



# INDIA LGBTI

Landscape Analysis  
of Political, Economic  
& Social Conditions



**Astraea** LESBIAN FOUNDATION FOR JUSTICE



## India LGBTI: Landscape Analysis of Political, Economic & Social Conditions

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# INTRODUCTION

In recent years, India's social movement to advance the rights of lesbian, gay, bisexual, trans\* and intersex (LGBTI) people has been both a beacon of hope and a cautionary tale.<sup>1</sup> In 2009, LGBTI activists in India won the decriminalization of consensual sex between same-sex adults. It was a landmark decision that rapidly transformed the country's social, cultural and political landscape. Then, in 2013, the Supreme Court overturned this decision and effectively re-criminalized homosexuality, which was a devastating blow for the LGBTI movement and the progress it had achieved. The following year, just on the heels of this loss, the Supreme Court made a bold move in favor of trans\* rights when it established a legally recognized third gender and guaranteed fundamental protections and access to government benefits for trans\* people.

LGBTI activists insist the social progress that the initial decriminalization of homosexuality inspired cannot be turned back. Today, issues of sexual orientation and gender identity are more openly discussed and the rights of LGBTI people more openly embraced, even by prominent political figures. Activists are engaging effectively with influential stakeholders in the Indian government, civil society and the private sector. Cultural demonstrations and celebrations of pride are more commonplace, and LGBTI individuals are more "out" than they have ever been. LGBTI organizations are also working to overcome the isolation they have experienced in the past to collectively pursue shared strategies for legal, political and social change.

Despite the progress LGBTI advocates have achieved, significant challenges persist. Human rights violations against LGBTI people are widespread, and since the 2013 re-criminalization of homosexuality, violence and discrimination against LGBTI people have increased. In addition, it remains

to be seen whether or not the conservative Bharatiya Janata Party (BJP), which assumed control of India's national government in the 2014 elections, can be eventually persuaded to stand in support of LGBTI and international human rights. In the past year, the new national government has taken troubling steps to restrict civil society and curtail protest, which also puts the work of LGBTI organizations at greater risk.

Still, the many varied organizations and leaders that make up India's LGBTI movement continue to be motivated by the 2009 decriminalization of homosexuality and all of the change it inspired. Across the country, in rural and urban areas, activists are pursuing creative campaigns to raise awareness about LGBTI rights; documenting the realities of LGBTI people's lives; advancing comprehensive legal anti-discrimination protections; and offering training to health care professionals and other service providers so that they are better equipped to respectfully address LGBTI people's unique needs. Activists have a tremendous amount of hope for the future, and share the belief that with sufficient resources and support, their movement will be able to build on its past successes and continue to thrive.

*Hijra* is a culturally specific identity in India for certain people who were assigned male at birth and do not identify as men. It is not, however, the Western equivalent of transgender. *Hijras* have a long tradition and culture in Indian society; *aravani* and *thirunangaigal* are examples of regional variations.

What follows is a landscape analysis of the social, political and economic conditions for LGBTI people in India. This report was developed out of research by Katie Zaman and produced by Astraea Lesbian Foundation for Justice.<sup>2</sup>

This report draws on a unique combination of data and expertise from international organizations, government sources and, most critically, Indian LGBTI organizations

1 A note on terms: Though the term "trans\*" is not commonly used in India, this report uses the notation "trans\*" to be inclusive of transgender, transsexual and transvestite, as well as culturally specific non-normative gender and sexual identities in India such as hijra, aravani and thirunangaigal. The term "transgender" isn't always understood to be an umbrella term in India given the visibility of hijra, aravani and other cultural and region-specific gender identities. In the HIV context, transgender or "TG" may be used as an umbrella term, but usually only refers to trans\* women. In addition, this report uses the acronym LGBTI (lesbian, gay, bisexual, trans\* and intersex) to be broadly inclusive of sexual orientation, gender identity and bodily diversity. The term LGBTI or the identification of specific groups, such as lesbians or trans\* people, are used where these are reflective of organizations or activities referenced.

