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India: Situation and treatment of family members of individuals with diverse sexual orientation, gender identity and expression, and sex characteristics (SOGIESC) by society and authorities (2022–May 2024)
[IND201139.E]

Research Directorate, Immigration and Refugee Board of Canada

For information on the situation and treatment of individuals with diverse SOGIESC, including legislation, state protection, and support services, particularly in Mumbai, Kolkata, and Delhi, see Response to Information Request IND106287 of May 2019.

1. Overview

Sources report that same-sex consensual relations (Amnesty International 2023-10-17) or homosexuality (*The New York Times* 2022-08-30) were decriminalized by a Supreme Court decision in 2018 (Amnesty International 2023-10-17; *The New York Times* 2022-08-30). In October 2023, the Supreme Court of India considered 21 petitions to legalize same-sex marriage but "declined" (BBC 2023-10-17) or "refused" (AP 2023-10-17) to do so (BBC 2023-10-17; AP 2023-10-17). While the Supreme Court indicated that discrimination against same-sex couples should end, the court deferred the ruling to Parliament (BBC 2023-10-17; AP 2023-10-17; Amnesty International 2023-10-17), stating that such a decision is a "legislative function" (AP 2023-10-17). Sources report that the Supreme Court also considered whether transgender persons had the right to marry and ruled that they can (*The Guardian* 2023-10-23; *The New York Times* 2023-10-17; *The Times of India* 2023-10-17), as long as one person

"identifies as a man and the other as a woman" (*The New York Times* 2023-10-17).

Sources report that in 2022, the Supreme Court of India expanded the definition of family to include same-sex couples, unmarried partners, and single parents (*The Tribune* 2022-08-29; *The New York Times* 2022-08-30). An article by the *Tribune*, a daily Indian newspaper, quotes the ruling's definition as stating that "'familial relationships may take the form of domestic, unmarried partnerships or queer relationships'" (2022-08-29).

An article from *Hindustan Times*, an English-language newspaper in India, indicates that in 2022, the state of Tamil Nadu was the first to enact legislation against police harassment of LGBTI people and those "'working for the welfare of said community'" (2022-02-18). An amendment to the *Tamil Nadu Subordinate Police Officers' Conduct Rules, 1964* issued on 29 January 2022 provides the following: "24-C. 'No police officer shall indulge in any act of harassment of any person belonging to the LGBTQIA (Lesbian, Gay, Bisexual, Transgender, Queer, Intersex, Asexual) Community and the persons working for the welfare of the said community'" (Tamil Nadu 2022-01-29).

According to *The Indian Express*, in 2021, Tamil Nadu became the first state in India to ban conversion therapy with an order issued by the Madras High Court prohibiting "'any attempts to medically cure or change the sexual orientation of LGBTQIA+ people to heterosexual or the gender identity of transgender people to cisgender'" (2021-06-08). The order also requires the removal of the licenses to practice of any professional involved in practices related to conversion therapy (*The Indian Express* 2021-06-08). According to sources, the 2021 Madras High Court case that led to the conversion therapy ban was filed by a female same-sex couple who faced "familial violence with police collusion" (Public Health Professional 2024-03-16) or who sought protection against "police harassment" after their families filed missing persons reports leading to the registration of a First Information Report (FIR) against the couple (*The Indian Express* 2021-06-08). In an interview with the Research Directorate, a public health professional in Chennai who has worked as a youth counsellor for LGBTQIA+ youth stigmatized by their families and society, indicated that, in practice, the conversion therapy ban applies to medical doctors, including psychiatrists, but does not include psychologists; doctors have been circumventing the ban by referring parents to clinical psychologists instead of conducting conversion therapy themselves (Public Health Professional 2024-03-16). The same source added that activists have called doctors who were still performing conversion therapies after the ban was in place in Tamil Nadu and informed them that they could lose their licenses (Public Health Professional 2024-03-16).

India's National Human Rights Commission (NHRC) stated in a 2023 letter that despite the government passing the *Transgender Persons (Protection*

of Rights) Act, 2019, "transgender persons continue to grapple with discrimination in multiple facets of life" and across different forms, such as "employment disparities, limited access to healthcare, and exclusion from social circles" (India 2023-09-15). Sources interviewed by the Australian Department of Foreign Affairs and Trade (DFAT) reported that discrimination based on sexuality and gender identity occurs despite legal protections (Australia 2023-09-29, para. 2.44).

