**INDEX TO DOCUMENTATION OF COUNTRY CONDITIONS REGARDING PERSECUTION OF LGBT INDIVIDUALS IN INDIA**

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used the threat of arrest to coerce victims not to report the incidents.” (p. 55)

- “Advocacy organizations, such as the Mission for Indian Gay and Lesbian Empowerment, documented workplace discrimination against LGBTI persons, including slurs and unjustified dismissals. In June NGO MINGLE released results of its survey of LGBTI employees from the information technology, banking, and manufacturing sectors on workplace climate, which showed that 40 percent of LGBTI persons faced some form of harassment.” (p. 55)

4. **United Kingdom: Upper Tribunal (Immigration and Asylum Chamber), MD (same-sex oriented males: risk) India CG v. Secretary for the Home Department (Feb. 12, 2014), available at** [https://www.refworld.org/cases,GBR_UTIAC,52fe3d744.html](https://www.refworld.org/cases,GBR_UTIAC,52fe3d744.html)

- “The violence faced by LGBT people who fall outside the network of support groups and NGOs goes largely unrecorded. People who join such networks live under a constant threat of violence, especially from the police.” (p. 9)

- “Blackmail is a common experience for LGBT persons across India, irrespective of class; cases of blackmail having been reported in the social media almost every month, if not every week, in recent years. The preponderance of cases relate to entrapment by police personnel; the most recent example being the assault and blackmail of a gay man in Mumbai by two plain clothed police officers reported in March 2013 . . .” (pp. 9-10)

- “The culture of ridicule and shaming of LGBT persons in India is pervasive. “Working class Queer males tend to face violence at the hands of … masculine petty criminals who often work in gangs.” There is no recourse to justice in such circumstances because approaching the police might result in further violence, although the common experience of those who approach the police is to be ‘laughed at, sexually teased and dismissed off-hand, with no action taken and no report filed.’” (p. 10)

- “There is discrimination against LGBT persons in the workplace, as evidenced by Dr Siras’ case and several other cases. Information about the latter cannot be divulged because it is sensitive and could lead to further discrimination. Obtaining employment is particularly difficult for working class effeminate males.” (p. 10)

- “There are several well-documented cases of discrimination against LGBT persons in the provision of healthcare. ‘…[m]en who have sex with men, and other stigmatised communities such as sex workers and injecting drug users are either refused treatment, given differential treatment, or made to wait until all other patients have been treated.’ There is prevalence for the use of aversion therapy as a treatment for homosexuality amongst mental health practitioners in India; including electro-shock therapy and the use of psychotropic drugs in an attempt to ‘cure’ individuals . . .” (p. 10)

- “Exclusion of LGBT persons from the family, as well as the difficulty in getting employment, leads to further vulnerability, abuse and violence.” (p. 11)

**INTERGOVERNMENTAL SOURCES**


- “In India, there is paucity of research on bullying faced by students based on their sexual orientation and gender identity (SOGI). Research evidence on bullying is crucial to make
schools safe and inclusive for all students.” (p. 1)

- “Forms of bullying varied according to grade levels – primary, middle/high school or higher secondary. Physical harassment was reported high among middle/high school (60%) and higher secondary (50%) students while sexual harassment was reported high when the participants were primary school students (43%).” (p. 1)

- “Only 18% said that they had reported incidents of bullying to school authorities to which authorities responded as follows: 29% were asked to change their perceived feminine mannerism/behaviour to avoid being bullied and 49% were asked to ignore the incidents." (p. 1)

- “About one-third (33.2%) reported that bullying played a key role in discontinuing school. More than three-fifths (63%) reported lowered academic performance while 53% reported having skipped classes.” (p. 1)

- “Almost all survey participants reported having experienced harassment in school because of their gender expression or perceived sexual orientation.” (p. 4)

- “‘We cannot go to the bathroom during recess. We have to either go to bathroom before everyone or after everyone. Since I used to walk curling my hips a gang of boys [in higher secondary school] forcefully took me to the bathroom and forced me to have sex’. (FG, Tirunelveli)” (p. 6)

- “‘I avoided using toilets in my school because of fear of being tortured by other boys.’ (FG, a trans woman, Vellore)” (p. 6)

- “Participants reported that lack of awareness about sexuality or gender issues among teachers and school management staff was a major barrier in effectively addressing SOGI-related bullying in schools. Some school teachers did not perceive gender-variant students as victims of bullying, but were abusive towards them.” (pp. 7-8)


- “In 2009, F, a transgender man and activist, was arrested by the police when he was assisting transgender sex workers who were being harassed. ‘[The police] took me to the police station and beat me with a stick. They said ‘people like you are always supporting sex workers’. I spent that night in the [police] station. The police took my phone. My lawyers couldn’t get through and the police did not allow me to inform my family about the arrest. I wasn’t given any food or water’, he told the ICJ. The next day, F was charged with committing “public nuisance” under section 290 of the Indian Penal Code [IPC]. Anyone convicted under section 290 may be punished with a maximum fine of INR 200 [approximately US$ 7]. F’s challenge to this in court led to the charges in his case being dismissed later that month…. F then filed a complaint against the police for the ill-treatment he had faced in the police station the night of his arrest. The case was repeatedly listed in court for three years, and F attended court every time it was listed. ‘In court, people stared at me, even the judge. But I went to the court even though people were laughing. I went because I wanted my human rights”, he told the ICJ. However, the police never appeared in court. Finally the case was dismissed, but he is not sure why.” (p. 7)

- “In contemporary India, the enforcement of the law by the police and the country’s justice system fails queer people and is in sharp contrast with India’s obligations under
international human rights law. As F’s story demonstrates, far from guaranteeing justice to him, the legal and justice system colluded to violate a range of F’s human rights, including the right to non-discrimination, equality before the law, and equal protection before the law; his right to be free from torture and other ill-treatment; and his right to access a remedy.” (p. 8)

- “While the context and experiences of queer people in India today may vary considerably across different socio-economic lines, it is safe to generalize that they face stigma, harassment and violence in their everyday lives, in private and public spaces, motivated in whole or in part by ignorance of, prejudice and hatred against their real or imputed sexual orientation and gender identity.” (p. 11)

- “This context of widespread human rights abuses is significant to how queer persons experience the justice system. Starting from childhood, for the vast majority of queer people stigma and prejudice across the board increase the risk that they would fall victims to violence and abuse and, therefore, their need for protection.” (p. 11)

- “The fact that institutions like the family, schools and hospitals often perpetuate discrimination and are frequently the sites of abuse increases the risk that queer people will be subjected to human rights abuses.” (p. 11)

- “This discrimination often continues into adulthood, and is carried forward in other avenues, ultimately exposing queer persons to an even greater risk of becoming victims of violence and abuse. In order to secure their livelihoods, queer people are exposed to an increased risk of human rights abuses based on sexual orientation and gender identity. The testimony of a group of launda dancers - men and transgender women who perform at weddings in certain Indian states – is an illustration of the risks faced. They told the ICJ of incidents of violence against the young dancers in the villages where they perform: ‘At every wedding I have been tortured. People rape [me ] after the wedding [was] over - once I was running away from a group of men and this half cut sugarcane went into my foot and I have forever been limping since then. Once a launda dancer was picked up by 25 people and taken to a field. All of them raped her and stubbed 25 cigarettes on her body. Then the last one stabbed her with a corn cob.’” (p. 12)

- “[L]aw enforcement officials throughout India use other laws, such as those relating to beggary and public nuisance, to harass or detain people in connection with their real or purported sexual orientation and / or gender identity. These laws either criminalize livelihoods on which some queer persons depend (e.g. begging or sex work), or are vaguely worded (e.g. public nuisance), making it easier for law enforcement officials to act on their prejudices and use these criminal provisions to harass or otherwise abuse people on the basis of their real or imputed sexual orientation and/or gender identity.” (p. 17)

- “For many people, the police represent the first point of contact with the criminal justice system. 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. In light of this, the ICJ is concerned that the police’s negative attitude towards queer people in India puts them at an increased risk of violence from non-State actors as well.” (p. 37)

- “Reports in the media have also documented the reality of police violence and abuse against queer people in India. Despite these acknowledgements, incidents of police
violence and abuse against queer persons continue. Several transgender sex workers shared harrowing stories of police violence and abuse with ICJ, some lasting for many years. For example, one transgender woman who engaged in sex work told the ICJ about an incident where she reported to the police that she was being chased by a gang of seven men and feared being assaulted by them. A police officer offered to provide protection to her from her attackers if she agreed to have sex with with him.” (p. 39)

- “In cases involving lesbian couples wishing to live together, families often attempt to end the relationship by holding their relative captive to prevent her from leaving with her partner. In ordinary cases, such captivity would constitute criminal behaviour, potentially involving the commission of serious criminal offences, since it involves the unlawful confinement of someone against their will. However, when attempts are made to file cases with the police against family members responsible for holding relatives against their will and to demand that they be freed, the police have often refused to take any action.” (p. 40)

- “Furthermore, approaching the police to file a complaint can also put the complainants at some personal risk, including of arrest and criminal charges, because of police stereotypes regarding queer persons. For example, in July 2016, a group of 11 transgender persons visited a police station in Kochi to file a complaint against a group of people who had assaulted them. Instead of recording this complaint, the police arrested them, charging them with offences under sections 394130 and 395131 of the Indian Penal Code.” (p. 41)

- “The fact that queer people often fear being arbitrarily arrested and detained, charged and prosecuted or otherwise harassed, abused and persecuted by the police has negative ramifications on the ability of the police themselves to effectively investigate crimes, since the very people who probably have the most valuable information about the said crimes are unlikely to cooperate in the investigation. Kaushik, a lawyer who handles several cases involving queer people, described a case where a transgender person was murdered, but no one from the transgender community was willing to assist the police in their investigation because they were afraid of being implicated in the case.” (p. 42)

- “Demands for justice and accountability for police abuses have led to direct forms of reprisal by the police against those denouncing their abuses. On 9 November 2016, Tara, a 28-year-old transgender woman, was found severely burned outside a police station in Chennai, in the Indian State of Tamil Nadu. She succumbed to her injuries and died in hospital very soon after. Transgender groups in the city demonstrated outside the police station, demanding accountability for her death, and asserting that police harassment and abuse had driven her to kill herself. In response, the police filed charges, including for ‘rioting’, against the protestors.” (p. 42)


- “The mere perception of different sexual orientation is sufficient to put people at risk of violence and is a contributory factor to the inability of the lesbian, gay, bisexual, transgender and intersex community to report cases of violence.” (p. 6)

NONGOVERNMENTAL SOURCES

8. Human Rights Watch, Section 377 is History but Young LGBT Indians Need Concrete Policies to Protect them from Bullying (June 24, 2019), available at https://www.hrw.org/news/2019/06/24/section-377-history-young-lgbt-indians-need-concrete-policies-protect-them-bullying
Educational and training opportunities are often denied to LGBTQ persons due to harassment, bullying, and violence,’ [the International Commission of Jurists] found, citing gender-specific school uniforms, lack of access to toilets, and difficulties in obtaining accurate identity documents as barriers for LGBT students. ‘Accounts of bullying in schools were common.’ The report details cases of teachers beating and berating male students for acting ‘too effeminately,’ and forcing transgender students to sit separately from their peers.” (p. 2)


“...Shemba dropped out of school altogether and abandoned her dream of becoming a lawyer, with begging or sex work now a more likely future.” (pp. 1-2)

“In a survey of almost 400 LGBT+ youth in Tamil Nadu by the United Nations’ cultural agency, UNESCO, more than half skipped classes to avoid bullying, while a third dropped out of school altogether. Abuse included threats of rape, groping, hitting and kicking, being locked in a room, having their belongings stolen, and having nasty rumors spread about them.” (p. 2)

“Despite a landmark 2018 court ruling that decriminalized gay sex, India’s LGBT+ community are often rejected by their families and denied jobs and driven into sex work or begging.” (p. 3)

“Shemba did not receive any support from school authorities, who UNESCO found often advise victims simply to ignore bullies or to change their mannerisms to avoid being targeted.” (p. 5)


“LGBT activists say that despite the Supreme Court decriminalizing homosexuality in 2018, members of the community still face discrimination. Speaking to the New Indian Express, C Moulee, founder of Queer Chennai Chronicles, said, Every queer person faces harassment. Section 377 may have been struck down, but it remains a judgment. It has not changed people's mentality or ou[r] everyday lives. Not many organisations have anti-discrimination policies to prevent LGBT+ individuals safe spaces, C Moulee said.” (p. 4)


“A 19-year-old girl was beaten up and tied to a tree by residents of her village for being in a lesbian relationship, in Jagatsinghpur district on Friday.” (p. 1)


“Eight years after the first Indian lesbian couple got legally married in the face of death
threats, LGBTQ youth continue to flee homes to escape secret honour-killing plans. South Asia’s honour culture is the prime culprit behind such hounding of India’s lesbian, gay, bisexual, transgender or queer (LGBTQ) community, according to new research published in the peer-reviewed, academic Journal of Interpersonal Violence. More than citizens of most other countries, Indians were likely to think that being a member of this group brought dishonour to their families. Many even approve of anti-gay abuse.” (pp. 1).


