

**Review of the UK Home Office Country Information and Guidance – India: Sexual Orientation and Gender Identity (updated 16 May 2014)**

Prepared for the Chief Inspector of Borders and Immigration & the Independent Advisory Group on Country Information (IAGCI)

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Reviewer: Vanessa Leigh (Milieu ltd.)

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## 1. Introduction

### 1.1 Purpose of the Review

This review provides a commentary on the *Country Information and Guidance (CIG) for India: Sexual Orientation and Gender Identity from May 2014* produced by the Home Office (UK Border Agency). It also examines responses to individual Country of Information (COI) Requests. The review is commissioned by the Independent Advisory Group on Country Information.

This review aims to assess the Country of Information in terms of its accuracy and balance, with the objective of ensuring that it offers an up-to-date and comprehensive summary of the most relevant available source material reflecting the human rights situation in India, and relating to the key issues raised in asylum claims made by Indian nationals. It does so by checking the citations in the report as well as the original documents from which they are drawn, by evaluating their continued relevance, and by identifying more recent, alternative, readily available sources that will usefully supplement the substantive content of the report.

The scope of the review also includes a more general assessment of the report's coherence and format, commenting on the methods used in its compilation, and offering suggestions on how its structure and/or organisation might be improved to deliver the content more effectively in the context of the report's goals.

### 1.2 Summary of findings on the CIG report

Overall this is a good report. The report reflects a sound understanding of LGBTI issues and uses appropriate language.

Many of the recommendations made in the 2013 review on the LGBTI section of the India COI report (from 30 March 2012) appear to have been taken into account.

Positive developments:

- The structure is much more straightforward, with each section divided according to LGBTI subgroups.
- More information has been included on the legal framework governing Sexual Reassignment Surgery (SRS).

Areas for improvement:

- **Information on harassment by police has been added but is not extensive as it could be** (see suggestions in section 2.2 below).
- **More information could be included on transgender persons**, in particular in the section on legal rights (2.1), attitudes of State authorities (2.2) (particularly police violence against transgender persons), and societal treatment (2.3). See specific comments in each section below.

### 1.3 Quality and balance of sources

On the whole the sources are balanced and up-to-date. The source "Immigration and Refugee Board of Canada, India: Update to IND32120.E of 25 June 1999 on the situation of homosexuals (26 June 1999-April 2004), 13 May 2004, IND42507.E: <http://www.refworld.org/docid/41501c1e2a.html>, accessed May 2014" reporting on the enforcement of section 377 of the Penal Code between 1999 from 2004 is outdated.

Minor notes on footnotes:

- Footnotes 1 and 19, on ILGA Asia: India – Law. The weblink does not work (it should be: <http://ilga.org/country/india/law/>)
- Footnote 3: A **more direct link to the Penal Code could be provided:** <http://chddistrictcourts.gov.in/THE%20INDIAN%20PENAL%20CODE.pdf>
- Footnote 5: the link to The Hindu Article of 2 July 2009 „Delhi High Court legalises gay sex.“ does not work.
- Footnote 39, Diva Magazine, „Curry and conversation: Lesbians in India,“, December 2009 <http://www.divamag.co.uk/diva/features.asp?AID=3409>, accessed May 2014- Correction: the article is from 4 May 2011.

## 2. CIG specific comments on each section

### 2.1 Legal rights

This section provides an up-to-date description of Supreme Court Ruling (11 December 2013) reversing the High Court Decision and reinstating Section 377 of the Penal Code. The legal information is divided according to LGBTI subgroups which is very useful.

The COI researcher provides an update on the determination of a ‘curative petition’ by the Supreme Court in relation to the Supreme Court 11 December 2013 judgment – stating that no developments can be noted at the time of publication of the CIG (in point 2.1.7)– this is good practice.

#### Legal information pertaining to transgender persons:

The section **could refer to the State’s Police Act** amended in April 2011 by the Karnataka government introducing a section 36A to regulate “undesirable activities” in Karnataka and keep a record of “eunuchs” in every police jurisdiction to prevent them from committing “unnatural offences.” For information on this:

- Siddharth Narrain, Policing Hijras, March 2013, <http://infochangeindia.org/agenda/access-to-justice/policing-hijras.html>.

