee. The question to be addressed is whether the particular person will face a real risk of persecution on account of their membership of such a group.
- 2.3.3 For further guidance on particular social groups, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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## 2.4 Risk

- 2.4.1 Decision makers must establish whether or not an LGBT person, if returned to their country of origin, will live freely and openly as such. This involves a wide spectrum of conduct which goes beyond merely attracting partners and maintaining relationships with them. Even if LGBT persons who lived openly would not be generally be at risk, decision makers must consider whether there are reasons why the particular person would be at risk.
- 2.4.2 If it is found that the person will conceal aspects of his or her sexual orientation/identity if returned, decision makers must consider why.
- 2.4.3 If this will simply be in response to social pressures, or for cultural or religious reasons of their own choosing, then they may not have a well-founded fear of persecution.
- 2.4.4 But if a material reason why the person will resort to concealment is that they genuinely fear that they will be persecuted, it will be necessary to consider whether that fear is well-founded.
- 2.4.5 Decision makers should also consider if there are individual- or country-specific factors that could put the person at risk, even if they choose to live discreetly because of social or religious pressures, and/or whether the steps taken by them would be sufficient to avoid the risk of persecution. Some people will not be able to avoid being known or perceived to be LGBT, whilst others will take some steps to conceal but would still be at risk.
- 2.4.6 For further guidance, see the [Asylum Instruction on Sexual Identity Issues in the Asylum Claim](#).

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### a. State treatment of gay and bisexual men

- 2.4.5 In the Country Guidance case [MD \(same-sex oriented males: risk\) India CG \[2014\] UKUT 65 \(IAC\)](#) (heard on 24 February 2012 and 10 October 2013 and promulgated 12 February 2014), the Upper Tribunal (UT) held that ‘Section 377 of the Indian Penal Code 1860 criminalises same-sex sexual activity’, however, ‘Prosecutions for consensual sexual acts between males under section 377 IPC are, and have always been, extremely rare.’ (para 174b).
- 2.4.6 There have been reports of police officers using Section 377 IPC as a pretext to harass and intimidate LGBT persons in public spaces (see [State treatment and attitudes](#)).

- 2.4.7 Several hundred people in various states have been arrested under Section 377 IPC, the majority of them for crimes against children. No evidence has been found that any of those arrested have been tried and convicted in cases involving consensual sexual activity between adults (see [Enforcement of Section 377 IPC prior to September 2018 ruling](#)).
- 2.4.8 Subsequent to [MD](#), India's Supreme Court ruled, on 6 September 2018, that consensual sexual acts between adults, conducted in private, are no longer an offence under Section 377 IPC (see [Gay and bisexual men: Section 377 of the Indian Penal Code \(IPC\)](#)).
- 2.4.9 In [MD](#) the UT held that:  
'Some persons who are, or are perceived to be, same-sex oriented males suffer ill treatment, extortion, harassment and discrimination from the police...; however, the prevalence of such incidents is not such, even when taken cumulatively, that there can be said in general to be a real risk of an openly same-sex oriented male suffering treatment which is persecutory or which would otherwise reach the threshold required for protection under the Refugee Convention, Article 15(b) of the Qualification Directive, or Article 3 ECHR.' (paragraph 174c).

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#### b. State treatment of lesbians and bisexual women

- 2.4.10 The Upper Tribunal's determination in the Country Guidance case [AR and NH \(lesbians\) India CG \[2016\] UKUT 00066 \(IAC\)](#) (heard on 23 June 2015 and promulgated 1 February 2016) found that '... both parties accept that there have been no prosecutions of lesbians under section 377 at all, and that in practice, section 377 is perceived in Indian law as inapplicable to lesbians.' (Paragraph 64). India's Supreme Court ruled, on 6 September 2018, that consensual sexual acts between adults, conducted in private, are no longer an offence under Section 377 IPC. There are no other laws in India which criminalise lesbian sexual activity. Women are not, therefore at risk of prosecution for same-sex sexual activity (see [Legal rights: Lesbian and bisexual women](#)).
- 2.4.11 [AR and NH](#) held that 'the evidence does not support a finding of endemic police complicity in harassment or other ill-treatment of lesbian couples or individuals.' (Paragraph 76)

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#### c. State treatment of transgender persons

- 2.4.12 In an April 2014 judgment, the Indian Supreme Court directed the central Government of India and all state governments to legally recognise transgender persons (including hijras) as a third gender and to implement specific measures to safeguard their Constitutional rights. These included the provision of educational and public employment opportunities, accessible medical care, the extension of social welfare schemes and, notably, a change in the attitudes of public officials towards transgender persons and the need for officials to influence public opinion positively. The Court directed that state-issued identity papers – including birth certificates, passports, electoral records and other documents – reflect the person's self-defined



gender identity (See [Legal rights: Transgender persons](#) and [Attitudes of, and treatment by, state authorities](#)).

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#### d. State treatment conclusion

- 2.4.13 In general, state treatment of LGBT persons, even when taken cumulatively, is not sufficiently serious by its nature and repetition as to amount to persecution or serious harm. Decision makers must consider each case on its facts. The onus will be on the person to demonstrate why, in their particular circumstances, they would be at real risk from the authorities.

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#### e. Societal treatment of gay men

- 2.4.14 In [MD](#), the UT held that ‘Same-sex orientation is seen socially, and within the close familial context, as being unacceptable in India. Circumstances for same-sex oriented males are improving, but progress is slow’ (para 174d).

- 2.4.15 The UT also found that some persons who are, or are perceived to be, same-sex oriented males, suffer ill treatment, extortion, harassment and discrimination from the general populace, but that the prevalence of such incidents is not such that there is, in general, a real risk of persecution or serious harm for an openly same-sex oriented male (paragraph 174c).

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#### f. Societal treatment of lesbians

- 2.4.16 In the case of [AR and NH](#) the UT found:

‘A risk of persecution or serious harm for a lesbian woman in India, where it exists, arises from her family members, and the extent of such risk, and whether it extends beyond the home area, is a question of fact in each case. (paragraph 78(8))

‘The risk of persecution or serious harm is higher for uneducated lower class lesbian women in rural areas, who remain under the control of their family members and may not be permitted to leave the home to continue meeting their lesbian partners.’ (paragraph 78(9))

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#### g. Societal treatment of transgender persons

- 2.4.17 Hijras (Aravanis) form the most prominent transgender community in India. Hijras have always suffered stigmatisation, abuse and derision. Societal attitudes have gradually improved in recent years, but incidents of violence against hijras continue to be reported (See [Societal treatment and attitudes: Transgender persons](#)).

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#### h. Societal treatment conclusion

- 2.4.18 In general, the societal treatment of LGBT people in India, even when taken cumulatively, is not sufficiently serious by its nature and repetition as to amount to persecution or serious harm. Decision makers must consider each

case on its facts. The onus will be on the person to demonstrate why, in their particular circumstances, they would be at real risk from non-state actors.