   - “Post hoc Tukey tests revealed that participants in Pakistan were more endorsing in their beliefs that the victim had damaged family honor than any other group. This was followed by participants in India, British Asian participants in England, then participants in Malaysia and Iran. Finally, British White participants were significantly less likely to endorse honor-based values than any other group. Approval of antigay ‘honor’ abuse revealed a slightly different pattern of results. Participants in Pakistan and India were the most approving of this ‘honor’ abuse, followed by the judgments of British Asians in England and participants in Iran.” (p. 12)


   - “Off stage, the pair [two members of the LGBT community in Patna] struggle with finding jobs or apartments to rent, and face regular threats of sexual and other violence, including from police. ‘They used to harass us [before the lifting of the gay ban] and nothing has changed,’ Roshni says. ‘If we resist, they can arrest us and do whatever they want. We are living the way we were living before the ban.’” (pp. 3-4)


   - “India has long struggled with rape. The country has recently been ranked the world’s most dangerous place for women [2], in part because of the high risk of sexual violence, according to a poll of international experts. While violence against women in India has gained national attention – millions protested against sexual assault after a student was gang raped in Delhi in 2012 – many in the country’s transgender community say they feel like crimes against them stay largely hidden in the shadows.” (p. 2)

   - “[S]exual abuse against transgender men and women remains largely ignored. The Transgender Persons [Protection of Rights] Bill, 2016, for example, treats sexual violence as a petty offence – maximum punishment being two years.” (p. 3)

   - “‘Sexual violence at the hands of state agencies is rampant against the transgender community all over India,’ Mogli says. ‘A few years ago, I encountered a case where a soldier raped a transgender woman, and tried to throw her off a moving vehicle. When she started shouting for help, the officer stopped the car, broke a branch off a tree, and hit her on the face with it.’ Mogli adds that the refusal by officials to register sexual assault complaints often forces transgender victims to suffer in silence.” (p. 9)

   - “‘I’ve helped a transgender woman, who was not only raped, but also had acid poured on
her face. When she approached the police, the cops registered a complaint against the victim instead – for indulging in anal sex, which is a crime in India. It took months of relentless campaigning to get her complaint registered.” (p. 9)

- Khan says that transgender people in India are often mocked and bullied in schools and colleges, and the discrimination extends to their professional lives, where they are largely deprived of employment opportunities. The rampant sexual violence and relaxed legislation further their tragedies.” (p. 11)


- “In Bilaspur, a sun-cracked city in central India, Rajesh Yadav, slim with sharp cheek bones, said she had been gang-raped four times in less than one year, beaten with a brick and nearly thrown out of a moving vehicle because of her sexuality. ‘I would beg them to leave me every time, but they would beat me and use violence against me and then rape me,’ said Ms. Yadav, 25, who identifies as a gay cross-dresser and prefers female pronouns. A., a young gay man who asked to be identified only by his first initial, shared a similar account. When A., 22, made plans to meet a man from an instant messaging application in eastern India, he was greeted instead by two different men, one of them in a police uniform, who drugged and raped him, he said. Afterward, one of the men took a selfie with A. ‘I was afraid he would blackmail me,’ he said. Neither of them considered approaching the police to report the crimes, fearing the consequences of doing so.” (pp. 1-2)


- “A recent book looks at the suffering of Kashmir’s transgender community by studying the lives of 24 ‘hijras’, with the author contending that very few people are interested in knowing about them, resulting in the sordid conditions in which they live.” (p. 1)

- “‘Our society is treating transgenders as transparent glass, denying them their existence, personhood, and agency. Systematically, we have marginalised and violated them in the most intimate way and we, as conscious beings, are accountable for their miserable state,’ Bund told IANS.” (p. 2)

- “Hijras, known in local parlance as ‘laanch’, comprise the sexual minority that falls in between the binary of male-female. They are born males, but as they grow up they acquire the physical as well as psychological tints of females, which give the impression of a female trapped in a male body. A conservative society further alienates their condition — the author notes that the transgender community forms a minuscule minority in the state and lives a life of discrimination, marginalisation and violence. ‘The problems in availing livelihood opportunities due to various socio-cultural frailties and harassment at the workplace are forcing them to live a sub-standard life,’ the author notes.” (p. 2)

- “‘They are considered abnormal and eventually become outsiders. Thus, access to social, economic, cultural, legal and political services is extremely restricted for anyone with this identity in Kashmir. Society assumes that they are only meant for matchmaking or singing and dancing. Due to bullying and a hostile environment, they are forced to leave their studies, which make them ineligible for white-collar jobs,’ Bund writes.” (p. 3)
18. **Times of India, Transgenders beaten up by police in city, Dec. 29, 2017, available at**

- Two transgenders were severely beaten up by the police, here in the wee hours on Thursday. The injured transgenders were admitted to Kozhikode Beach General Hospital for treatment. According to the injured persons, ‘they were beaten up mercilessly by the police persons without any provocation.’ (p. 1)
- The injured persons also complained that the police used abusive language against them while beating them with a lathi.” (p. 1)

19. **Times of India, Furore over attack on transgender daily wager in Imphal, Aug. 9, 2017, available at**

- “A daily wager from the transgender community was assaulted by locals in the Sagolband area of Imphal city and the video of the incident was posted on the social media, triggering anger among the community.” (p. 1)
- “I was beaten up by locals in the Sagolband area on Saturday night on false charges of theft. Actually, I was followed by two boys who later fled,’ an emotional Umakanta aka Chan Rajkumari (24) told reporters at a media conference here on Monday. Chan added, ‘The locals used abusive language and wrongly charged me with theft. A man also hit me with a stick. Again at a local club, I was beaten up despite pleading my innocence,’.” (p. 1)


- “Three persons belonging to the transgender community were injured when they were allegedly beaten up by the police near the KSRTC bus stand here in the wee hours of today. The injured persons have been identified as Deepthi, Ragaranjini and Aleena. According to Sheethal Shyam, who is an LGBT activist said the police attack against the three persons was totally unprovoked and much more disturbing aspect was that the district hospital authorities had initially refused to admit the injured persons in the hospital. The hospital staff had reportedly denied treatment alleging that they were trying to get admitted to strengthen their case against the police.” (p. 1)

Dated: [DATE] Respectfully submitted,
[CITY, STATE]

[FIRM]
Pro Bono Counsel for Respondent

By: ______________________
Tab 1
EXECUTIVE SUMMARY

India is a multiparty, federal, parliamentary democracy with a bicameral legislature. The president, elected by an electoral college composed of the state assemblies and parliament, is the head of state, and the prime minister is the head of government. Under the constitution the 29 states and seven union territories have a high degree of autonomy and have primary responsibility for law and order. Voters elected President Ram Nath Kovind in 2017 to a five-year term, and Narendra Modi became prime minister following the victory of the National Democratic Alliance coalition led by the Bharatiya Janata Party (BJP) in the 2014 general elections. Observers considered these elections, which included more than 551 million participants, free and fair despite isolated instances of violence.

Civilian authorities maintained effective control over the security forces.

Human rights issues included reports of arbitrary killings; forced disappearance; torture; rape in police custody; arbitrary arrest and detention; harsh and life-threatening prison conditions; and reports of political prisoners in certain states. Instances of censorship, the use of libel laws to prosecute social media speech, and site blocking continued. The government imposed restrictions on foreign funding of some nongovernmental organizations (NGOs), including those with views the government stated were not in the “national interest,” thereby curtailing the work of these NGOs. Widespread corruption; lack of criminal investigations or accountability for cases related to rape, domestic violence, dowry-related deaths, honor killings remained major issues. Violence and discrimination based on religious affiliation, sexual orientation, gender identity, and caste or tribe, including indigenous persons, also occurred.

A lack of accountability for misconduct persisted at all levels of government, contributing to widespread impunity. Investigations and prosecutions of individual cases took place, but lax enforcement, a shortage of trained police officers, and an overburdened and under-resourced court system contributed to a small number of convictions.

Separatist insurgents and terrorists in the state of Jammu and Kashmir, the northeast, and Maoist-affected areas committed serious abuses, including killings and torture of armed forces personnel, police, government officials, and of civilians, and recruited and used child soldiers.
Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were reports that the government and its agents committed arbitrary or unlawful killings, including extrajudicial killings of suspected criminals and insurgents.

According to Ministry of Home Affairs 2017-18 data, the Investigation Division of the National Human Rights Commission (NHRC) reported 59 nationwide “encounter deaths,” a term used to describe any encounter between the security or police forces and alleged criminals or insurgents that resulted in a death. This number was less than the prior reporting period. The South Asian Terrorism Portal, run by the nonprofit Institute for Conflict Management, reported the deaths of 152 civilians, 142 security force members, and 377 terrorists or insurgents throughout the country as of September 23.

Reports of custodial death cases, in which prisoners or detainees were killed or died in police custody, continued. On March 14, Minister of State for Home Affairs Hansraj Gangaram Ahir told the upper house of parliament the NHRC registered 1,674 cases of custodial deaths between April 2017 and February. Approximately 1,530 were deaths in judicial custody, while 144 deaths occurred under police custody. According to the Asian Center for Human Rights’ Torture Update India report released on June 26, more than five custodial deaths per day occurred on average between April 2017 and February 28. This was an increase from 2001 to 2010, when an average of about four custodial deaths were recorded.

On July 22, authorities suspended a senior police officer in Rajasthan after cattle trader Rakbar Khan died in police custody. Villagers reportedly assaulted Khan on suspicion of cow smuggling before authorities picked him up. Police took four hours to transport Khan to a local hospital 2.5 miles away, reportedly stopping for tea along the way, according to media sources. Doctors declared Khan dead upon arrival. State authorities arrested three individuals in connection with the assault and opened a judicial inquiry into the incident; however, authorities filed no criminal charges as of August 20.

Killings by government and nongovernment forces, including organized insurgents and terrorists, were reported in the state of Jammu and Kashmir, northeastern
states, and Maoist-affected areas of the country (see section 1.g.). In the state of Jammu and Kashmir, the Institute for Conflict Management recorded 213 fatalities from terrorist violence through June, compared with 317 for all of 2017.

On June 14, *Rising Kashmir* editor in chief Shujaat Bukhari and two police bodyguards were shot and killed by unidentified gunmen in Srinagar as they departed the office. A police investigation alleged militants targeted Bukhari in retaliation for his support of a government-backed peace effort.

On June 25, a judicial commission investigative report presented to the Madhya Pradesh state assembly justified the use of force in the killings of eight suspected members of the outlawed Students’ Islamic Movement of India after they escaped from a high-security prison in 2016. Police and prison authorities shot and killed the individuals after they allegedly killed a guard and escaped from Bhopal’s high-security prison.

As of August the Central Bureau of Investigation (CBI) filed charges against 20 Manipur Police personnel in response to a 2017 directive by the Supreme Court that the CBI should examine 87 of 1,528 alleged killings by police, army, and paramilitary forces between 1979 and 2012 in Manipur.

Under the Armed Forces Special Powers Act (AFSPA), a central government designation of a state or union territory as a “disturbed area” authorizes security forces in the state to use deadly force to “maintain law and order” and arrest any person “against whom reasonable suspicion exists” without informing the detainee of the grounds for arrest. The law also provides security forces immunity from civilian prosecution for acts committed in regions under the AFSPA, although in 2016 the Supreme Court concluded that every death caused by the armed forces in a disturbed area, whether of a common person or a terrorist, should be thoroughly investigated, adding that the law must be equally applied.

The AFSPA remained in effect in Nagaland, Manipur, Assam, and parts of Mizoram, and a version of the law was in effect in the state of Jammu and Kashmir. There was considerable public support for repeal of the AFSPA, particularly in areas that experienced a significant decrease in insurgent attacks. Human rights organizations also continued to call for the repeal of the law, citing numerous alleged human rights violations.

In July the UN special rapporteur on extrajudicial, summary, or arbitrary executions, and the special rapporteur on the situation of human rights defenders
urged authorities to complete investigations into the alleged encounter killings after CBI officials failed to meet a third deadline on July 2 set by the Supreme Court for inquiries into the cases. The experts stated the government has an obligation to ensure prompt, effective, and thorough investigations into all allegations of potentially unlawful killings.

The NGO Commonwealth Human Rights Initiative noted in its 2016 report that, of 186 complaints of human rights violations reported against the armed forces in states under the AFSPA between 2012 and 2016, 49.5 percent were from the state of Jammu and Kashmir. The data supplied by the Ministry of Home Affairs under the Right to Information Act did not indicate, however, whether complaints were deemed to have merit.

