

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	405
Land:	Indien
Kilde:	UK Home Office
Titel:	Country Policy and Information Note - India: Sexual orientation and gender identity and expression
Udgivet:	april 2021
Optaget på baggrundsmaterialet:	25. maj 2021



Home Office

Country Policy and Information Note

India: Sexual orientation and gender identity and expression

Version 4.0

April 2021

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 [Introduction](#) 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 of, in general, whether one or more of the following applies:

- A person is reasonably likely to face a real risk of persecution or serious harm
- The general humanitarian situation is so severe as to breach Article 15(b) of European Council Directive 2004/83/EC (the Qualification Directive) / Article 3 of the European Convention on Human Rights as transposed in paragraph 339C and 339CA(iii) of the Immigration Rules
- The security situation presents a real risk to a civilian's life or person such that it would breach Article 15(c) of the Qualification Directive as transposed in paragraph 339C and 339CA(iv) of the Immigration Rules
- 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
- A claim is 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: 3 February 2021

1. Introduction

1.1 Basis of claim

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

1.2 Points to note

- 1.2.1 This note provides an assessment of the general situation for gay men, lesbians, bisexuals, transgender and intersex persons (including hijras). They are referred to collectively as 'LGBTI persons', although 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 LGBTI groups.
- 1.2.3 For general guidance on considering claims made by LGBTI persons, decision makers should refer to the Asylum Instructions, [Sexual orientation in asylum claims](#) and [Gender identity issues in the asylum claim](#).

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2. Consideration of issues

2.1 Credibility

- 2.1.1 For information on assessing credibility, see the 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 there are serious reasons for considering whether one (or more) of the exclusion clauses is applicable. Each case must be considered on its individual facts and merits.
- 2.2.2 If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection.
- 2.2.3 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instructions on [Exclusion under Articles 1F and 33\(2\) of the Refugee Convention](#), [Humanitarian Protection](#) and [Restricted Leave](#).

2.3 Convention reason

- 2.3.1 A person's actual or imputed membership of a particular social group (PSG).
- 2.3.2 LGBTI persons in India form a particular social group (PSG) within the meaning of the Refugee Convention because they share an innate characteristic or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to their identity or conscience that they should not be forced to renounce it, and have a distinct identity which is perceived as being different by the surrounding society.
- 2.3.3 Although LGBTI persons in India form a PSG, establishing such membership is not 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.
- 2.3.4 For further guidance on Convention reasons see the instruction on [Assessing Credibility and Refugee Status](#).

2.4 Risk

a. General points

- 2.4.1 Paragraphs 35 and 82 of the determination of the Supreme Court's ruling in [HJ \(Iran\) and HT \(Cameroon\) v Secretary of State for the Home Department \[2010\] UKSC 31, heard 10,11,12 May and promulgated 7 July 2010](#), have set out the approach to take and established the test that should be applied when assessing such a claim based on a person's sexual orientation and / or gender identity / expression.
- 2.4.2 For further guidance, see the Asylum Instruction on [Sexual identity issues in the asylum claim and Gender identity issues in the asylum claim](#).

b. State treatment

State treatment of gay and bisexual men

- 2.4.3 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 always have been, extremely rare.' (para 174b).
- 2.4.4 However, on 6 September 2018, the Supreme Court of India ruled that consensual same-sex sexual acts between adults, conducted in private, are no longer an offence under Section 377 IPC (see [Legal Context](#)).
- 2.4.5 In 2014 the Supreme Court of India held that no citizen can be discriminated against on the grounds of gender identity, including those who identify as the third gender (see [Legal Context](#)).

- 2.4.6 Since the decriminalisation of Section 377, some positive steps have been taken in creating a more open dialogue about LGBTI experiences and rights and encouraging sensitisation training for those in authoritative positions (see [State attitudes and treatment since September 2018 ruling: Overview](#)).
- 2.4.7 Despite the Supreme Court ruling, LGBTI persons report negative attitudes and behaviours of the police, including ongoing harassment from state authorities who use 'nuisance laws' to arrest, manipulate, bribe and threaten them. Reportedly same-sex relations continue to be punishable with up to seven years imprisonment for those serving in the army (see [State attitudes and treatment of gay men](#) and [The Indian Army](#)).
- 2.4.8 As noted above, MD was heard before the Supreme Court ruling of September 2018. Therefore, any country guidance will have been given at a time when same-sex sexual acts were illegal. However, some of the judgment is still useful because it shows that, despite the illegal nature of same-sex acts at that time, it was unlikely that police behaviour in terms of ill-treatment and discrimination would have in general amounted to persecutory treatment.
- 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).

State treatment of lesbian and bisexual women

- 2.4.10 With reference to state treatment of lesbian and bisexual women, 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) held that all the country guidance given in MD relating to males also applied equally to lesbians (paragraph 78 (7)).
- 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).
- 2.4.12 Positive steps have been taken by the judiciary to afford lesbian women more protection as well as freedoms, for example, in their living arrangements (see [State attitudes and treatment of lesbian women](#)).

State treatment of trans persons

- 2.4.13 With reference to state treatment of transgender persons, in an April 2014 judgment, the Supreme Court of India directed the central Government of India and all state governments to legally recognise transgender persons (including hijras and intersex persons) 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 [State attitudes and treatment of Hijras and the wider transgender community](#) and [State attitudes and treatment of intersex persons](#)).

- 2.4.14 Subsequently, on 5 December 2019, the Indian Ministry of Law and Justice Transgender Persons (Protection of Rights) Act, 2019 (TPPRA) was passed. The Act creates obligations for welfare, education, social protection and health measures, as well as prevention against employment-based discrimination. The legislation has been widely criticised by various LGBT groups and the wider Transgender community, who have argued that self-declared identity alone should form the basis to the rights, benefits and entitlements outlined in the Act (see [Constitution](#)).

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c. State treatment conclusion

- 2.4.15 Since the decriminalisation of Section 377, there have been encouraging steps taken to change attitudes towards, and state treatment of, LGBTI persons. For example, the police are given periodic sensitisation and awareness training, and there are examples of senior police officers intervening when complaints about police behaviour have been lodged. However, attitudes are changing slowly and there continue to be reports of police harassment and threats against LGBTI persons.
- 2.4.16 In general, state treatment of LGBTI persons, in particular the police, even when taken cumulatively, as held in MD in 2014, is not sufficiently serious in its nature and repetition as to amount to persecution or serious harm. There are not, therefore, very strong ground supported by cogent evidence to warrant a departure from MD.
- 2.4.17 The TPPRA of 2019 has allowed transgender (including Hijras) and intersex persons to be legally recognised as a third gender and to have their constitutional rights safeguarded. However, shortcomings have been observed with trans and intersex advocates raising these in court.
- 2.4.18 Decision makers must consider each case on its own facts. The onus will be on the person to demonstrate why, in their particular circumstances, they would be at real risk of serious harm from the authorities on the basis of their sexual orientation or gender identity and expression.
- 2.4.19 For further guidance on assessing risk, see the instruction on [Assessing Credibility and Refugee Status](#).

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d. Societal treatment

Societal treatment of gay and bisexual men

- 2.4.20 With regards to gay and bisexual men, 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).
- 2.4.21 The UT also held 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).
- 2.4.22 Since the decriminalisation of Section 377, societal attitudes towards LGBTI people are slowly changing with the protection of the law encouraging gay men in particular to be more open and accepted in society. The UT in MD also held that India has a large, robust and accessible LGBTI activist and support network, mainly to be found in the large cities (paragraph 174 (f)) and since decriminalisation, pride events have been held for the first time in smaller cities. However, no comprehensive anti-discrimination code exists and whilst the Constitution prohibits discrimination based on sex and gender, it only applies to the government and not the private sector. Gay and bisexual men, particularly in rural areas continue to suffer ill treatment and discrimination in many aspects of their lives, including education, work and public spaces and the findings in MD are still relevant (see [Societal norms](#) and [LGBTI culture in India](#)).

Societal treatment of lesbian and bisexual women

- 2.4.23 Having found that MD applied equally to lesbians in terms of treatment by the state and general populace, [AR and NH](#) then looked more closely at societal treatment of lesbians; specifically relating to family members and held:
- ‘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)).
- 2.4.24 Recent country information does not indicate that the situation for lesbians has changed significantly since MD was promulgated. Women’s sexuality is rarely discussed in India where women are expected to marry and have children and “corrective” rape, often by family men, is prevalent in rural areas. In a society where gender-based violence is widespread and conducted in public, many lesbians may find it difficult to come out even to their families (see [Societal treatment of lesbian women](#)).

Societal treatment of trans persons

- 2.4.25 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 and the wider transgender community continue to be reported (see [Societal treatment of Hijras / Transgender and Intersex persons](#)).

- 2.4.26 Despite the Indian Psychiatric Society releasing a statement to say that being gay was not a mental illness, instances of the illegal practice of 'conversion therapy' still occurs in India. Positive steps have been taken by the judiciary in apprehending those responsible for perpetrating the practice (see [Societal treatment of lesbians](#) and [Judiciary overview](#)).

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e. Societal treatment conclusion

- 2.4.27 In general, the societal treatment of LGBTI people in India, even when taken cumulatively, is not sufficiently serious by its nature and repetition as to amount to persecution or serious harm.
- 2.4.28 LGBTI persons, in particular lesbians and those living in rural areas, sometimes, because of a lack of safe space or fear of being ostracized or possible violence from their family, are not open about their sexual identity. Moreover, some women who are seen to have transgressed social, cultural and religious norms, may fear gender-based violence as a result, and may therefore be at risk of persecution or serious harm (see [CPIN India: Women fearing gender-based violence](#)). If a woman does not openly express her sexual orientation or gender identity, consideration must be given to the reasons why she does not.
- 2.4.29 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.
- 2.4.30 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 Where the person has a well-founded fear of persecution from the state they will not, in general, be able to avail themselves of the protection of the authorities.
- 2.5.2 Where the person has a well-founded fear of persecution from non-state actors, including 'rogue' state actors, decision makers must assess whether the state can provide effective protection.
- 2.5.3 Police conduct towards LGBTI people varies. Police effectiveness and conduct varies from state to state, undermined by inadequate training and equipment, limited resources, political influence and corruption. Police investigation is seriously hampered by some police officers refusing to register victim's complaints, poor quality of investigations, insufficient training and legal knowledge, inadequate and outdated forensic and cyber infrastructure, and a lack of public trust. Their investigation may also be affected by bias in relation to class, caste, ethnicity and religion of the victim

or offender or in relation to down-playing crimes in certain areas of the country. Reports have suggested that there is absence in police protection for Hijras and Transgender persons and some victims may be reluctant to report police violations due to fear of retribution. In several states, the police have received relevant additional education and sensitivity training in LGBTI issues (see [CPIN India: Actors of protection](#), [State attitudes and treatment since September 2018 ruling: overview](#), [State attitudes and treatment of gay men](#), [State attitudes and treatment of lesbian women](#) and [State attitudes and treatment of Hijras and the wider transgender community](#) and [State attitudes and treatment of intersex persons](#)).