- 2.4.19 For further guidance on assessing risk, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#) and, in regard to women, [Gender issues in the asylum claim](#).

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## 2.5 Protection

- 2.5.1 If the person's fear is of ill treatment/persecution at the hands of the state, they will not be able to avail themselves to the protection of the authorities.
- 2.5.2 Where the person's fear is persecution and/or serious harm from non-state actors, including rogue state agents, decision makers must assess whether the state can provide effective protection.
- 2.5.3 Police conduct towards LGBT people varies from one Indian state to another. In several states, the police have received relevant additional education and sensitivity training in LGBT issues (see [Police conduct](#)).
- 2.5.4 Whilst there have been some reports of police intimidating, harassing and extorting LGBT persons, there are avenues of redress in such circumstances. There is no evidence that, in general, the police would fail to properly investigate a serious incident of violence, or another serious crime, on the basis that the person is LGBT (see [Remedies for police misconduct](#) and [Police conduct](#)).
- 2.5.5 There are remedies for victims of police misconduct (see [Remedies for police misconduct](#)).
- 2.5.6 Various non-governmental organisations advocate for LGBT rights and may also be able to assist the person to avail themselves of the protection of the state (see [Societal treatment and attitudes](#)).
- 2.5.7 In general, the state appears willing and able to offer effective protection and the person will be able to avail themselves of the protection of the authorities. A person's reluctance to seek protection does not mean that effective protection is not available. It should be noted that protection does not need to eliminate the risk of discrimination and violence. Each case must be considered on its facts.
- 2.5.8 For general information and analysis on actors of protection, see the Country Policy and Information Note (CPIN) on [India: Background information, including actors of protection, and internal relocation](#) and, in the case of women, the CPIN on [India: women fearing gender based harm/violence](#).
- 2.5.9 For further guidance on assessing the availability of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#) and, in regard to women, [Gender issues in the asylum claim](#).

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## 2.6 Internal relocation

- 2.6.1 Where the person's fear is of persecution and/or serious harm by the state, they will not be able to relocate to escape that risk.

- 2.6.2 Where the person's fear is of ill treatment/persecution at the hands of non-state actors, including rogue state agents, in general they will be able to relocate to escape that risk.
- 2.6.3 The UT found in [MD \(same-sex oriented males: risk\) India](#) that:  
'It would not, in general, be unreasonable or unduly harsh for an open same-sex oriented male (or a person who is perceived to be such), who is able to demonstrate a real risk in his home area because of his particular circumstances, to relocate internally to a major city within India.' (para 174e)  
'India has a large, robust and accessible LGBTI activist and support network, mainly to be found in the large cities.' (paragraph 174f)
- 2.6.4 In [AR and NH](#) the UT found that:  
'Where family members are hostile to a lesbian woman's sexuality, they may reject her completely and sometimes formally renounce her as a member of that family. In such a case, whether relocation to a city is unduly harsh will be a question of fact, depending on the ability of such a lesbian woman to survive economically away from her family and social networks.' (para 78(10))  
'If a lesbian woman's family wishes to pursue and harm her in the place of internal relocation, their ability to do so will depend on the reach of the family network, how persistent they are, and how influential. The evidence indicates that there is normally sufficient state protection for women whose families seek to harm them in their place of internal relocation.' (para 78(11))  
'In general, where there is a risk of persecution or serious harm in a lesbian woman's home area, for educated, and therefore "middle class" women, an internal relocation option is available. They are likely to be able to relocate to one of the major cities in India and are likely to be able to find employment and support themselves, albeit with difficulty, and to live together openly, should they choose to do so. In general, such relocation will not be unduly harsh.' (paragraph 78(12))  
(See [Freedom of movement](#) and [NGOs and support networks](#)).
- 2.6.5 Internal relocation will not be an option if it depends on the person concealing their sexual orientation and / or gender identity in the proposed new location for fear of persecution. This will not be the case if the person does so simply in response to social pressures, or for cultural or religious reasons of their own choosing. Each case must be considered on its facts with the onus will be on the person to demonstrate why relocating internally to another part of the country is unreasonable or unduly harsh.
- 2.6.6 For general information and analysis on internal relocation, see the Country Policy and Information Note on [India: Background information, including actors of protection, and internal relocation](#) and, in the case of women, the CPIN on [India: women fearing gender based harm/violence](#).
- 2.6.7 For further guidance on internal relocation, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#) and, in regard to women, [Gender issues in the asylum claim](#).

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## 2.7 Certification

- 2.7.1 Where a claim is refused, it must be considered for certification under section 94 of the Nationality, Immigration and Asylum Act 2002 as India is listed as a designated state, and the claim is likely to be certifiable as 'clearly unfounded' as, in general, the state is willing and able to provide effective protection.
- 2.7.2 For further guidance on certification, see the [Appeals Instruction on Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#).

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# Country information

This part of the COI was updated: 20 September 2018

## 3. Legal rights

### 3.1 General

3.1.1 The International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA) noted in 2016 that there were no national laws specifically prohibiting discrimination on the basis of sexual orientation or gender identity<sup>1</sup>.

3.1.2 The Indian Constitution does not refer to sexual orientation in Articles defining the rights of citizens. The Constitution provides:

Article 15a: The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth...'

Article 14: 'The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.'

Article 16.1: 'There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.'<sup>2</sup>

3.1.3 There is no provision in Indian law for civil partnerships or for the recognition of same-sex marriages<sup>3</sup>.

3.1.4 Same-sex couples are generally not permitted to adopt children jointly as a couple. Surrogacy is legal and the law recognises single male or female parenthood<sup>4</sup>.

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### 3.2 Gay and bisexual men: Section 377 of the Indian Penal Code (IPC)

3.2.1 Section 377 was included in the Indian Penal Code by the colonial government in the 1860s. It provides as follows:

'377. Unnatural offences: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with 1\*[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation.- Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.'<sup>5</sup>

3.2.2 The phrase 'carnal intercourse against the order of nature' was interpreted to include sodomy and applied in principle in both gay and heterosexual relationships<sup>6</sup>.

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<sup>1</sup> ILGA, 'State-sponsored Homophobia, 11th Edition', (page 153), May 2016, [url](#).

<sup>2</sup> Constitution of India, [url](#).

<sup>3</sup> ILGA, 'State-sponsored Homophobia, 11th Edition', (page 153), May 2016, [url](#).

<sup>4</sup> The World Bank, 'Charting a Programmatic Roadmap', July 2012, [url](#).

<sup>5</sup> Indian Penal Code (Act No.45 of Year 1860), [url](#).

<sup>6</sup> The Naz Foundation Case, 'Section 377', [url](#).