The Office of the UN High Commissioner for Human Rights (OHCHR) published the Report on the Situation of Human Rights in Kashmir, documenting alleged violations committed by security forces from June 2016 to April 2018. The report estimated civilian deaths by security forces ranged from 130 to 145, and between 16 to 20 killings by armed groups. The government of Jammu and Kashmir reported 9,042 injured protesters and 51 persons killed between July 2016 and February 2017. The report called for the repeal of the AFSPA in all states and territories, and an international probe into the human rights situation in the Indian state.

Nongovernmental forces, including organized insurgents and terrorists, committed numerous killings and bombings in the state of Jammu and Kashmir, the northeastern states, and Maoist-affected areas (see section 1.g.). Maoists in Jharkhand and Bihar continued to attack security forces and key infrastructure facilities such as roads, railways, and communication towers.

b. Disappearance

There were allegations police failed to file required arrest reports for detained persons, resulting in hundreds of unresolved disappearances. Police and government officials denied these claims. The central government reported state government screening committees informed families about the status of detainees. There were reports, however, that prison guards sometimes required bribes from families to confirm the detention of their relatives.

Disappearances attributed to government forces, paramilitary forces, and insurgents occurred in areas of conflict during the year (see section 1.g.).
In February the UN Working Group on Enforced or Involuntary Disappearances informed the government about 16 newly reported cases of enforced disappearances that allegedly occurred between 1990 and 1999.

There were allegations of enforced disappearance by the Jammu and Kashmir police. Although authorities denied these charges and claimed no enforced disappearance cases had occurred since 2015, the Association of Parents of Disappeared Persons submitted inquiries for 639 cases of alleged disappearance in the state of Jammu and Kashmir. In July the Jammu and Kashmir State Human Rights Commission ordered its police wing to investigate these cases.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture, but there were reports that government officials, specifically police, employed such practices.

Police beatings of prisoners resulted in custodial deaths (see section 1.a.).

The law does not permit authorities to admit coerced confessions into evidence, but NGOs and citizens alleged authorities used torture to coerce confessions. In some instances, authorities submitted these confessions as evidence in capital cases. Authorities allegedly also used torture as a means to extort money or as summary punishment. According to human rights experts, the government continued to try individuals arrested and charged under the repealed Prevention of Terrorism Act and Terrorist and Disruptive Activities Act. Under the repealed laws, authorities treated a confession made to a police officer as admissible evidence in court.

On July 13, a 45-year-old Dalit man, B. Murthy, was found hanging in a police station in Mandya, Karnataka. According to several Dalit organizations, police suspected Murthy of being a motorcycle thief and tortured him in police custody. Four police officers were suspended for dereliction of duty. The Criminal Investigation Department took over the investigation of this death but at year’s end had not produced its findings.

On August 2, activist Talib Hussain was allegedly tortured in the custody of Samba police in the state of Jammu and Kashmir and suffered a fractured skull, according to the NGO Commonwealth Human Rights Initiative. Hussain was a witness in the gang rape and murder case of eight-year-old Asifa Bano (see section 6).
On March 9, the Odisha Human Rights Commission directed the state government to pay 300,000 rupees ($4,225) in compensation to the family of Abhay Singh, an antiques dealer, who died while in police custody in June 2017.

There were continued reports that police raped female and male detainees. The government authorized the NHRC to investigate rape cases involving police officers. By law the NHRC may also request information about cases involving the army and paramilitary forces, but it has no mandate to investigate those cases. NGOs claimed the NHRC underestimated the number of rapes committed in police custody. Some rape victims were unwilling to report crimes due to social stigma and the possibility of retribution, compounded by a perception of a lack of oversight and accountability, especially if the perpetrator was a police officer or other official. There were reports police officials refused to register rape cases.

**Prison and Detention Center Conditions**

Prison conditions were frequently life threatening, most notably due to inadequate sanitary conditions, lack of medical care, and extreme overcrowding.

**Physical Conditions:** Prisons were often severely overcrowded; and food, medical care, sanitation, and environmental conditions frequently were inadequate. Potable water was not universally available. Prisons and detention centers remained underfunded, understaffed, and lacked sufficient infrastructure. Prisoners were physically mistreated.

According to the National Crimes Records Bureau’s (NCRB) *Prison Statistics India 2015* report, there were 1,401 prisons in the country with an authorized capacity of 366,781 persons. The actual incarcerated population was 419,623. Persons awaiting trial accounted for more than two-thirds of the prison population. The law requires detention of juveniles in rehabilitative facilities, although at times authorities detained them in adult prisons, especially in rural areas. Authorities often detained pretrial detainees along with convicted prisoners. In Uttar Pradesh occupancy at most prisons was two, and sometimes three, times the permitted capacity, according to an adviser appointed by the Supreme Court.

In 2017 Minister of State for Home Affairs Hansraj Gangaram Ahir informed the lower house of parliament there were 4,391 female jail staff for a population of 17,834 female prisoners as of 2015. On May 21, the NHRC issued notices to all states and union territories seeking statistical reports on the number of children
who live with their mothers in jails. The commission issued notices based on a media report that 46 children, including 25 boys and 21 girls, were in jails with their mothers.

On February 5, the Karnataka state government filed an affidavit before the Karnataka High Court stating that 48 unnatural deaths occurred in the state’s prisons between January 2012 and October 2017; of these, compensation was paid in one case.

On June 20, prosecutors filed murder, conspiracy, criminal intimidation, and destruction of evidence charges against the jail warden and five other prison officials for the 2017 death of Manjula Shetye, a female convict in Mumbai. The officials were arrested in 2017 for allegedly assaulting Shetye following her complaint about inadequate food. A government doctor who signed the death certificate was suspended.

**Administration:** Authorities permitted visitors limited access to prisoners, although some family members claimed authorities denied access to relatives, particularly in conflict areas, including the state of Jammu and Kashmir.

**Independent Monitoring:** The NHRC received and investigated prisoner complaints of human rights violations throughout the year, but civil society representatives believed few prisoners filed complaints due to fear of retribution from prison guards or officials. In March media reported the NHRC completed its investigative report that confirmed torture allegations by 21 inmates on trial in a jail in Bhopal. The report allegedly recommended appropriate legal action be taken against the jail authorities and the doctor involved in the torture and its cover up.

Authorities permitted prisoners to register complaints with state and national human rights commissions, but the authority of the commissions extended only to recommending that authorities redress grievances. Government officials reportedly often failed to comply with a Supreme Court order instructing the central government and local authorities to conduct regular checks on police stations to monitor custodial violence.

In many states the NHRC made unannounced visits to state prisons, but NHRC jurisdiction does not extend to military detention centers. An NHRC special rapporteur visited state prisons to verify that authorities provided medical care to
all inmates. The rapporteur visited prisons on a regular basis throughout the year but did not release a report to the public or the press.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, but both occurred during the year. Police also used special security laws to postpone judicial reviews of arrests. Pretrial detention was arbitrary and lengthy, sometimes exceeding the duration of the sentence given to those convicted.

According to human rights NGOs, some police used torture, mistreatment, and arbitrary detention to obtain forced or false confessions. In some cases police reportedly held suspects without registering their arrests and denied detainees sufficient food and water.

Role of the Police and Security Apparatus

The 29 states and seven union territories have primary responsibility for maintaining law and order, with policy oversight from the central government. Police are under state jurisdiction. The Ministry of Home Affairs controls most paramilitary forces, the internal intelligence bureaus, and national law enforcement agencies, and provides training for senior officials from state police forces. According to Human Rights Watch (HRW), cases of arbitrary arrest, torture, and forced confessions by security forces remained common. Police continued to be overworked, underpaid, and subject to political pressure, in some cases contributing to corruption. The HRW 2018 India country report found that lack of accountability for past abuses committed by security forces persisted even as there were new allegations of torture and extrajudicial killings, including in the states of Uttar Pradesh, Haryana, Chhattisgarh, and Jammu and Kashmir.

The effectiveness of law enforcement and security forces varied widely throughout the country. According to the law, courts may not hear a case against a police officer unless the central or state government first authorizes prosecution. Nonetheless, NGOs reported that, in many instances, police refused to register victims’ complaints, termed “first information reports,” on crimes reported against officers, effectively preventing victims from pursuing justice. Additionally, NGOs reported that victims were sometimes reluctant to report crimes committed by police due to fear of retribution. There were cases of officers at all levels acting with impunity, but there were also cases of security officials being held accountable for illegal actions. Military courts investigated cases of abuse by the
armed forces and paramilitary forces. Authorities tried cases against law enforcement officers in public courts but occasionally did not adhere to due process. Authorities sometimes transferred officers after convicting them of a crime.

The NHRC recommended the Criminal Investigations Department of the state police investigate all deaths that take place during police pursuits, arrests, or escape attempts. Many states did not follow this nonbinding recommendation and continued to conduct internal reviews at the discretion of senior officers.

While NHRC guidelines call for state governments to report all cases of deaths from police actions to the NHRC within 48 hours, state governments did not consistently adhere to those guidelines. The NHRC also called for state governments to provide monetary compensation to families of victims, but the state governments did not consistently adhere to this practice. Authorities did not require the armed forces to report custodial deaths to the NHRC.

**Arrest Procedures and Treatment of Detainees**

In cases other than those involving security risks, terrorism, insurgency, or cases arising in the state of Jammu and Kashmir, police may detain an individual without charge for up to 30 days, although an arrested person must be brought before a judge within 24 hours of arrest. Lengthy arbitrary detention remained a significant problem due to overburdened and under-resourced court systems and a lack of legal safeguards.

Arraignment of detainees must occur within 24 hours unless authorities hold the suspect under a preventive detention law. The law allows police to summon individuals for questioning, but it does not grant police prearrest investigative detention authority. There were incidents in which authorities allegedly detained suspects beyond legal limits. By law authorities must allow family members access to detainees, but this was not always observed.

Other than in the state of Jammu and Kashmir, the National Security Act allows police to detain persons considered security risks without charge or trial for as long as one year. The law allows family members and lawyers to visit national security detainees and requires authorities to inform a detainee of the grounds for detention within five days, or 10 to 15 days in exceptional circumstances. Nonetheless, rights activists noted provisions allowing detainees to meet family or lawyers were
not followed in practice, especially in the states of Orissa, Manipur, Andhra Pradesh, and Maharashtra.

On September 14, Chandrashekhar Azad, leader of the pro-Dalit organization Bhim Army, was released from jail. Azad was arrested in June 2017, following clashes between Dalits and security forces that left one dead and many injured in the Saharanpur district of Uttar Pradesh. In November 2017 Azad was charged under the National Security Act after the Allahabad High Court granted him bail, and he was held for 10 months under the act before being released.

The Public Safety Act (PSA), which applies only in the state of Jammu and Kashmir, permits state authorities to detain persons without charge or judicial review for up to two years without visitation from family members. Authorities in the state of Jammu and Kashmir allowed detainees access to a lawyer during interrogation, but police allegedly and routinely employed arbitrary detention and denied detainees access to lawyers and medical attention.

Authorities must promptly inform persons detained on criminal charges of the charges against them and of their right to legal counsel. By law a magistrate may authorize the detention of an accused person for a period of no more than 90 days prior to filing charges. Under standard criminal procedure, authorities must release the accused on bail after 90 days if charges are not filed. NCRB data from 2015 showed most individuals awaiting trial spent more than three months in jail before they could secure bail, and nearly 65 percent spent between three months and five years before being released on bail.

The law also permits authorities to hold a detainee in judicial custody without charge for up to 180 days (including the 30 days in police custody). The Unlawful Activities Prevention Act (UAPA), which gives authorities the ability to detain persons without charge in cases related to insurgency or terrorism for up to 180 days, makes no bail provisions for foreign nationals and allows courts to deny bail in the case of detained citizens of the country. It presumes the accused to be guilty if the prosecution can produce evidence of the possession of arms or explosives, or the presence of fingerprints at a crime scene, regardless of whether authorities demonstrate criminal intent. State governments also reportedly held persons without bail for extended periods before filing formal charges under the UAPA.

On August 28, Maharashtra police detained five human rights activists in connection with an alleged plot to overthrow the government and assassinate the prime minister. All five asserted wrongful arrest and detention, and further
claimed that the arrests were intended to muzzle voices of dissent, as all five activists were active in protesting arrests of other human rights defenders. Maharashtra police synchronized police actions with counterparts across the country to arrest Varavara Rao in Hyderabad, Vernon Gonsalves and Arun Ferreira in Mumbai, Gautam Navlakha in New Delhi, and Sudha Bharadwaj in Faridabad under the UAPA. Police alleged the activists were part of a Maoist conspiracy to incite violence at a public rally that led to violent caste-related clashes in Maharashtra in December 2017. On August 29, the Supreme Court directed the Maharashtra police to place the detained individuals under house arrest instead of in jail and cautioned that if the country did not allow dissent to be the safety valve of democracy, “the pressure cooker will burst.” On October 27, the Supreme Court declined a request to extend the house arrest. On the same day, a Pune Court rejected their bail applications, and the Maharashtra Police placed Gonsalves, Pereira, and Bharadwaj in jail.