2. Treatment of Individuals with Diverse SOGIESC by Society

DFAT notes that LGBTI groups "lack protection, have poor education and health outcomes, and face intolerance, abuse and violence in their daily lives" (Australia 2023-09-29, para. 3.150). In an interview with the Research Directorate, a Delhi-based lawyer with experience working on LGBTQ rights' cases in India stated that anonymity is possible in large cities while rural areas where neighbours "know each other" can be "very oppressive," and that individuals who have had their identities "disclosed" can face risks to their safety and security (Lawyer 2024-03-28). In an interview with the Research Directorate, a program head at a New Delhi-based NGO that advocates for the rights of LGBTQIA+ individuals and other marginalized groups stated that the treatment of individuals with diverse SOGIESC and their families varies from community to community and depends on how tightly knit the rural community is (Program Head 2024-03-12).

The Lawyer shared the example of a couple who was attacked after their neighbours "found out about the gender identity" of one of the members of the couple; the police proceeded to register a complaint on behalf of the female victim but not the transgender man victim despite the existence of legislation to protect transgender people (Lawyer 2024-03-28). The same source indicated that there have been cases of "neighbours [who] have asked queer persons to vacate houses," and they noted "many cases of violence" against "queer" individuals (Lawyer 2024-03-28). The Lawyer added that in "many" of such cases, survivors have "not received accountability"; and in "many cases" have faced "evictions" and "violence," and "abuse" is "very" common (Lawyer 2024-03-28).

According to the BBC, while same-sex marriage is not permitted in India, in September 2023 an LGBTQ couple had a marriage ceremony in a gurdwara in the Punjab city of Bathinda with the approval of their respective families (2023-09-25). *India Today*, a weekly English news magazine, reported that the marriage led to the 5-year suspension of the Sikh priest who performed the ceremony by the highest body of the Sikh religion (2023-10-17).

According to the Public Health Professional, children that are seeking safety and escaping from parents who are not accepting of them move to metropolitan cities such as Mumbai, Kolkata, Hyderabad, Delhi, Bengaluru [Bangalore], and Chennai (Public Health Professional 2024-03-16). The Lawyer indicated that Delhi, Mumbai, Chennai, Kolkata, and Bengaluru

have community supports in place for SOGIESC individuals and stated that in Delhi queer people can remind police officials of their rights, an assertion that is not as possible in rural areas (Lawyer 2024-03-28). The Public Health Professional noted that Tamil Nadu, and the city of Chennai in particular, have specific anti-discrimination legislation providing protections for SOGIESC populations (Public Health Professional 2024-03-16).

The Program Head indicated that if an LGBTQ individual moves away from their native community, their new community typically "does not care" about that person's family and parents (Program Head 2024-03-12). According to the Program Head, although there are exceptions, the liberty to be openly walking outside with your partner or coming out to your employer in rural or urban India "does not exist" (Program Head 2024-03-12).

2.1 Treatment the Family Members of Individuals with Diverse SOGIESC

According to the Lawyer, the family members of a queer person "overall" do not accept them once they come out and are the ones "causing the violence" (Lawyer 2024-03-28). In Delhi, "most" of the cases the Lawyer deals with involving individuals with diverse SOGIESC are related to the safety and security of those individuals who have left their families due to violence (Lawyer 2024-03-28). The same source noted that they have helped individuals with diverse SOGIESC get orders of police protection from the courts or get the courts to release them from arbitrary detention by their families, and they have also helped individuals with diverse SOGIESC get protection from being forcibly married by their families (Lawyer 2024-03-28).

Similarly, the Public Health Professional stated that LGBTQIA+ individuals encounter discrimination from family members, including their parents and siblings, and that the "overwhelming majority" of families have not been supportive of their queer and trans children coming out, "forcing" them to stay in the closet; when they do come out, the parents ask their child to not speak of it or to move to another city or country away from their extended family and neighbours (Public Health Professional 2024-03-16). The same source added that "most family members are queerphobic and interested in upholding conservative ideas of family and cultural values," and noted that parents have attempted to "change the sexual orientation" of their child through "psychologists, conversion therapy, and anti-depressant" medications (Public Health Professional 2024-03-16).

The Public Health Professional indicated that there have been "scattered" reports of honour killings of queer and trans children by conservative parents and siblings (Public Health Professional 2024-03-16). The same source noted that in cases where individuals fear honour killings, leaving the family home may not be sufficient as families will "do anything to track

down" their child and partner (Public Health Professional 2024-03-16). However, the Public Health Professional also stated that there is a "significant" minority of parents who have embraced their "queer and trans" children and their identity (Public Health Professional 2024-03-16).

