India: Treatment of sexual and gender minorities, including legislation, state protection, and support services, particularly in Mumbai, Kolkata, and Delhi (2017-May 2019)

1. Legislation

1.1 Decriminalization of Same-Sex Consensual Relations

According to the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA)'s *State-Sponsored Homophobia 2019*, same-sex sexual acts are legal in India, but neither same-sex marriages nor civil unions are recognized (ILGA Mar. 2019, 531).

Sources report that same-sex consensual relations were decriminalized in India in September 2018, when the Supreme Court declared that Section 377 of the Penal Code was unconstitutional (Freedom House 30 Jan. 2019; ILGA Mar. 2019, 187; Human Rights Watch 6 Sept. 2018). The Supreme Court decision in *Navtej Singh Johar & Ors. versus Union of India* was pronounced on 6 September 2018 (ILGA Mar. 2019, 142; India 2018a, 52). For further information on Section 377 of the Indian Penal Code, see Response to Information Request IND105380 of December 2015.

The Indian press agency Press Trust of India (PTI) reported in April 2019 that the Supreme Court dismissed a review plea seeking various civil rights for the LGBTQ community:

The plea had sought civil rights of the [LGBTQ] community as part of the basic human rights and said that these rights were not addressed in the apex court's judgement on Section 377 of the [penal code] which had criminalised consensual gay sex.

It had sought recognition of their rights to same-sex marriages, adoption, surrogacy, IVF [in vitro fertilization] and directions so that the community can serve openly in the army, navy and air force. (PTI 16 Apr. 2019)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

1.2 The Transgender Persons (Protection of Rights) Bill

The UN Working Group on the Universal Periodic Review reports that the Supreme Court of India instructed its government in April 2014 to recognize transgender persons as belonging to a "'third gender'" and declared that "they should have all rights under the law" (UN 17 July 2017, para. 15). For further information on the 2014 recognition of a "third gender," see Response to Information Request IND105380 of...
December 2015.

According to the UN, the government of India introduced the Transgender Persons (Protection of Rights) Bill in 2016, which "provided for, inter alia, non-discrimination against transgender persons and the formation of a national council for transgender persons" (UN 17 July 2017, para. 69). The Transgender Persons (Protection of Rights) Bill, 2018 was passed by the Lok Sabha [Lower House of Indian Parliament] on 17 December 2018 "to provide for protection of rights of transgender persons and their welfare and of matters connected therewith and incidental thereto" (India 2018b). According to the International Commission of Jurists (ICJ) [1], "[t]he next step in order for the Bill to progress is for the Rajya Sabha (Upper House of Indian Parliament) to pass it" (ICJ 19 Dec. 2018). Information about the status of the bill at the Rajya Sabha could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources mention that the bill was passed by the Lok Sabha with 27 amendments (The Times of India 20 Dec. 2018; The News Minute 18 Dec. 2018). Sources indicate that the bill was passed after consultations with the transgender community had taken place (Firstpost 4 Apr. 2019; OHRH 18 Feb. 2019); Indian news source Firstpost cites a trans activist who stated that amendments requested by the transgender community were "ignored" (Firstpost 4 Apr. 2019). Media sources report that soon after the bill was passed by the Lok Sabha, it was labelled as "regressive" (The News Minute 18 Dec. 2018; The Times of India 20 Dec. 2018) and "discriminatory" towards transgender persons (The Times of India 20 Dec. 2018). Human rights organizations also claim it fails to protect the transgender community (Human Rights Watch 17 Jan. 2019; ICJ 19 Dec. 2018). Sources report the following criticisms:

- it denies transgender people the right to self-identification or to identify their own gender (ILGA Mar. 2019, 136-137; ICJ 19 Dec. 2018; OHRH 18 Feb. 2019) by requiring a "certificate" of identity delivered by the authorities (OHRH 18 Feb. 2019; ICJ 19 Dec. 2018);
- it criminalizes "begging," which is sometimes the only source of income available to some transgender people [2] (The Times of India 20 Dec. 2018; ICJ 19 Dec. 2018);
- it does not provide for "reservations" in education and employment for transgender persons, despite the fact that this was a directive of the 2014 Supreme Court decision on the rights of third gender individuals (ICJ 19 Dec. 2018; The News Minute 18 Dec. 2018);

The ICJ also states that "while the proposed law guarantees the right to non-discrimination to transgender people ..., it does not provide a definition of discrimination, nor does it provide an enforcement mechanism for ensuring transgender people’s right to non-discrimination" (ICJ 19 Dec. 2018). Similarly, the Times of India indicates that the bill does not include "robust anti-discrimination clauses" and that "there is no effective remedy for discrimination" (The Times of India 20 Dec. 2018).