- 2.5.4 There is some evidence to suggest that police have responded to reported violence against the LGBTI community, though there are continued reports of police intimidating, harassing and extorting LGBTI persons in the same way as before the Supreme Court judgement, as highlighted in [MD](#). There are avenues of redress in these circumstances, such as in-station complaints processes, an escalation of complaints to Magistrates to take forward and also through the Indian National Human Rights Commission. 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 LGBTI (see [Avenues of complaint against state misconduct](#)).
- 2.5.5 Improvements in the rights afforded to and protection given to the LGBTI community can be seen in actions taken by the judiciary, with courts voting in favour of same-sex couples involved in disputes targeting their sexuality, ordering police protection for same-sex couples wishing to live together and against doctors engaging in 'conversion therapy' (see [Judiciary overview](#) and [Judiciary](#)).
- 2.5.6 Various non-governmental organisations advocate for LGBTI rights and, whilst they cannot provide protection to LGBTI individuals in lieu of the state, they may be able to assist the person in availing themselves of the protection of the state by providing support and advice (see [NGOs and support](#)).
- 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 has a well-founded fear of persecution from the state and there is no safe part of the country where they would not be at risk from the state, they are unlikely to 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 held 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))

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 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.
- 2.7.2 The claim is likely to be certifiable as ‘clearly unfounded’ as, in general, the state is willing and able to provide effective protection.
- 2.7.3 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

Section 3 updated: 03 February 2021

3. Terminology

3.1 Commonly used terms

- 3.1.1 'Tritiya Prakriti' (third sex) was in 'ancient India' used to refer to transgender persons¹.
- 3.1.2 'Hijras', 'Aravanis', 'Alis' are terms used to refer to transgender persons². With specific regard to Hijras: '...hijras are biological males who reject their masculine identity and identify either as women, or "not-men", or "in-between man and woman" or "neither man nor woman."' ³
- 3.1.3 'Thirunangai', 'Kinnar', 'Shiv-Shakti', 'Jogappa', 'Sakhi', 'Jogta', and 'Aradhi' are also terms used to refer to transgender persons⁴.

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3.2 Hijras

- 3.2.1 In the culture of the Indian sub-continent, 'Hijras' are regarded as a 'third gender'; most hijras see themselves as 'neither man nor woman'⁵. They cannot accurately be described as 'eunuchs' or 'hermaphrodites' or 'transsexual women', which are Western terms⁶. The hijra role has been described as 'a magnet that attracts people with many different kinds of cross-gender identities, attributes, and behaviours – people whom we in the West would differentiate as eunuchs, homosexuals, transsexuals, hermaphrodites, and transvestites'⁷. Hijras in India identify as a community of its own, with their own set of traditions, occupations and even languages⁸.
- 3.2.2 Although most Hijras wear women's clothing and have adopted female mannerisms, they generally do not attempt to pass as women⁹. Becoming a hijra involves a process of initiation into a Hijra 'family', or small group, under a guru teacher^{10 11}. George Arney wrote, in a BBC News article of 30 November 2000, that Hijras have been part of the South Asian landscape for thousands of years¹².
- 3.2.3 Hijras can fall under the umbrella term transgender¹³ but the Kaleidoscope Human Rights Foundation, Australia, noted in September 2016 'The Hijra community often identifies itself as an alternative gender, rather than as

¹ Law Insider, '[LGBTQ Rights in India and Acknowledgment](#)' 23 August 2020

² EPW Editorial, '[Gender Rights](#)', 15 July 2008

³ Scroll.In '[Hijra, kothi, aravani: a quick guide to transgender terminology](#)' 17 April 2014

⁴ Development News, '[In India, Nothing About Being a Trans Person Is Easy](#)' no date

⁵ Nanda. S., '[Neither Man nor Woman...](#)' (Chapter 2), 1999

⁶ Nanda. S., '[Neither Man nor Woman...](#)' (Chapter 2), 1999

⁷ Nanda. S., '[Neither Man nor Woman...](#)' (Chapter 2), 1999

⁸ Scroll.In '[Hijra, kothi, aravani: a quick guide to transgender terminology](#)' 17 April 2014

⁹ Nanda. S., '[Neither Man nor Woman...](#)' (Chapter 2), 1999

¹⁰ Nanda. S., '[Neither Man nor Woman...](#)' (Chapter 2), 1999

¹¹ BBC News, '[Blurring the gender lines in Bangladesh](#)', 30 November 2000

¹² BBC News, '[Blurring the gender lines in Bangladesh](#)', 30 November 2000

¹³ BBC, '[The semi-sacred "third gender" of South Asia](#)', 20 July 2017

transgender.’¹⁴

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Section 4 updated: 03 February 2021

4. Legal context

4.1 Constitution

- 4.1.1 The Indian Constitution does not refer to sexual orientation or gender identity in Articles defining the rights of citizens. The Constitution provides:

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

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.’¹⁵

- 4.1.2 On 15 April 2014, in a [judgment](#) concerning the rights of the transgender community, the Supreme Court of India held that:

“Gender identity, in our view, is an integral part of sex and no citizen can be discriminated on the ground of gender identity, including those who identify as the third gender. We, therefore, conclude that discrimination on the basis of sexual orientation or gender identity includes any discrimination, exclusion, restriction or preference, which has the effect of transposing equality by the law or the equal protection of the law guaranteed under our Constitution.”¹⁶

- 4.1.3 Subsequently, on 5 December 2019, the Indian Ministry of Law and Justice passed the [Transgender Persons \(Protection of Rights\) Act, 2019 \(TPPRA\)](#). The Act created obligations for welfare, education, social protection and health measures, as well as prevention against employment-based discrimination for transgender (including Hijras) and intersex persons. It also encouraged the provision of a National Council for Transgender persons, which was established in August 2020. Any offences committed under the Act can attract fines and/or a punishment of between six months and two years’ imprisonment¹⁷.

- 4.1.4 The legislation, however, has been criticised widely by various LGBTI groups including the transgender community, who have argued that self-declared identity alone should form the basis to the rights, benefits and entitlements outlined in the Act. In January 2020, human rights activist Swati Bidhan filed a constitutional challenge against the Act in the Supreme Court¹⁸. The Australian Government’s Department for Foreign Affairs (DFAT) country report on India, which drew on DFAT’s on-the-ground knowledge and discussions with a range of sources in India, published in December 2020

¹⁴ Kaleidoscope Australia, ‘[Parallel Report to the CEDAW](#)’ (para 4.2), September 2016

¹⁵ [Constitution of India](#), Part 3: Fundamental Rights, (pages 6-7)

¹⁶ Supreme Court India, [Writ Petition \(Civil\) no 400 of 2012](#), (paragraph 76, 77), 15 April 2014

¹⁷ DFAT, [Country Information Report: India](#) (paragraph 3.163, page 47), 10 December 2020

¹⁸ Hindustan Times, ‘[... notice to Centre on plea against transgender act](#)’, 28 January 2020

reported that: 'Sources told DFAT that, despite the TPPRA, transgender persons still function as non-citizens, with no rights to marry, inherit or take care of sick partners.'¹⁹

- 4.1.5 There is no provision in Indian law for civil partnerships or for the recognition of same-sex marriages²⁰. Human Rights Watch detailed that in September 2020, a petition in the Delhi High Court sought the right of same-sex couples to get married under the Hindu Marriage Act. At the time of writing, the petition is ongoing, and the result remains unknown²¹.
- 4.1.6 Same-sex couples are generally not permitted to adopt children, with regulation 5(3) of the Adoption Regulation Act, 2017 citing that a couple are only eligible to adopt a child following two years of a stable, marital relationship²².
- 4.1.7 Same-sex couples are not permitted to parent children through surrogacy. The recently introduced 2019 Surrogacy Regulation Bill outlines that only Indian citizens who have been married for at least 5 years are eligible to parent a child through surrogacy²³.

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

- 4.2.1 In September 2018, the Supreme Court of India declared in Navtej Singh Johar v. Union of India that Section 377²⁴ of the Penal Code (which denoted the criminalisation of same-sex acts) was unconstitutional. The court emphasised that the provision violated the rights to privacy and to human dignity, among others. Section 377 was thereafter decriminalised, allowing consensual same-sex sexual acts in private settings²⁵.
- 4.2.2 Section 377 was included in the Indian Penal Code by the colonial government in the 1860s. It stated 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.'²⁶
- 4.2.3 The phrase 'carnal intercourse against the order of nature' was interpreted to include sodomy and applied in principle in both gay and heterosexual relationships²⁷.
- 4.2.4 On 6 September 2018, India's Supreme Court (SC) ruled that consensual

¹⁹ DFAT, [Country Information Report: India](#) (paragraph 3.166, page 48), 10 December 2020

²⁰ ILGA, [State-Sponsored Homophobia 2020](#) (page 327), December 2020

²¹ HRW, [World Report 2021 – India](#) 13 January 2021

²² The Gazette of India, [Adoption Regulations, 2017](#) (chapter 1, page 103) 04 January 2017

²³ Ministry: Health and Family Welfare, [The Surrogacy Regulation Bill](#) 2019

²⁴ The Times of India, [‘What is Section 377 of IPC?’](#) 31 December 2018

²⁵ ILGA, [State-sponsored Homophobia, Global overview update 2020](#) December 2020 (page 101),

²⁶ [Indian Penal Code](#) (Act No.45 of Year 1860)

²⁷ The Naz Foundation Case, [‘Section 377’](#)

sexual acts between adults, conducted in private, was no longer an offence under Section 377 of the IPC²⁸. The ruling effectively scrapped the colonial law, which deemed sex between consenting gay men, a punishable offence²⁹. The SC held that non-consensual sexual acts against adults, all acts sexual acts against minors and acts of bestiality would remain criminalised under Section 377³⁰. 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).’³¹

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Section 5 updated: 03 February 2021

5. State attitudes and treatment since September 2018 ruling: overview

5.1 Police overview

- 5.1.1 The Supreme Court judgment 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 [LGBT] persons in the light of the observations contained in this judgment.’³²
- 5.1.2 Following the judgement the LGBT rights group, Naz Foundation, said: “They [the judges] have apologised to the gay community and said copies of the judgment will be handed to every police station.”³³
- 5.1.3 The Guardian noted in March 2019 that members of the LGBT community in Patna continued to ‘face regular threats of sexual and other violence, including from police. “They used to harass us [before the lifting of the gay ban] and nothing has changed,” Roshni says. “If we resist, they can arrest us and do whatever they want. We are living the way we were living before the ban.”’³⁴
- 5.1.4 An article by the Times of India published September 2020 outlines the ongoing negative attitudes and behaviours of the police towards LGBTI individuals generally in Kolkata. However, the article also highlights that some steps were being taken to tackle such attitudes and behaviours. Addressing a sensitisation programme on issues concerning LGBTQ (lesbian, gay, bisexual, transgender and queer³⁵) community, attended by representatives from all police stations under the Commissionerate, Biddhannagar City Police Commissioner Mukesh said “I confess most of our people are unaware of the rights of LGBTQ members and often we tend to be insensitive to them. I would ask all officers to go back to their police stations and brief colleagues that we need to be more humane and sensitive

²⁸ Supreme Court India, ‘[Writ Petition \(Criminal\) No. 76 of 2016](#)’, 6 September 2018

²⁹ The Times of India, ‘[Gay sex is not a crime](#)’, 6 September 2018

³⁰ Supreme Court India, ‘[Writ Petition \(Criminal\) No. 76 of 2016](#)’, 6 September 2018

³¹ The Times of India, ‘[SC decriminalises gay sex](#)’, 8 September 2018

³² Supreme Court India, ‘[Writ Petition \(Criminal\) No. 76 of 2016](#)’ paragraph 74(c), September 2018

³³ Independent, ‘[Section 377](#)’, 6 September 2018

³⁴ The Guardian, ‘[“There are few gay people in India”: stigma lingers...](#)’ 13 March 2019

³⁵ BBC News, ‘[We know what LGBT means but here’s what LGBTQIAAP stands for](#)’, 25 June 2015

while dealing with people from the community.’³⁶

- 5.1.5 The article also noted that Bidhannagar Police Commissionerate, in affiliation with other forces, would facilitate more sensitisation sessions with more frequency, in order to challenge the negative attitudes and behaviours of the authorities against the LGBT community³⁷.