2 For more information on the Astraea Lesbian Foundation for Justice, see page 2.

and activists themselves.<sup>3</sup> In synthesizing diverse material

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<sup>3</sup> Methodology: This analysis is based on reports, data and studies procured from international and Indian organizations, development agencies, newspaper and magazine reports and various websites maintained by LGBTI organizations in India. Researcher Katie Zaman also conducted interviews with LGBTI activists working in India about the state of their movement.

and firsthand insight, it offers an overview of the country's political context and LGBTI social movement; exposes gaps in research about the LGBTI community; provides a window into what life is like for LGBTI people in India; and summarizes the opportunities and challenges activists face as they work to advance LGBTI rights protections and advocate for equitable, meaningful change.

# COUNTRY BACKGROUND

The legacy of British colonialism continues to impact LGBTI people in India. Historically, alternative expressions of gender and sexuality were an important part of Indian culture.<sup>1</sup> But in the late 1800s, the British government enacted penal codes throughout its colonies that made same-sex conduct illegal. In India, the Criminal Tribes Act of the 1870s classified many indigenous communities as “hereditary criminals,” and *hijras* were included in that category. Though Britain itself decriminalized homosexuality in 1967, Section 377 of the Indian Penal Code says that any adult, consensual same-sex sexual activity deemed “against the order of nature” is punishable up to life in prison.<sup>2</sup> While few cases have ever been prosecuted, police have used the law extensively to harass LGBTI people. Organizations and activists who advocate for LGBTI rights have long reported targeting by police, including cases of entrapment, extortion and beatings.<sup>3</sup>

Despite LGBTI activists’ success in raising awareness about

LGBTI rights, the topic of sexuality and gender identity remains largely taboo in the public sphere. A 2013 report by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) found that the Indian government has at best been a passive actor in its country’s efforts to advance LGBTI rights.<sup>4</sup> At times, government officials have been openly hostile to LGBTI rights, such as in 2011, when India’s Minister of Health Ghulam Nabi Azad said gay sex was “completely unnatural” and referred to homosexuality as a disease.<sup>5</sup> Minister Azad was widely criticized and eventually said his words were taken out of context. More recently, in April 2015, India voted to deny benefits to LGBTI partners of United Nations employees—the only public indication thus far of the current BJP-led government’s stance on LGBTI issues. Still, as this report discusses later on, the tide has begun to turn, and prominent political figures in India are taking increasingly public stands in defense of stronger legal recognition and respect for LGBTI people and their rights.

## A Landmark Victory and Stunning Reversal in Legal Challenge of Same-Sex Criminalization

On July 2, 2009, India’s LGBTI movement secured a landmark victory on behalf of LGBTI rights. After nearly a decade-long legal battle, the Delhi High Court found that Section 377 of India’s Penal Code, which criminalizes adult, consensual same-sex sexual activity, was unconstitutional.

In 2001, the **Naz Foundation**, an HIV/AIDS prevention organization, filed the original petition in the case challenging Section 377. After a series of legal setbacks, their prospects improved in 2006, when the **National AIDS Control Organization** filed an affidavit saying that Section 377 hampered humanitarian efforts to prevent and treat HIV/AIDS in India by forcing some of the highest risk groups underground.<sup>6</sup> That same year, **Voices Against 377**—a coalition of progressive LGBTI, women’s rights and human rights groups—expanded the argument to say that Section 377 violated the fundamental rights of LGBTI persons. In 2009, the High Court found Section 377 to be in violation of the equality, non-discrimination and privacy clauses of the Indian Constitution, and understood the law as having not only criminalized same-sex acts but also infringed upon the rights of LGBTI citizens.<sup>7</sup>

“Three years ago, we were providing services to 30,000 [people]. Three years later, we are providing services to 300,000. That wouldn’t have been possible had the Delhi High Court judgment not been in place.”

The historic High Court decision resulted in an exponential increase in conversations about gender, sexuality and LGBTI rights nationwide. The number and size of pride marches swelled, more and more LGBTI celebrities “came out,” and the emergence of LGBTI characters in popular movies and soap operas rose. Members of the general public, police officers, medical and mental health professionals, students and the private sector showed an increased interest in, and acceptance of LGBTI issues.

