Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's Refworld website. Please note that some RIRs have attachments which are not electronically accessible. To obtain a PDF copy of an RIR attachment, please email the Knowledge and Information Management Unit.

IND105380.E

24 December 2015

India: Treatment of sexual minorities, including legislation, state protection, and support services, including in Mumbai, Kolkata and Delhi (2013-December 2015)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Legislation

According to sources, same-sex sexual activity is criminalized in India (Freedom House 26 Aug. 2014; The Hindu 1 Mar. 2014), under Section 377 of the Indian Penal Code (The Hindu 1 Mar. 2014). Section 377 on Unnatural Offences reads:

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend ten years, and shall also be liable to fine. (India 1860)

_The Hindu_, a newspaper based in India, states that courts have interpreted this law to include the "criminalisation of bestiality, child sexual abuse, and also consensual homosexual intercourse" (_The Hindu_ 1 Mar. 2014). A news special by the Australian Broadcasting Company (ABC) notes that the law is "essentially used to target LGBT individuals" (ABC 1 Dec. 2015).

Human Rights Watch reports that LGBT people "suffered a setback in December 2013 when the Supreme Court reversed a landmark 2009 Delhi High Court decision striking down a colonial-era law criminalizing adult consensual same-sex relations" (29 Jan. 2015). Freedom House similarly states that in 2013, the Supreme Court upheld the constitutionality of the criminalization of same-sex relationships by claiming that "only Parliament had the authority to change the legislation" (Freedom House 26 Aug. 2014, 3). A report on India by Human Rights Watch states that, at the time of its publication, "a petition to review the decision was pending before the Supreme Court" (29 Jan. 2015). According to a 2014 article in _The Hindu_, the Supreme Court of India dismissed a petition to amend Section 377 of the Indian Penal Code and decriminalize homosexuality (1 Mar. 2014). The same source indicated that a "legislative amendment" on the criminalization of same-sex sexual activity "does not appear to be a priority" for the Indian government (ibid.).

1.1 State Efforts

According to sources, in April 2014, the Supreme Court recognized transgender individuals who identify under a "third gender" (Human Rights Watch 29 Jan. 2015; Freedom House 26 Aug. 2014, 3; US 25 June 2015, 59). The _Gay & Lesbian Review_, a bi-monthly magazine of history, politics, and culture, published an article about the LGBT community in Mumbai, stating that people who often identify as a "third gender" are known as Hijra, "a term that describes a range of male-to-female transgenders and transvestites" (2 Nov. 2015). Human Rights Watch indicates that the Supreme Court ruling asked the government to treat transgender persons as a "minority eligible for quotas in jobs and education" (29 Jan. 2015). The US
Department of State's *Country Report on Human Rights Practices for 2014* states that the April 2014 ruling gives "a person the right to identify as a 'third gender' when registering to vote, own property, marry, or apply for a passport, ration card, and driver's licence" (25 June 2015, 59). The same source states that the judgement instructed state and central governments to "extend affirmative action or reservations to transgender individuals for admission to higher-education facilities, public appointments, and healthcare services" (ibid.). The Supreme Court also reportedly "assigned a committee to study problems faced by the transgender community and provide suggestions on how to address discrimination" (ibid.).

### 2. Treatment

#### 2.1 Societal Attitudes

Sources report that in India, homosexuality is considered "taboo" (ABC 1 Dec. 2015; GlobalGayz n.d.) by "both Indian civil society and the government," according to GlobalGayz, a charitable organization that reports on LGBT life in countries around the world (GlobalGayz n.d.). ABC states that homosexuality is also "condemned by many of the country's influential religious leaders" (1 Dec. 2015). *Dna India*, a Mumbai-based newspaper (*Dna India* n.d.), quotes an Indian LGBT activist as stating that, in India, children are taught that a hetero-normative, patriarchal family is the "only" acceptable family model (ibid. 24 Nov. 2013).

*Dna India* indicates that there are LGBT pride parades held in Delhi, Bangalore, Chennai, and Pune (*Dna India* 24 Nov. 2013). According to sources, the Delhi LGBT pride parade occurred in November 2015 (NDTV 30 Nov. 2015; *The Indian Express* 30 Nov. 2015), and "[t]he parade saw participation by several hundred people belonging to [the] LGBT community as well as those outside of it" (ibid.).

#### 2.2 Discrimination

According to *Dna India*, there are "many cases" where LGBT people have had to run from their families "for fear of intimidation" (24 Nov. 2013). *Country Reports 2014* states that "LGBT groups reported that they faced widespread discrimination and violence throughout society, particularly in rural areas" (US 25 June 2015, 59), ABC quotes an Indian lawyer and gay rights activist as stating that LGBT people are "harassed and discriminated against at the workplace" (ABC 1 Dec. 2015). Similarly, *Country Reports 2014* states that "[homophobic] slurs and unjustified dismissals" are documented forms of workplace discrimination against LGBT people (US 25 June 2015, 59).

*Country Reports 2014* indicates that transgender persons who are HIV positive have difficulty accessing medical treatment due to discrimination (US 25 June 2015, 21). *The Hindu* article similarly states that sexual minorities in India have difficulty accessing sexual healthcare due to the criminalization of same-sex acts (1 Mar. 2014).

Additionally, *Country Reports 2014* notes that Indian activists stated that there were instances of "homophobia among students at certain university campuses" and "a systematic disregard for LGBT rights on university campuses" (US 25 June 2015, 59).