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5.2 Judiciary overview

- 5.2.1 It is noted that the judiciary have taken steps against doctors engaging in ‘conversion therapy’ of LGBTI individuals. Outlook India reported that in December 2018, a doctor was summoned by the Delhi High Court for allegedly violating the Indian Medical Council Act, after he was banned by the Delhi Medical Council for engaging in ‘conversion therapy’³⁸.

- 5.2.2 In an interview by Global Voices in July 2020, Supreme Court Advocate Saurabh Kirpal, who acted as the lawyer for petitioners in the case that led to the decriminalisation of Section 377 of the IPC, outlined his views on the decriminalisation and its impact upon legislature in practice:

‘The Supreme Court in its judgment only held that consensual homosexual sex could not be a crime under the Indian Constitutional scheme. The judgment was therefore limited in its scope. Of course, the signalling by the Court that it was on the side of the queer community had a positive force in the discourse about sexuality in public spaces. The statement of legal principles – that a queer person is entitled to the full protection of the laws without any discrimination by the state – has also helped lay the foundation for future challenges to other discriminatory laws. The greatest positive change has been in bringing the issue of sexuality and queerness into the public space for discussion without any fear of reprisal by the authorities. There is, however, a very long way to go.

‘...India does not have a comprehensive anti-discrimination code. While the Constitution prohibits discrimination, that injunction only applies to the government and its instrumentalities. The private sector thus can discriminate with impunity in matters of employment, housing, health and education among other areas. While there is a discussion about the need for such a law, there appears to be very little political consensus towards the enactment of such a law. Even the courts have not yet woken to this problem which materially affects the lives of the queer community.’³⁹

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Section 6 updated: 03 February 2021

6. State attitudes and treatment of gay men

6.1 Police

- 6.1.1 DFAT’s country report on India published in December 2020 stated that

³⁶ Times of India, ‘[Police to sensitise personnel to deal with LGBTQ people](#)’ 16 September 2020

³⁷ Times of India, ‘[Police to sensitise personnel to deal with LGBTQ people](#)’ 16 September 2020

³⁸ OI, ‘[Delhi HC summons doctor treating homosexual patients using electric shocks](#)’ December 2018

³⁹ Global Voices, ‘[The State of LGBTQ+ Rights in India...an interview with Saurabh Kirpal](#)’ July 2020

‘Sources told DFAT attitudes towards gay men have not changed, despite the change in the law. Sources claim police still use many “nuisance laws” to arrest, harass, manipulate and bribe gay men whose families are not aware of their sexual orientation.’⁴⁰

- 6.1.2 The United States Department of State (USSD) human rights report on India, published in 2020 and covering events in 2019, also noted that some police committed crimes against gay and bisexual men and used threats of arrest to discourage victims from reporting the incidents⁴¹.

- 6.1.3 In an article by the Times of India published September 2020, two instances of negative police attitudes were reported in Kolkata, though it is noted that senior police officers intervened, and a complaint was received:

‘A 23-year-old gay man was this July allegedly abused, made fun of and insulted by police in New Town [Kolkata] over his sexual orientation when they picked him up suspecting him to be a part of a sex racket. Senior police officers intervened after the youth lodged a complaint. But by then the youth had been allegedly subjected to cops’ traumatising behaviour in the time he was kept at the police station.

‘Another youth from the LGBTQ community said: “I went to cops seeking justice as my parents tortured me frequently because of my sexual orientation. But they shooed me away. I was told my parents were doing the right thing because I’m a homosexual.”’⁴²

- 6.1.4 In their 2019 Human Rights report, following data to show men who have sex with men being one of the population’s groups most adversely affected by HIV/AIDS, the USSD noted that, more encouragingly, ‘The National AIDS Control Organization worked actively with NGOs to train women’s HIV/AIDS self-help groups. Police engaged in programs to strengthen their role in protecting communities vulnerable to human rights violations and HIV.’⁴³

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6.2 Judiciary

- 6.2.1 CPIT could not find information relating to judicial treatment of gay men since the September 2018 ruling in the sources consulted (see [Bibliography](#)).

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6.3 The Indian Army

- 6.3.1 Despite the 2018 ruling decriminalising Section 377 of the IPC, the Indian Army Chief General, Bipin Rawat, spoke out in January 2019 to determine how same-sex relations would remain punishable to those serving in the army. In an article published by The Print (Indian based on-line newspaper), it was reported that the General stated: ‘...that while the Army Act, which governs the force, was not above the law of the land, the Indian Army was

⁴⁰ DFAT, [Country Information Report: India](#) paragraph 3.160, page 47, 10 December 2020

⁴¹ USSD, [India Human Rights Report 2019](#) page 56, 11 March 2020

⁴² Times of India, ‘[Police to sensitise personnel to deal with LGBTQ people](#)’ 16 September 2020

⁴³ USSD, [India Human Rights Report 2019](#) page 57, 11 March 2020

not “westernised and modernised” and was “conservative” when it came to matters like adultery or homosexuality. He declared that gay sex offenders would be dealt with under relevant sections of the Army Act.’⁴⁴

6.3.2 Section 46 of The Army Act, 1950 outlines that:

‘46. Certain forms of disgraceful conduct. Any person subject to this Act who commits any of the following offences, that is to say,-

‘(a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or

‘(b) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or

‘(c) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or that person; shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.’⁴⁵

6.3.3 Under the Army Act, any person found guilty of unbecoming or, disgraceful conduct of a ‘cruel, indecent or unnatural kind’ can be imprisoned for up to seven years. Same-sex sexual acts are not explicitly detailed as falling within this category, but in their 2020 report, DFAT assess that ‘the catch-all language of the Act can be interpreted to include such relations.’⁴⁶

6.3.4 In response to General Rawat’s comments, in a January 2019 article by The Week, Lieutenant General H.S. Panag, former Northern Army Commander, reportedly stated that:

“Sex on duty, sex in barracks, sex in family quarters by an outsider, are all subjects, which are kind of taboo anywhere (in all armed forces). So the Army has got its own rules and regulations. While you don't punish them for homosexuality or for heterosexuality, you can punish them for violating military orders.

“Since the Supreme Court judgement, nobody has been charged for adultery or homosexuality in the Army. They are going to be charged for 'unbecoming conduct or for violation of military rules’.”⁴⁷

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Section 7 updated: 03 February 2021

7. State attitudes and treatment of lesbian and bisexual women

7.1 Police

7.1.1 The United States Department of State (USSD) human rights report on India, published in 2020 and covering events in 2019, noted that some police committed crimes against lesbian and bisexual women and used threats of arrest to discourage victims from reporting the incidents⁴⁸.

⁴⁴ The Print, [‘Here’s how homosexuals in Indian military can be punished’](#) 11 January 2019

⁴⁵ The Army Act, [Section 46 in the Army Act](#) 1950

⁴⁶ DFAT, [Country Information Report: India](#) paragraph 3.158, page 47, 10 December 2020

⁴⁷ TW, [‘Sexual ‘mis’conduct\[...\]: How armed forces uphold conservatism as a virtue’](#), 12 January 2019

⁴⁸ USSD, [India Human Rights Report 2019](#) page 56, 11 March 2020

- 7.1.2 DFAT's country report on India, which drew on DFAT's on-the-ground knowledge and discussions with a range of sources in India, published in December 2020 found that lesbians and bisexual women lack police protection⁴⁹.
- 7.1.3 Despite this, in an article by Orissa Post, an online English news forum from May 2019 regarding a violent attack on a 19-year old lesbian, the Indian police reportedly responded promptly, rescuing the girl and filing cases against those responsible⁵⁰.

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7.2 Judiciary

- 7.2.1 The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) noted that:
 'One legal activist who was involved in this struggle for decades notes that while it is too early to draw categorical opinions about the impact of the repeal, courts already are "affirming the legitimacy of queer relationships with heartening frequency - so far mainly in cases of queer women couples approaching the judiciary seeking injunctions from intrusion and coercion by relatives towards their relationships."' ⁵¹
- 7.2.2 The same ILGA report notes that 'Soon after the 377 verdict, the High Court of India's southern state of Kerala on ruled in favour of a lesbian couple who wanted to live together. In a similar move, the High court of New Delhi ordered police protection for a lesbian couple who feared threat to life by their parents as they had been in a romantic relationship for around one-and a [sic] half year[s] and wished to live together as a same sex couple.'⁵²

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Section 8 updated: 03 February 2021

8. State attitudes and treatment of Hijras and the wider Transgender community

8.1 Police

- 8.1.1 The United States Department of State (USSD) human rights report on India, published in 2020 and covering events in 2019, noted that some police committed crimes against transgender individuals and used threats of arrest to discourage victims from reporting the incidents⁵³.
- 8.1.2 Hijras also reported that a lack of police protection resulted in them becoming targets for extortion and sexual violence⁵⁴.

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8.2 Judiciary

- 8.2.1 In an interview with Global Voices, Supreme Court Advocate Saurabh Kirpal,

⁴⁹ DFAT, [Country Information Report: India](#) paragraph 3.155, page 46, 10 December 2020

⁵⁰ Orissa Post, '[Girl tied to tree, thrashed for being in a lesbian relationship](#)' 26 May 2019

⁵¹ ILGA, [State-sponsored Homophobia](#) page 26, 2019

⁵² ILGA, [State-sponsored Homophobia](#) page 137, 2019

⁵³ USSD, [India Human Rights Report 2019](#) page 56, 11 March 2020

⁵⁴ DFAT, [Country Information Report: India](#) page 48, 10 December 2020

who acted as the lawyer for petitioners in the case that led to the decriminalisation of Section 377 of the IPC, outlined his views on the legislature aimed at protecting the rights of Transgender persons (including Hijras) and how it can be seen as discriminatory in nature:

“The Parliament has passed the Transgender Persons (Protection of Rights) Act, 2019 which is very problematic as it does not allow for self-determination of transgender status. The Act also does not offer the reservations in public employment and education as had been directed by an earlier Supreme Court judgment. The Act has been challenged in the Supreme Court and there is an urgent need to remedy its more draconian provisions.”⁵⁵

- 8.2.2 With specific regard to Hijras, in 2014, the Supreme court of India rules that Hijras would be recognised on official documents under a ‘third gender’ category⁵⁶. It was also ruled that quotas and reservation in education and employment be put in place to ensure Hijras had access to jobs and educational establishments where they had previously faced discrimination on the basis of their appearance. Hijras are now recognised as a ‘third gender’ on official documents⁵⁷.