The landmark case also had a dramatic impact on LGBTI organizing, advocacy and service delivery. LGBTI organizations and activities received an unprecedented level of visibility and exposure, which, to a degree, opened them up to greater risk, but also encouraged bolder actions of LGBTI people asserting themselves publically and in their communities. New groups emerged and LGBTI organizations began to form new—and strengthen existing—coalitions and networks with one another and in broader civil society. The LGBTI community received critical gestures of support from the feminist movement, the Dalit movement and groups like the **National Alliance of People’s Movements**. And with the specter of prosecution removed, HIV/AIDS organizations reported an easier time meeting the needs of at-risk LGBTI populations. In a 2012 interview, Vivek Anand of the **Humsafar Trust**, a group that provides free HIV tests and other health services to LGBTI people in Mumbai, said, “Three years ago, we were providing services to 30,000 [people]. Three years later, we are providing services to 300,000. That wouldn’t have been possible had the Delhi High Court judgment not been in place.”<sup>8</sup>

But immediately following the 2009 decision, astrologer Suresh Kumar Kaushal appealed before the Supreme Court, followed by 13 other appellants comprising conservative religious groups and a children’s rights organization.<sup>9</sup> In December 2013, the Supreme Court of India reversed the 2009 Delhi High Court judgment, recriminalizing adult, same-sex, consensual sexual activity. Instead, they ruled, it was up to the legislature to consider the legal merits of Section 377.

Met with disbelief by India’s LGBTI movement, the Supreme Court decision, *Kaushal v. Naz Foundation*, galvanized collective action at local and national levels. Within weeks, the slogan “No Going Back” spread through protests nationally and globally. In an interview with *The Hindu*, gay activist and lawyer Arvind Narrain said, “While it is a moment of disappointment and anger, it’s also one of hope; for, while the Supreme Court has been able to reverse the 2009 judgment legally, socially it cannot reverse the social change the community has seen.”<sup>10</sup>



# LIFE FOR LGBTI PEOPLE IN INDIA

## Legal Protections

The constitution guarantees “equality before law” and “prohibition of discrimination,” though there are only a few laws explicitly protecting LGBTI people from discrimination—including discrimination by employers, health care providers, government employees or educational institutions. Even more striking, Section 377 of the Indian Penal Code currently stands in contradiction to the constitutional promise of equality: 377 criminalizes same-sex sexual activity by consenting adults.

While the transformative 2009 ruling decriminalizing homosexuality and its subsequent reversal have dominated the legal landscape, additional laws affect the lives of LGBTI people in India. The Indian Penal Code, for example, also includes provisions for kidnapping (Section 361) and abduction (Section 366) that families draw on to sanction women who run away to escape forced marriage or violence, or to be with their chosen partner.<sup>11</sup>

On the positive end of the spectrum, in April 2014, the Supreme Court issued a breakthrough ruling in favor of trans\* people’s rights. In *National Legal Services Authority (NALSA) v. Union of India and Others*, the Court officially recognized the fundamental rights of trans\* people as a third gender category. The ruling included the right to select a third gender in official identification—irrespective of surgery or hormone treatment—and access to government benefits afforded to other legally recognized marginalized groups in India.<sup>12</sup> The Court instructed the government to abide by the Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity and other international human rights agreements to which it is a party. And in affirming the rights of trans\* people in India, the Supreme Court’s judgment opened up the possibility of repealing state laws that continue to criminalize the trans\* community—laws such as the Karnataka Police Act Section 36A and Andhra Pradesh (Telangana Area) Eunuchs Act, which are remnants of the colonial era Criminal Tribes Act.<sup>13</sup>

However, the ruling justices gave states discretion as to how to interpret the NALSA ruling, and implementation has been slow. As a result, trans\* organizations and activists are now pushing state governments to clarify their interpretation and establish trans\* welfare and development boards to ensure the appropriate delivery of services. In the meantime, attacks on trans\* people’s rights have continued unabated. In fact, after the reinstatement of Section 377 in December 2013, LGBTI people in India have been at heightened risk of violence and discrimination.

## Advancing Decriminalization and Trans\* Rights at the State Level

Founded in 1999, **Sangama** is a leading LGBTI organization based in southern India, with programs in Karnataka, Kerala and Tamil Nadu. Sangama has established a strong track record for strategically intervening in police abuse against LGBTI communities, building alliances with progressive movements and conducting HIV prevention. Sangama and allied organization **Aneka** have also worked to engage religious leaders on issues of gender and sexuality and thus untangle the role of faith in perpetuating anti-LGBTI stigma and discrimination.