While the CIG refers to the Supreme Court judgment in National Legal Services Authority (NALSA) v. Union of India and Others at para. 2.1.16, **this section could include information on the implementation of the judgment.** Human Rights Watch stated the following in February 2015 (this source was not available at the time of publication of the CIG):

- *Nearly a year after the Supreme Court’s judgment, implementation has stalled, even as recent attacks on transgender communities highlight their vulnerability. In particular, section 377 of the Indian penal code, which criminalizes same-sex relations among consenting adults, has made both transgender people and homosexuals vulnerable to police harassment, extortion, and abuse<sup>1</sup>.*

### 2.2 Attitudes of and treatment by State authorities

#### *Police treatment:*

Para. 2.2.5 cites a USSD source reporting on police brutality and ‘threat of arrest to coerce victims not to report the incidents’ (para. 2.2.5).

The aforementioned ILGA Asia source (‘Violence against LGBT groups still prevails in India, 30 November 2013) specifies:

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<sup>1</sup> India: Enforce Ruling Protecting Transgender People, Court Directive Recognizes ‘Third Gender’ But Stigma Continues, FEBRUARY 5, 2015, Human Rights Watch, <http://www.hrw.org/news/2015/02/05/india-enforce-ruling-protecting-transgender-people>

- *Earlier this month, 13 people were arrested in Hassan in Karnataka by the police under section 377. “The police went to the homes of some of those arrested saying that they were from a HIV Prevention unit. Then they coerced these people into naming a few others and arrested them as well,” alleges Mallappa, state co-ordinator of the Karnataka Sexual Minorities Forum, who led a protest of 200 people in the Town Hall in Bangalore two weeks ago.*

Given that this information provides a useful indication of Article 377 being used as a threat and basis for arrest, **it would be pertinent to cite this information cited above.**

The ILGA source also mentions specific treatment of lesbians in prisons, which should be reflected in the report:

- *The police has repeatedly shown its insensitivity towards the LGBT community. Even in the Pinki Pramanik case, who identifies herself as female, they put her in a prison cell with male inmates,” says queer activist Rituparna Bora, who is part of Pride Committee, the team organising the Delhi Queer Pride Parade.*

This section **could include more information on treatment of transgender persons, including information of police abuse.** Suggested source (published after the publication of the CIG):

- India: Enforce Ruling Protecting Transgender People, Court Directive Recognizes ‘Third Gender’ But Stigma Continues, FEBRUARY 5, 2015, Human Rights Watch, <http://www.hrw.org/news/2015/02/05/india-enforce-ruling-protecting-transgender-people> :
  - *‘Activists say that transgender people across the country still live with fear of violence and police abuse’.*
  - *‘Most recently, the [nongovernmental organization Telangana Hijra Transgender Samiti, based in the southern city of Hyderabad] said that on January 20, 2015, police detained a young hijra, a distinct transgender and intersex community that has a formal system of shared residence and mutual support, for questioning about the murder of another hijra, Pravallika, four days earlier. The police brought the person, a friend of Pravallika who identifies herself as a woman, to a police station where she was allegedly stripped naked and verbally abused and humiliated. Without any female police official present, the hijra was kept at the station for four hours.’*

### 2.3 Societal treatment and attitudes

*Information specific to transgender persons:*

Information provided on Hijras at 2.3.8 from the Lesbian and Gay Studies Reader, 1993 is outdated. The article from New Statesman cited in 2.3.9 is also relatively outdated (2008).

More recent sources:

The following article from Deutsche Welle considers the effects of the Supreme Court ruling National Legal Services Authority (NALSA) v. Union of India and Others recognising the third gender, outlining remaining entrenched discrimination against transgender persons:

- ‘Transgender Persons not even considered humans’, 15 April 2014, Deutsche Welle, <http://www.dw.de/transgender-people-not-even-considered-humans/a-17568119>
  - *The Indian court's ruling does not mean that the people's attitudes towards the transgender community will change overnight. It will take a lot of time. In the entire South Asian region, discrimination against the transgender people is deeply ingrained in people's minds. They are economically and socially marginalized, and are not even treated as humans.*

- On violence towards transgender persons: India: Enforce Ruling Protecting Transgender People, Court Directive Recognizes ‘Third Gender’ But Stigma Continues, 5 February 2015, Human Rights Watch, <http://www.hrw.org/news/2015/02/05/india-enforce-ruling-protecting-transgender-people>:
  - *‘The nongovernmental organization Telangana Hijra Transgender Samiti, based in the southern city of Hyderabad, reported 40 attacks on transgender people in the last six months. In several cases, the police refused to even register complaints, the rights group told Human Rights Watch’.*

#### 2.4 Other forms of discrimination

##### i. Access to health care:

While a reference to difficulties for transgender persons who were HIV positive in receiving healthcare is made in 2.4.2, **this could be elaborated upon.**

This section could **also include information on sex-workers and other human rights/health issues for Hijras**, such as high rates of HIV/AIDS.