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Section 9 updated: 03 February 2021

9. State attitudes and treatment of intersex persons

9.1 Police

- 9.1.1 DFAT’s country report on India, which drew on DFAT’s on-the-ground knowledge and discussions with a range of sources in India, published in December 2020 found that intersex persons also lack police protection⁵⁸.

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9.2 Judiciary

- 9.2.1 It is noted that the TPPRA Act of 2019, which gave transgender persons a right to self-perceived identity, includes intersex persons⁵⁹. However, as outlined in a 2019 Thomas Reuters article on India’s intersex people, it is noted that Human Rights Watch (HRW) have called for the law to be amended and renamed to The Rights of Transgender and Intersex Persons Bill, with specific protections for intersex people⁶⁰.
- 9.2.2 An HRW article dated 14 January 2021 which reported on intersex protection in India showed some positive steps being taken to protect intersex persons:
- ‘During the Delhi Child Rights Commission’s consultation process late last year, the Delhi Medical Council supported the rights of intersex children. The council wrote that it “agrees with the complainants that Differences of Sex Developments/Intersex (DSD) issues are [a] human rights issue as it

⁵⁵ Global Voices, [‘The State of LGBTQ+ Rights in India...an interview with Saurabh Kirpal’](#) July 2020

⁵⁶ The Kootneeti, [‘Hijras disposition during British Colonization’](#) 20 December 2020

⁵⁷ The Kootneeti, [‘Hijras disposition during British Colonization’](#) 20 December 2020

⁵⁸ DFAT, [Country Information Report: India](#) paragraph 3.155, page 46, 10 December 2020

⁵⁹ DFAT, [Country Information Report: India](#) paragraph 3.166, page 48, 10 December 2020

⁶⁰ Reuters, [‘Job snubs to forced surgery: India’s ‘invisible’ intersex people’](#) 16 August 2019

pertains to bodily integrity and autonomy,” and “[s]urgical interventions and gender-related medical interventions for DSD that are not deemed medically necessary should be delayed until the patient can provide meaningful informed consent.”

‘The mandate is now on the Delhi municipal government to formulate a policy regulating these surgeries. As the commission affirmed, everyone has the right to informed consent – even those born with bodies that are slightly different.’⁶¹

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Section 10 updated: 03 February 2021

10. Avenues of complaint against state conduct

10.1.1 Under the Constitution, each state and union territory (UT) has primary responsibility for crime prevention and investigation and maintaining law and order⁶². Each state and union territory has its own police force (for further details, see the country policy and information note on [India: Background, including actors of protection and internal relocation](#)).

10.1.2 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^{63 64}.
- 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 investigation⁶⁵.

10.1.3 DFAT reported that another avenue of complaint is India’s National Human Rights Commission (NHRC), who received 86,000 complaints in 2018; most of which related to police conduct⁶⁶. DFAT expanded upon the role of the NHRC:

‘India’s National Human Rights Commission (NHRC) was established in 1993 and has a broad mandate to inquire into and make recommendations about violations of human rights by the central and state governments, including through intervention in court proceedings. The NHRC can initiate inquiries on any of the issues under its remit. Governments are required to respond to the NHRC’s reports within a period of one month for general

⁶¹ Human Rights Watch, ‘[Momentum Builds Around Intersex Protection in India](#)’ 14 January 2021

⁶² USSD, [India Human Rights Report 2019](#) page 56, 11 March 2020

⁶³ [Code of Criminal Procedure Act](#), 1973.

⁶⁴ Legal Services India, ‘[The Power of the Magistrate](#)’, June 2012

⁶⁵ Legal Services India, ‘[The Power of the Magistrate](#)’, June 2012

⁶⁶ DFAT, [Country Information Report: India](#) paragraph 2.62, page 19, 10 December 2020

complaints, and three months for complaints relating to the armed forces; however, government responses are often delayed. The NHRC consults with civil society representatives, some of whom sit on NHRC committees. The NHRC is accredited by the UN-affiliated Global Alliance of National Human Rights Institutions as “fully compliant” with the Paris Principles for national human rights bodies.’⁶⁷

- 10.1.4 Whilst the NHRC appears to be a viable avenue of redress, critics claimed that the NHRC does not investigate all complaints, lacked investigative capacity and relied upon information provided by India’s states, which is withheld in some cases⁶⁸.
- 10.1.5 The United States Department of State (USSD) human rights report on India, published in 2020 and covering events in 2019, noted that ‘The NHRC has neither the authority to enforce the implementation of its recommendations nor the power to address allegations against military and paramilitary personnel. Human rights groups claimed these limitations hampered the work of the NHRC. Some human rights NGOs criticized the NHRC’s budgetary dependence on the government and its policy of not investigating abuses that are older than one year. Some claimed the NHRC did not register all complaints, dismissed cases arbitrarily, did not investigate cases thoroughly, rerouted complaints back to the alleged violator, and did not adequately protect complainants.’⁶⁹
- 10.1.6 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 misconduct⁷⁰. It is noted that seventeen states (of 29 states in total⁷¹) have now established the PCAs through State Police Acts and ten states have done this through executive orders⁷². However, as reported by Mumbai Mirror, an Indian news source, in September 2020, the lack of proper establishment of PCAs and the associated negative impact on police reform has been heavily criticised⁷³.

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Section 11 updated: 03 February 2021

11. Societal norms and public opinion

11.1 Societal attitudes LGBTI persons: overview

11.1.1 India is a vast, diverse, multicultural country. Communities vary considerably

⁶⁷ DFAT, [Country Information Report: India](#) paragraph 2.61, page 19, 10 December 2020

⁶⁸ DFAT, [Country Information Report: India](#) paragraph 2.62, page 19, 10 December 2020

⁶⁹ USSD, [India Human Rights Report 2019](#) page 56, 11 March 2020

⁷⁰ IHS, ‘Jane’s Sentinel Security Assessment’, subscription only.

⁷¹ World Atlas, [‘How many States are in India?’](#) nd

⁷² Frontline, [‘Police reforms still largely on paper’](#) 09 August 2019

⁷³ Mumbai Mirror, [‘Need for robust police complaints authorities’](#), 24 September 2020

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 values⁷⁴. For more information on the basic country facts of India including demography, geography, political and religious background, see [Country Background Note: India](#).

- 11.1.2 The Centre for Global Education at Asia Society summarised the heavily reinforced traditions of Indian culture and societal tradition in their article on Indian society and ways of living:

‘Marriage is deemed essential for virtually everyone in India, marking the great watershed in life for the individual. For most of Hindu northern and central India, marriages are arranged within the caste between unrelated young people who may never have met. Among some south Indians communities and many Muslims, families seek to strengthen existing kin ties through marriages with cousins whenever possible. For every parent, finding the perfect partner for one’s child is a challenging task. People use their existing social networks, and increasingly, matrimonial newspaper advertisements. The advertisements usually announce religion, caste, educational qualifications, physical features, and earning capacity, and may hint at dowry size (even though giving or accepting dowries is actually illegal).’⁷⁵

- 11.1.3 Regarding Indian culture and societal tradition, The Guardian noted in March 2019 that India is a ‘vast, diverse and conservative country’ and that ‘Even in its noisy, congested main city of Patna, people still hold fast to traditional values and family honour as pillars in a society where little else can be relied on. “The ideology of marrying a woman and having children here is deeply rooted,” says Shubhankar Mondal, a medical student and one of the few openly gay people at his college in the city.’⁷⁶

- 11.1.4 Also speaking to The Guardian, Ajita Banerjee, a researcher on gender and sexuality rights, demonstrated how expressions of the LGBTI community differ, dependent on location and custom in India: “Being queer in India is not a monolithic identity, other than in big cities, where the imitation of western culture defines how we party and how we do pride.”⁷⁷

- 11.1.5 In a study undertaken in 2018 by The Centre for Regional Political Economy (CRPE), a research centre at Azim Premji University, respondents from 12 states (Assam, Jammu and Kashmir, Kerala, Mizoram, Nagaland, Tamil Nadu, Tripura, Punjab, Uttar Pradesh, Uttarakhand, West Bengal and Delhi), were asked for their opinions on same-sex relationships in a questionnaire. One question posed was ‘Sexual relationship[s] between two men or two women should be accepted in society. Do you agree or disagree with this statement?’. The results are summarised in the report:

‘Overall, more than a quarter of the male and the female respondents did not express an opinion on the matter. Almost half of all male and female respondents strongly reject the notion of accepting same sex couples and

⁷⁴ DFAT, [Country Information Report: India](#) paragraph 2.10, page 11, 10 December 2020

⁷⁵ Asia Society, [‘Indian Society and Ways of Living’](#) 2004

⁷⁶ The Guardian, [“There are few gay people in India”: stigma lingers...](#) 13 March 2019

⁷⁷ The Guardian, [“There are few gay people in India”: stigma lingers...](#) 13 March 2019

only 20 percent of men and 17 percent of women agree that same-sex couples should be accepted.

'Mizoram at 87 percent records the highest share of respondents who strongly reject the statement, followed by Nagaland (63 percent), Jammu and Kashmir (63 percent) and Kerala (58 percent)...The greatest support for same-sex couples seems to come from Uttar Pradesh where 36 percent of the respondents agree with the statement. Tamil Nadu (30 percent) and Delhi (30 percent) are the other states with relatively higher acceptance of same-sex relationships. Considering that over 50 percent of the responses across the states either reject the acceptance of same-sex couples or do not offer any opinion, the reluctance of society in general to even consider, much less begin a conversation on, the acceptance of LGBTQ members evident.'⁷⁸

11.1.6 More recently, in face-to-face interviews conducted by the Pew Research Centre in 2019, 2,476 Indian national respondents were asked 'which one of these comes closer to your opinion? Homosexuality should be accepted by society OR Homosexuality should not be accepted by society'. The results showed that since the first time the question was asked of a nationally representative sample in 2014, there was a 22% increase in acceptance of LGBTI individuals⁷⁹.

11.1.7 In an interview with the BBC in March 2019, Nitish (Tish) Anand, a gay man living in India, and Kiran Bobby of the Naz Foundation, described the changes and mixed attitudes towards LGBTI people since the decriminalisation of Section 377 'Tish says more cafes and bars in Delhi have become LGBT-friendly by putting up rainbow flags - but that doesn't necessarily mean the public have changed their attitudes. India should create a space where I'd actually be able to make my family understand that it's normal," he explains.'⁸⁰

11.1.8 The BBC report continued:

'Despite those small steps, there's "still a need for acceptance", one of India's top LGBT organisations believes.

"Many people still have the mentality that homosexuality is wrong," says Kiran Bobby from the Naz Foundation.

'The change in law does mean "many lesbian and gay people are starting to disclose their sexuality to their parents", Kiran explains.