**Arbitrary Arrest:** The law prohibits arbitrary arrest or detention, but in some cases police reportedly continued to arrest citizens arbitrarily. There were reports of police detaining individuals for custodial interrogation without identifying themselves or providing arrest warrants.

**Pretrial Detention:** NCRB data reported 293,058 prisoners were awaiting trial at the end of 2016. In July 2017 Amnesty International released a report on pretrial detention in the country, noting that shortages of police escorts, vehicles, and drivers caused delays in bringing prisoners to trial. According to the Amnesty report, the pretrial population is composed of a disproportionate amount of Muslims, Dalits, and Adivasis who made up 53 percent of prisoners awaiting trial. A committee convened by the Maharashtra government on orders of the Bombay High Court found persons awaiting trial during the year accounted for 73 percent of the prison population.

The government continued efforts to reduce lengthy detentions and alleviate prison overcrowding by using “fast track” courts, which specified trial deadlines, provided directions for case management, and encouraged the use of bail. Some NGOs criticized these courts for failing to uphold due process and requiring detainees unable to afford bail to remain in detention.

**e. Denial of Fair Public Trial**

The law provides for an independent judiciary, and the government generally respected judicial independence, but judicial corruption was widespread.
The judicial system remained seriously overburdened and lacked modern case management systems, often delaying or denying justice. According to Department of Justice statistics released in September, there were 427 judicial vacancies out of a total of 1,079 judicial positions on the country’s 24 high courts.

**Trial Procedures**

The law provides for the right to a fair and public trial, except in proceedings that involve official secrets or state security. Defendants enjoy the presumption of innocence, except as described under UAPA conditions, and may choose their counsel. The constitution specifies the state should provide free legal counsel to defendants who cannot afford it to ensure that opportunities for securing justice are not denied to any citizen, but circumstances often limited access to competent counsel. An overburdened justice system resulted in lengthy delays in court cases, with disposition sometimes taking more than a decade.

There were reported cases in which police denied suspects the right to meet with legal counsel as well as cases in which police unlawfully monitored suspects’ conversations and violated their confidentiality rights.

While defendants have the right to confront accusers and present their own witnesses and evidence, defendants sometimes did not exercise this right due to lack of proper legal representation. Defendants have the right not to testify or confess guilt. Courts must announce sentences publicly, and there are effective channels for appeal at most levels of the judicial system.

**Political Prisoners and Detainees**

There were reports of political prisoners and detainees. NGOs reported the state of Jammu and Kashmir held political prisoners and temporarily detained individuals under the PSA. The Jammu and Kashmir state government reported that more than 1,000 prisoners were detained under the PSA between March 2016 and August 2017. According to the Jammu and Kashmir High Court Bar Association, political prisoners made up one-half of all state detainees.

**Civil Judicial Procedures and Remedies**

Individuals, or NGOs on behalf of individuals or groups, may file public-interest litigation (PIL) petitions in any high court or directly to the Supreme Court to seek
judicial redress of public injury. Grievances may include a breach of public duty by a government agent or a violation of a constitutional provision. NGOs credited PIL petitions with making government officials accountable to civil society organizations in cases involving allegations of corruption and partiality.

f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence

While the constitution does not contain an explicit right to privacy, the Supreme Court has found such a right implicit in other constitutional provisions. In August 2017 the Supreme Court ruled that privacy is a “fundamental right” in a case involving government collection of biographical information.

The law, with some exceptions, prohibits arbitrary interference. The government generally respected this provision, although, at times, authorities infringed upon the privacy rights of citizens. The law requires police to obtain warrants to conduct searches and seizures, except for cases in which such actions would cause undue delay. Police must justify warrantless searches in writing to the nearest magistrate with jurisdiction over the offense.

On August 8, Minister of State for Electronics and Information Technology S.S. Ahluwalia told the lower house of parliament the existing legislation and policies relating to privacy and data security were “insufficient,” according to recommendations the Telecom Regulatory Authority of India released on July 18.

Both the central and state governments intercepted communications under legal authority. The Group of Experts on Privacy convened in 2012 by the Government of India Planning Commission, the most recent review available, noted the differences between two provisions of law (section 5(2) of the Telegraph Act 1885 and section 69 of the Information Technology Act 2000, as amended) had created an unclear regulatory regime that was, according to the report, “inconsistent, nontransparent, prone to misuse, and does not provide remedy or compensation to aggrieved individuals.”

In addition the UAPA also allows use of evidence obtained from intercepted communications in terrorist cases. In the states of Jammu and Kashmir, Punjab, and Manipur, security officials have special authorities to search and arrest without a warrant.

g. Abuses in Internal Conflict
The country’s armed forces, the security forces of individual states, and paramilitary forces engaged in armed conflict with insurgent groups in several northeastern states, and with Maoist insurgents in the northern, central, and eastern parts of the country--although the intensity of these conflicts continued to decrease significantly. Army and central security forces remained stationed in conflict areas in the northeast. The armed forces and police forces also engaged in armed conflict with separatist insurgents and terrorist groups in the state of Jammu and Kashmir.

The use of force by all parties to the conflicts resulted in deaths and injuries to both conflict participants and civilians. There were reports government security forces committed extrajudicial killings, including staging encounter killings to conceal the deaths of captured militants. Human rights groups claimed police refused to release bodies in cases of alleged “encounters.” Authorities did not require the armed forces to report custodial deaths to the NHRC.

According to the Office of the UN OHCHR publication released in June and entitled, The Report on Situation of Human Rights in Kashmir, civil society estimated up to 145 civilians were killed by security forces between July 2016 and March in Jammu and Kashmir, with up to 20 other civilians killed by armed groups in the same period.

In July, Minister of State for Defense Subhash Bhamre informed the upper house of parliament that three terrorist attacks had occurred against army installations and camps in the state of Jammu and Kashmir between January 1 and July 23.

There were few investigations and prosecutions of human rights violations arising from internal conflicts, but central and state governments and armed forces investigated some complaints and punished some violations committed by government forces. On October 13, an Indian Army General Court Martial (GCM) found Major-General A.K. Lal, two colonels, and five other junior- and noncommissioned officers guilty of an extrajudicial killing in Tinsukia, Assam, in 1994. The incident became known as the Dangari Fake Encounter. All seven were sentenced to life imprisonment. A news report on the verdict noted the long delay in conducting the trial might open the verdict up to appeal since the GCM was conducted more than three years after the army became aware of the incident, as required under the Army Act of 1950. Authorities arrested and tried insurgents under terrorism-related legislation. NGOs claimed that, due to AFSPA immunity
provisions, authorities did not hold the armed forces responsible for the deaths of civilians killed in the state of Jammu and Kashmir.

**Killings:** Various domestic and international human rights organizations continued to express serious concern at the use of pellet guns by security forces for crowd control purposes in the state of Jammu and Kashmir. HRW reported that according to official government figures, 17 individuals died from pellet gun injuries between July 2016 and August 2017. Former chief minister for Jammu and Kashmir Mehbooba Mufti told the state legislative assembly that pellet guns injured 6,221 people in Kashmir between July 2016 and February 2017.

In Maoist-affected areas, there were reports of abuses by insurgents and security forces. On March 2, Telangana police killed 10 Maoist insurgents during an exchange of gunfire in Pujarianker, in Chhattisgarh. A police official was also killed during the ambush attack. On May 20, seven police officers were killed when their vehicle ran over an improvised explosive device (IED) planted by Maoist insurgents along the road in the Dantewada district in southern Chhattisgarh.

On April 22, the Maharashtra police’s counterinsurgency commandos claimed to have killed 39 Maoist insurgents, including 19 women, during an exchange of fire in Gadchiroli district.

According to HRW, police in Manipur continued to threaten and harass activists, lawyers, and families pursuing justice for alleged unlawful killings by security forces.

**Abductions:** Human rights groups maintained that military, paramilitary, and insurgent forces abducted numerous persons in Manipur, Jharkhand, Jammu and Kashmir, and Maoist-affected areas.

On August 29 and 30, family members of five Jammu and Kashmir policemen were abducted from various areas of south Kashmir by suspected Hizbul Mujahideen (HM) militants. Media reports indicated nine persons were abducted in what was seen as HM’s retaliation for the arrest of some family members of HM militants and the killing of their leader, Altaf Dar, by security forces on August 29. This was the first time since 1990 that militants abducted family members of the Jammu and Kashmir police.
Physical Abuse, Punishment, and Torture: There were reports government security forces tortured, raped, and mistreated insurgents and alleged terrorists in custody and injured demonstrators. Human rights activists alleged some prisoners were tortured or killed during detention.

In January a police team reportedly headed by Officer-in-Charge Ranjit Hazarika allegedly raided the home of Hasen Ali in Assam’s Mangaldoi district, suspecting him of possessing illegal arms. Hasen’s wife, Jamiran Nessa, asserted her husband was dragged out of the home and that at least four police officers pinned him down in the courtyard, kicked him indiscriminately, covered his face with a cloth, and poured cold water on his face until he vomited and fainted. He was later taken to the hospital and died due to his injuries.

Child Soldiers: Insurgent groups reportedly used children to attack government entities. In June the annual UN Children and Armed Conflict report found that children continued to be affected by violence between armed groups and the government, particularly in Chhattisgarh, Jharkhand, and Jammu and Kashmir. Maoist groups, particularly in Chhattisgarh and Jharkhand, allegedly continued to recruit children and reportedly used a “lottery system” to conscript children in Jharkhand. Three incidents of child recruitment and conscription by separatist groups were reported in the state of Jammu and Kashmir; unverified reports also indicated children were used as informants and spies by national security forces.

Although the United Nations was not able to verify all allegations of child soldiers, NGO observers reported children as young as age 12 were members of Maoist youth groups and allied militia. The children reportedly handled weapons and IEDs. Maoists reportedly held children against their will and threatened severe reprisals, including the killing of family members, if the children attempted to escape. The government claimed, based on statements of several women formerly associated with Maoist groups, that sexual violence, including rape and other forms of abuse, was a practice in some Maoist camps. NGOs quoting police contacts stated that children employed by Maoist groups in Jharkhand were made to carry IED triggers with them. Police did not engage the children to retrieve the triggering devices.

According to government sources, Maoist armed groups used children as human shields in confrontations with security forces. Attacks on schools by Maoists continued to affect children’s access to education in affected areas. There were continued reports on the use of schools as military barracks and bases. The
deployment of government security forces near schools remained a concern. There were reports armed groups recruited children from schools in Chhattisgarh.

Other Conflict-related Abuse: The Internal Displacement Monitoring Center estimated that conflicts, violence, and natural disasters in the country displaced 1.4 million persons in 2017.

In August 2017 Minister of State for Home Affairs Hansraj Gangaram Ahir informed parliament’s lower house that there were approximately 62,000 registered Kashmiri migrant families in the country. Tens of thousands of Hindus, known as Kashmiri Pandits, fled the Kashmir Valley after 1990 because of conflict and violent intimidation, including destruction of houses of worship, sexual abuse, and theft of property, by Kashmiri separatists. In March the state government announced 3,000 posts for Hindu Kashmiri migrants under the prime minister’s Special Employment Package, in departments such as education, health, and social welfare. Additionally, in June, Home Minister Rajnath Singh stated in a press conference that the monthly cash supplement for Hindu Kashmiri migrant families would increase by 30 percent.

In the central and eastern areas, armed conflicts between Maoist insurgents and government security forces over land and mineral resources in tribal forest areas continued. According to the South Asian Terrorism Portal’s existing conflict map, Maoist-affected states included Madhya Pradesh, Maharashtra, Karnataka, Kerala, Tamil Nadu, Andhra Pradesh, Telangana, Odisha, Chhattisgarh, Jharkhand, West Bengal, Bihar, Uttar Pradesh, and Assam. Human rights advocates alleged the government’s operations sought not only to suppress the Maoists, but also to force tribal populations from their land, allowing for purchase by the private sector.

Internally displaced person (IDP) camps continued to operate in Chhattisgarh for tribal persons displaced during the 2005 fighting between Maoists and the subsequently disbanded state-sponsored militia Salwa Judum.

Throughout the year there were reports by media organizations and academic institutions of corporations’ abuses against tea workers, including violations of the law. In some cases violent strikes resulted from companies withholding medical care required by law. Other reports indicated workers had difficulty accessing clean water, and open sewage flowed through company housing areas.