The NUJS Law Review "[Crystallising Queer Politics-The Naz Foundation Case and Its Implications For India's Transgender Communities](#) (see sources below) could be **cited for a description on discrimination and other issues faced by transgender persons in India.**

##### ii. Access to employment:

**A perspective on access to employment for Hijras could be included:**

- Jobs are denied to eunuchs due to their gender and they are ridiculed in the society. Sharma, P., Historical Background and Legal Status of Third Gender in Indian Society, IJRESS, Volume 2, Issue 12 (December 2012), ISSN 2249-7382).

Para. 2.4.6 of the CIG cites a survey by the Labour Bureau in 2010 which showed that only 17 per cent of the Indian workforce is in formal, salaried employment; more than 70 per cent of all working people are self-employed as casual workers. This does not specifically refer to LGBTI persons or suggest how LGBTI persons may be disproportionately affected by low unemployment.

### 3. Recommendations for sources

- Lesbians in India: living a life of anonymity, isolation, Thomas Reuters Foundation, 16 May 2011, <http://www.trust.org/item/20110516182200-ai vx6/?source=search>
- Back in the Shadows: The Perils of Being LGBT in India, December 2014, <http://www.newsweek.com/india-gay-lgbt-modi-transgender-us-kolkata-civil-rights-coming-out-295483>
- The NUJS Law Review, September 2009, "[Crystallising Queer Politics-The Naz Foundation Case and Its Implications For India's Transgender Communities](#)
- India: Enforce Ruling Protecting Transgender People, Court Directive Recognizes ‘Third Gender’ But Stigma Continues, FEBRUARY 5, 2015, Human Rights Watch, <http://www.hrw.org/news/2015/02/05/india-enforce-ruling-protecting-transgender-people>
- Siddharth Narrain, Policing Hijras, March 2013, <http://infochangeindia.org/agenda/access-to-justice/policing-hijras.html>
- Supreme Court ruling National Legal Services Authority (NALSA) v. Union of India and Others: <http://supremecourtindia.nic.in/outtoday/wc40012.pdf>.

#### 4. Review of responses to country of origin information requests:

##### Overall comments on COI Request responses:

The responses provided in the COI Requests are on the whole very good using balanced and relevant sources.

##### Good practice:

- Some responses (for e.g. 09/14-16 on interfaith marriages) provide a geographical and urban/rural nuance as well as socio-economic factors which may influence difficulties encountered;
- A good practice is noted in (COI Request (02/13/-107)) which provides headings for each question being addressed;
- Several of the responses include cross-references to the relevant sections of the COI India Report of 30 March 2012, which is good practice.

##### Suggestions:

- Where possible the responses should ensure **a balance of international and local sources**;
- Where information is not identified, and only background information is provided, **this could be stated explicitly**: ‘i.e. no information specific to the issue raised in the request has been identified’.

##### **i. COI request on Interfaith marriages (09/14-16)**

*Would you be able to confirm that a Hindu woman and Pakistani Muslim man be able to either live together or marry?*

The response provided is relevant, balanced and uses up-to date sources explaining effects of interfaith marriages. The sources cited provide a geographical nuance (including a nuance between urban and rural situations) as well as socio –economic factors which may influence the degree of difficulties encountered in interfaith marriages, which is good practice.

Sources: Mostly international sources are used (Canadian IRB Report; Australian Refugee Review Tribunal). **More local sources could be relied upon in responding to these requests**, for e.g.:

- Interfaith marriage: Dhule youth moves HC for safety, 19 November 2014, <http://timesofindia.indiatimes.com/city/mumbai/Interfaith-marriage-Dhule-youth-moves-HC-for-safety/articleshow/45196997.cms>

##### **ii. COI Request on LTTE – Indian national (02/13/-107)**

*Information on the sufficiency of protection regarding an individual of Tamil ethnicity who has previously resided in Tamil Nadu, India and claims that he collected money for the LTTE in India. Request to confirm that the LTTE is a banned organisation in India, and prison conditions are likely to breach the Article 3 threshold.*

The response is well structured, headings are included for different parts of the response, which is very helpful. The response uses for the most part up-to-date and balanced sources, including local sources.