"But there's a double standard. Some people will accept having LGBT friends but they won't accept their relatives who come out."⁸¹

11.1.9 The Guardian reported, in March 2019, the extent of which attitudes towards the LGBT community had changed since the judgment. Noting the experience of one gay man, The Guardian note:

'Social acceptance is lagging far behind legal sanction. But the end of India's gay ban is inspiring tiny acts of courage in unlikely places, the accumulated effect of which may only be known years later. At a college dance last year,

⁷⁸ CRPE, '[Politics and society between elections](#)' 2019, page 90

⁷⁹ PRC, '[The Global Divide on Homosexuality Persists](#)' 25 June 2020

⁸⁰ BBC News, '[LGBT in India: What it's like six months after gay sex was decriminalised](#)' March 2019

⁸¹ BBC News, '[LGBT in India: What it's like six months after gay sex was decriminalised](#)', March 2019

Mondal decided to grasp his partner's hand.

"I don't think I would've done that before the judgment," he says. "Maybe the other person would have been reluctant. Or people would have said things. But we are protected by the law."⁸²

Reflecting on the Supreme Court's ruling against aspects of Section 377 IPC, UK 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.'⁸³

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Section 12 updated: 03 February 2021

12. Societal treatment

12.1 Overview

- 12.1.1 With regard to general societal treatment of LGBTI individuals since the Section 377 ruling, DFAT reported that:

'Attitudes towards and experiences of LGBTI individuals can vary based on a range of factors (such as disparities between urban and rural India, language, caste, class and gender)... The removal of section 377 of the IPC, while a victory for same-sex men in particular, does not prevent or reduce widely held anti-gay and anti-LGBTI sentiment. Equally, the TPPRA, while providing a range of measures, has been widely criticised on a number of grounds and does not prevent or reduce anti-transgender public sentiment and treatment.'⁸⁴

- 12.1.2 The 2020 USSD report, found that despite the September 2018 ruling 'Lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons faced physical attacks, rape, and blackmail. LGBTI groups reported they faced widespread societal discrimination and violence, particularly in rural areas.'⁸⁵

- 12.1.3 Scroll.In, an Indian Hindi and English language digital news publication, also reported in June 2019 an increase in hate crimes against LGBTI individuals since the September 2018 ruling:

'While there has been growing visibility of queer people, there have been growing hate crimes too – reported and unreported, such as a lesbian being tied to a tree and beaten in Odisha in May and the numerous attacks on trans-genders in various parts of the country. Some gay chat apps have resulted in a rise in blackmail cases, exploiting the continued stigmatisation of the community.'⁸⁶

- 12.1.4 Reporting on reactions to the 2018 Supreme Court judgement, Foreign Policy reported on 10 September 2018 that religion also has an impact on levels of acceptance:

⁸² The Guardian, "[There are few gay people in India: stigma lingers...](#)" 13 March 2019

⁸³ UK Human Rights Blog, "[To the Wisdom of the Court](#)", 18 September 2018

⁸⁴ DFAT, [Country Information Report: India](#), (paragraph 3.155, page 46), 10 December 2020

⁸⁵ USSD, [India Human Rights Report 2019](#) (page 56), 11 March 2020

⁸⁶ Scroll.in, '[...India's LGBT community...even prouder if it healed internal divisions](#)' 28 June 2019

‘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.”⁸⁷

- 12.1.5 It is also noted that in January 2014 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 alive⁸⁸. No evidence could be found in the sources consulted that any pronouncements of this nature had been acted upon, nor that further fatwas of the same ilk had been issued since.

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12.2 Societal treatment of gay men

- 12.2.1 Specifically considering the societal treatment of gay men, DFAT reported that local sources claim that whilst there is some evidence of freedoms for gay men, insofar as ‘gay nights’ in bars, safe spaces remain non-existent for gay men⁸⁹.
- 12.2.2 In March 2019, the BBC News, in an article on the decriminalisation of Section 377, spoke to one gay man on his experiences of how societal attitudes had changed. Whilst he recognised some positive steps towards societal acceptance, he stated he still feels fearful of homophobic attacks, six months on⁹⁰.
- 12.2.3 The BBC News, in a video of 9 September 2019 entitled ‘A year of being gay and legal in India’ spoke to a 41-year-old gay man living in an urban area who said that he had seen a change of people’s attitudes over the year. He noted that he didn’t receive homophobic taunts as frequently now and he is able to discuss his identity with his colleagues, friends and family. However, he acknowledged that some attitudes are slow to change, and he wouldn’t be able to enter a club or book a hotel room as part of a gay couple. He also thought that difficulties could still exist in rural areas as people do not want to change their attitudes there⁹¹.
- 12.2.4 In an article by India Today in July 2019, an Indian news publication, it was

⁸⁷ Foreign Policy, ‘[In India, still unfurling the rainbow flag](#)’, 10 September 2018

⁸⁸ MEMRI, ‘[Indian Cleric Issues Anti-Gay Fatwa](#)’, 20 January 2014

⁸⁹ DFAT, [Country Information Report: India](#) paragraph 3.160, page 47, 10 December 2020

⁹⁰ BBC News, ‘[LGBT in India: What it’s like six months after gay sex was decriminalised](#)’, March 2019

⁹¹ BBC News, ‘[A year of being gay and legal in India](#)’ 9 September 2019

reported that despite the decriminalisation of Section 377 a year previously, a 19-year-old gay man took his own life, attributing societal attitudes towards the expression of his sexuality as the reason for doing so⁹².

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12.3 Societal treatment of lesbian women

12.3.1 An article published by Reuters in June 2018 on the suicides of a lesbian couple highlighted the experience lesbians face in India, prior to the Supreme Court judgement:

‘It is more common to hear about lesbians committing suicide than other members of the lesbian, gay, bisexual and transgender (LGBT) community, said gay rights campaigner Anjali Gopalan.

“They live a far worse life than gay men, a much tougher life, because there is largely more acceptance of male homosexuality,” she told the Thomson Reuters Foundation.

“Women’s sexuality is not discussed at all in India, making it much more challenging for them to come out.”⁹³

12.3.2 The article continued:

‘Outside cities, lesbians often face violence, brutality and even death, rights groups say.

“In rural areas, corrective rape is very prevalent and it is one of the main reasons why women do not come out,” Maya Urmi Aher, a transgender rights activist, said, pointing to pressure on women to marry and bear children.

‘Such rapes are seldom reported as they are often carried out by husbands, brothers and fathers in a bid to “cure” women, she said.

“Law and order consider crimes like this a joke,” she said.⁹⁴

12.3.3 DFAT reported a similar situation for lesbians in 2019:

‘Local sources told DFAT the situation for lesbians is difficult in that they lack safe spaces and, particularly in rural areas, often cannot talk about their sexual orientation. While issues of sexuality are discussed more openly in cities, sources claim the lesbian community still lacks access to services in urban areas. Sources were aware of a number of suicides of lesbians in 2019. Although information on lesbians in India is scarce, DFAT understands lesbians often experience sexual, physical and emotional violence, including lack of control over resources or forcible psychiatric treatment. Lesbians report feeling unsafe and sometimes being forced to marry men. Reports suggest lesbians seeking to end sexual or physical abuse in such relationships would either need to leave the situation (and sever family ties) or deny their sexuality.’⁹⁵

⁹² India Today, [‘...I was born gay: 19 year old commits suicide over homophobia’](#) 9 July 2019

⁹³ Reuters, [‘Lesbian couple’s suicide notes reveal stigma they face in India’](#) 12 June 2018

⁹⁴ Reuters, [‘Lesbian couple’s suicide notes reveal stigma they face in India’](#) 12 June 2018

⁹⁵ DFAT, [Country Information Report: India](#) paragraph 3.161, page 47, 10 December 2020

- 12.3.4 Despite the Indian Psychiatric Society (IPS) releasing a statement in 2018 stating that homosexuality was not a mental health disorder⁹⁶, in a 2020 Hindustan Times article regarding a bisexual woman who had taken her own life after being forced to undergo conversion therapy by her family, Deepa Vasudevan, co-founder of LGBT organisation 'Sahayatrika' is quoted to state 'Parents of queer or trans people often send them to psychiatrists or psychologists to "cure" them of their sexual orientation or gender identity, to make them "normal." We have seen this practice in many of our crisis interventions.'"⁹⁷

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12.4 Societal treatment of Hijras and the wider transgender community

- 12.4.1 With regard to the experience of Hijras, DFAT stated that:

'According to local sources, Hijras are part of Indian tradition and hold a unique space in the community. While Hijras are sometimes called on to bless newborns, marriages and new houses in Indian society, their perceived ability to curse people can engender fear. Sources claim most families do not accept their male child behaving in ways considered feminine, and children who do so risk being subject to verbal or physical violence. Some families disown and evict their Hijra children, while some Hijras or transgender children run away and seek refuge in Hijra communes.'⁹⁸

- 12.4.2 Furthermore, in a 2019 article by The Pioneer, transgender individuals talked about the obstacles they continued to face, and how the journey to equality had only just begun. They highlighted the need for more to be done to change public perception of LGBTI individuals, as they described being rejected for jobs and facing societal and family pressures⁹⁹.

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12.5 Societal treatment of intersex persons

- 12.5.1 The Joint NGO submission by Srishti Madurai and the NNID Foundation to the UN Committee on the Rights of Persons with Disabilities reported that 'Intersex people in the Republic of India are often faced with discrimination, stigmatisation and bullying and through this may struggle with access to education, employment, identity documents and marriage.'¹⁰⁰ Moreover it highlighted that 'intersex children are at risk of being subjected to non-necessary medical interventions without their prior, free and fully informed consent at an age that they are not sufficiently mature to provide consent.'¹⁰¹
- 12.5.2 In a 2019 Reuters article on intersex people in India, it was reported:
- 'Bullied at school, gang raped as a prostitute and asked about his genitals in job interviews, Daniel Mendonca - like many intersex people in India - has

⁹⁶ IPS, [Position statement of Indian Psychiatric Society regarding LGBTQ](#), 11 June 2020

⁹⁷ Hindustan Times, ['...student's suicide puts focus on dubious "conversion therapy"'](#) 18 May 2020

⁹⁸ DFAT, [Country Information Report: India](#) paragraph 3.162, page 47, 10 December 2020

⁹⁹ The Pioneer, ['Gender sensitisation is key for equality: LGBT activists'](#), 29 July 2019

¹⁰⁰ Srishti Madurai/NNID Foundation, ['...Intersex People in India...'](#) 26 July 2019

¹⁰¹ Srishti Madurai/NNID Foundation, ['The Rights of Intersex People in India, ...'](#), 26 July 2019

been mistreated all his life.

‘Although the country’s top court officially recognized intersex and transgender people as a third gender with equal rights under the law in 2014, they are often stigmatized and shunned and many survive through begging or sex work.’¹⁰²

- 12.5.3 The article continued by highlighting how intersex persons in India are among the most ‘invisible’ in Indian society, with little awareness surrounding them even within the LGBTI community¹⁰³. Infanticide, abandonment and mutilation of intersex babies was also reported within the article, as well as forced ‘corrective’ medical procedures¹⁰⁴.