#### 2.3 Violence

Sources report that LGBT persons in India are subjected to blackmail (US 25 June 2015, 59; ABC 1 Dec. 2015). *Country Reports for 2014* indicates that LGBT persons experienced physical attacks as well as rape (US 25 June 2015, 58). *Dna India* quotes an LGBT activist who stated that there have been reports of "corrective rape" of lesbians and transgender persons, and of "electro shock therapy" administered to gay men (24 Nov. 2013). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. According to Pink News, a UK-based LGBT news service (Pink News n.d.), the Chairman of India's Law Commission stated publicly that Section 377 is "discriminatory in its application" and that the consequences of the laws on same-sex activity in India "include damage to the psychological well-being of homosexuals, encouragement of violence and facilitation of police harassment and discrimination against the LGBT community" (ibid. 17 Feb. 2015).

Sources report on instances of killings of LGBT persons:

- In April 2015, a man was murdered in Delhi after inviting a partner for "unnatural sex" (UNI 13 Apr. 2015);
- In February 2014, a man was murdered in Mumbai by a former partner who was afraid that their relationship would become known to others (PTI 26 Feb. 2014).

#### 2.4 Treatment by Authorities
The Hindu reports that "there have been less than 200 reported judgements [under Section 377] in 150 years of the law's existence" (The Hindu 1 Mar. 2014). In contrast, the Deccan Herald newspaper states that according to the National Crime Records Bureau, since the Supreme Court struck down the decriminalization of homosexuality, nearly 600 people had been arrested under Section 377 during 2014 (Deccan Herald 1 Jan. 2015). The same source indicates that not all states had reported figures, and that the state of Delhi had the highest reported number, with 140 cases and 110 arrests up until September 2014 (ibid.).

ABC quotes an Indian lawyer as stating that "although prosecutions for sex between consenting adults are rare, as long as the law remains, it will be used to intimidate" (ABC 1 Dec. 2015). According to The Hindu, Section 377 of the Penal Code has been "used by the police to harass and intimidate sexual minorities" (The Hindu 1 Mar. 2014). According to an LGBT community activist interviewed by Dna India, there have been "many reports" of sexual violence by police (24 Nov. 2014). Country Reports 2014 similarly states that "[s]ome police committed crimes against LGBT persons and used the threat of arrest to coerce victims not to report the incidents" (US 25 June 2015, 59). According to Dna India, "[t]he police [force] has repeatedly shown its insensitivity towards the LGBT community" (Dna India 24 Nov. 2013).

ABC reports that people continue to be arrested in India for same-sex sexual activity (ABC 1 Dec. 2015). According to Pink News, seven men were arrested in Bangalore in the summer of 2014 for suspicion of violating Section 377 (Pink News 17 Feb. 2015). Dna India also reports that in November 2013, 13 people were arrested by police in Hassan, Karnataka for violating section 377 of the Penal Code (Dna India 24 Nov. 2013). The same source quotes the coordinator of an Indian NGO focused on LGBT issues as stating that "[t]he police went to the homes of some of those arrested saying that they were from an HIV prevention unit. Then they coerced these people into naming a few others and arrested them as well" (ibid.). Further and corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Dna India further reports an incident in which police placed a transgender female in a prison cell with male inmates (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

3. State Protection

The Indian newspaper, Mint, interviewed a peer counsellor of a phone helpline for LGBT people in New Delhi, who stated that when LGBT people approach the police, "emboldened by a law like Section 377, policemen can easily take on the role of extortionists themselves" (MINT 5 Dec. 2014). The counsellor stated that she "often" encounters cases of police blackmail of LGBT people who approach them (ibid.). Dna India quotes an Indian LGBT activist as stating that it is "very difficult for a queer person to report partner assault to the police. Mostly, they are turned away, or worse, threatened with section 377 (24 Nov. 2013).

4. Support Services

According to an article regarding the LGBT community in Mumbai, published by the Gay & Lesbian Review, there are a "wide range" of LGBT community organizations in India, noting that the largest organization working on issues of gender diversity is the Humsafar Trust, a community organization based in Maharashtra State, for self-identified gay men, MSM, transgender people, Hijras and lesbian, bisexual, transsexual people (2 Nov. 2015). The same source describes the organization as a "major service delivery organization" which receives considerable international funding and has assisted thousands of people in greater Mumbai (ibid.). According to the website of the Humsafar Trust, the organization offers legal support, crisis management, mental health counselling, and projects on health, advocacy, and research on LGBT issues (Humsafar Trust n.d.). For further information on shelter services and hotlines available to LGBT Indians, please see Response to Information Request IND104060.

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.

References


Mint. 5 December 2014. Vinay Chandran. "Vinay Chandran: No Need for Treatment." (Factiva)


United News of India (UNI). 13 April 2015. "One Held on Charge of Murdering Homosexual." (Factiva)


**Additional Sources Consulted**

**Oral sources:** The following were unable to provide information for this Response: ARC International The Humsafar Trust; International Lesbian and Gay Law Association; The Naz Foundation; OutRight Action International; Research Fellow, Human Rights Watch; The Sangini Gender Resource Centre.

**Internet sites, including:** 76crimes.org; Agence France Presse; Al Jazeera; BBC; ecoi.net; Equality for Gays and Lesbians Everywhere; *The Gay and Lesbian Review*; Gay Star News; *The Globe and Mail*; *The Hindustan Times*; International Lesbian, Gay, Bisexual, Trans and Intersex Association; International Lesbian and Gay Law Association; IRIN; Mission for Indian Gay and Lesbian Empowerment; *The New York Times*; Orinam; OutRight Action International; Reuters; Ryot; The Sangini Gender Resource Centre; United Kingdom – Home Office; United Nations – Refworld; United States – Central Intelligence Agency; *The Washington Post*.

Tips on how to use this search engine.