- 3.2.3 On 6 September 2018, India's Supreme Court [SC] ruled that consensual sexual acts between adults, conducted in private, was no longer an offence under Section 377 of the IPC<sup>7</sup>. The historic ruling effectively scrapped the colonial law, which deemed sex between consenting gay men, a punishable offence<sup>8</sup>. The SC held that 'non-consensual sexual acts against adults, all acts of carnal intercou[r]se against minors, and acts of bestiality [sic]', would remain criminalised under Section 377<sup>9</sup>. The Times of India noted that the ruling '...does not automatically get extended to the state of Jammu and Kashmir, governed by its own Constitution and criminal law – Ranbir Penal Code (RPC).'<sup>10</sup>
- 3.2.4 The Immigration and Refugee Board of Canada (IRB), citing various sources, noted that section 377 IPC is also relied on by the courts in India to prosecute cases of child sexual abuse<sup>11</sup>.

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### 3.3 Enforcement of Section 377 IPC prior to September 2018 ruling

- 3.3.1 The Supreme Court of India noted in its judgment of 11 December 2013 that fewer than 200 people had been prosecuted under Section 377 IPC since it came into force 150 years ago. A minority of those cases involved consenting adults<sup>12</sup>.
- 3.3.2 According to various reports cited by the Immigration and Refugee Board of Canada, the threat of being charged under section 377 was sometimes used by police to harass and discriminate against LGBT people in public spaces<sup>13</sup>.
- 3.3.3 The Times of India reported on 29 September 2016 that, according to the National Crimes Record Bureau, police in various states and Union Territories registered 1,347 cases and arrested 1,491 people under section 377 during 2015, including 207 minors and 16 women. In 2014, 1,148 cases were registered. The article noted, 'Though the figures do not give a [break-down] of the gender of the victims, it mentions that in 814 cases, the crimes were committed against children. The remaining crimes were committed against adults, but the report does not specify whether the acts were consensual.'<sup>14</sup>
- 3.3.4 The organisation Erasing 76 Crimes commented in October 2016, 'Some observers believe that the vast majority of arrests under India's Section 377 have been for sexual assault of minors, especially boys.'<sup>15</sup>
- 3.3.5 The National Crime Records Bureau (NCRB) recorded the following data:  
**2015** (Source: [Crime in India 2015 Statistics](#))

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<sup>7</sup> Supreme Court India, 'Writ Petition (Criminal) No. 76 of 2016', 6 September 2018, [url](#).

<sup>8</sup> The Times of India, 'Gay sex is not a crime', 6 September 2018, [url](#).

<sup>9</sup> Supreme Court India, 'Writ Petition (Criminal) No. 76 of 2016', 6 September 2018, [url](#).

<sup>10</sup> The Times of India, 'SC decriminalises gay sex', 8 September 2018, [url](#).

<sup>11</sup> IRB, 'India: Treatment of sexual minorities', 24 December 2015, [url](#).

<sup>12</sup> Supreme Court India, 'Civil Appeal No.10972 of 2013', 11 December 2013, [url](#).

<sup>13</sup> IRB, 'India: Treatment of sexual minorities', 24 December 2015, [url](#).

<sup>14</sup> The Times of India: '14% of those arrested under section 377', 29 September 2016, [url](#).

<sup>15</sup> Erasing 76 Crimes, 'Nearly 1,500 arrested last year', 17 October 2016, [url](#).



1,347 cases were registered (reported by the police) in 2015 under Section 377 IPC<sup>16</sup> (table 1.3); charge-sheets were submitted in 1,006 cases (tab.4.1); 1,491 persons were arrested (tab.12.1), of whom 177 were children and 16 were women. Transgender persons were not counted separately (tab.12.2). Trials were completed in 378 cases, resulting in 175 convictions, 203 were acquitted or discharged (tab.4.5). In 814 of the 1,347 cases registered, the victims were children (tab.6.3) At the end of the year 2015, 199 persons were in custody while their cases were being investigated; a further 480 were in custody pending trial; a total of 1,841 persons were on bail (tabs.12.3-12.4)<sup>17</sup>.

**2014** (Source: [Crime in India 2014 Statistics](#))

1,148 cases were registered in 2014 under Section 377 IPC (table 1.3); 113 cases for investigation were carried over from 2013 (tab 4.1); charge-sheets were submitted in 879 cases (tab.4.1); 1,279 persons were arrested in 2014 (tab.12.1), of whom 207 were children and 14 were women. Transgender persons were not counted separately (tab.12.2). Trials were completed in 233 cases, resulting in 100 convictions, 133 were acquitted or discharged (tab.4.5). In 765 of the 1,148 cases registered, the victims were children (tab.6.2)<sup>18</sup>.

- 3.3.6 The NCRB, in recording arrests and convictions under section 377, did not differentiate between consensual or non-consensual sexual relations<sup>19</sup>.
- 3.3.7 CPIT has not found evidence in other reports or articles that any persons have been tried and convicted under section 377 since December 2013 in cases involving sexual relations between consenting adults.
- 3.3.8 The Pink News, in February 2015, quoted the chairman of India's Law Commission as stating 'Section 377 is discriminatory in its application, unreasonable in its intent, deprives a group of its personal autonomy and violates individual privacy and human dignity ... Consequences of the laws in our country on gay sex include damage to the psychological well-being of homosexuals, encouragement of violence and facilitation of police harassment and discrimination against the LGBT community.'<sup>20</sup>
- 3.3.9 Asia Pacific Director of the International Committee of Jurists (ICJ) said, regarding the September 2018 Supreme Court judgement that the criminalisation of consensual same-sex relationships under Section 377 violated the Indian Constitution, "'Even a landmark decision by the Indian Supreme Court cannot alone end the discrimination against people based on their sexual orientation or gender identity. It is time for the Indian Parliament to conduct wide-ranging review of existing legal framework, repeal discriminatory laws, and address other gaps in the law that prevent LGBT persons from fully exercising their rights".'<sup>21</sup>

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<sup>16</sup> Listed as 'Unnatural offences' in the tables

<sup>17</sup> NCRB, 'Crime in India 2015', n.d., [url](#).

<sup>18</sup> NCRB 'Crime in India 2014', n.d., [url](#).

<sup>19</sup> NCRB 'Crime in India 2014', n.d., [url](#).

<sup>20</sup> Pink News, 'Judge: India's Anti-Gay Law is "Discriminatory"', 17 February 2015, [url](#).

<sup>21</sup> ICJ, 'India: Supreme Court decision', 6 September 2018, [url](#).

See also [Police conduct](#)

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### 3.4 Lesbian and bisexual women

- 3.4.1 There are no laws in India criminalising lesbian sexual activity<sup>22</sup>.
- 3.4.2 Indian law does not recognise same-sex marriages or civil partnerships<sup>23</sup>.
- 3.4.3 In vitro fertilization (IVF) is carried out in hospitals and private clinics in several centres<sup>24</sup> and is available to single women who wish to start a family<sup>25</sup>.