Section 2. Respect for Civil Liberties, Including:
a. Freedom of Expression, Including for the Press

The constitution provides for freedom of expression, but it does not explicitly mention freedom of the press. The government generally respected this right, although there were several instances in which the government or actors considered close to the government allegedly pressured or harassed media outlets critical of the government, including through online trolling. There were also reports of extremists perpetrating acts of killing, violence, and intimidation against journalists critical of the government.

Freedom of Expression: Individuals routinely criticized the government publicly and privately. According to HRW, however, sedition and criminal defamation laws were sometimes used to prosecute citizens who criticized government officials or opposed state policies. In certain cases local authorities arrested individuals under laws against hate speech for expressions of political views. Freedom House, in its most recent report, asserted that freedom of expression was eroding in the country noted the government’s silence regarding direct attacks on free speech. In some instances the government reportedly withheld public-sector advertising from outlets that criticized the government, causing some outlets to practice self-censorship. According to media watchdog The Hoot, media freedom continued to deteriorate in the first quarter of the year. Between January and April, The Hoot detailed three journalists killed, 13 attacks on journalists, 50 instances of censorship, seven defamation cases, and more than 20 instances of suspension of internet services, as well as the taking down of online content. In 2017 reporting by The Hoot detailed 11 journalists killed, 46 alleged attacks on journalists, 77 internet shutdowns, and 20 sedition cases against 335 individuals.

On July 2, Tamil Nadu police registered a case against a human rights activist and a documentary filmmaker following the launch of a trailer for her upcoming documentary Orutharum Varala (“No one came”), which focused on the plight of victims of Cyclone Ockhi, a storm that hit Tamil Nadu in November 2017. Police charged her for promoting enmity between groups and insulting the national flag. According to media reports, police personnel searched her house without a warrant. At year’s end she remained under conditional bail.

In September 2017 Akhil Gogoi, a right to information activist and president of the anticorruption organization Krishak Mukti Sangram Samiti, was arrested in Assam on charges of sedition and labelled a Maoist by the government a day after he gave a speech criticizing various policies of the ruling BJP party. In December 2017 Guwahati High Court ordered Gogoi’s release.
Press and Media Freedom: Independent media were active and generally expressed a wide variety of views. The law prohibits content that could harm religious sentiments or provoke enmity among groups, and authorities invoked these provisions to restrict print media, broadcast media, and publication or distribution of books.

According to a number of journalists, press freedom declined during the year. There were a number of reports, including from journalists and NGOs, that government officials, both at the local and national levels, were involved in silencing or intimidating critical media outlets through physical harassment/attacks, pressuring owners, targeting sponsors, and encouraging frivolous lawsuits.

The 2018 World Press Freedom Index identified physical attacks on journalists and online “trolls” as major areas of concern, noting, “with Hindu nationalists trying to purge all manifestations of ‘anti-national’ thought from the national debate, self-censorship is growing in the mainstream media and journalists are increasingly the targets of online smear campaigns by the most radical nationalists, who vilify them and even threaten physical reprisals.” The report also noted at least three journalists were killed in 2017 in connection with their work, as well as three in March. The report highlighted the use of Section 124a of the penal code, which includes sedition punishable by life imprisonment, to gag journalists.

The Editors Guild of India claimed the government limited press freedom by exerting political pressure and blocking television transmissions. In January Chandigarh-based The Tribune reported on privacy and security flaws in the government’s Aadhaar identity program, leading to the subsequent firing of its editor in chief Harish Khare after government pressure reportedly was brought to bear on the newspaper. Starting in January, Tamil Nadu media reported state-run Arasu Cable Network blocked several television channels’ live coverage of antigovernment protests for periods varying from a day to several months, and on May 22, it blocked coverage of police firing on protesters at a demonstration against the Sterlite copper smelting plant in Thoothukudi, Tamil Nadu.

The government maintained a monopoly on AM radio stations, limiting broadcasting to the state-owned All India Radio, and restricted FM radio licenses for entertainment and educational content. Widely distributed private satellite television provided competition for Doordarshan, the government-owned television network. There were some accusations of political interference in the
state-owned broadcasters. State governments banned the import or sale of some books due to material that government censors deemed could be inflammatory or provoke communal or religious tensions.

**Violence and Harassment:** There were numerous instances of journalists and members of media being threatened or killed in response to their reporting. Police rarely identified suspects involved in the killing of journalists. A 2017 report by the Press Council of India highlighted that at least 80 journalists had been killed since 1990 and only one conviction had been made.

In March, Sandeep Sharma, a News World channel reporter investigating illegal sand mining in Madhya Pradesh, was run over by a dump truck shortly after filing an intimidation complaint against a police officer whom he accused of being in league with local criminal organizations. In July, Ahmedabad police beat DNA India photographer Praveen Indrekar while he was reporting on a police crackdown on illegal liquor sales.

Reporters were also attacked while covering elections. On April 9, Biplab Mondal, a photojournalist with the Times of India, and Manas Chattopadhyay, a reporter with regional television channel ETV Bharat, along with several other journalists, were assaulted by alleged Trinamool Congress loyalists while covering the process of filing nomination papers for local elections in West Bengal.

Online and mobile harassment was especially prevalent, and incidents of internet “trolling,” or making deliberately offensive or provocative online posts with the aim of upsetting someone, continued to rise. Journalists were threatened with violence and, in the case of female journalists, rape. On May 22, Rana Ayyub, a Mumbai-based independent journalist, wrote in the New York Times that after she criticized the prime minister’s policies towards minorities and lower-caste groups, she was targeted by “a coordinated social media campaign that slut shames, deploys manipulated images with sexually explicit language, and threatens rape.”

In September 2017 senior journalist and activist Gauri Lankesh was shot and killed by three assailants at her home in Bengaluru. At year’s end 16 individuals were arrested in connection with the case, without formal charges being filed, and the investigation continued.

**Censorship or Content Restrictions:** In August internet news portal The Wire reported the government disrupted the broadcast signal of ABP News and
pressed the outlet into sidelining several of its journalists, including its editor in chief, in response to a story that claimed inaccuracies in one of the prime minister’s speeches. ABP anchor Punya Prasoon Vajpai and editor Milind Khandekar resigned, and the Editors Guild of India demanded action against officials for “throttling media freedom.”

**Libel/Slander Laws**: Individuals continued to be charged with posting offensive or derogatory material on social media. The NGO Freedom House noted that more than 20 individuals were detained for online comments about religion or political issues ranging from a water dispute between Karnataka and Tamil Nadu to the government’s demonetization policy. In August a 24-year-old was arrested for posting “abusive” comments against Karnataka Chief Minister H.D. Kumaraswamy on social media.

**National Security**: In some cases government authorities cited laws protecting national interest to restrict media content. In August numerous outlets reported that the Indian Department of Telecom was seeking the views of telecom companies, industry associations, and other stakeholders on how to block mobile apps, including Facebook, WhatsApp, Telegram, and Instagram, “in cases where national security or public order are under threat.”

**Internet Freedom**

There were government restrictions on access to the internet, disruptions of access to the internet, and censorship of online content. There were also reports the government occasionally monitored users of digital media, such as chat rooms and person-to-person communications. The law permits the government to block internet sites and content and criminalizes sending messages the government deems inflammatory or offensive. Both central and state governments have the power to issue directions for blocking, intercepting, monitoring, or decrypting computer information.

In 2015 the Supreme Court overturned some provisions of information technology law that restricted content published on social media, but it upheld the government’s authority to issue orders to block online content “in the interest of sovereignty and integrity of India, defense of India, security of the State, and friendly relations with foreign states or public order” without court approval. In August 2017 the Ministry of Communications announced new rules allowing the government to shut telephone and internet services temporarily during a “public emergency” or for “public safety.”
According to media reports, as of August central and state governments temporarily shut down the internet in different locations across the country 95 times, the highest figure recorded and more than the total figure for 2017. Internet access and services were frequently curtailed during periods of violence and curfew in the state of Jammu and Kashmir and occasionally in other parts of the country, particularly Rajasthan, Uttar Pradesh, Maharashtra, and Bihar. According to HRW, authorities sometimes failed to follow legal procedures and in some instances ordered shutdowns unnecessarily.

Requests for user data from internet companies continued to rise, and according to Facebook’s Transparency report, the government made 22,024 data requests in 2017, a 61.7-percent rise from 2016. Google also highlighted an increase in government requests for user data in its 2017 Transparency Report, receiving 14,932 user-data disclosure requests. Twitter reported 576 account information requests from the government during the same period.

In July the government announced that as many as 1,662 defamatory websites had been blocked on social media platforms following requests from law enforcement agencies. Officials stated the government blocked 956 sites on Facebook, 409 on Twitter, and 152 on YouTube, among others. The number of blocked URLs has grown annually, with more than double the number of URLs blocked in 2017 compared with previous years.

Freedom House, in its 2018 India Country Report, rated the country “partly free” with respect to internet user rights. The report documented arrests of internet users and group administrators for content distributed on social media accounts, including WhatsApp, and stated officials detained more than 20 individuals for online comments about religious or political issues.

The Central Monitoring System (CMS) continued to allow governmental agencies to monitor electronic communications in real time without informing the subject or a judge. The CMS is a mass electronic surveillance data-mining program installed by the Center for Development of Telematics, a government-owned telecommunications technology development center. The CMS gives security agencies and income tax officials centralized access to the telecommunication network and the ability to hear and record mobile, landline, and satellite telephone calls and Voice over Internet Protocol, to read private emails and mobile phone text messages, and to track geographical locations of individuals in real time. Authorities can also use it to monitor posts shared on social media and track users’
search histories on search engines, without oversight by courts or parliament. This monitoring facility was available to nine security agencies, including the Intelligence Bureau, the Research and Analysis Wing, and the Ministry of Home Affairs. The law governing interception and monitoring provides an oversight mechanism to prevent unauthorized interceptions. Punishment for unauthorized interception includes fines, a maximum prison sentence of three years, or both.

Academic Freedom and Cultural Events

The government occasionally applied restrictions on the travel and activities of visiting foreign experts and scholars. Academics continued to face threats and pressure for expressing controversial views. In July, The Wire reported the Delhi University administration canceled a magazine launch and panel discussion by Delhi University students on the freedom of expression allegedly due to pressure from the Akhil Bharatiya Vidyarthi Parishad, a Hindu right-wing student association.

b. Freedoms of Peaceful Assembly and Association

The law provides for the freedoms of peaceful assembly and association, and the government generally respected these rights.

Freedom of Peaceful Assembly

The law provides for freedom of assembly. Authorities often required permits and notification before parades or demonstrations, and local governments generally respected the right to protest peacefully. The state of Jammu and Kashmir was an exception, where the state government sometimes denied permits to separatist political parties for public gatherings, and security forces reportedly occasionally detained and assaulted members of political groups engaged in peaceful protest (see section 1.g.). During periods of civil unrest in the state of Jammu and Kashmir, authorities used the law to ban public assemblies and impose curfews.

Security forces, including local police, often disrupted demonstrations and reportedly used excessive force when attempting to disperse protesters. On May 22, Tamil Nadu police opened fire on protesters who were demanding the closure of the Sterlite copper smelting plant at Thoothukudi, Tamil Nadu, killing 15 individuals. The Tamil Nadu government claimed the police only fired on individuals who used logs and petrol bombs to set fire to vehicles during the protests.
There were sometimes restrictions on the organization of international conferences. Authorities required NGOs to secure approval from the central government before organizing international conferences. Authorities routinely granted permission, although in some cases the approval process was lengthy. Some human rights groups claimed this practice provided the government tacit control over the work of NGOs and constituted a restriction on freedoms of assembly and association.

**Freedom of Association**

The law provides for freedom of association. While the government generally respected this right, the government’s increased monitoring and regulation of NGOs that received foreign funding caused concern. In certain cases the government required “prior approval” for some NGOs to receive foreign funds, suspended foreign banking licenses, or froze accounts of NGOs that allegedly received foreign funding without the proper clearances or that mixed foreign and domestic funding, and in other instances canceled or declined to renew Foreign Contributions (Regulation) Act (FCRA) registrations. On April 3, Minister of State for Home Affairs Kiran Rijiju informed the lower house of parliament that the government had canceled the registration of more than 14,000 NGOs in the last four years, although some of the cancellations reportedly pertained to defunct organizations. Some human rights organizations claimed these actions were sometimes used to target specific NGOs.

Some NGOs reported an increase in random FCRA compliance inspections by Ministry of Home Affairs officials who they said were purportedly under pressure to demonstrate strict enforcement of the law. FCRA licenses were also reportedly canceled periodically based on nonpublic investigations by the Intelligence Bureau. On June 1, the Ministry of Home Affairs launched an online tool to facilitate real-time monitoring of foreign funds deposited into NGO bank accounts. On June 5, it announced NGOs found in violation of FCRA provisions would be assessed a civil fine instead of having their licenses canceled or suspended. The rules, however, were not applicable retroactively. Some NGOs reported the new rules would severely affect smaller organizations that would be unable to pay the steep penalties—amounting to 10 percent of their total funds—and that did not have the compliance expertise, leaving only large entities able to maintain their FCRA licenses.