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Section 13 updated: 03 February 2021

13. Access to services

13.1 Healthcare

- 13.1.1 With regards to LGBTI persons’ access to healthcare generally, in the September 2018 ruling, the court held that: ‘...the Indian constitution guarantees all Indians, including LGBTQ people, “the right to emergency medical care and the right to the maintenance and improvement of public health.”¹⁰⁵
- 13.1.2 In 2018, two weeks following the judgement, National Public Radio (NPR) reported that: ‘India’s government has yet to announce any formal changes. Activists hope for major reforms to health policy, including mandatory sensitivity training for doctors and nurses at public hospitals and clinics, and new LGBTQ-specific chapters in medical school textbooks...But they acknowledge implementation could take years.’¹⁰⁶
- 13.1.3 With specific regard to those LGBTI persons suffering with HIV/AIDS; in 2017, 2.1 million people were reported to be living with HIV in India. An estimated 2.7% of gay men in particular are thought to be living with HIV/AIDS. Despite the decriminalisation of Section 377 of the IPC, gay men reportedly remain hesitant to obtain treatment due to the stigma surrounding their sexuality¹⁰⁷.
- 13.1.4 Additionally, UNAIDS 2018 data indicates that whilst HIV infections were declining among men who have sex with men, stigma related to these groups continued to limit their access to HIV testing and treatment. The data showed 79 percent of individuals were aware of their HIV status and that 71 percent living with HIV were on HIV treatment¹⁰⁸ (see [Country Policy and Information Note: India: Medical and healthcare provision](#) for more information on HIV healthcare in India).

¹⁰² Reuters, ‘[Job snubs to forced surgery: India’s ‘invisible’ intersex people](#)’, 16 August 2019

¹⁰³ Reuters, ‘[Job snubs to forced surgery: India’s ‘invisible’ intersex people](#)’, 16 August 2019

¹⁰⁴ Reuters, ‘[Job snubs to forced surgery: India’s ‘invisible’ intersex people](#)’, 16 August 2019

¹⁰⁵ Supreme Court India, ‘[Writ Petition \(Criminal\) No. 76 of 2016](#)’, paragraph 171, September 2018

¹⁰⁶ NPR, ‘...[Anti-Gay Law Is History...Treat LGBTQ Patients With Respect](#)’, 17 September 2018

¹⁰⁷ Avert, ‘[HIV and AIDS in India](#)’, nd

¹⁰⁸ AIDS data hub, ‘[UNAIDS Data 2018](#)’, nd

- 13.1.5 With specific regard to the experience of transgender individuals in accessing general healthcare, DFAT note that: ‘Hijras reported discriminative practices such as deliberate use of male pronouns, admission into male wards, harassment by hospital staff and patients, and, in some cases, denial of medical services.’¹⁰⁹
- 13.1.6 Similarly, the USSD report stated that: ‘Activists reported that transgender persons continued to face difficulty obtaining medical treatment.’¹¹⁰
- 13.1.7 The TPPRA of 2019 allows for transgender persons to undergo sex reassignment surgery (SRS) and stipulates the care transgender persons should receive during the process¹¹¹. Regarding transgender persons’ ability to access sex reassignment surgery (SRS), there are a number of hospitals in India which have facilities for SRS¹¹².
- 13.1.8 With specific regard to intersex persons’ ability to access the healthcare some do require, in a 2019 Reuters article on intersex people in India, it was reported that “‘There is a range of distinct issues that intersex persons face ranging from forced ‘corrective’ operations on intersex infants to continuing health issues which the medical system is ... unequipped to handle and is inaccessible to (many).”¹¹³
- 13.1.9 CPIT could not find any information in regard to gay men’s and lesbians’ access to general healthcare (see [Bibliography](#)).

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13.2 Housing

- 13.2.1 In qualitative interviews conducted with various LGBTI individuals from diverse backgrounds across six states in India, the International Commission of Jurists (ICJ), in their June 2019 report ‘Living with Dignity: Sexual Orientation and Gender Identity-based Human Rights Violations in Housing, Work and Public Spaces in India’ found that: ‘LGBTQ persons often face extensive rights violations within the domain of housing and the home. This includes discrimination in the rental market; denial of housing; segregation into poorly resourced neighbourhoods; violence and harassment (from landlords, neighbours, family and police); and homelessness.’¹¹⁴

- 13.2.2 The report went on to state:

‘As a result of systemic discrimination by landlords, transgender persons are often effectively segregated into localities that lack basic amenities, even when they have the economic capacity to afford better housing. These locations can be distant from public transport, sanitation, running water, healthcare, and employment opportunities. Landlords who do agree to rent to LGBTQ persons often discriminate against them by charging higher rentals than other tenants.

‘...Property owners and landlords often discriminate against LGBTQ

¹⁰⁹ DFAT, [Country Information Report: India](#) paragraph 3.163, page 47-48, 10 December 2020

¹¹⁰ USSD, [India Human Rights Report 2019](#) page 56, 11 March 2020

¹¹¹ [TPPRA](#), page 5, 2019

¹¹² The New Indian Express, [...The reality of sex reassignment surgeries in India](#) 24 February 2020

¹¹³ Reuters, [‘Job snubs to forced surgery: India’s ‘invisible’ intersex people’](#), 16 August 2019

¹¹⁴ ICJ, [‘...Sexual Orientation...Gender Identity-based Human Rights Violations...in India’](#), pg 8, 2019

persons, particularly transgender persons, by assuming that they are involved in illegal activities – such as sex work. Prejudice against LGBTQ persons frequently results in denial of rental accommodation, and targeted harassment and abuse resulting in voluntary or forced eviction from their homes and accommodation.

‘... LGBTQ persons are vulnerable to homelessness as they are often forced to leave their family homes due to conflict within the family, violence or threats of violence, or are pushed out due to abuse. The precarious economic and physical conditions that often affect homeless persons may also lead LGBTQ individuals to choose sex work and begging, despite the risk of criminal prosecution, as a means to meet their basic needs. This further exposes them to hostility and abuse from police and municipal authorities and makes it difficult to access government services’.¹¹⁵

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13.3 Employment

- 13.3.1 With regards to access to work, the International Commission of Jurists (ICJ), in their June 2019 report ‘Living with Dignity; Sexual Orientation and Gender Identity-based Human Rights Violations in Housing, Work and Public Spaces in India’ highlighted the obstacles and discrimination LGBTI individuals faced throughout the employment process:

‘Educational and training opportunities are often denied to LGBTQ persons due to harassment, bullying, and violence. School uniforms, dress codes, limitations on participation in sports, a lack of access to toilets, and even seating arrangements are often gendered in a male-female binary without appropriate accommodation for transgender persons. Difficulties in obtaining accurate gender identity documents, including school records, adversely affect employment prospects.

‘Discriminatory eligibility requirements place gender restrictions on some jobs, which effectively exclude transgender and gender non-binary persons. Invasive medical tests are sometimes imposed during recruitment processes leading to further discrimination, including the “outing” of LGBTQ persons without their consent. This discrimination is further compounded by the difficulty of obtaining required identity documents that are consistent with and match their gender identity. Documents are often refused to LGBTQ individuals by State institutions such as universities. Due to the difficulties in accessing work in the formal sector, transgender and gender non-binary persons often take up work in precarious employment spaces in the informal sector, or work as sex workers and resort to begging thereby further exposing themselves to human rights abuses.

‘Public and private workspaces are often gendered within a binary of male-female with resulting discriminatory effects, including the imposition of restrictive and discriminatory dress codes and standards of appearance. Where LGBTQ persons’ identities are presumed or known in the workplace, they sometimes experience discrimination and harassment including bullying, sexual harassment, assault and mis-gendering. Those who undergo

¹¹⁵ ICJ, ‘[...Sexual Orientation and Gender Identity-based Human Rights Violations...in India](#)’, 2019

transitions or sex reassignment surgery sometimes have their pre-transition work records disregarded.

‘LGBTQ persons suffer impediments to job security as a result of workplace discrimination. This includes harassment, threats of harassment, and arbitrary and/or discriminatory dismissal from work. Some areas of livelihood engaged in by some transgender persons are subject to outright criminalization.’¹¹⁶

13.3.2 DFAT also reported that a large number of Hijras are not formally educated, thereby making it even more difficult to access employment¹¹⁷.

13.3.3 The USSD indicate that discrimination against LGBTI individuals in terms of employment is prohibited in India but notes that such laws and regulations do not protect individuals working in the informal sector, which represents approximately 90% of the workforce in India¹¹⁸.

13.3.4 With specific regard to intersex persons, in a 2019 Reuters article on intersex people in India, it was reported that intersex individuals can also face workplace harassment, for example, as a result of inconsistent appearances and registered sex on official documents¹¹⁹.

13.3.5 Despite the challenges LGBTI persons continue to face in the workplace, organisations such as [The Pride Circle](#) have taken positive steps to advocate and encourage workplace inclusion for individuals. Their mission reads:

‘India's premier Diversity & Inclusion consulting with a mission of Social Equity by affirmative action for LGBTI community in India. Through a customized suite of expertise and solutions, we enable organizations to foster inclusion. We work with over 150 Indian & Multinational companies across India, conduct Audit & Assessments, Training & Sensitization, Industry Roundtables, Job Placement, Research & Publications. With our experience & growing roster of national & international partner companies, governments & non-profit organizations in India.

‘In 2019, we organized Asia's First and Biggest LGBTI Conference, Job Fair and Marketplace, called RISE – “Reimagining Inclusion for Social Equity.”’¹²⁰

13.3.6 In addition to positive movements such as The Pride Circle, the [Corporate Social Responsibility journal](#) (CSR) reported that: ‘Speaking of safer workspaces in India, employee benefits is where the LGBT+ workforce gets a raw deal. Some companies are taking the lead in making offices safer and more inclusive with benefits in insurance, leave and relocation.’¹²¹

13.3.7 The article continued by highlighting encouraging practices increasingly being implemented by companies to attract and include LGBTI individuals:

‘Many leading companies have begun to refocus their recruitment efforts to ensure that they are actively attracting and hiring LGBT+ talent. This helps to

¹¹⁶ ICJ, ‘[...Sexual Orientation and Gender Identity-based Human Rights Violations...in India](#)’, 2019

¹¹⁷ DFAT, [Country Information Report: India](#) paragraph 3.163, page 47, 10 December 2020

¹¹⁸ USSD, [India Human Rights Report](#), 2019, pages 63-64

¹¹⁹ Reuters, ‘[Job snubs to forced surgery: India's ‘invisible’ intersex people](#)’, 16 August 2019

¹²⁰ The Pride Circle, [About Us](#), no date

¹²¹ CSR Journal, ‘[Pride Month 2020: LGBT+ Allies in Corporate India](#)’, 30 May 2020

build a diverse workforce and enhances a company's competitiveness, forming a virtuous cycle in which more diverse talent are attracted to join the company.

'Industry initiatives: Many companies are participating in or holding LGBT+ focused recruitment events to better target and engage with the LGBT+ community. Uber, Accenture, BNY Mellon and The Lalit actively participated in India's first LGBT+ job fair last year.

'Several companies that are leaders on LGBT+ inclusion have also taken steps to ensure LGBT+ employees feel included in the workplace. This affiliation creates a platform that brings LGBT+ employees together, making them feel welcomed, supported and connected within their companies.

'One initiative gaining popularity is an Employee Resource Group (ERG) that represents LGBT+ employees. An ERG has the support of a senior executive, along with a budget to organise events aimed at connecting and supporting LGBT+ employees. Many of the best ERGs welcome non-LGBT+ ally employees to join the network to demonstrate firm-wide support for the LGBT+ community.'¹²²

- 13.3.8 In addition to the above initiatives targeted at creating a pro-LGBTI workplace, some companies were also working towards championing an inclusive culture. The same source further stated:

'Inclusive companies regularly host LGBT+ sensitisation training and sexual orientation and gender identity workshops for employees.