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### 3.5 Transgender persons

- 3.5.1 There are a number of hospitals in India which have facilities for sex reassignment surgery (SRS). The legality of SRS is not yet clear, although there have been no documented cases of doctors being prosecuted for carrying out such surgery. (Section 320 of the Penal Code criminalises the emasculation of a person and falls under the definition of grievous hurt; however, Section 88 provides an exception, where an action is undertaken in good faith and the subject gives consent to suffer that harm)<sup>26</sup>.
- 3.5.2 Official guidance enables the issue of national identity documents ('Aadhaar' ID cards), passports and voter registration where transgender people can show their gender as 'transgender' or 'other' if they wish to; female to male reassigned persons may record their gender as male; male to female can record their gender as female<sup>27</sup>.
- 3.5.3 In particular, the Supreme Court of India, in a [judgment](#) of 15 April 2014, directed that 'State-issued identity papers which indicate a person's gender/sex – including birth certificates, passports, electoral records and other documents – reflect the person's profound self-defined gender identity.' The Court held:

'Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilisation or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a person's gender identity. No one shall be subjected to pressure to conceal, suppress or deny their sexual orientation or gender identity.'<sup>28</sup>

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<sup>22</sup> ILGA, 'State-sponsored Homophobia, 11th Edition', (page 153), May 2016, [url](#).

<sup>23</sup> ILGA, 'State-sponsored Homophobia, 11th Edition', (page 153), May 2016, [url](#).

<sup>24</sup> Indraprastha Apollo Hospitals, 'Gynecology & Obstetrics; Treatments & Services', n.d., [url](#).

<sup>25</sup> Delhi IVF Fertility Research Centre: 'What is single parenting', 25 July 2018, [url](#).

<sup>26</sup> NUJS Law Review 'Crystallising Queer Politics', (page 462), 20019, [url](#).

<sup>27</sup> Indian Express, 'An identity at last as 71 transgenders get Aadhaar cards', 9 March 2014, [url](#).

<sup>28</sup> Supreme Court India, 'Writ Petition (Civil) no 400 of 2012', (paragraph 22), 15 April 2014, [url](#).



3.5.4 The Supreme Court issued the following directions to the central Government of India (the 'Centre') and to all state governments:

(a) Hijras, Eunuchs, apart from binary gender, are to be treated as [a] "third gender" for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature.

(b) Transgender persons' right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.

(c) We direct the Centre and the State Governments to take steps to treat them as socially and educationally backward classes of citizens and extend all kinds of reservation in cases of admission in educational institutions and for public appointments.

(d) Centre and State Governments are directed to operate separate HIV Sero-surveillance Centres since Hijras/ Transgenders face several sexual health issues.

(e) Centre and State Governments should seriously address the problems being faced by Hijras/Transgenders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and any insistence for SRS for declaring one's gender is immoral and illegal.

(f) Centre and State Governments should take proper measures to provide medical care to [the Transgender community] in the hospitals and also provide them separate public toilets and other facilities.

(g) Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.

(h) Centre and State Governments should take steps to create public awareness so that [the Transgender community] will feel that they are also part and parcel of the social life and be not treated as untouchables.

(i) Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in our cultural and social life.<sup>29</sup>

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This part of the COI was updated: 20 September 2018

## 4. State treatment and attitudes

### 4.1 Responses to court judgments on Section 377 IPC

4.1.1 BBC News reported on the reaction by political parties to the Supreme Court ruling of September 2018 on Section 377. It stated:

'The governing BJP party has said it would leave the decision to the Supreme Court. However, one of its members said he was disappointed with the verdict. Subramanian Swamy, known for making provocative comments, said: "It could give rise to an increase in the number of HIV cases." Meanwhile, the main opposition Congress party has welcomed the ruling,

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<sup>29</sup> Supreme Court India, 'Writ Petition (Civil) no 400 of 2012', (paragraph 129), 15 April 2014, [url](#).

saying they “hope this is the beginning of a more equal and inclusive society”.<sup>30</sup>

- 4.1.2 In respect of cases pending under Section 377, the Supreme Court judgement held ‘The declaration of the aforesaid reading down of Section 377 shall not, however, lead to the reopening of any concluded prosecutions, but can certainly be relied upon in all pending matters whether they are at the trial, appellate, or revisional stages.’<sup>31</sup>

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## 4.2 Gay pride events

- 4.2.1 Gay Pride parades have taken place in New Delhi, Bangalore and Chennai since 2008, and in Pune since 2011. The first pride parade was held informally in Kolkata in 1997<sup>32</sup>. The Delhi LGBT pride parade in November 2015 saw participation by several hundred people belonging to the LGBT community as well as people outside of it, according to various reports<sup>33</sup>.

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## 4.3 Positive steps toward transgender/hijra/aravani groups

- 4.3.1 The government of the state of Tamil Nadu established an Aravani (Hijra) Welfare Board in 2008 and has taken several initiatives to improve the lives of transgender people, including admission quotas in colleges, ration cards and free surgery in state hospitals<sup>34</sup>.
- 4.3.2 The US Department of State (USSD) 2015 Human Rights Report noted: ‘In March [2015], Tamil Nadu Uniformed Services Recruitment Board rejected K. Prathika Yashini’s application because her name did not match her [masculine] birth name, “K. Pradeep Kumar.” Yashini had previously officially changed her name with all government agencies after undergoing gender reassignment surgery. Yashini successfully sued in Madras High Court for permission to take a written examination for the police force on May 23 and partook in field trials on August 5. Yashini became the country’s first transgender police officer in November [2015]<sup>35</sup>.

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## 4.4 Police conduct

- 4.4.1 There is no national police force in India. Most of the 36 states and ‘union territories’ have their own independent police forces. There are about 14,000 police stations throughout the country. Police conduct varies from one state or region to another (for further details, see the country policy and information on [India: Background, including actors of protection and internal relocation](#)).

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<sup>30</sup> BBC News, ‘India court legalises gay sex in landmark ruling’, 6 September 2018, [url](#).

<sup>31</sup> Supreme Court India, ‘Writ Petition (Criminal) No. 76 of 2016’, 6 September 2018, [url](#).

<sup>32</sup> ILGA, ‘Violence against LGBT groups still prevails in India’, 30 November 2013, [url](#).

<sup>33</sup> IRB, ‘India: Treatment of sexual minorities’, 24 December 2015, [url](#).

<sup>34</sup> EPW, ‘Editorial: Gender Rights’, 15 July 2008, [url](#).

<sup>35</sup> USSD, ‘Country Report on Human Rights Practices for 2015’, (section 6), 13 April 2016, [url](#).

- 4.4.2 As noted in the US State Department 2015 Human Rights Report, ‘The effectiveness of law enforcement and security forces varied widely throughout the country.’<sup>36</sup>
- 4.4.3 The US State Department reported that, in 2015, ‘Some police committed crimes against LGBTI persons and used the threat of arrest to coerce victims not to report the incidents ... There were cases of officers at all levels acting with impunity, but there were also cases of security officials held accountable for illegal actions ... Several states, with the aid of NGOs, offered education and sensitivity training to police.’<sup>37</sup>
- 4.4.4 The Times of India reported on 29 September 2016 that police in various states and Union Territories had arrested 1,491 people under section 377 during 2015, including 207 minors and 16 women. In 814 of these cases, the recorded offences had been committed against children<sup>38</sup>.