For the response on prison conditions, a **more up-to-date/balanced response could be provided**.

Specific comments:

*On the question of whether the LTTE is a banned organisation:*

A clear response is provided in Point 2 confirming that the ban is extended. (In May 2014 the Union Home Ministry extended it for a further 5 years) <http://www.thehindu.com/news/national/tamil-nadu/ban-on-ltte-extended-for-five-years/article6012768.ece>)

*Prison conditions*

The response cites a USSD 2011 report of prison conditions and foreign prisoner support service information on Indian prisons.

On the prison sources, an NGO perspective could be added. A reference to sources cited in the Home Office [Country Information and Guidance India: Prison conditions](#) (it was updated on 2 September 2014 and had not been published at the time of publication of this CIG) could be made.

### **iii. COI request on Hinduism to Islam convert (06/13/-026)**

*Is there sufficiency of protection available to someone who has converted from Hinduism to Islam, in light of the anti-conversion laws and prejudices that could be faced from officials?*

The Response provides a good cross-reference to the relevant section of the COI India Report of 30 March 2012. No information is found in response to the sufficiency of protection. The one source cited (Canadian IRB) only provides information on the lack of protection of Christians by authorities. Very little information seems to be available on this topic.

Suggested sources:

- Arrested For Converting to Islam Become Hindus Again, updated 5 September 2014, <http://www.ndtv.com/india-news/men-arrested-for-converting-to-islam-become-hindus-again-659312b>, (*Religious conversions are allowed in the state only if they are not forced. The people converting have to declare that it is voluntary and seek the state's permission. This was what the men - Tularam Jatav, his son Keshav and relatives Maniram and Makhubhai Jatav - had apparently failed to do when they converted to Islam nine months ago*).
- International Business Times: India: MP Sakshi Maharaj vows death sentences for Hindus converting to Islam or Christianity, 7 January 2015, <http://www.ibtimes.co.uk/india-mp-sakshi-maharaj-vows-death-sentences-hindus-converting-islam-christianity-1482301>.

### **iv. COI request – relationships between Indian and Pakistani nationals (01-15-020)**

*Can an unmarried Indian national and Pakistani continue to live in a relationship in India considering that they are unmarried and the fraught relations between India and Pakistan?*

The response considers both the issue of unmarried relationships and of relations between Pakistan and India.

The response does not consider concretely whether a couple would experience difficulties in India because of their mixed Pakistani/Indian origins.

Suggested sources;

- Live-in relationships: Happily unmarried <http://www.ndtv.com/india-news/live-in-relationships-happily-unmarried-413763> The Supreme Court recently ruled that the right to live-in with a partner, without the certificate of marriage, was a fundamental right,
- Law and ‘Live-in’ Relationships in India, [http://www.academia.edu/3793906/Law\\_and\\_Live\\_in\\_Relationships\\_in\\_India](http://www.academia.edu/3793906/Law_and_Live_in_Relationships_in_India): for e.g. discusses the Protection of Women from Domestic Violence Act (PWDVA) 2005, which is considered to be the first piece of legislation that, in having covered relations ‘in the nature of marriage’, has provided a legal recognition to relations outside marriage;

#### v. COI request – children with special needs (O5/15-159)

*Is there appropriate treatment available in India for a child with special needs with attending specialist hearing school (with multidisciplinary team of paediatric specialist, audiology, speech and language therapy and ENT). What are his employment prospects?*

The response provides information on the All India Institute for Speech and Hearing in Mysore and to 2,500 schools for children with special needs throughout India as well as children with hearing impairment. The response does not cite sources that could suggest whether the treatment would be appropriate.

Suggested source:

- On health care for hearing impaired children in India: Sulabha M Naik, Mahendra S Naik, Akriti Sharma, *Rehabilitation of hearing impaired children in India – An update*, M.M.Institute of Medical Sciences & Research, Mullana, Ambala, Volume 3 Issue 1 2013, <http://opendepot.org/1597/1/deaf.pdf>
- On employment: Success Stories of Hearing Impaired Candidates from NGO EnAble India, [http://enable-india.org/new/index.php?option=com\\_content&view=article&id=72&Itemid=26&limitst=art=3](http://enable-india.org/new/index.php?option=com_content&view=article&id=72&Itemid=26&limitst=art=3)

#### vi. COI request – land crime (05/14-071)

*Request for information on the land mafia in India: What power/influence do they have in India? Are they likely to be involved in other criminal activities such as torture? Are Indian official involved in the land mafias? Can anyone seize land for public purposes or can this only be done by government officials? What impact will ‘The Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013’ have on protection available against land mafias?*

The response is quite clear and substantiated. The sources used are up-to-date and local sources are cited. A cross-reference is made to the COI 2012 report.