Today, Sangama is challenging the application of Penal Code Section 377 in Karnataka and Kerala while simultaneously working to promote the states’ implementation of the April 2014 Supreme Court NALSA judgment on trans\* rights. Leveraging the recent Supreme Court decision, Sangama and the **Karnataka Sexual Minorities Forum**, a statewide grassroots activist collective, are engaged in strategic litigation to repeal the Karnataka Police Act 36A, a state law which continues to criminalize *hijras* and trans\* communities. Sangama is also creating a 24-hour crisis helpline staffed by legal volunteers. In collaboration with the **Kerala Legal Services Authority (KELSA)**, they are establishing a legal services program for trans\* communities in Kerala.



For *hijras*, a certain amount of social and legal recognition existed prior to the 2014 ruling rights. A third category for gender was added to the national census in 1994, in an attempt to acknowledge the *hijra* identity in particular.<sup>14</sup> In addition, gender expression is constitutionally protected under the “right to freedom of speech and expression, assembly, association or union, movement, residence, and right to practice any profession or occupation....”<sup>15</sup>

But trans\* and gender non-conforming people, including *hijras*, continue to face significant legal and societal obstacles to the realization of their rights and well-being. The Indian legal system is silent on the right to gender-affirming surgeries.<sup>16</sup> And the criminalization of sex work—a recourse for many trans\* and gender non-conforming people, who are excluded from education, housing and traditional employment—has resulted in serious violations of trans\* people’s human rights.<sup>17</sup>

## Social, Economic and Health Conditions

Data documenting the rights and well-being of LGBTI people in India is limited. Apart from surveys on the topic of HIV/AIDS, no comprehensive national government studies of the experiences and needs of LGBTI people exist. Accurate reporting of violence and discrimination is frequently hampered by intimidation, fear of discrimination and lack of resources—particularly in rural areas.

Nonetheless, evidence of human rights violations against LGBTI people catalogues widespread violence, barriers to accessing public and private services, mistreatment in health care settings and employment discrimination due to gender nonconformity, involvement in sex work or HIV status.<sup>18</sup> Importantly, experiences of LGBTI people in India are diverse and formed within the context of class, caste, religion, age, sex, gender identity, geography and the degree to which they are “out”. As such, the nature of discrimination faced by LGBTI people takes many forms, impacting in different ways their vulnerability to violence, economic insecurity and poor health.

### *Violence and Discrimination*

In India today, LGBTI people face widespread violence and discrimination, particularly in rural areas and at the hands of health care providers and the police. The re-criminalization of same-sex relations among consenting adults in December 2013 left LGBTI people in India even more vulnerable to abuse, with a surge in violence including harassment, rape, blackmail and extortion.<sup>19</sup> Despite the Supreme Court ruling in favor of trans\* people’s rights, assaults against trans\* Indians continue. The civil society organization **Telangana Hijra Transgender Samiti**, based in the southern city of

Hyderabad, for example, reported 40 attacks on trans\* people in the last six months of 2014. “In several cases,” the group told Human Rights Watch, “the police refused to even register complaints.”<sup>20</sup>

The dominant, patriarchal family structure in India impacts the nature of discrimination and violence against LBT women in particular. Research shows that lesbian and bisexual women experience the most severe violence within their immediate and extended families. According to a study by the group LABIA (Lesbians and Bisexuals in Action):

Various family members—mothers, fathers, brothers, sisters, extended or joint family members like aunts and uncles—all have been perpetrators of violence. Suicide attempts, cutting, harming oneself, depression and persecution seem to be a commonplace occurrence within families. In very few cases has there been complete and unconditional support.<sup>21</sup>

Women and trans-masculine people are subjected to verbal and physical abuse, psychological torture, house arrest, forced marriage and rape.<sup>22</sup> According to a national study by Sappho for Equality, lesbian and bisexual women and trans\* men in India face “violation of the right to choice, family, property, work, education, self-determination and dignity.”<sup>23</sup>

People living with or at risk of HIV/AIDS, including trans\* people, sex workers and men who have sex with men (MSM), report high levels of discrimination—from doctors and other health care professionals who refuse to treat them; schools who expel or segregate HIV-positive children or children with HIV-positive parents; orphanages and housing entities that reject HIV-positive children; and employers who discriminate based on the applicant’s HIV-positive status.<sup>24</sup>

LGBTI people in India also face high levels of bullying from peers and teachers in school. In a survey by the Mission for Indian Gay and Lesbian Empowerment (MINGLE) of 272 students at colleges and universities across the country, LGBTI students reported more bullying and harassment than their straight counterparts.<sup>25</sup>