See [Enforcement of Section 377 IPC prior to September 2018 ruling](#)).

- 4.4.5 Human Rights Watch stated in their World Report 2016, published 27 January 2016, ‘LGBT individuals continue to face harassment, extortion, intimidation, and abuse, including by the police.’<sup>39</sup>
- 4.4.6 According to a study conducted in 17 Indian states by researchers from 3 NGOs, and reported in 2016 in the International Journal of Health Sciences and Research (IJHSR):

‘Police officials and other law enforcing authorities who came in contact with TW [trans women] on a regular basis such as Railway Protection Force (RPF) did not support TW community in majority of the states. As expressed by the community, they were the perpetrators of physical violence on a regular basis. The community engaged in commercial sexual activities and other means of income generation, which made them come in contact with the law enforcing authorities. Many community members shared their experiences during the discussions that they had faced discrimination, physical and sexual abuse and seclusion from law enforcing authorities in [a] majority of the study states.

‘Whereas, there were some experiences of support, where the police officials had protected the rights of the community and prevented exploitation. The support was mainly extended in the states where the TW community was in adequate number to represent their presence in the mainstream society such as southern states or western states of India.’<sup>40</sup>

- 4.4.7 A report of July 2012, prepared on behalf of the World Bank by Amaltas Consulting (Delhi) and Humsafar Trust, a Mumbai-based LGBT advocacy NGO noted:

<sup>36</sup> USSD, ‘Country Report on Human Rights Practices for 2015’, (section 1d), 13 April 2016, [url](#).

<sup>37</sup> USSD, ‘Country Report on Human Rights Practices for 2015’, (section 6), 13 April 2016, [url](#).

<sup>38</sup> The Times of India: ‘14% of those arrested under section 377’, 29 September 2016, [url](#).

<sup>39</sup> Human Rights Watch, ‘World Report 2016 – India’, 27 January 2016, [url](#).

<sup>40</sup> IJHSR, ‘Social Support System of Hijras’, (page 22), 4 April 2016, [url](#).

‘Countless episodes of gay men entrapped in public spaces and parks by police and threatened with arrest and prosecution under Section 377 have been reported.

‘It is common for police to misuse their privilege with impunity against alternate sexuality since intolerance is built into the social structure. Moral policing replaces the policing that is protective of human rights, laid down by the law of the land.

‘Community activities such as simple get-togethers are met with suspicion and complaints of public nuisance. There are various incidents where gay parties have been raided by the police on the pretext of drugs and sex.’<sup>41</sup>

4.4.8 The Canadian IRB report of 24 December 2015 stated:

‘ABC [Australian Broadcasting Corporation] quotes an Indian lawyer as stating that “although prosecutions for sex between consenting adults are rare, as long as the law remains, it will be used to intimidate.”

‘According to an LGBT community activist interviewed by Dna India, there have been “many reports” of sexual violence by police (24 Nov. 2014).’<sup>42</sup>

4.4.9 Dr Akshay Khanna stated in his role as an expert witness in the Country Guidance case of MD (India) in October 2013:

‘Apart from the Queer pride marches...there is no evidence of the police positively supporting LGBT people, especially working class LGBT people facing adversity. There is an obstinate refusal to recognise violence as being homophobic, and even where this is obvious, the police tend to obfuscate this fact and treat these as simply violent crimes. There is also a tendency to refuse investigation...and instead there is a tendency to ridicule and taunt...’<sup>43</sup>

4.4.10 A 2012 report by the Special Rapporteur on the Situation of Human Rights Defenders noted that ‘Defenders engaged in promoting and defending the rights of lesbian, gay, bisexual and transgender (LGBT) persons face discrimination, stigmatization and threats reportedly from many parts of society, especially in rural areas. On some occasions, the police attacked LGBT activists for raising issues pertaining to the situation of the LGBT community’<sup>44</sup>.

4.4.11 The Supreme Court judgement of September 2018 requested that ‘... all government officials, including and in particular police officials, and other officers of the Union of India and the States, be given periodic sensitization and awareness training of the plight of such persons in the light of the observations contained in this judgment.’<sup>45</sup>

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<sup>41</sup> The World Bank, ‘Charting a Programmatic Roadmap’, July 2012, [url](#).

<sup>42</sup> IRB, ‘India: Treatment of sexual minorities’, 24 December 2015, [url](#).

<sup>43</sup> Upper Tribunal, ‘MD (same-sex oriented males: risk)’, (paragraph 170), 12 February 2014, [url](#).

<sup>44</sup> UN HRC, ‘Report of the Special Rapporteur’, (paragraphs 55-57), 6 February 2012, [url](#).

<sup>45</sup> Supreme Court India, ‘Writ Petition (Criminal) No. 76 of 2016’, (page 96), 6 September 2018, [url](#).

4.4.12 The LGBT rights group, Naz Foundation, said that copies of the Supreme Court judgement would be given to every police station<sup>46</sup>.

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#### 4.5 Remedies for police misconduct

4.5.1 Investigations into allegations of serious police misconduct or abuse may be initiated through various means:

- A complaint can be made to the officer in charge of a police station. Section 154(3) of the Code of Criminal Procedure provides that, if that officer fails to initiate a formal investigation by registering a First Information Report, or if a proper investigation is not carried out, the complainant can apply in writing to the Superintendent of Police, who must then take responsibility for investigating the case<sup>47 48</sup>.
- If the state police force fails to properly investigate the case, or if the aggrieved individual does not wish to lodge a complaint at a police station, he/she is entitled to take their case to a Magistrate who, under sections 156 and 200 of the Code of Criminal Procedure, is empowered to order a criminal investigation<sup>49</sup>.
- A victim of police misconduct can also make a report to the National Human Rights Commission (NHRC) According to the Ministry of Home Affairs' 2012-13 Annual Report, the NHRC registered for consideration 80,764 cases of abuse by security officials nationwide between April and December 2012. The Commission closed 66,346 cases, some of which had been carried forward from previous years. In 275 cases, the Commission recommended payment of interim relief amounting to 86.7 million rupees (US \$1.42 million)<sup>50</sup>.

4.5.2 Freedom House reported in May 2014 that 'While [the NHRC] monitors abuses, initiates investigations, makes independent assessments, and conducts training sessions for the police and others, its recommendations are often not implemented and it has few enforcement powers.'<sup>51</sup> According to the US State Department 2015 Human Rights Report, some human rights NGOs have claimed that 'the NHRC did not register all complaints, dismissed cases arbitrarily, did not investigate cases thoroughly, re-routed complaints back to the alleged violator, and did not adequately protect complainants.' In addition to the NHRC, 23 states and union territories, as of 2015, had Human Rights Commissions with remits in those particular states. According to the US State Department, 'Some human rights groups alleged that local politics influenced state committees, which were less likely to offer fair judgments than the NHRC.'<sup>52</sup>

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<sup>46</sup> Independent, 'Section 377', 6 September 2018, [url](#).