Suggestions:

On substance:

On the question of ‘what power/influence do [the land mafia] have in India, the response provides:

*There is likely to be a large number of criminal groups in India involved in fraudulent or coercive land dealing of one kind or another, and in ‘land grabbing’. They have been referred to in the press and elsewhere as “land mafia”. CPIT is not aware that any particular criminal organisation has a dominant or substantial presence in all regions of India.*

**A more precise and geographically nuanced perspective would be helpful.** See for e.g.

- Tamil Nadu's land grab stories revived by Vadra allegations, October 2012, <http://www.firstpost.com/india/tamil-nadus-land-grab-stories-revived-by-vadra-allegations-485880.html>: *The highest number of cases have been registered in Chennai, which commands the highest real estate prices in the state, followed by Kancheepuram, which is home to the booming IT corridor. There were 168 cases registered in Chennai followed by 114 in Kancheepuram.*
- The response refers to in point 4 to violence linked to fighting over land (among families; neighbours) but does not refer to acts of torture. For sources on this, see for e.g.:
  - 75 years old sikh died of Punjab Police torture", 2010, Sikh Philosophy website, 7 August <http://www.sikhphilosophy.net/india/31764-75-years-old-sikh-died-punjab.html>: *The Sikh Philosophy website reported allegations that a Member of the Legislative Assembly, Virsa Singh Valtoha, who was a member of the ruling Akali Dal party, had supported one Ajit Singh in an attempt to force a family off their land. After an altercation involving the land, police were alleged to have arrested, tortured and killed a member of the victimised family, 75 year old Subegh Singh. 16*

On structure:

- **It would be helpful to include headings for each answer.**

On sources:

Suggested source:

- Australian Government Refugee Review Tribunal, Country Advice India, India – IND38565 – Punjab – Land Mafia – BJP – State Protection 12 April 2011, <http://www.refworld.org/pdfid/4f460c1e2.pdf>

**vii. COI Request – Family structure (01/15-204)**

*Is it culturally and socially acceptable for an elderly mother to live with her daughter and family in India?*

The response is very clear, using up-to-date, diverse (including local) sources and citing pertinent information on family structures in India and more specifically elderly women living with their relatives.

**viii. COI request – Dera Sacha Sauda (DSS) (06/14/147)**

*Does the leader of Dera Premi have connections to the police and authorities in India? How influential is he in India? Is he wanted for crimes in India and if so has he ever been charged appropriately? (the name given for the leader is Dear Sucha Sodha)*

The response provided is very comprehensive, using up to date sources and citing relevant information.

A comment on the fact that most states in India have their police forces and therefore that connections to one police force would not be nationwide is good practice.

**ix. COI Request – Tenant registration with the police (05/14-080)**

*Applying for accommodation/seeking employment while relocating from Jammu Province: are security ID checks made by the police in Jammu to confirm identity and terrorism links when a person relocates elsewhere in India?*

The response provided is clear, using an up-to date source and summarises pertinent information from the source.

**x. COI request on Inter-caste marriage – Brahmin (10/14/-072)**

On the whole the sources cited are balanced and up-to-date. The sources cited in the response to the COI request provides an answer for most questions:

Sources cited in para. 1 specify that it is not possible to move between castes, but it is possible to excommunicate individuals (not clear on whether remarrying will exclude them from the family though). Para. 2 of the response cites sources providing an up-to date accurate description on who is the head of the Brahmin family and refers to the eldest succeeding as head of family. Sources in para. 3 clearly explains acceptance of marriage outside of caste. Para. 7 refers to local politicians and officials supporting the violence of families towards couples marrying outside their caste (also mentioned in point 10). Para. 10 includes a reference to police sometimes being the perpetrators of violence against inter-caste couples.

No information is identified to respond to questions 6 and 7; this is stated explicitly which is good practice.

**It would be helpful to include headings indicating each question of the request to which the cited sources respond to.**

Comments on sources:

Sources cited in para. 3 (2003 book by Rathor stating that inter-caste and inter-religious marriage gaining ground; and 2006 UN survey are over ten years old).