MINGLE also conducted a survey of 455 lesbian, gay and bisexual white-collar workers in India and found that they experienced a great deal of hostility from their co-workers and managers.<sup>26</sup> The vast majority remained closeted at work. One third of respondents reported facing harassment in the workplace, and nearly 80% had heard homophobic comments, primarily from co-workers. Respondents reported feeling isolated and at-risk, and half of them believed that their being closeted or harassed had a direct or indirect impact on their productivity.<sup>27</sup>

## % LGBTI PEOPLE WHO HAVE: EXPERIENCED HARASSMENT IN THE WORKPLACE:



Source: Mission for Indian Gay and Lesbian Empowerment (MINGLE)

### *Economic Security and Access to Health Care*

The lives and status of LGBTI people in India operate within the context of India's economic extremes—on the one hand, the country's growing global economic significance and, on the other, its widespread economic inequality. Class, caste, biological sex and gender identity overlap and compound the economic insecurity LGBTI people in India face.

LGBTI people are frequently denied access to education and employment opportunities throughout their lives, and studies increasingly point to lower wages and disproportionate levels of poverty among LGBTI people in India.<sup>28</sup> Compared to an overall literacy rate of 74% amongst the general Indian population for example, the literacy rate for trans\* populations is only 46%.<sup>29</sup>

Discrimination against unmarried women—which takes many forms—places a unique burden on lesbian and bisexual women. There is such great stigma against adult single women, activists say, that without a husband to vouch for them, lesbian and bisexual women experience significant barriers to education, employment and basic rights and services such as government food subsidy cards, passports, bank accounts and housing.<sup>30</sup> Those who are ostracized by their families have even less access to resources. With so few economic options, activists and researchers report, some LGBTI people—especially trans\* women who face extreme social stigma—are compelled to work in informal economies such as sex work. The ongoing criminalization of sex work places them at especially high risk of interpersonal and police violence and abuse, as well as vulnerability to HIV/AIDS.<sup>31 32</sup>

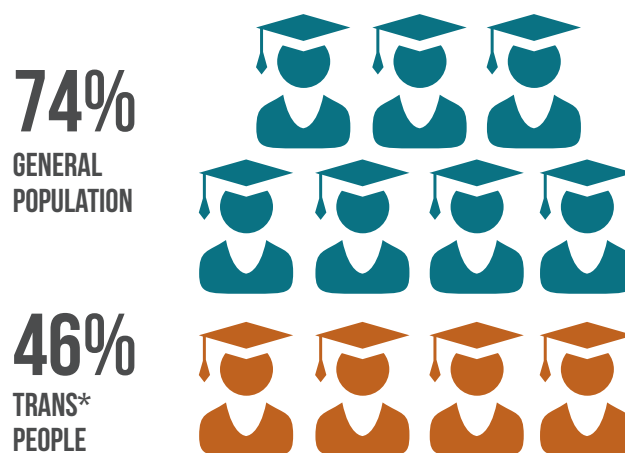
Over two million people are living with HIV or AIDS in India, and MSM and trans\* people are at disproportionate risk of contracting the virus. However, the dominant focus on HIV/AIDS in India, as in other places, has obscured the

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broad range of health concerns facing LGBTI communities. Plus, HIV services that do exist do not always reach or meet the specific needs of LB women, trans-masculine and intersex people.<sup>33 3435</sup> To this point, a 2010 United Nations Development Programme (UNDP) report recommends separate HIV testing facilities for trans\* people, programs that provide holistic health care including mental health care services, greater involvement of the trans\* community in decision-making processes and community-based organizations.<sup>36</sup>

One of the most serious gaps in LGBTI health care is in the area of mental health, especially suicide prevention. In the aforementioned report, UNDP found that violence, discrimination and exclusion faced by *hijra* or trans\* women in India have a significant impact on their physical and mental health—including shame, fear, internalized transphobia and social pressure to conform. Evidence also suggests the need to address alcohol and substance abuse.<sup>37</sup> Several studies note

## UNEQUAL EDUCATION:



Source:

the high prevalence of suicide in queer women and trans\* communities.<sup>38 3940</sup>