<sup>47</sup> Code of Criminal Procedure Act, 1973, [url](#).

<sup>48</sup> Legal Services India, 'The Power of the Magistrate', June 2012, [url](#).

<sup>49</sup> Legal Services India, 'The Power of the Magistrate', June 2012, [url](#).

<sup>50</sup> USSD, 'Country Reports on Human Rights Practices for 2013', (section 1d), 27 February 2014, [url](#).

<sup>51</sup> Freedom House, 'Freedom in the World 2014', (F. Rule of Law), 19 May 2014, [url](#).

<sup>52</sup> USSD, 'Country Report on Human Rights Practices for 2015', (section 5), 13 April 2016, [url](#).



- 4.5.3 In September 2006, the Supreme Court instructed both the central and state governments to comply with certain directives which were regarded as necessary for a police reform process. The Court stated that these directives had two main objectives: functional autonomy for the police and enhanced police accountability. One of the directives was that a Police Complaints Authority (PCA) was to be established in each state of India to inquire into public complaints against police officers in certain cases of serious misconduct.<sup>53</sup> However, as of December 2012, only 14 states had enacted legislation to establish Police Complaints Authorities and PCA's were actually operational in six states and four union territories<sup>54</sup>.
- 4.5.4 The New India Express reported in September 2016 that, according to National Crime Records Bureau data, 3080 criminal cases were registered against police officers in the state of Kerala in 2015. The newspaper quoted the Chairman of the State Human Rights Commission as saying, 'The common complaints against Kerala Police are delay[s] in registering the case, keeping [the] accused in custody for more than the prescribed time and custodial torture. Now, people are aware of their rights and do not hesitate to adopt legal measures in instances of violations of their rights.' In the state of Maharashtra, 536 cases against police officers were registered in 2015<sup>55</sup>.

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## 5. Societal treatment and attitudes

### 5.1 Gay men and lesbians

- 5.1.1 India is a vast, diverse, multicultural country. Communities vary considerably not only in size, but also in their religious, ethnic, economic and political composition – and in the extent of their adherence to traditional social and family values<sup>56</sup>.

For the general position of women in society see the country policy and information note on [India: women fearing gender based harm/violence](#).

- 5.1.2 In 2016 the International Lesbian, Gay, Bisexual, Transgender and Intersex Association (ILGA) published the partial results of the ILGA-RIWI 2016 Global Attitudes Survey on LGBTI People, in partnership with Logo, a US-based LGBT media organisation. The survey was carried out in 65 countries to show whether or not a certain piece of legislation enjoyed the support of the public in that country. Results for India were tabulated as follows:

	Strongly agree	Somewhat agree	Neither	Somewhat disagree	Strongly disagree
"Being gay, lesbian	21%	10%	20%	11%	39%

<sup>53</sup> IHS, 'Jane's Sentinel Security Assessment', subscription only.

<sup>54</sup> CHRI, 'Police Complaints Authorities in India: A Rapid Study', December 2012, [url](#).

<sup>55</sup> New India Express, '3080 criminal cases against Kerala cops', 1 September 2016, [url](#).

<sup>56</sup> The Top Tens, 'Most Multicultural Countries in the World', n.d., [url](#).

bisexual, trans, or intersex should be a crime?"					
"Same-sex desire is a Western phenomenon"	28%	18%	25%	6%	24%
	No concerns	Somewhat uncomfortable		Very uncomfortable	
"How would you feel if your neighbour is gay or lesbian?"	62%	17%		22%	

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### 5.1.3 The World Bank report of July 2012 observed:

'Often the stigmatizing attitudes and discriminatory actions towards homosexuals or persons with alternative sexuality are hostile, and justified on the pretext of them being anti-religious, anti-social or just anti-tradition.

'Sexuality is sometimes viewed even in liberal and radical circles as a frivolous, bourgeois issue. In such a context, homosexuality is seen implicitly as something deviant and unnatural that is at best defended as an individual freedom but not a matter of priority for the human rights movement. Generally, issues of poverty, class and caste oppression are seen as more important than that of gender and sexuality – especially gender and sexual minorities – and the links and interdependencies are often not recognized.

'Violence is an everyday reality faced by those of the LGBT communities. The issues of violence faced by the LGBT community can be from within the community and that faced from outside the community.

'Public spaces are fraught with danger for the average LGBT person. Commonplace interactions with those of the mainstream result in stigmatization, derision and often, violence. The community has no safe spaces.

'Even in the southern states where the LGBT mobilization has been quite strong, there have been instances where people from the LGBT communities have not been allowed to enter hotels, restaurants or clubs.'<sup>58</sup>

### 5.1.4 The Naz Foundation (India) Trust, a leading LGBT advocacy organisation and the principal respondent in the Indian Supreme Court case regarding Article 377 IPC, advised the British High Commission (Delhi) in September 2013: '...we do see a lot more openness in relationships especially in urban areas. Many couples are living together...'<sup>59</sup>

### 5.1.5 A founder of the support group, The Sangini Trust, told Diva magazine in 2009 that a major problem facing lesbians in India was societal and family pressure to marry. The magazine quoted an editorial from the Indian women's magazine Gladrags: 'From the time a little girl turns into a young

<sup>57</sup> ILGA, 'State-sponsored Homophobia, 11th Edition', (pages 99-100), May 2016, [url](#).

<sup>58</sup> The World Bank, 'Charting a Programmatic Roadmap', July 2012, [url](#).

<sup>59</sup> BHC letter, 22 September 2013, [Annex A](#).

girl, the one goal of her family and her is that she attracts a good husband. Other problems often expressed by callers to Sangini's helpline included fear of loneliness (or growing old alone) and, in the case of Christian women, questions of sin.<sup>60</sup>