Some NGOs alleged they were targeted as a reprisal for their work on “politically sensitive” issues like human rights or environmental activism. The Center for
Promotion of Social Concerns (CPSC) and its partner program unit People’s Watch continued court proceedings against the nonrenewal of their FCRA license. A September 12 report by the UN secretary general cited the use of FCRA regulations to “restrict the work of NGOs cooperating with the United Nations, for example by a refusal to renew or grant licenses, including for the CPSC.”

On October 25, the Enforcement Directorate (ED), a government agency that investigates financial crimes, raided the premises of Amnesty International India’s Bengaluru office and froze its bank accounts on suspicion that it had violated foreign funding guidelines. Aakar Patel, Amnesty International India’s executive director stated, “The Enforcement Directorate’s raid on our office today shows how the authorities are now treating human rights organizations like criminal enterprises, using heavy-handed methods that are commonly found in repressive states. Our staff have been harassed and intimidated.” The searches came days after the ED searched the premises of environmental nonprofit Greenpeace India in Bengaluru on October 12, also for allegedly violating foreign funding rules. Greenpeace India refuted the allegations stating, “This seems to be part of a larger design to muzzle democratic dissent in the country.”

In February the Public Health Foundation of India (PHFI), a public-health advocacy group, was placed in the “prior permission” category, requiring the organization to seek permission from the Ministry of Home Affairs each time it wanted to receive and use funds from foreign sources. The Ministry of Home Affairs indicated the center and state governments would review PHFI’s use of foreign funds quarterly and that the investigation into PHFI’s alleged FCRA violations would continue.

c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation. The government generally respected these rights. In 2015 the implementation of a land-boundary agreement between India and Bangladesh enfranchised more than 50,000 previously stateless residents, providing access to education and health services.
The country hosts a large refugee population, including 108,005 Tibetan refugees and approximately 90,000 refugees from Sri Lanka. The government generally allows the Office of the UN High Commissioner for Refugees (UNHCR) to assist asylum seekers and refugees from noncontiguous countries and Burma. In many cases refugees and asylum seekers under UNHCR’s mandate reported increased challenges regularizing their status through long-term visas and residence permits. Rohingya refugees were registered by UNHCR but not granted legal status by the government.

Abuse of Migrants, Refugees, and Stateless Persons: The law does not contain the term “refugee,” treating refugees like any other foreigners. Undocumented physical presence in the country is a criminal offense. Persons without documentation were vulnerable to forced returns and abuse. The courts protected refugees and asylum seekers in accordance with the constitution.

Refugees reported exploitation by nongovernment actors, including assaults, gender-based violence, fraud, and labor exploitation. Problems of domestic violence, sexual abuse, and early and forced marriage also continued. Gender-based violence and sexual abuse were common in camps for Sri Lankans. Most urban refugees worked in the informal sector or in occupations such as street vending, where they suffered from police extortion, nonpayment of wages, and exploitation.

UNHCR and NGOs observed an increase in antirefugee (specifically anti-Rohingya) rhetoric throughout the year in advance of state and 2019 national elections, which reportedly led to an increased sense of insecurity in refugee communities. On October 4, the Supreme Court rejected a plea to stop the deportation of seven Rohingya immigrants from Assam. The court noted the individuals, held in an Assam jail since 2012, were arrested by Indian authorities as illegal immigrants and that Burma was ready to accept them as their nationals. According to media reports, the nationality of the immigrants was confirmed after the Burmese government verified their addresses in Rakhine State. Rights groups said the government’s decision to deport them placed them at risk of oppression and abuse. According to HRW, the government deported the seven ethnic Rohingya Muslims to Burma where “they are at grave risk of oppression and abuse.” HRW further noted, “The Indian government has disregarded its long tradition of protecting those seeking refuge within its borders.”
In-country Movement: The central government relaxed restrictions on travel by foreigners to Arunachal Pradesh, Nagaland, Mizoram, Manipur, and parts of Jammu and Kashmir, excluding foreign nationals from Pakistan, China, and Burma. The Ministry of Home Affairs and state governments required citizens to obtain special permits upon arrival when traveling to certain restricted areas.

Foreign Travel: The government may legally deny a passport to any applicant for engaging in activities outside the country “prejudicial to the sovereignty and integrity of the nation.”

The trend of delaying issuance and renewal of passports to citizens from the state of Jammu and Kashmir continued, sometimes up to two years. The government reportedly subjected applicants born in the state of Jammu and Kashmir, including children born to military officers deployed in the state, to additional scrutiny and police clearances before issuing them passports.

Citizenship: On July 31, the government of Assam published the final draft of the National Register of Citizens (NRC), a document intended to define individuals with a claim to citizenship in a state that experienced an influx of foreigners in 1971. In 1985 the government declared that anyone who entered Assam without proper documentation after March 24, 1971, would be declared a foreigner. The names of four million residents were excluded from the final draft list, leading to uncertainty over the status of these individuals, many of whose families had lived in the state for several generations. Individuals will be required to go through an appeals process to have their names included in the final list of Indian citizens. The Supreme Court is overseeing the process, and four million individuals were given 60 days from September 25 to file a claim or objection. On September 24, ruling BJP party president Amit Shah called Bangladeshis who may be in Assam “termites” who will be struck from the list of citizens.

Internally Displaced Persons

Authorities located IDP settlements throughout the country, including those containing groups displaced by internal armed conflicts in the state of Jammu and Kashmir, Maoist-affected areas, the northeastern states (see section 1.g.), and Gujarat. The 2018 annual report of the Internal Displacement Monitoring Center asserted 806,000 individuals were displaced because of conflict and violence as of December 2017, with 78,000 new displacements due to conflict in 2017. Estimating precise numbers of those displaced by conflict or violence was difficult, because the government does not monitor the movements of displaced persons, and
humanitarian and human rights agencies had limited access to camps and affected regions. While authorities registered residents of IDP camps, an unknown number of displaced persons resided outside the camps. Many IDPs lacked sufficient food, clean water, shelter, and health care (see section 1.g., Other Conflict-related Abuse).

National policy or legislation did not address the issue of internal displacement resulting from armed conflict or from ethnic or communal violence. The welfare of IDPs was generally the purview of state governments and local authorities, allowing for gaps in services and poor accountability. The central government provided limited assistance to IDPs, but they had access to NGOs and human rights organizations, although neither access nor assistance was standard for all IDPs or all situations.

NGOs estimated Gotti Koya tribe members displaced due to prior paramilitary operations against Maoists numbered 50,000 in Chhattisgarh and 27,000 in Telangana and Andhra Pradesh. In October 2017 the Hyderabad High Court directed the Telangana government not to displace the Gotti Koya tribal members or demolish their dwelling units.

**Protection of Refugees**

**Refoulement**: The government detained Rohingya in many of the northeastern states of the country. For example, after serving the allotted time for illegal entry into the country, the government obtained travel permits for seven Rohingya refugees from Burmese authorities and, according to media reports on October 4, the seven Rohingya were transported from prison to the border town of Moreh in Manipur state to be deported.

In July, Minister of State Kiren Rijiju informed the lower house of parliament that the Ministry of Home Affairs instructed state governments to identify Rohingya migrants through the collection of biometric data. The Ministry of Home Affairs directed state governments to monitor Rohingya and restrict their movements to specific locations. The government advocated for the return of Rohingya migrants to Burma.

**Access to Asylum**: Absent a legal framework, the government sometimes granted asylum on a situational basis on humanitarian grounds in accordance with international law. This approach resulted in varying standards of protection for different refugee and asylum seeker groups. The government recognized refugees
from Tibet and Sri Lanka and honored UNHCR decisions on refugee status determination for individuals from other countries, including Afghanistan.

UNHCR did not have an official agreement with the government but maintained an office in New Delhi where it registered refugees and asylum seekers from noncontiguous countries and Burma, made refugee status determinations, and provided some services. The office’s reach outside of New Delhi was limited, however. The government permitted UNHCR staff access to refugees in other urban centers and allowed it to operate in Tamil Nadu to assist with Sri Lankan refugee repatriation. Authorities did not permit UNHCR direct access to Sri Lankan refugee camps, Tibetan settlements, or asylum seekers in Mizoram, but it did permit asylum seekers from Mizoram to travel to New Delhi to meet UNHCR officials. Refugees outside New Delhi faced added expense and time to register their asylum claims.

The government generally permitted other NGOs, international humanitarian organizations, and foreign governments access to Sri Lankan refugee camps and Tibetan settlements, but it generally denied access to asylum seekers in Mizoram. The government denied requests for some foreigners to visit Tibetan settlements in Ladakh.

After the end of the Sri Lankan civil war, the government ceased registering Sri Lankans as refugees. The Tamil Nadu government assisted UNHCR by providing exit permission for Sri Lankan refugees to repatriate voluntarily. The benefits provided to Sri Lankan Tamil refugees by the state government of Tamil Nadu were applicable only within the state. The central government approved the extension of funding to run the camps until 2020.

**Employment:** The government granted work authorization to many UNHCR-registered refugees, and others found employment in the informal sector. Some refugees reported discrimination by employers.

**Access to Basic Services:** Although the country generally allowed recognized refugees and asylum seekers access to housing, primary and secondary education, health care, and the courts, access varied by state and by population. Refugees were able to use public services, although access became more complicated during the year because many refugees were unable to acquire the digitized identity (Aadhaar) card necessary to use some services. In cases where refugees were denied access, it was often due to a lack of knowledge of refugee rights by the service provider. In many cases UNHCR was able to intervene successfully and
advocate for refugee access. The government allowed UNHCR-registered refugees and asylum seekers to apply for long-term visas that would provide work authorization and access to higher education, although the rate of renewal for long-term visas slowed significantly. For undocumented asylum seekers, UNHCR provided a letter upon registration indicating the person was under consideration for UNHCR refugee status.

The government did not fully complete a 2012 Ministry of Home Affairs directive to issue long-term visas to Rohingya. It has reportedly slowed renewals for those with long-term visas significantly, limiting access to formal employment in addition to education, health services, and bank accounts.

Sri Lankan refugees were permitted to work in Tamil Nadu. Police, however, reportedly summoned refugees back into the camps on short notice, particularly during sensitive political times such as elections, and required refugees or asylum seekers to remain in the camps for several days.

Government services such as mother and child health programs were available. Refugees were able to request protection from police and courts as needed.

The government did not accept refugees for resettlement from other countries.

**Stateless Persons**

By law parents confer citizenship, and birth in the country does not automatically result in citizenship. Any person born in the country on or after January 26, 1950, but before July 1, 1987, obtained Indian citizenship by birth. A child born in the country on or after July 1, 1987, obtained citizenship if either parent was an Indian citizen at the time of the child’s birth. Authorities consider those born in the country on or after December 3, 2004, citizens only if at least one parent was a citizen and the other was not illegally present in the country at the time of the child’s birth. Authorities considered persons born outside the country on or after December 10, 1992, citizens if either parent was a citizen at the time of birth, but authorities do not consider those born outside the country after December 3, 2004, citizens unless their birth was registered at an Indian consulate within one year of the date of birth. Authorities can also confer citizenship through registration under specific categories and via naturalization after residing in the country for 12 years. Tibetans reportedly sometimes faced difficulty acquiring citizenship despite meeting the legal requirements.
The Assam state government began a process to update the NRC to determine who has legal claim to citizenship in the country, and who is determined to have migrated illegally per a 2014 Supreme Court order. According to official reports, the government has excluded an estimated four million persons from the NRC draft list published on July 30. The central and state governments indicated that all persons not listed were able to file claims and objections for 60 days from September 25. The future legal status of those excluded is not clear. Many individuals may be declared citizens at the end of the process, while others may be at risk of statelessness.

According to UNHCR and NGOs, the country had a large population of stateless persons, but there were no reliable estimates. Stateless populations included Chakmas and Hajongs, who entered the country in the early 1960s from present-day Bangladesh, and groups affected by the 1947 partition of the subcontinent into India and Pakistan. In September 2017 the central government stated it would appeal to the Supreme Court to review its 2015 order to consider citizenship for approximately 70,000 Chakma and Hajong refugees. Media quoted Minister of State for Home Affairs Kiren Rijiju saying the Supreme Court order was “unimplementable.”