'Senior management plays a big role in setting the tone and moulding their organisation's culture. The actions that senior executives could undertake ranges from engagement with and participation in LGBT+ ERG networks, being role models by being out LGBT+ individuals themselves and making statements of support for LGBT+ inclusion.

'Industry initiatives: There are many companies who have created a special Diversity and Inclusion Officer position to focus full-time on building and maintaining an inclusive workplace. A number of Indian companies, including Dr. Reddy's, Godrej, Infosys, Mahindra & Mahindra, Reliance Industries, Tata Steel, Tech Mahindra and Wipro, have appointed specific employees focused on diversity and inclusion.'¹²³

- 13.3.9 A number of multinational companies in India also reportedly changed their social media handles to Pride colours, or publicly showed their support to celebrate the overruling of Section 377 in India in 2018¹²⁴.

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13.4 Access to public facilities and transport

- 13.4.1 With regards to freedoms, it is reported by ICJ that:

'LGBTQ persons are vulnerable to gender-based violence and harassment by both State (especially police) and non-state actors in streets and parks. They are targeted and harassed by the selective application of laws that

¹²² CSR Journal, '[Pride Month 2020: LGBT+ Allies in Corporate India](#)', 30 May 2020

¹²³ CSR Journal, '[Pride Month 2020: LGBT+ Allies in Corporate India](#)', 30 May 2020

¹²⁴ CSR Journal, '[Pride Month 2020: LGBT+ Allies in Corporate India](#)', 30 May 2020

criminalize sex work, begging, and public nuisance. LGBTQ individuals are sometimes targeted even when they are not engaged in criminalized conduct.

‘Access to public sanitation facilities and toilets in India is already problematic and discriminatory on the basis of gender for women and girls. LGBTQ persons have particular difficulties in accessing sanitation facilities in public spaces, including public transport. They are often denied access to toilets corresponding to their self-identified gender. This impacts LGBTQ persons’ rights to water and to freedom of movement, which in turn adversely impacts LGBTQ persons’ access to work, education and cultural spaces and public events.

‘LGBTQ access to public transport is affected by discrimination based on real or perceived gender identity and expression. Access points for travel (including ticket booking forms, security screening and toilets) are often gendered. LGBTQ persons are sometimes forced to engage in a public negotiation of their gender identity when questioned about their self-identified gender. Public transport is also a site of gender-based violence, harassment and verbal abuse.

‘LGBTQ persons experience discrimination in gaining access to privately-owned places that are generally open to the public in shopping malls, hotels, restaurants, privately owned transport and other private businesses. This discrimination includes outright denial of entry; refusal to provide services; invasive surveillance; and discriminatory pricing.’¹²⁵

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13.5 Education

13.5.1 The Compulsory Education Act, 2009 provides for free elementary education of satisfactory and equitable quality in an educational institution¹²⁶.

13.5.2 Information gathered through interviews conducted by the ICJ suggest that whilst all children are entitled to elementary education, in reality, LGBTI students are bullied, excluded and punished by peers as well as teachers¹²⁷. The report stated:

‘School uniforms, dress code and appearance, participation in sports, access to toilets, and sometimes even seating arrangements are frequently determined by dividing male and female students to the exclusion or discomfort of transgender and gender non-binary persons. These conditions make it difficult for students with gender expression or identity, at variance with the sex assigned at birth to realize their right to education.’¹²⁸

13.5.3 According to a Reuters article published in 2019:

‘In a survey of almost 400 LGBT+ youth in Tamil Nadu by the United Nations’ cultural agency, UNESCO, more than half skipped classes to avoid

¹²⁵ ICJ, '[...Sexual Orientation and Gender Identity-based Human Rights Violations...in India](#)', 2019

¹²⁶ India Code, ...Central and State Acts, '[The compulsory Education Act, 2009](#)' 26 August 2009

¹²⁷ ICJ, '[...Sexual Orientation and Gender Identity-based Human Rights Violations...in India](#)', 2019

¹²⁸ ICJ, '[...Sexual Orientation and Gender Identity-based Human Rights Violations...in India](#)', 2019

bullying, while a third dropped out of school altogether.

‘Abuse included threats of rape, groping, hitting and kicking, being locked in a room, having their belongings stolen and having nasty rumors spread about them.’¹²⁹

- 13.5.4 The same report highlighted that some jurisdictions were attempting to tackle reported discrimination:

‘The Tamil Nadu state education department said it already has a general hotline for students which offers counseling, while it plans to strengthen its anti-bullying policy to include sexual and gender diversity.

“We have measures in place like a 24-7 helpline and periodically conduct gender sensitization workshops for our teachers and counselors,” said Pradeep Yadav, head of the school education department.’¹³⁰

- 13.5.5 However, Reuters reported that UNESCO found that school authorities often told students to ignore bullies or change their mannerisms in order to avoid being targeted¹³¹.

- 13.5.6 DFAT also reported that many Hijras face discrimination when seeking access to education¹³².

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Section 14 updated: 03 February 2021

14. LGBTI culture in India

14.1 NGOs and support

- 14.1.1 There are a number of NGOs and support groups available to LGBTI individuals in India. The Naz Foundation, an organisation at the forefront of the campaign to de-criminalise Section 377, offered the following at their centre in New Delhi:

‘Naz is committed to provide counseling, care and support services to the LGBTQIA+ community. It supports individuals to access their rights such as medical services, face-to-face and telephonic counselling and referral services. They can access the helpline to seek support on understanding their sexuality, coming out with their identity, relationship issues, safe sex practices, testing for HIV and addressing issues of discrimination. Naz also offers counselling support and home-based care to the families of the community members.’¹³³

- 14.1.2 GQ India reported on a number of established LGBTI organisations who support individuals as well as continue to advocate for LGBTI rights, such as [Humsafar Trust](#), [Harmless Hugs](#), [Queerythm](#), [Sangama](#), [Sappho for Equality](#) and [QueerAbad](#)¹³⁴.

- 14.1.3 A study reported in the International Journal of Health Sciences and

¹²⁹ Reuters, [‘Bullied by peers, India’s LGBT+ children drop out of schools’](#) 18 July 2019

¹³⁰ Reuters, [‘Bullied by peers, India’s LGBT+ children drop out of schools’](#) 18 July 2019

¹³¹ Reuters, [‘Bullied by peers, India’s LGBT+ children drop out of schools’](#) 18 July 2019

¹³² DFAT, [Country Information Report: India](#) paragraph 3.163, page 47, 10 December 2020

¹³³ [Naz Foundation \(India\) Trust](#) nd

¹³⁴ GQ India, [‘Pride Guide: Seven LGBTQ+ organisations you should know about’](#) 19 June 2020

Research in 2016, 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]”.’¹³⁵

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14.2 LGBTI events in the community

14.2.1 DFAT report that:

‘In urban areas, there are reportedly venues for the LGBTI community to meet and socialise, although not openly. In 2016, an online dating platform for the LGBTI community, “Amour Queer Dating”, was launched. There are also groups focused on support and advocacy for LGBTI women in Bangalore (ASQ), Mumbai (Labia), Kolkata (Sappho for Equality) and Chennai (Sahodaran) and trans-specific groups including Sampoorna, Tweet Foundation and Telangana Hijra Trans Intersex Samiti.’¹³⁶

14.2.2 On 17 May 2018, the International Day Against Homophobia, activities were held throughout India, in areas such as Trivandrum and Delhi as well as Kolhapur, where ‘On May 19, 2018 Abhimaan- LGBTQ Support group had organised an IDAHOT (Rising with Pride – Empowering the LGBTQ) event addressing the issues of homophobia, transphobia, stigma around HIV AIDS and family acceptance in support of Project MSA and The Humsafar Trust. The event was organized at the Hotel Citrus in Kolhapur where 25 participants from the community and allies of the community participated.’¹³⁷

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14.3 Pride

14.3.1 The first Pride was held informally in Kolkata in 1997¹³⁸. In 2017, New Delhi held its tenth pride parade, attended by hundreds of people¹³⁹. Chennai has held pride parades since 2009¹⁴⁰, while Goa held its first pride parade in October 2017¹⁴¹.

14.3.2 The International Lesbian, Gay, Bisexual, Trans and Intersex Association noted that:

‘Since the decriminalization, there has been a surge of pro-LGBT events and

¹³⁵ IJHSR, ‘[Social Support System of Hijras](#)’, (page 11), 4 April 2016

¹³⁶ DFAT, [Country Information Report: India](#) paragraph 3.156, page 46, 10 December 2020

¹³⁷ [IDAHOTB](#), no date

¹³⁸ Feminism in India, ‘[The History of Pride Parades in India](#)’ 24 June 2019

¹³⁹ NBC News, ‘[Hundreds Join Pride March in India...](#)’ 12 November 2017

¹⁴⁰ Times of India, ‘[A decade of Pride in Chennai](#)’ 2 June 2018

¹⁴¹ Times of India ‘[A walk to remember for the LGBT community](#)’ 29 October 2017

campaigns across India. Most of the major cities saw the Pride events taking place in a larger scale and with wider participation. More than 15,000 people—the highest so far— participated in the Queer Azaadi Mumbai Pride Parade. Kolkata was the first city to have a Pride walk after the Supreme Court verdict soon followed by Delhi and Bengaluru. Decriminalisation also encouraged pride events for the first time in smaller cities such as Shillong.¹⁴²

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¹⁴² ILGA, [State-Sponsored Homophobia 2019](#) (page 136), March 2019

Terms of Reference

A 'Terms of Reference' (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the [country information section](#). The Home Office's Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Legal context
 - Constitution
 - Penal Code
 - Same-sex partnerships
 - Adoption
- State attitudes and treatment
 - Police treatment
 - Judiciary
 - The Indian Army
 - Public statements by government officials
 - Censorship
 - Avenues of complaint
- Societal norms
 - Attitudes
- Societal treatment
 - Public and religious views
 - Violence and discrimination
- Access to services
 - Healthcare
 - Housing
 - Employment
 - Education
- Freedom of movement
- LGBTI culture in India
 - NGOs and support
 - LGBT events and socials in the community
 - Pride

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Bibliography

Sources cited

AIDS data hub, [UNAIDS Data 2018](#), undated. Last accessed 01 February 2021

Asia Society, '[Indian Society and Ways of Living](#)' 2004. Last accessed 04 March 2021

Avert, [HIV and AIDS in India](#), undated. Last accessed 01 February 2021

Azim Premji University, [Politics and society between elections](#), 2019. Last accessed 20 January 2021

BBC News,

[Blurring the gender lines in Bangladesh](#), 30 November 2000. Last accessed 27 February 2021

['LGBT in India: What it's like six months after gay sex was decriminalised'](#), March 2019. Last accessed 26 January 2021

['The semi-sacred "third gender" of South Asia'](#), 20 July 2017. Last accessed 01 February 2021

['We know what LGBT means but here's what LGBTQIAAP stands for'](#), 25 June 2015. Last accessed 01 February 2021

[Code of Criminal Procedure Act](#), 1973. Last accessed: 20 January 2021

Constitution of India, [Part 3: Fundamental Rights](#), November 1949. Last accessed 02/02/2021