- 5.1.6 From time to time, certain religious and nationalistic agents have targeted the gay community through malicious and threatening statements and declarations. For example, it was reported in January 2014 that an Islamic mufti of the Barelvi school of Sunni Islam in the northern Indian town of Bareilly had issued a fatwa against both same-sex and extramarital heterosexual cohabitation, calling such relationships anti-Islamic; it stipulated punishments for gay couples such as stoning and being burned alive<sup>61</sup>. At the time of publication, no evidence could be found that any pronouncements of this nature had been acted upon.
- 5.1.7 The Immigration and Refugee Board (IRB) of Canada recorded in the report of 24 December 2015 that:
- 'Dna India quotes an LGBT activist who stated that there have been reports of "corrective rape" of lesbians and transgender persons, and of "electro shock therapy" administered to gay men (24 Nov. 2013). Corroborating information could not be found among the sources consulted by the Research Directorate [of the IRB] within the time constraints of this Response. The IRB recorded that, in April 2015, a man was murdered in Delhi after inviting a partner for "unnatural sex"; in February 2014 a man was murdered in Mumbai "by a former partner who was afraid that their relationship would become known to others".<sup>62</sup>
- 5.1.8 Reflecting on the Supreme Court's ruling against aspects of Section 377 IPC, barrister Rajkiran Barhey wrote in the UK Human Rights Blog, dated 18 September 2018, 'This judgment represents a huge victory for LGBT people throughout India. However, the attitudes of citizens do not change as swiftly as case-law.'<sup>63</sup>
- 5.1.9 LGBT activist and academic, Ashley Tellis, dismissed the verdict as 'rubbish', stressing the judgement did not repeal section 377. Tellis stated:
- "All that has happened is a reading down of section 377... It just renders privacy rights to elite gay people... Only people who have a bedroom can have privacy. Hijras on the road who are often forced to have public sex for money to survive don't have this privacy. They are harassed by the police, their clients and the societies around them. This doesn't change anything for them and the rest of the LGBTQ community on the ground".<sup>64</sup> (see [Hijras](#)).
- 5.1.10 In the Supreme Court ruling, the judges asked that the government widely publicise the order to counter the stigma associated with being gay, lesbian, or bisexual<sup>65</sup>.

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<sup>60</sup> Diva, 'Curry and conversation: Lesbians in India', 4 May 2011, [url](#).

<sup>61</sup> MEMRI, 'Indian Cleric Issues Anti-Gay Fatwa', 20 January 2014, [url](#).

<sup>62</sup> IRB, 'India: Treatment of sexual minorities', 24 December 2015, [url](#).

<sup>63</sup> UK Human Rights Blog, "'To the Wisdom of the Court'", 18 September 2018, [url](#).

<sup>64</sup> New Indian Express, 'Verdict on Sec 377 is rubbish, says LGBT activist', 6 September 2018, [url](#).

<sup>65</sup> Supreme Court India, 'Writ Petition (Criminal) No. 76 of 2016', (page 95), 6 September 2018, [url](#).



5.1.11 Reporting on reactions to the judgement, Foreign Policy stated on 10 September 2018:

'Many religious organizations – Hindu, Christian, and Muslim – are up in arms about the verdict. Imam Umer Ahmed Ilyasi of the All India Organization of Imams of Mosques said that the Supreme Court should have consulted religious heads before making a decision. And Stephen Fernandes, the secretary of the Catholic Bishops' Conference of India, said in a statement that just because "homosexuality is now not a crime in the IPC [Indian Penal Code] does not mean that homosexual acts or behaviour is morally acceptable or justified." Arun Kumar, who is affiliated with the far-right Hindu organization Rashtriya Swayamsevak Sangh (the ideological parent of the BJP), remarked that "just like the Supreme Court, we also do not consider this criminal. But we do not support homosexuality, as same-sex marriages and relations are not in sync with nature. Traditionally too, Indian society does not accept such relations".<sup>66</sup>

See [Gay and bisexual men: Section 377 of the Indian Penal Code \(IPC\)](#).

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## 5.2 Transgender persons

5.2.1 At the time of writing, CPIT was not able to find information on societal attitudes specifically towards people (other than hijras) who have undergone sex reassignment surgery or therapy in the sources consulted (see [Bibliography](#)).

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## 5.3 Hijras (Aravanis)

5.3.1 In the culture of the Indian sub-continent, hijras – also known as aravanis – are regarded as a 'third gender'; most hijras regard themselves as neither man nor woman. They cannot accurately be described as 'eunuchs' or 'hermaphrodites' or 'transsexual women', which are Western terms. Most hijras were born male or intersex (with ambiguous genitalia); many will have undergone a ritual emasculation operation, which includes castration. Some other individuals who identify as hijras were born female. Although most hijras wear women's clothing and have adopted female mannerisms, they generally do not attempt to pass as women. Becoming a hijra involves a process of initiation into a 'hijra family', or small group under a guru-teacher, who has a parental role<sup>67</sup>.

5.3.2 It was estimated in an article in the New Statesman that there were about 200,000 Hijras in India in 2008. The article stated:

'With more than 4,000 years of recorded history Hijras have a supposedly sanctioned place in Indian life, but they've faced severe harassment ... Something, however, is beginning to alter in the traditional Indian mindset as right now there seems to be both subtle and appreciable changes taking place in terms of how this group are being treated and recognised by

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<sup>66</sup> Foreign Policy, 'In India, still unfurling the rainbow flag', 10 September 2018, [url](#).

<sup>67</sup> Nanda, S., 'Hijras as Neither Man Nor Women', 1999, [url](#).

mainstream society ... Yet these developments come after years of crushing social stigmatisation, abuse and general derision from the wider community.’<sup>68</sup>

### 5.3.3 The US State Department 2015 Human Rights Report recorded:

‘According to the Telangana transgender NGO Hijra Samiti, the state witnessed on average 10 physical attacks every month against transgender persons. In February [2015], Hyderabad police arrested three individuals for the murder of Kummari Suresh, alias Pravalika, a transgendered person, after the victim refused to give money to the assailants during an attempted extortion.

‘On April 16 [2015], an acquaintance threw acid upon a transgender AIDS activist in Salem, Tamil Nadu.

‘In January [2015], Madhu Kinnar became the first transgender mayor when voters elected her in Raigarh, Chhattisgarh.’<sup>69</sup>

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## 6. Other forms of discrimination

### 6.1 Access to healthcare

#### 6.1.1 According to the World Bank report of July 2012,

‘[Focus group interviews] show very clearly that the LGBT community prefers to stay away from the mainstream health services. The reason for staying away is the stigmatization faced by the LGBT community in the hands of the health service providers. The stigmatization doubled for MSM and transgenders. Other than stigmatization the community also feels that service providers specially the doctors are not oriented about the health issues faced by the community.’<sup>70</sup>

#### 6.1.2 The US State Department 2015 Human Rights Report noted that, according to activists, transgender persons who were HIV-positive continued to have difficulty obtaining medical treatment<sup>71</sup>

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### 6.2 Rented accommodation

#### 6.2.1 There have been reports of homophobic landlords refusing to rent accommodation to LGBT tenants and there is no law in India effectively preventing such discrimination. However, the Upper Tribunal found in MD India that ‘...the evidence does not disclose that this problem is endemic or anywhere approaching it.’<sup>72</sup>

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<sup>68</sup> New Statesman, ‘India’s transgendered – the Hijras’, 13 May 2008, [url](#).

<sup>69</sup> USSD, ‘Country Report on Human Rights Practices for 2015’, (section 5), 13 April 2016, [url](#).

<sup>70</sup> The World Bank, ‘Charting a Programmatic Roadmap’, July 2012, [url](#).