Few mental health professionals are knowledgeable about gender and sexuality and it is not uncommon for them to diagnose LGBTI sexuality as a disorder to be “cured.”<sup>41</sup> As elsewhere around the world, the medicalization of homosexuality in India has resulted in such strategies as conversion therapy, drugs and shock therapy to cure sexual “deviation.”<sup>42</sup> However, growing numbers of health care providers are expressing a willingness to treat LGBTI patients responsibly. For example, a recent workshop on LBT health that was offered by the organization Sappho for Equality and held at a medical college drew over 150 medical students, 55 doctors, assistant professors and professors. In fact, activists say, they are having a hard time keeping up with requests for training and resources for medical professionals, including mental health providers.<sup>43</sup>

### Changing the Face of Health Care:

Sappho for Equality is training medical students, doctors, medical school professors to provide relevant, respectful and effective health care to LGBTI people.

In one training alone, they hosted 150 students and 55 doctors and professors.

## Culture, Religion and Public Opinion

Momentum from the 2009 Delhi High Court verdict thrust LGBTI issues into the national spotlight, and a sudden increase in the visibility of LGBTI issues in political, cultural and private spheres has inspired greater acceptance of LGBTI people and their rights.

Recently, for example, *hijras* have run for public office; the city of Raigarh elected the country’s first *hijra* mayor in January 2015 and there is one *hijra* member of a state assembly.<sup>44 45</sup> And promisingly, in a study of 272 LGBTI and non-LGBTI students at colleges and universities across the country, no heterosexual respondents said that they would hesitate to be friends with an LGBTI person, and 95% said that if a friend came out to them it would not affect their friendship.<sup>46 47</sup>

Politicians have also become increasingly public in their support for LGBTI rights. Following the 2013 re-criminalization of homosexuality, several prominent political figures

voiced their opposition. “We are proud that our culture has always been an inclusive and tolerant one,” said Sonia Gandhi in a significant shift from 2009, when the Congress Party—of which she is president—said little about the pro-LGBTI ruling. “I hope that parliament will address this issue and uphold the constitutional guarantee of life and liberty of all citizens of India,” Ms. Gandhi added.

The conservative Bharatiya Janata Party (BJP), however, which replaced the Congress Party in the 2014 national elections, has not taken a public position on the status of Section 377. Moreover, the BJP-led government has taken steps that have significantly affected civil society, including restrictions on the estimated 30,000 civil society organizations’ (CSOs) that receive foreign funding.<sup>48</sup> In 2010, the government determined that CSOs registered through the Foreign Contribution Regulation Act (FCRA) would need to renew their applications every five years. In 2015, the new administration utilized the FCRA review processes to target certain NGOs like Greenpeace for their political actions, and, in summer 2015, drafted new worrisome requirements. CSOs must now sign a declaration that any funds received from abroad will not be used for activities “detrimental to the national interest, likely to affect public interest, or likely to prejudicially affect the security, scientific or strategic interest of the state” and are required to submit cumbersome and extensive financial paperwork, often on short notice, and list all foreign contributions on public websites.<sup>49</sup> A draft of the revision mandated that groups submit personal Facebook and twitter handles of each of their officers—this was later changed to “optional.” The BJP administration has also had a troubling attitude towards freedom of expression, with implications for public discussion of LGBTI rights. A recent

## PROMISING PERCEPTIONS AT COLLEGES & UNIVERSITIES:

### NON-LGBTI STUDENTS:



Supreme Court ruling, however, found in favor of protecting online speech.<sup>50</sup>

Despite the secular nature of the state, religious leaders and organizations do seek to influence politics and public opinion. The Hindu right in India has been one of the main forces opposing LGBTI rights, and religious leaders from Hindu, Muslim and Christian traditions have publicly expressed disapproval of LGBTI people and contributed to legal appeals that led to the Supreme Court ruling to reinstate Section 377.<sup>51 52</sup>

There is also space emerging for some faith communities to express support. In 2014, the Bangalore Interfaith declaration calling on religious leaders to condemn homophobia was adopted at the close of an interfaith round table discussion on religion and sexuality at a public meeting on “Faiths Against Homophobia” organized by Aneka.<sup>53 54</sup>

# INDIA'S LGBTI MOVEMENT

## Movement Background

Beginning in the late 1980s, groups concerned with the threat of HIV and AIDS in India began documenting HIV cases and identifying “high-risk” groups, particularly men who have sex with men (MSM). In the 1990s, much of LGBTI-focused organizing centered upon the delivery of HIV treatment and prevention. During the same decade, women’s and human rights groups began to come together in support of LGBTI rights—inspired in part, according to LABIA, by the release and then ban of the lesbian-themed movie “Fire.”