### 2. Treatment by Society
2.1 Attitudes

In *State-Sponsored Homophobia 2019*, ILGA states the following:

Since the decriminalization [of same-sex sexual relations], there has been a surge of pro-LGBT events and campaigns across India. Most of the major cities saw the Pride events taking place [on] 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. (ILGA Mar. 2019, 136)

In a March 2019 article about the situation in India for sexual minorities six months after the decriminalization of same-sex sexual relations, a reporter for the BBC show Newsbeat recounts the following about a young Indian drag queen:

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. ... Tish regularly parties at gay club Kitty Su but says he's sometimes nervous when he leaves the venue as homophobic people know "what we are" [and] so could attack him in surrounding streets. (BBC 6 Mar. 2019)

The same article also states that, according to a representative of the The Naz Foundation (India) Trust (Naz India) [Naz Foundation], "one of India's top LGBT organisations,"

Despite ... small steps, there's "still a need for acceptance" ... "Many people still have the mentality that homosexuality is wrong," ... The change in law does mean "many lesbian and gay people are starting to disclose their sexuality to their parents ... [b]ut there's a double standard. Some people will accept having LGBT friends but they won't accept their relatives who come out. (BBC 6 Mar. 2019)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.2 Violence and Discrimination

The ICJ reported in 2017 that "'the transgender community is continually harassed, stigmatized, and abused by the police, judges, their family and society'" (ICJ 19 Dec. 2018). Freedom House reports that despite the decriminalization of same-sex sexual relations, some sexual and gender minorities still face "violence and harassment" in India (Freedom House 30 Jan. 2019). According to the US Department of State's *Country Reports on Human Rights Practices for 2018*, "LGBTI groups reported they faced widespread societal discrimination and violence, particularly in rural areas" (US 13 Mar. 2019, 48). The same source also states they faced "physical attacks, rape, and blackmail" (US 13 Mar. 2019, 48). The Naz India representative indicated to the BBC's Newsbeat reporter that "it can be dangerous to be transgender in India's capital and [that she] won't always attend celebrations, or visit certain areas" (BBC 6 Mar. 2019).
US *Country Reports 2018* indicates that discrimination based on sexual orientation and gender identity with respect to employment and occupation is prohibited in India, but that the law is only enforced in the formal sector, and not in the informal sector, which represents approximately 90 percent of the workforce (US 13 Mar. 2019, 53-54). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. According to the same source, activists stated that it was "too early [after decriminalization of same-sex sexual relations] to determine how the verdict would translate into social acceptance, including safe and equal opportunities at workspaces and educational institutions" (US 13 Mar. 2019, 48). Similarly, Human Rights Watch states that "[t]he decriminalization of same-sex conduct will not immediately result in full equality for LGBT people in India ... Transgender people in particular, including *hijra* [2] communities, face discrimination in employment, [and] housing" (Human Rights Watch 6 Sept. 2018). Freedom House indicates that "discrimination continues" against LGBT individuals (Freedom House 30 Jan. 2019). According to the Naz India representative interviewed by the BBC's Newsbeat reporter, sexual and gender minorities still have "a long way to go" for their rights and for representation in the country (BBC 6 Mar. 2019).

Sources indicate that transgender persons have difficulty accessing health care (US 13 Mar. 2019, 48; IPS 11 July 2017). According to a transsexual [a transgender person who "typically has altered or identified the need to alter sex characteristics through medical transition" (ORAM 2016, 22, 23)] man interviewed by the Inter Press Service (IPS) [3], transgender people face stigma in the health services as well as economic difficulties in accessing the care they need (IPS 11 July 2017). Human Rights Watch also notes that transgender people face discrimination in health care (Human Rights Watch 6 Sept. 2018).

### 3. Treatment by Authorities

#### 3.1 Implementation of the Law

ILGA's 2019 report indicates that there is no protection for sexual minorities in India, either in the constitution, in terms of broad protection, in employment, against hate crimes, or against incitement, and there is no ban on conversion therapies (ILGA Mar. 2019, 531). The same source nonetheless states the following:

The ramifications of the India 377 case [that Section 377 of the Penal Code was declared to be unconstitutional] stretch beyond the narrowest (but still foundationally critical) implications of people not being arrested because they're gay, or assumed to be. 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." (ILGA Mar. 2019, 26)

Sources report that in September 2018, a court in Kerala ruled in favor of a lesbian couple wanting to live together (PTI 26 Sept. 2018; BBC 25 Sept. 2018). According to the BBC, this "is thought to be the first verdict of its kind since the Supreme Court decriminalised homosexuality" earlier that month (BBC 25 Sept. 2018). Sources also
mention that in October 2018, Delhi’s High Court ordered police protection for a lesbian couple fearing violence from their family (Hindustan Times 1 Oct. 2018; Gay Star News 11 Mar. 2019). Sources indicate that in December 2018, a doctor was summoned by the Delhi High Court for engaging in conversion therapy (Outlook 8 Dec. 2018; PinkNews 8 Dec. 2018).