Corporate Social Responsibility (CSR) Journal, '[Pride Month 2020: LGBT+ Allies in Corporate India](#)', 30 May 2020. Last accessed 29 January 2021

Department of Foreign Affairs and Trade, [Country Information Report: India](#), Last accessed 02 February 2021

Development News, '[In India, Nothing About Being a Trans Person Is Easy](#)' no date. Last accessed 04 January 2021

Economic and Political Weekly, Editorial: '[Gender rights](#)', 21 June 2008 (published on Queer Media Watch July 2008). Last accessed: 04 January 2021

Feminism in India, '[The History of Pride Parades in India](#)', 24 June 2019. Last accessed 03 February 2021

Foreign Policy, '[In India, still unfurling the rainbow flag](#)', 10 September 2018. Last accessed 02 February 2021

Frontline, '[Police reforms still largely on paper](#)', 09 August 2019. Last accessed 28 January 2021

Global Voices, '[The State of LGBTQ+ Rights in India...an interview with Saurabh Kirpal](#)', July 2020. Last accessed 26 January 2021

GQ India, '[Pride Guide: Seven LGBTQ+ organisations you should know about](#)', 19 June 2020. Last accessed 01 February 2021

Hindustan Times, '[Kerala student's suicide puts focus on dubious "conversion](#)

[therapy](#)” 18 May 2020. Last accessed 01 February 2021

Hindustan Times, [‘Supreme Court notice to Centre on plea against transgender act’](#), 28 January 2020. Last accessed 02 February 2021

Human Rights Watch, [‘Momentum Builds Around Intersex Protection in India’](#) 14 January 2021. Last accessed 04 March 2021

Human Rights Watch (HRW), [World Report 2021 – India](#), 13 January 2021. Last accessed 13 January 2021

IHS, Jane's Sentinel Security Assessment, subscription only.

ILGA, [State-Sponsored Homophobia 2020](#) (page 327), December 2020. Last accessed 04 February 2021.

Independent, [‘Section 377’](#), 6 September 2018. Last accessed 15 January 2021

India Code, [The Right of Children to Free and Compulsory Education Act 2009](#), 26 August 2009. Last accessed 18 January 2021

Indian Ministry of Law and Justice, [The Transgender Persons Protection of Rights Act 2019](#), 5 December 2019. Last accessed 14 January 2021

Indian Penal Code, [Act No.45 of the Year 1860](#) Last accessed: 19 January 2021

India Today, [‘Not my fault I was born gay: 19 year old commits suicide over homophobia’](#) 9 July 2019. Last accessed 05 March 2021

International Commission of Jurists (ICJ), [‘Living with Dignity: Sexual Orientation and Gender Identity-Based Human Rights Violations in Housing, Work and Public Spaces in India’](#), June 2019. Last accessed 15 January 2021

International Day Against Homophobia, Transphobia & Biphobia, India – IDAHOTB 2018 [Country Page](#), undated. Last accessed 04 February 2021

International Journal of Health Sciences and Research (IJHSR), [‘Social Support System of Hijras’](#), 4 April 2016. Last accessed 02 February 2021

Immigration and Refugee Board of Canada (IRB), [India: Treatment of sexual minorities](#), 24 December 2015. Last accessed 02 February 2021

Kaleidoscope Australia, [‘Parallel Report to the CEDAW’](#) (para 4.2), September 2016. Last accessed 27 February 2021

Law Insider, [‘LGBTQ Rights in India and Acknowledgment’](#), August 2020. Last accessed: 04 January 2021

Legal Services India, [‘The Power of the Magistrate’](#), June 2012. Last accessed 01 February 2021

Middle East Media Research Institute (MEMRI), [‘Indian Cleric Issues Anti-Gay Fatwa: A Gay Or Lesbian “May Be Burned Alive, Pushed From A High Wall, Or Beaten Publicly With Stones”](#)’, 20 January 2014. Last accessed 01 February 2021

Ministry: Health and Family Welfare, [The Surrogacy Regulation Bill 2019](#), 05 August 2019. Last accessed 05 January 2021

Mumbai Mirror, [‘Need for robust police complaints authorities’](#), 24 September 2020. Last accessed 05 March 2021

Nanda. S., [‘Neither Man nor Woman, the Hijras of India’](#) (Chapter 2), 1999. Last

accessed 27 February 2021

National Public Radio (NPR), '[India's Anti-Gay Law Is History. Next Challenge: Treat LGBTQ Patients With Respect](#)', 17 September 2018. Last accessed 28 January 2021

Naz Foundation (India) Trust [Homepage](#), no date. Last accessed 03 February 2021

NBC News, '[Hundreds Join Pride March in India Where Gay Sex is Illegal](#)', 12 November 2017. Last accessed 02 February 2021

Orissa Post, '[Girl tied to tree, thrashed for being in a lesbian relationship](#)', 26 May 2019. Last accessed 26 January 2021

Outlook India, '[Delhi HC summons doctor treating homosexual patients using electric shocks](#)', December 2018. Last accessed 02 February 2021

Pew Research Centre, '[The Global Divide on Homosexuality Persists](#)', 25 June 2020. Last accessed 29 January 2021

Reuters,

['Job snubs to forced surgery: India's 'invisible' intersex people'](#) 16 August 2019

['Lesbian couple's suicide notes reveal stigma they face in India'](#) 12 June 2018. Last accessed 01 February 2021

['Bullied by peers, India's LGBT+ children drop out of schools'](#), 18 July 2019. Last accessed 27 January 2021

Scroll.In,

[Hijra, Kothi, Aravani: a quick guide to transgender terminology](#) 17 April 2014. Last accessed: 04 January 2021

['In Pride Month, India's LGBT community could be even prouder if it healed internal divisions'](#), 28 June 2019. Last accessed 20 January 2021

Srishti Madurai/NNID Foundation, '[The Rights of Intersex People in India, NGO submission for the 22nd session of the Committee on the Rights of Persons with Disabilities \(CRPD\), 1st Periodic Review of the Republic of India](#)', 26 July 2019. Last accessed 04 February 2021

Supreme Court of India,

[Writ Petition \(Civil\) no 400 of 2012](#), 15 April 2014. Last accessed 07 January 2021

[Writ Petition \(Criminal\) No. 76 of 2016](#), 6 September 2018. Last accessed 07 January 2021

[Civil Appeal No.10972 of 2013](#), 11 December 2013. Last accessed 07 January 2021

The Army Act, [Section 46 in the Army Act](#), 1950. Last accessed 07 January 2021

The Gazette of India, [Adoption Regulations](#), 2017, 04 January 2017. Last accessed 05 January 2021

The Guardian, '[There are few gay people in India': stigma lingers despite legal victory](#)', 13 March 2019. Last accessed 29 January 2021

The International Lesbian, Gay, Bisexual Trans and Intersex Association (ILGA), [State-Sponsored Homophobia 2019](#), March 2019. Last accessed 20 January 2021

The Kootneeti, '[Hijras disposition during British Colonization](#)' 20 December 2020. Last accessed 27 February 2021

The Naz Foundation Case, [Section 377](#), Last accessed: 19 January 2021

The New Indian Express, '[Battle for right body: The reality of sex reassignment surgeries in India](#)' 24 February 2020. Last accessed 04 February 2021

The Pioneer, '[Gender sensitisation is key for equality: LGBT activists](#)', 29 July 2019. Last accessed 02 February 2021

The Pride Circle, [About Us](#), undated. Last accessed 28 January 2021

The Print, '[Here's how homosexuals in Indian military can be punished](#)', 11 January 2019. Last accessed 07 January 2021

The Times of India,

- ['What is Section 377 of IPC?'](#), 31 December 2018. Last accessed 12 January 2021
- ['Gay sex is not a crime'](#), 6 September 2018. Last accessed 25 January 2021
- ['SC decriminalises gay sex'](#), 8 September 2018. Last accessed 25 January 2021
- ['14% of those arrested under section 377 last year were minors'](#), 29 September 2016. Last accessed 28 January 2021
- ['Police to sensitise personnel to deal with LGBTQ people'](#), 16 September 2020. Last accessed 02 February 2021
- ['A decade of Pride in Chennai'](#), 2 June 2018. Last accessed 02 February 2021
- ['A walk to remember for the LGBT community'](#) 29 October 2017. Last accessed 03 February 2021

The Top Tens, '[Most Multicultural Countries in the World](#)', undated. Last accessed 02 February 2021

The Week, '[Sexual 'mis'conduct and Army: How armed forces uphold conservatism as a virtue](#)', Last accessed 07 January 2021

UK Human Rights Blog, '["To the Wisdom of the Court"](#)', 18 September 2018. Last accessed 03 February 2021

United States State Department (USSD), [India Human Rights Report 2019](#), 11 March 2020. Last accessed 03 February 2021

Upper Tribunal (Asylum and Immigration Chamber), [MD \(same-sex oriented males: risk\) India CG \[2014\] UKUT 65 \(IAC\)](#), 12 February 2014, Last accessed 02 February 2021

Upper Tribunal (Asylum and Immigration Chamber), [AR and NH \(lesbians\) India CG \[2016\] UKUT 00066 \(IAC\) 01 February 2016](#), Last accessed 02 February 2021

World Atlas, '[How many States are in India?](#)' undated. Last accessed 04 February 2021

Sources consulted but not cited

Commonwealth Human Rights Initiative (CHRI) '[Police Complaints Authorities in India: A Rapid Study](#)', December 2012. Last accessed: 27 January 2021

Erasing 76 Crimes, '[Nearly 1,500 arrested last year under India's anti-gay law](#)', 17 October 2016. Last accessed: 07 January 2021

Global Citizen, '[India's Gay Sex Ruling is a Win for the Fight against Aids](#)', undated. Last accessed 02 February 2021

Indian Ministry of Law and Justice, '[The Transgender Persons \[...\] Act 2019](#)', 5 December 2019. Last accessed 19 January 2021

Nanda, Serena., '[Hijras as Neither Man Nor Women](#)', 1999. Last accessed: 20 January 2021

New India Express, '[3080 criminal cases against Kerala cops, reveals NCRB data](#)', 1 September 2016. Last accessed: 19 January 2021

Scroll.in, '[Existing as a queer South Asian is draining](#)': How LGBTQ+ groups hope to combat stigma and exclusion', 23 December 2020. Last accessed 14 January 2021

The Hindustan Times, '[The arrests that sparked a crusade against S.377](#)', 6 September 2019. Last accessed 13 January 2021

The London School of Economics and Political Sciences, '[An analysis of conversion therapy in India: The need to outlaw and the allied socio-cultural concerns](#)', 15 June 2020. Last accessed 01 February 2021

The Times of India,

[SC decriminalises gay sex, but J&K LGBTs will have to wait longer](#)', 08 September 2018. Last accessed: 05 January 2021

[Verdict on Sec 377 is rubbish, says LGBT activist and academic Ashley Tellis](#)', 6 September 2018. Last accessed: 21 January 2021

The World Bank South Asia Human Development Sector: Report 55: '[Charting a Programmatic Roadmap for Sexual Minority Groups in India](#)', July 2012. Last accessed: 15 January 2021

Version control

Clearance

Below is information on when this note was cleared:

- version **4.0**
- valid from **1 April 2021**

Changes from last version of this note

Updated country of origin information.

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