Children born in Sri Lankan refugee camps received Indian birth certificates. While Indian birth certificates alone do not entitle refugees to Indian citizenship, refugees may present Indian birth certificates to the Sri Lankan High Commission to obtain a consular birth certificate, which entitles them to pursue Sri Lankan citizenship. According to the Organization for Eelam Refugees’ Rehabilitation, approximately 16,000 of 27,000 Sri Lankan refugee children born in the refugee camps have presented birth certificates to the Sri Lankan Deputy High Commission in Chennai. According to UNHCR, the Sri Lankan Deputy High Commission issued 2,858 birth certificates during the year.

UNHCR and refugee advocacy groups estimated that between 25,000 and 28,000 of the approximately 90,000 Sri Lankan Tamil refugees living in Tamil Nadu were “hill country” Tamils. While Sri Lankan law allows “hill country” refugees to present affidavits to secure Sri Lankan citizenship, UNHCR believed that until the Sri Lankan government processes the paperwork, such refugees were at risk of becoming stateless.

**Section 3. Freedom to Participate in the Political Process**
The constitution provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

**Elections and Political Participation**

**Recent Elections:** The Election Commission of India is an independent constitutional body responsible for administering all elections at the central and state level throughout the country. In 2017 a national electoral college elected President Ramnath Kovind to a five-year term. During the year the nine states of Chhattisgarh, Karnataka, Madhya Pradesh, Meghalaya, Mizoram, Nagaland, Rajasthan, Telangana, and Tripura held elections for their state assemblies. Observers considered these elections, which included more than 300 million participants, free and fair, despite very isolated instances of violence.

**Political Parties and Political Participation:** The constitution provides for universal voting rights for all citizens age 18 and older. There were no restrictions placed on the formation of political parties or on individuals of any community from participating in the election process. The election law bans the use of government resources for political campaigning, and the Election Commission effectively enforced the law. The commission’s guidelines ban opinion polls 48 hours prior to an election, and exit poll results may not be released until completion of the last phase (in a multiphase election).

**Participation of Women and Minorities:** No laws limit participation of women or members of minorities in the political process, and they freely participated. The law reserves one-third of the seats in local councils for women. Religious, cultural, and traditional practices and ideas prevented women from proportional participation in political office. Nonetheless, women held many high-level political offices, including positions as ministers, members of parliament, and state chief ministers.

The constitution stipulates that, to protect historically marginalized groups and provide for representation in the lower house of parliament, each state must reserve seats for Scheduled Castes and Scheduled Tribes in proportion to their population in the state. Only candidates belonging to these groups may contest elections in reserved constituencies. While some Christians and Muslims were identified as Dalits, the government limited reserved seats for Dalits to Hindus, Sikhs, and Jains. Members of minority populations have previously served as prime minister,
vice president, cabinet ministers, Supreme Court justices, and members of parliament.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials at all levels of government. Officials frequently engaged in corrupt practices with impunity. There were numerous reports of government corruption during the year.

Corruption: Corruption was present at all levels of government. On July 18, Minister of State in the Prime Minister’s Office Jitendra Singh informed parliament’s lower house that the CBI registered 314 corruption-related cases between January and June compared with 632 cases in 2017. NGOs reported the payment of bribes to expedite services, such as police protection, school admission, water supply, or government assistance. Civil society organizations drew public attention to corruption throughout the year, including through demonstrations and websites that featured stories of corruption.

Media reports, NGOs, and activists reported links among politicians, bureaucrats, contractors, militant groups, and security forces in infrastructure projects, narcotics trafficking, and timber smuggling in the northeastern states. In Manipur and Nagaland, allegations of bribes paid to secure state government jobs were prevalent, especially in police and education departments.

On February 1, the ED filed money-laundering charges against former Himachal Pradesh chief minister Virbhadra Singh, who stood accused of misrepresenting “proceeds of crime” as agricultural income totaling more than 72.56 million rupees (one million dollars). The former chief minister faced separate charges from the CBI, which alleged the senior politician amassed assets disproportionate to his reported income from 2009 to 2011.

Financial Disclosure: The law mandates asset declarations for all officers in the Indian Administrative Services. Both the Election Commission and the Supreme Court upheld mandatory disclosure of criminal and financial records for candidates for elected office.

On September 25, a five-judge bench of the Supreme Court ruled unanimously that the judiciary could not disqualify politicians facing charges related to serious offenses and stop them from contesting elections. The court asked the parliament
to frame laws to bar those accused of crimes from being able to run for elected office.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

Most domestic and international human rights groups generally operated without government restriction, investigating, and publishing their findings on human rights cases. In some circumstances, groups faced restrictions (see section 2.b, Freedom of Association). Reportedly more than three million NGOs in the country advocated for social justice, sustainable development, and human rights, but definitive numbers were not available. The government generally met with domestic NGOs, responded to their inquiries, and took action in response to their reports or recommendations. The NHRC worked cooperatively with numerous NGOs, and several NHRC committees had NGO representation. Some human rights monitors in the state of Jammu and Kashmir were able to document human rights violations, but periodically security forces, police, and other law enforcement authorities reportedly restrained or harassed them. Representatives of certain international human rights NGOs sometimes faced difficulties obtaining visas and reported that occasional official harassment and restrictions limited their public distribution of materials.

In July 2017 the Supreme Court rejected the relief plea of activists Teesta Setalvad, Javed Anand, and their colleagues from charges of corruption and misappropriation of funds. Additional charges were filed on May 30 for allegedly securing and misusing fraudulently 14 million rupees ($200,000) worth of government funds for educational purposes between 2010 and 2013. The activists claimed authorities filed the case in retaliation for their work on behalf of victims of the 2002 Gujarat riot. The case continued at year’s end.

The United Nations or Other International Bodies: The government continued to decline access by the United Nations to the state of Jammu and Kashmir, and limit access to the northeastern states, and Maoist-controlled areas. The June 14 OHCHR publication Report on the Human Rights Situation in Kashmir cited impunity for human rights violations and lack of access to justice as key human rights challenges in the state of Jammu and Kashmir. The government rejected OHCHR’s report as “false, prejudicial, politically motivated, and [seeking] to undermine the sovereignty of India.”
Government Human Rights Bodies: The NHRC is an independent and impartial investigatory and advisory body, established by the central government, with a dual mandate to investigate and remedy instances of human rights violations and to promote public awareness of human rights. It is directly accountable to parliament but works in close coordination with the Ministry of Home Affairs and the Ministry of Law and Justice. It has a mandate to address official violations of human rights or negligence in the prevention of violations, intervene in judicial proceedings involving allegations of human rights violations, and review any factors (including acts of terrorism) that infringe on human rights. The law authorizes the NHRC to issue summonses and compel testimony, produce documentation, and requisition public records. The NHRC also recommends appropriate remedies for abuses in the form of compensation to the victims of government killings or their families.

The NHRC has neither the authority to enforce the implementation of its recommendations nor the power to address allegations against military and paramilitary personnel. Human rights groups claimed these limitations hampered the work of the NHRC. Some human rights NGOs criticized the NHRC’s budgetary dependence on the government and its policy of not investigating abuses more than one year old. Some claimed the NHRC did not register all complaints, dismissed cases arbitrarily, did not investigate cases thoroughly, rerouted complaints back to the alleged violator, and did not adequately protect complainants.

Twenty-four of 29 states have human rights commissions, which operated independently under the auspices of the NHRC. In six states the position of chairperson remained vacant. Some human rights groups alleged local politics influenced state committees, which were less likely to offer fair judgments than the NHRC. In the course of its nationwide evaluation of state human rights committees, the Human Rights Law Network (HRLN) observed most state committees had few or no minority, civil society, or female representatives. The HRLN claimed the committees were ineffective and at times hostile toward victims, hampered by political appointments, understaffed, and underfunded.

The Jammu and Kashmir commission does not have the authority to investigate alleged human rights violations committed by members of paramilitary security forces. The NHRC has jurisdiction over all human rights violations, except in certain cases involving the army. The NHRC has authority to investigate cases of human rights violations committed by Ministry of Home Affairs paramilitary forces operating under the Armed Forces Special Powers Act (AFSPA) in the
northeast states and in the state of Jammu and Kashmir. According to the OHCHR Report on the Human Rights Situation in Kashmir, there has been no prosecution of armed forces personnel in the nearly 28 years that the AFSPA has been in force in the state of Jammu and Kashmir.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: The law criminalizes rape in most cases, although marital rape is not illegal when the woman is older than age 15. Official statistics pointed to rape as the country’s fastest-growing crime, prompted at least in part by the increasing willingness of victims to report rapes, although observers believed the number of rapes still remained vastly underreported.

Law enforcement and legal recourse for rape victims were inadequate, and the judicial system was overtaxed and unable to address the problem effectively. Police sometimes worked to reconcile rape victims and their attackers, in some cases encouraging female rape victims to marry their attackers. The NGO International Center for Research on Women noted that low conviction rates in rape cases was one of the main reasons sexual violence continued unabated. The NGO Lawyers Collective noted the length of trials, lack of victim support, and inadequate protection of witnesses and victims remained major concerns. Doctors continued to carry out an invasive “two-finger test” to speculate on sexual history, despite the Supreme Court’s ruling that the test violated a victim’s right to privacy. In 2015 the government introduced new guidelines for health professionals’ medical examinations of victims of sexual violence. It included provisions regarding consent of the victim during various stages of examination, which some NGOs claimed was an improvement. According to media reports, only nine state governments adopted the guidelines. A November 2017 HRW report, Everyone Blames Me, found that medical professionals, even in states that adopted the guidelines, did not always follow them.

On August 6, parliament passed the Criminal Law (Amendment) Bill to increase the minimum mandatory punishments for rape from seven years’ to 10 years’ imprisonment. The minimum sentence for the rape of a girl younger than age 16 increased from 10 years to between 20 years and life imprisonment; the minimum sentence of gang rape of a girl younger than age 12 was punishable by either life imprisonment or the death penalty.
Incidents of gang rape of minors remained prevalent. On January 10, an eight-year-old Muslim girl in the state of Jammu and Kashmir’s Kathua district was allegedly kidnapped, drugged, and gang-raped over several days. The ensuing investigation resulted in the arrest of eight individuals, including four police personnel. On May 7, the Supreme Court ordered the trial moved to Punjab’s Pathankot district following protests in Jammu and Kashmir demanding the officers’ release. The case continued at year’s end.

Women in conflict areas, such as in the state of Jammu and Kashmir, the northeast, Jharkhand, and Chhattisgarh, as well as vulnerable Dalit or tribal women, were often victims of rape or threats of rape. National crime statistics indicated Dalit women were disproportionately victimized compared with other caste affiliations. Activists in Manipur complained that the armed forces, instead of resorting to extrajudicial killings, were tacitly encouraging rape and sexual violence by criminal gangs as part of their counterinsurgency strategy.

Domestic violence continued to be a problem. The NCRB estimated the conviction rate for crimes against women was 18.9 percent. Acid attacks against women continued to cause death and permanent disfigurement. In February the Delhi government announced it would cover 100 percent medical expenses for victims of acid attacks in all private hospitals within the National Capital Territory of Delhi. In May the Supreme Court approved assistance for victims of acid attacks under the Compensation Scheme for Women Victims, Survivors of Sexual Assault, and Other Crimes 2018. The scheme outlined a maximum assistance of 800,000 rupees ($11,500) for injuries from acid attacks.

The government made efforts to address the safety of women. In August the minister of state for women and child development told the lower house of parliament the government allocated 2,919 crore rupees ($410 million) toward enhancing women’s safety in eight cities, including New Delhi, Mumbai, and Chennai. Projects included increased surveillance technology, capacity building, and awareness campaigns. The MWCD also approved five additional one-stop crisis centers for women in distress, increasing the number of such centers to 200. These centers provide medical, legal, counseling, and shelter services for women facing violence. On September 20, the government launched an online National Database on Sexual Offenders. The registry included accused and convicted sexual offenders. Only police and legal authorities had access to data.

Female Genital Mutilation/Cutting (FGM/C): No national law addresses the practice of FGM/C. According to human rights groups and media reports, between
70 and 90 percent of Dawoodi Bohras, a population of approximately one million concentrated in the states of Maharashtra, Gujarat, Rajasthan, and Delhi, practiced FGM/C.

On July 30, the Supreme Court observed a public interest litigation hearing seeking to ban the practice of FGM/C. The government, represented by Attorney General K. K. Venugopal, told the court that it supports the petitioners’ plea that the practice be punishable under the provisions of the Indian Penal Code and the Protection of Children from Sexual Offences Act. Days after a September 14 meeting between the prime minister and the spiritual head of the Dawoodi Bohra community, who supports the practice of FGM/C, the government reportedly reversed its position, and the attorney general stated the matter should be referred to a five-member panel of the Supreme Court to decide on the issue of religious rights and freedom.

Other Harmful Traditional Practices: The law forbids the acceptance of marriage dowry, but many families continued to offer and accept dowries, and dowry disputes remained a serious problem. NCRB data showed authorities arrested 20,545 persons for dowry deaths in 2016. Most states employed dowry prohibition officers. A 2010 Supreme Court ruling makes it mandatory for all trial courts to charge defendants in dowry-death cases with murder.