During this period, LGBTI organizing still focused more heavily on sexuality, and less on gender identity. In-depth discussions of gender and the limiting nature of the male-female gender binary—including the marginalization and violence people faced because of it—did not start happening until the 2000s. Then, lesbian, bisexual and trans\* people started integrating themselves into more gay male-dominated efforts. Eventually, while not always working in concert, a web of organizing began to form that was more representative of LGBTI people’s diverse concerns.<sup>55</sup>

## LGBTI Legal Advocacy Today

In 2009, after the Delhi High Court’s decision to decriminalize same-sex sexual activity, LGBTI organizations witnessed an unprecedented political opening to discuss LGBTI issues. Then, in 2013, the Supreme Court’s reversal of the Delhi High Court’s decision was met with waves of protest nationally and globally.

Today, LGBTI groups are considering several legal, policy and mobilization strategies in response to the re-criminalization of same-sex sexual activity. These include a Curative petition, or appeal, to reconsider the Supreme Court’s judgment (which was filed in 2014 and is currently under review) and a request to the national government that states halt enforcement of the decision. States could also be approached to make their own legislative amendments to Section 377, though not all would be amenable—the Tamil Nadu government, for example, has already added new “sexual offenses” to their state Goondas law.<sup>56</sup> With a conservative government now in power at the national level, it is unlikely that Parliament will challenge Section 377’s prohibition of consensual, adult, same-sex sexual activity in this decade.

## Promoting Collaboration Across LGBTI and Women’s Rights

**Sappho**, which began as an informal emotional support group in 1999, is the first lesbian organization in Eastern India. In 2003, Sappho created “Sappho for Equality” to serve as the activist platform of the organization and enable LGBTI people and non-LGBTI allies alike to advocate for rights. Among many other programs, Sappho for Equality conducts original research and communications campaigns to raise public awareness and promote civic dialogue on issues of gender and sexuality. They host the Chetana Resource Centre on gender and sexuality for students, researchers and interested community members—the first of its kind in Eastern India. For the last eight years, they have co-organized the longest running LGBTI film festival in India.

Today, one of its key priorities is to foster more strategic partnership across activism for LGBTI and women’s rights. In 2013, Sappho interviewed LGBTI and women’s rights activists and identified opportunities for collaboration and coalition. The shared language of rights and common issues of violence and oppression could lead to fruitful coalitions, they discovered. But the first step towards building a more strategic, collaborative movement is to facilitate networking among queer and trans\* women’s rights groups, LGBTI rights groups, and the women’s movement—as well as other groups working on human rights. To this end, Sappho for Equality is working to support the formation of feminist coalitions and to help integrate LBT issues into the women’s movement.

## Legal Activism on Behalf of LGBTI Rights

Founded in 2000, **Alternative Law Forum (ALF)** is a collective of progressive lawyers working to further social and economic justice in India. With LGBTI lawyers and allies on its team, for many years ALF has integrated legal support into campaigns concerning sexual orientation and gender identity in coordination with LGBTI groups around the country—including the long fight to decriminalize consensual sex between same-sex adults as well as other laws that criminalize lesbian and trans\* communities.

ALF is a key leader in the national legal and mobilization strategy against the criminalization of LGBTI communities alongside **Voices Against 377, Lawyers Collective** and a range of local and regional LGBTI organizations. In December 2014, ALF organized a cutting-edge consultation at which experts examined the possibility of pursuing a long-term effort to advance a comprehensive anti-discrimination law—one that would include protections for sexual orientation and gender identity.

### Strengths and Challenges of India's LGBTI Movement

India has a relatively strong, diverse LGBTI movement that has achieved significant visibility over the last ten years. But the movement, a conglomeration of many different LGBTI organizations and collectives, is largely decentralized, isolated and under-resourced. In addition, tensions persist regarding gender, class, caste, political ideology and region.