<sup>71</sup> USSD, ‘Country Report on Human Rights Practices for 2015’, (section 6), 13 April 2016, [url](#).

<sup>72</sup> Upper Tribunal, ‘MD (same-sex oriented males: risk)’, (paragraph 167), 12 February 2014, [url](#).

### 6.3 Workplace harassment

- 6.3.1 The US State Department 2015 Human Rights Report noted that advocacy organizations, such as the Mission for Indian Gay and Lesbian Empowerment ([MINGLE](#)), have assessed workplace discrimination against LGBT persons<sup>73</sup>.
- 6.3.2 It was observed in The World Bank report of 2012 that ‘workplace policies are locally defined and many organizations, big or small, are not necessarily inclusive, sensitized or protective towards LGBT persons.’<sup>74</sup>

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### 6.4 Education

- 6.4.1 The World Bank report of July 2012 stated:

‘The educational system is often the point at which many [LGBT] community members face their greatest initial challenge. Ostracized by their classmates and sometimes facing extreme forms of violence, [several interviewees have spoken] about how the educational system was blind to the needs of young persons with a different experience of sexual awakening. The consequent high dropout from the school systems leads to poor educational outcomes and perpetuates poor social acceptance and achievement within mainstream society.

‘In the present scenario as soon as a student is identified as a person with different gender/sex orientation the attitude of the teachers and the students change. Discrimination by the teachers or the administrative staff is evident during admission and evaluation, while discrimination faced from the students is mainly in the form of ragging.’<sup>75</sup>

- 6.4.2 The US Department of State reported that, in 2015, ‘LGBTI activists in Hyderabad expressed satisfaction with public awareness efforts, including protests against the Supreme Court judgment to uphold the criminalization of same-sex conduct. Hyderabad LGBTI students reportedly experienced homophobia among students and a systematic disregard for LGBTI rights on certain university campuses.’<sup>76</sup>

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## 7. Freedom of movement

- 7.1.1 India comprises 29 states, plus 7 ‘union territories’. Some of these states have populations of over 100 million<sup>77</sup>. The major urban areas are Delhi U.T. (population 21.6 million in 2011); Mumbai, formerly Bombay (18.8 million); Kolkata, formerly Calcutta (14.1 million); Chennai, formerly Madras (8.7 million); Bangalore (8.5 million); Hyderabad (7.7 million); Ahmedabad (6.3

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<sup>73</sup> USSD, ‘Country Report on Human Rights Practices for 2015’, (section 6), 13 April 2016, [url](#).

<sup>74</sup> The World Bank, ‘Charting a Programmatic Roadmap’, July 2012, [url](#).

<sup>75</sup> The World Bank, ‘Charting a Programmatic Roadmap’, July 2012, [url](#).

<sup>76</sup> USSD, ‘Country Report on Human Rights Practices for 2015’, (section 6), 13 April 2016, [url](#).

<sup>77</sup> IndiaOnlinePages, ‘India’s population 2018’, n.d., [url](#).

million) and Pune (5.0 million)<sup>78</sup>. There are some 600,000 villages in the country<sup>79</sup>.

For further information on freedom of movement, see the Country Policy and Information Note on [India: Background information, including actors of protection, and internal relocation](#).

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## 8. NGOs and support networks

8.1.1 The US Department of State 2013 Human Rights Report observed, 'LGBT groups were active throughout the country mostly in urban areas. Advocacy groups and collectives regularly sponsored events and activities, including pride marches, cultural events, and public demonstrations of support for equal rights.'<sup>80</sup> The 2015 Human Rights Report noted, however that 'LGBTI groups reported that they faced widespread societal discrimination and violence, particularly in rural areas.'<sup>81</sup>

See also [Societal treatment and attitudes](#)

8.1.2 In a study reported in the International Journal of Health Sciences and Research in 2016, it was stated:

'In the states of Manipur and Nagaland, the TW [trans women] expressed that the NGOs/CBOs were very much accessible to them; they could share any problems with the organizations and the solutions provided by them satisfied TW"s needs. They also provided interventions on livelihood and income generation activities ... In Karnataka and Maharashtra, TW were supported by providing access to social protection schemes such as arranging for ration cards, ID cards, bank accounts and insurance policies ... "In NGOs, they won't discriminate that we are TW. We get ration cards, we can open bank accounts...We can tell our problems to police (about gundas), and the general public...they solve our problems. They support us from family side also...we get our share from our house property [sic]".'<sup>82</sup>

The India Network for Sexual Minorities (INFOSEM) provided a list of support groups and NGOs for LGBT persons<sup>83</sup>.

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<sup>78</sup> New Geography, 'Urbanising India', 21 November 2011, [url](#).

<sup>79</sup> Business Standard, 'In its 91st year', 22 October 2015, [url](#).

<sup>80</sup> USSD, 'Country Reports on Human Rights Practices for 2013', (section 6), 27 February 2014, [url](#).

<sup>81</sup> USSD, 'Country Report on Human Rights Practices for 2015', (section 6), 13 April 2016, [url](#).

<sup>82</sup> IJHSR, 'Social Support System of Hijras', (page 11), 4 April 2016, [url](#).

<sup>83</sup> INFOSEM, 'List of INFOSEM Organizations', n.d., [url](#).

# Annex A

Letter from the British High Commission (New Delhi), 4 September 2013

## Foreign & Commonwealth Office (letterhead)

### Migration Policy

British High Commission

New Delhi

110021

Tel: +91 11 24192[xxx]

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[www.fco.gov.uk](http://www.fco.gov.uk)

Country of Origin Information Service

Home Office

04 September 2013

### Situation of gay men and lesbians in India

I confirm that, following your request, we put the following three questions to the Executive Director at the Naz Foundation (India) in New Delhi:

1. Are you aware of any individuals actually being tried and convicted in any Indian state under Section 377 – in the last two or three years – where the case only involved consensual sex between adult men?
2. Although it might be difficult to generalise (because there are separate police forces in each state), are you aware of any general change in police attitudes towards LGBT persons?
3. [DfID] mentioned that ‘there are still a number of social pressures, but an increasing number of gay men and lesbians in the larger cities are able to find ways to live openly, to different degrees’. Could you elaborate on this please?

The following response was received in an email from the Naz Foundation on 3 September:

- “1. i am not aware of any individual tried and convicted under section 377 in the last couple of years involving consensual sex involving adult men.
2. in delhi we have seen a change over the years...difficult to comment on other states.
3. yes...[DfID] is right. we do see a lot more openness in relationships especially in urban areas. many couples are living together. the means to meet each other have also expanded..thanks to the internet!”

Yours sincerely,

Migration Delivery Officer  
British High Commission  
New Delhi

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# Version control

## Clearance

Below is information on when this note was cleared:

- version **3.0**
- valid from **2 October 2018**

## Changes from last version of this note

Country information and assessment updated to reflect the September 2018 Supreme Court of India judgement on Section 377 of the IPC.

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