### 3.2 Police and Justice System

In a February 2017 report on obstacles to justice for sexual minorities in India, the ICJ states the following:

The attitude and behavior of the police is one of the biggest barriers to queer persons' access to the justice system in India. Several people spoke to the ICJ about the violence, abuse and harassment they suffered at the hands of the police. Furthermore, in several cases, the police have refused to file complaints submitted by queer persons owing to bias or stereotypes. (ICJ Feb. 2017, 33)

The same source adds that

[quote]queer people's trust in the police is further eroded by the frequency of their negative interactions with police, for instance, when attempting to register complaints regarding violence and other crimes against them at the hands of the police. Furthermore, the police's refusal to file such complaints has a seriously detrimental impact on queer persons' access to justice and redress. (ICJ Feb. 2017, 36)[/quote]

US Country Reports 2018 states that "[s]ome police committed crimes against LGBTI persons and used the threat of arrest to coerce victims not to report the incidents" (US 13 Mar. 2019, 48). The ICJ also indicates that transgender persons are "continually harassed, stigmatized and abused" by the police (ICJ 19 Dec. 2018).

The September 2018 Supreme Court judgment requested that government officials, and in particular police officials, receive "sensitization and awareness training" regarding sexual minorities (India 2018a, 96). The British daily newspaper The Independent also reported that, according to Naz India, copies of the Supreme Court judgment would be given "to every police station" (The Independent 6 Sept. 2018). US Country Reports 2018 notes that "[w]ith the aid of NGOs, several states offered education and sensitivity training to police" (US 13 Mar. 2019, 48).

The ICJ indicates that, in court, sexual and gender minorities and their lawyers can suffer harassment, such as remarks made by judges and public prosecutors (ICJ Feb. 2017, 46). The source adds that transgender persons are "particularly at risk of discrimination" in courts (ICJ Feb. 2017, 46). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

### 4. Non-Governmental Support Services

The Internet portal Fifty Shades of Gay (FSOG) [4] provides a list of sexual and gender minority support groups and helplines in India (FSOG n.d.a). A copy of that list is attached to this Response.
The Humsafar Trust (HST) is an NGO based in Mumbai offering counselling and sexual health services to sexual and gender minorities; HST reaches out to over 10,000 gay men and men who have sex with men and transgender communities every year through its social media and online outreach programs (HST n.d.).

Naz India, based in Delhi, is an NGO working on HIV/AIDS and sexual health issues that provides "direct home-based care, outreach through clinical services, telephone-based counseling, and drop in information centers for persons living with and affected by HIV and members of the LGBTQ community" (Naz India n.d.).

Sappho for Equality (Sappho) is a registered organization in Kolkata working for the rights of lesbians, bisexual women and trans men (Sappho n.d.).

Solidarity and Action Against the HIV Infection in India (SAATHII), headquartered in Chennai with offices in Kolkata, Mumbai and Delhi, among other cities, is an organization that promotes the "access to rights, health, legal and social services for communities marginalised on account of HIV status, gender and/or sexuality" (SAATHII n.d.).

According to the ICJ,

Bangalore, Delhi and Mumbai play host to at least one larger collective of human rights lawyers that extensively work on cases concerning the human rights of queer people along with other individual queer-friendly lawyers who have independently worked on this type of cases on their own. Many of the other cities feature individual lawyers who handle a large volume of queer clients, along with larger organizations that do some amount of work on queer issues. (ICJ Feb. 2017, 43)

The same source notes as an example the Lawyers Collective (LC), a network of public interest lawyers that works in multiple cities in India (ICJ Feb. 2017, 43). The LC describes itself as a group of lawyers that promote human rights and use the law "as a tool to address critical issues," including the rights of the LGBTQ community (LC n.d.).

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

Notes

[1] The International Commission of Jurists (ICJ), based in Geneva, Switzerland, is "[c]omposed of 60 eminent judges and lawyers from all regions of the world"; it "promotes and protects human rights through the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems" (ICJ Feb. 2017).

[2] The hijras, a specific category of transgender people in India, traditionally played a particular social or cultural role in India; their livelihood often depends on begging (The Washington Post 23 Apr. 2016; The Guardian 16 Apr. 2014) because they have
been "ostracised" (The Guardian 16 Apr. 2014) or "locked out of most professions" (The Washington Post 23 Apr. 2016).

[3] Inter Press Service (IPS) is a news agency that focuses on the global South and "privileges the voices and concerns of the poorest" (IPS n.d.).

[4] Fifty Shades of Gay (FSOG) describes itself as "India's leading LBGTQIA+ portal striving to end discrimination against LGBTQ people and foster a society free of prejudice, harassment, and violence"; it focuses on topics such as safe-sex practices, family planning and LGBTQIA+ stories (FSOG n.d.b).

References


Hindustan Times. 1 October 2018. "Delhi High Court Orders Police Protection for Same Sex Couple." [Accessed 6 May 2019]


Press Trust of India (PTI). 26 September 2018. "Post-Section 377, Court Allows..."


Additional Sources Consulted

Internet sites, including: Amnesty International; Asylum Research Centre; Bertelsmann Stiftung’s Transformation Index; ecoinet; Equaldex; GlobalGayz.com; The Indian Express; UK – Home Office; UN – Refworld.

Attachment