The Lawyer stated that individuals with diverse SOGIESC from working class backgrounds do not have adequate family support and small cities, and towns do not have any queer support networks (Lawyer 2024-03-2024). The Public Health Professional indicated that while it is difficult to generalize, parents who openly accept their queer children tend to come from urban upper or middle-class backgrounds (Public Health Professional 2024-03-16).

2.2 Treatment of the Family Members of Individuals with Diverse SOGIESC by Society

In an interview with Scroll.in, an Indian news website, the co-founder of the LGBTQ+ parent support group Sweekar - The Rainbow Parents notes that parents of individuals with diverse SOGIESC are often "grieving the loss of historic support systems for the sake of their children" (Scroll.in 2023-06-07). The co-founder further adds that after "their child comes out"

[p]arents then go into denial, and immediately start thinking of what extended family, friends and neighbours will say, forgetting about their own child's health and happiness. ... Parents who love and accept their children, however, are often ostracised from their friends and families. Because they align themselves more closely with their children than, say, their religious community, these parents are forced to confront a major fear: rejection. (Scroll.in 2023-06-07)

The Program Head similarly indicated that parents can be "shunned altogether" for supporting their LGBTQ child (Program Head 2024-03-12). The Public Health Professional indicated that parents who accept their children have successfully advocated for their child before the government and police personnel to protect them and obtain updated ID cards (Public Health Professional 2024-03-16).

3. Treatment of the Family Members of Individuals with Diverse SOGIESC by Authorities

According to the Lawyer, it is rare for family members to seek assistance from the police, as most family members feel their child is being "harassed" because the child is doing "something wrong" and they do not want to invite further attention (Lawyer 2024-03-28). The same source further noted that "[m]ost" police in rural areas are "extremely homophobic," and "transphobic" and they "harass" individuals with diverse SOGIESC and are "extremely violent," while in Delhi, the police are a "little supportive" and a "little mindful" (Lawyer 2024-03-28). The Lawyer shared that in the "multiple cases" they have been involved with in Delhi,

police have "handed over" couples with diverse SOGIESC to the family, which has further caused harm (Lawyer 2024-03-28).

The Program Head shared the example of a transgender person who was "extorted" and assaulted but did not want to file a police complaint, as his uncle knew the local police and they all lived close to the station; the person felt that being outed as a LGBTQIA+ would affect their safety as well as the family's social standing (Program Head 2024-03-12).

The Program Head noted that families are believed to have nothing to do with their child's queerness and are shown "pity" (Program Head 2024-03-12). The Public Health Professional shared that they were involved in multiple cases where individuals have left the family home, their parents have filed a missing persons report, and the police attempted to "mediate" and to "negotiate" that person's return to their family (Public Health Professional 2024-03-16). The same source added that the police made statements encouraging the adult children to "go back" to their parents and "'listen to their advice and get heterosexually married'" (Public Health Professional 2024-03-16). Similarly, the Lawyer noted that they are familiar with multiple cases in which a couple with diverse SOGIESC has been returned to the family (Lawyer 2024-03-28).

The Program Head noted that in areas such as Haryana, Punjab, and rural areas, even in southern India, families who support their LGBTQIA+ family member face "systemic isolation" (Program Head 2024-03-12).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Oral sources: All India Queer Association; Assistant Professor who works on sexual minorities and transnational sexualities in the United States; Dhanak of Humanity; Dumdum Swikriti Society; Human Rights Watch; Humsafar; Mumbai-based feminist lawyer; Organization for Refuge, Asylum & Migration; Nazariya Foundation; Queer rights activist in India; Queerythm; Sangama; Sappho for Equality; Transgender Welfare Equity and Empowerment Trust; Vidhi Centre for Legal Policy; Visiting Professor at a university in India specializing in human rights, legal history, and queer rights.

Internet sites, including: Australian Red Cross – ecoi.net; Bertelsmann Stiftung; The Conversation; *The Diplomat*; Equaldex; EU – EU Agency for Asylum; Factiva; Human Rights Watch; National Network of LBI Women and Trans Persons; Pink News; The Print; People's Union for Civil Liberties; Reuters; UK – Home Office; UN – UN Population Fund, Office of the United Nations High Commissioner for Human Rights; US – Department of State Department.

Associated documents

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