A 2013 study by the advocacy group LesBiT and the Alternative Law Forum examined the ways in which the LGBTI community and its activism are affected by gender and different levels of access to resources and societal recognition. *Hijras* and other trans\* women, for example, have become more socially recognized, but trans\* men remain unseen. Funding for HIV/AIDS prevention among *hijras* and sex workers has also shaped much of the service provision landscape. Whereas *hijras* have some degree of cultural and political recognition, trans\* men, gender non-conforming people, lesbians and bisexual women, as well as the organizations that serve them, remain marginalized.<sup>57</sup> Apart from gender, less attention has been given to issues of caste, class, religion, ethnicity and disability within the LGBTI community, though each of these systems significantly impact the lived experience, needs and priorities of LGBTI people who face multiple discriminations.

To mitigate this challenge, some organizations are working to advance a national strategy to periodically call for national consultations to ensure buy-in and fair representation of a range of voices. Human Rights Watch has noted that, in addition to increasing the capacity and visibility of existing organizations, the winning strategy in many countries has been to form coalitions of organizations with other human rights projects. A report by the organization urges facilitation of communication and networking among LGBTI organizations and activists, in addition to working on legislative changes.<sup>58</sup> Surely, the path forward will require long-term, multi-pronged strategies that prioritize building organizational capacity, building activist leadership, networking, engaging a broad range of partners and building on existing infrastructure to secure justice and equality for all LGBTI people in India.

# CONCLUSION

A point echoed throughout this report, and by activists time and again, is that India is a changed country. “Before 2009, [homosexuality] was not dinner conversation,” Delhi-based activist Mohnish Kabir Malhotra told reporters.<sup>59</sup> But a code of silence was broken by the decriminalization of same-sex, adult, consensual sex.

Meanwhile, as this report notes, violence and police abuses against LGBTI people spiked following the December 2013 reversal of the High Court’s decriminalization decision. But the momentum created by the 2009 decision has not been

lost, and in fact it regained new strength when the Supreme Court decided in favor of trans\* people’s rights.

Indeed, India’s LGBTI movement faces significant internal and external challenges, including doubts about the potential for political change in the face of a more conservative national government and an uphill climb to secure legal protections. Employing diverse, creative strategies, while working in partnership and coalition, means advocates continue to demonstrate a tenacious ability to examine and overcome the obstacles they face. It is not hard to believe their clarion call: No Going Back.

## Recommendations for Advocates, Allies and Funders

The following recommendations are based on analysis presented in this report and reflect the needs and priorities identified by LGBTI movement actors in India.

1. Support the advancement of a coordinated, inclusive strategy to decriminalize same-sex sexual activity between consenting adults, including an ongoing public awareness and mobilization effort that continues to build public support for LGBTI people and their rights.
2. Support comprehensive and inclusive implementation of the 2014 Supreme Court judgment in favor of trans\* people’s rights, and leverage the judgment to engage state governments in the repeal of local laws that continue to criminalize trans\* people and violate their rights.
3. Invest in research and reporting on the specific conditions LGBTI people face, including violence, discrimination, barriers to housing, education and employment, health care and other pressing human rights concerns.
4. Increase access to non-discriminatory health services for LGBTI people and promote a more holistic, equitable approach to health care delivery that addresses the full range of LGBTI people’s health concerns and reflects a more inclusive understanding of gender and sexuality. Focus in particular on expanding access to quality mental health services and expanding access to gender-affirming health care for low-income trans\* communities.
5. Increase the availability of training for law enforcement, health care providers, educators and non-urban, non-English speaking populations on issues of gender and sexuality.
6. Develop and build the capacity of diverse LGBTI leadership and prioritize the concerns and activism of trans\* people, lesbians, Dalit LGBTI people and others who have been marginalized within LGBTI movements—amplify their voices and leadership as activists, thought leaders and cultural producers.
7. Support LGBTI organizations working with one another in coalition at local and national levels. Foster improved communication, networking and shared fact-finding and documentation among LGBTI organizations and activists to help build greater consensus, capacity and coordination.

8. Support coalition-building opportunities between LGBTI groups and other civil society organizations (CSOs), particularly women's rights groups, Dalit groups, sex worker rights, labor organizing groups and others whose priorities overwhelmingly intersect with those of the LGBTI movement.
9. Support increased dialogue between LGBTI and faith leaders and communities, including collaboration with progressive organizations such as Muslim feminist groups.
10. Invest in the development of LGBTI groups' organizational capacity and the creation, implementation and sharing of best practices, particularly through Information and Communication Technology (ICT) tools.



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