“Sumangali schemes” affected an estimated 120,000 young women. These plans, named after the Tamil word for “happily married woman,” are a form of bonded labor in which young women or girls work to earn money for a dowry to be able to marry. The promised lump-sum compensation is normally withheld until the end of three to five years of employment and sometimes goes partially or entirely unpaid. While in bonded labor, employers reportedly subjected women to serious workplace abuses including severe restrictions on freedom of movement and communication, sexual abuse, sexual exploitation, and sex trafficking.

So-called “honor killings” remained a problem, especially in Punjab, Uttar Pradesh, and Haryana, and were usually attributable to the victim’s marrying against his or her family’s wishes. On March 27, the Supreme Court ordered state governments to identify districts, subdivisions, and villages that witnessed incidents of honor killings to take remedial, preventive, and punitive measures to stop these crimes. In addition the Supreme Court ruled that state governments must create special cells in all districts for people to report harassment and threats to couples of intercaste marriage.
There were reports women and girls in the “devadasi” system of symbolic marriages to Hindu deities were victims of rape or sexual abuse at the hands of priests and temple patrons in what amounted to a form of sex trafficking. NGOs suggested families exploited some girls from lower castes into prostitution in temples to mitigate household financial burdens and the prospect of marriage dowries. Some states have laws to curb sex trafficking and sexual abuse of women and girls in temple service. Enforcement of these laws remained lax, and the problem was widespread. Some observers estimated more than 450,000 women and girls were exploited in temple-related prostitution.

No federal law addresses accusations of witchcraft; however, authorities may use other legal provisions as an alternative for a victim accused of witchcraft. Most reports stated villagers and local councils usually banned those accused of witchcraft from the village. Bihar, Odisha, Chhattisgarh, Rajasthan, Assam, and Jharkhand have laws criminalizing those who accuse others of witchcraft.

**Sexual Harassment:** Sexual harassment remained a serious problem. Authorities required all state departments and institutions with more than 50 employees to operate committees to prevent and address sexual harassment, often referred to as “eve teasing.” By law sexual harassment includes one or more unwelcome acts or behavior such as physical contact, a request for sexual favors, making sexually suggestive remarks, or showing pornography. Employers who fail to establish complaint committees face fines of up to 50,000 rupees ($705).

On April 12, the NHRC issued notices to the government of Telangana and the Ministry of Information and Broadcasting over media reports of sexual exploitation of women in the Telugu film industry. The commission noted the issues raised by an actress required the Telangana government to constitute a committee to redress the grievances of female employees relating to sexual harassment in the film industry in accordance with the provisions of Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act, 2013.

**Coercion in Population Control:** There were reports of coerced and involuntary sterilization. The government has promoted female sterilization as a form of family planning for decades and, as a result, it made up 86 percent of contraceptive use in the country. Some women, especially poor and lower-caste women, reportedly were pressured by their husbands and families to have tubal ligations or hysterectomies. The government provided monetary compensation for the wage loss, transportation costs, drugs and dressing, and follow-up visits to women.
accepting contraceptive methods including voluntary sterilization. There were no formal restrictions on access to other forms of family planning; however, despite recent efforts to expand the range of contraceptive choices, voluntary sterilization remained the preferred method due to the costs and limited availability of alternative contraceptive choices.

Policies penalizing families with more than two children remained in place in seven states, but some authorities did not enforce them. There are reports that these policies created pressure on women with more than two children to use contraception, including permanent methods such as sterilization, or even termination of subsequent pregnancies. Certain states maintained government reservations for government jobs and subsidies for adults with no more than two children and reduced subsidies and access to health care for those who have more than two. On October 25, in response to a petition filed by an Odisha resident who was not allowed to contest Panchayat (local self-governing body) elections as he had three children, the Supreme Court upheld provisions of the Panchayati Raj Act, which disallows candidates with more than two children from standing for election for posts in local government. The court stated the birth of a third child would automatically disqualify an individual from contesting. According to the NGO Lawyers Collective, such policies often induced families to carry out sex-selection for the second birth to assure they have at least one son, without sacrificing future eligibility for political office.

To counter sex selection, almost all states introduced “girl child promotion” schemes, some of which required a certificate of sterilization for the parents to collect benefits.

**Discrimination:** The law prohibits discrimination in the workplace and requires equal pay for equal work, but employers reportedly often paid women less than men for the same job, discriminated against women in employment and credit applications, and promoted women less frequently than men.

Many tribal land systems, including in Bihar, deny tribal women the right to own land. Other laws or customs relating to the ownership of assets and land accord women little control over land use, retention, or sale.

**Gender-biased Sex Selection:** According to the latest census (2011), the national average male-female sex ratio at birth was 1,000 to 943. According to the National Institution for Transforming India, the national sex ratio at birth between 2013 and 2015 was 900 females per 1,000 males. The law prohibits prenatal sex selection,
but authorities rarely enforced it. In March the government announced the expansion of the Beti Bachao Beti Padhao (Save the Daughter, Educate the Daughter) project in all 640 districts across the country. The government launched the program in 2015 to prevent gender-biased sex selection, promote female education, and ensure the survival and protection of girls. Government data revealed sex ratio at birth showed improving trends in 104 out of 161 districts between 2015 and 2017. The program spent 25.40 crore rupees ($3.5 million) until July 20.

**Children**

**Birth Registration:** The law establishes state government procedures for birth registration. UNICEF estimated authorities registered 58 percent of national births each year. Children lacking citizenship or registration may not be able to access public services, enroll in school, or obtain identification documents later in life.

**Education:** The constitution provides for free education for all children from ages six to 14, but the government did not always comply with this requirement. The World Economic Forum’s 2017 *Gender Gap Report* revealed that enrollment rates, for both male and female students, dropped by nearly 30 percent between primary and secondary school. Additionally, the report found that, while girls had a slight lead in primary and secondary education enrollment rates, boys had greater educational attainment at all levels. The NGO Pratham’s 2017 *Annual Status of Education Report* noted in January that the enrollment gap between males and females in the formal education system increased with age. While there was hardly any difference between boys’ and girls’ enrollment at age 14, 32 percent of females were not enrolled at age 18 as compared with 28 percent of males.

According to UNICEF more than 60 percent of secondary-school age children with disabilities did not attend school.

**Child Abuse:** The law prohibits child abuse, but it does not recognize physical abuse by caregivers, neglect, or psychological abuse as punishable offenses. Although banned, teachers often used corporal punishment. The government often failed to educate the public adequately against child abuse or to enforce the law.

In 2017 humanitarian aid organization World Vision India conducted a survey of 45,844 children between the ages of 12 and 18 across 26 states and found that one in every two children was a victim of sexual abuse. The NGO Counsel to Secure
Justice reported nearly 30 percent of child sexual abuse cases involved incest and that 99 percent of overall child sexual abuse cases were not reported.

NGOs reported abuse in some shelter homes resulted from a systematic lack of oversight, since many NGOs selected to run these spaces were nominated without any background checks. On April 26, the Tata Institute of Social Sciences submitted a report based on interviews conducted in October 2017 stating that girls at a state-run women’s shelter in Muzaffarpur, Bihar, were subjected to sexual assault by the home’s authorities. A police complaint was filed on May 31 against the NGO owned by Brajesh Thakur that ran the home, and Thakur was arrested on June 3. A raid on the home on July 24 and medical tests of its occupants established that 34 of the 44 residents, ranging between ages six and 18, were tortured and sexually abused. The police subsequently arrested 10 men and women who operated the home.

In other cases, shelter owners’ political connections enabled them to continue sexual abuse and exploitation of adult and child residents. In addition in some cases government officials demonstrated continued inaction to address longstanding complaints of mistreatment.

The government sponsored a toll-free 24-hour helpline for children in distress.

**Early and Forced Marriage:** The law sets the legal age of marriage for women at 18 and men at 21, and it empowers courts to annul early and forced marriages. The law does not characterize a marriage between a girl younger than age 18 and a boy younger than age 21 as “illegal,” but it recognizes such unions as voidable. The law also sets penalties for persons who perform, arrange, or participate in child marriages. Authorities did not consistently enforce the law nor address girls who were raped being forced into marriage.

According to international and local NGOs, procedural limitations effectively left married minors with no legal remedy in most situations. According to the Ministry of Home Affairs’ 2015-2016 National Family Health Survey, 27 percent of women between 20 and 24 married before the age of 18, and 2017 UNICEF data revealed 7 percent of the same group of women married before the age of 15.

The law establishes a full-time child-marriage prohibition officer in every state to prevent child marriage. These individuals have the power to intervene when a child marriage is taking place, document violations of the law, file charges against
parents, remove children from dangerous situations, and deliver them to local child-protection authorities.

On July 26, a mahila court (a district court dealing with women’s issues) in Salem, Tamil Nadu, convicted three individuals, including the mother of the victim and the groom, for conducting the marriage of a minor girl in 2015. The court sentenced the mother and groom to 12 years’ imprisonment each.

**Sexual Exploitation of Children:** The law prohibits child pornography and sets the legal age of consent at 18. It is illegal to pay for sex with a minor, to induce a minor into prostitution or any form of “illicit sexual intercourse,” or to sell or buy a minor for the purposes of prostitution. Violators are subject to 10 years’ imprisonment and a fine.

Special Courts to try child sexual abuse cases existed in all six Delhi courts. Civil society groups observed, however, that large caseloads severely limited judges’ abilities to take on cases in a timely manner. In an April study on the status of pending trials in child sexual abuse cases, the Satyarthi Foundation estimated child survivors may need to wait up to 99 years in some states for trials of their cases based on the speed of current cases on the calendar, despite a regulation that all cases should be decided within one year. The Counsel to Secure Justice reported some courts did not use separate witness rooms for children to provide testimony and police officials sometimes pressured child survivors of incest to compromise with the perpetrator and not report the case. Lack of training in handling forensic evidence also had adverse implications on case handling.

On February 21, a local court in Visakhapatnam, Andhra Pradesh, delivered a verdict in a 17-year-old case of pedophilia and sentenced Australian national Paul Henry Dean, who was charged with sexually abusing children in Visakhapatnam and Puri, Odisha, to three years of imprisonment in addition to a fine of 32,000 rupees ($450). Child rights activists raised serious concerns over the duration of the court proceedings, the light sentence, and the accused’s obtaining bail the same day of the judgment.

**Child Soldiers:** No information was available on how many persons younger than age 18 were serving in the armed forces. NGOs estimated at least 2,500 children were associated with insurgent armed groups in Maoist-affected areas as well as child soldiers in insurgent groups in the state of Jammu and Kashmir. There were allegations government-supported, anti-Maoist village defense forces recruited children (see section 1.g., Child Soldiers).
Displaced Children: Displaced children, including refugees, IDPs, and street children, faced restrictions on access to government services (see also section 2.d.).

Institutionalized Children: Lax law enforcement and a lack of safeguards encouraged an atmosphere of impunity in a number of group homes and orphanages.

The Calcutta Research Group reported police sometimes separated families detained at the India-Bangladesh border in the state of West Bengal by institutionalizing children in juvenile justice homes with limited and restricted access to their families.


Anti-Semitism

Jewish groups from the 4,650-member Jewish community cited no reports of anti-Semitic acts during the year.

The Gujarat government accorded the Jewish community minority status, making the community eligible for government entitlements for faith minorities.

Trafficking in Persons

See the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

The constitution does not explicitly mention disability. The law provides equal rights for persons with a variety of disabilities, and the Rights of Persons with Disabilities Act 2016 increased the number of recognized disabilities, including persons with Parkinson’s disease and victims of acid attacks. The law set a two-year deadline for the government to provide persons with disabilities with
unrestricted free access to physical infrastructure and public transportation systems.

The law also reserves 3 percent of all educational places and 4 percent of government jobs for persons with disabilities. The government allocated funds to programs and NGOs to increase the number of jobs filled. In 2017 a government panel decided that private news networks must accompany public broadcasts with sign language interpretations and closed captions to accommodate persons with disabilities.

Despite these efforts, problems remained. Private-sector employment of persons with disabilities remained low, despite governmental incentives. In July the Delhi High Court issued a notice to the All India Institute of Medical Sciences after an acid attack survivor claimed the institution prohibited her from applying to a nursing position because of her disability.

Discrimination against persons with disabilities in employment, education, and access to health care was more pervasive in rural areas, and 45 percent of the country’s population of persons with disabilities were illiterate. There was limited accessibility to public buildings. A public interest litigation case was filed in the Supreme Court regarding accessibility to buildings and roads for persons with disabilities.

The Ministry of Health and Family Welfare estimated 25 percent of individuals with mental disabilities were homeless. Mainstream schools remained inadequately equipped with teachers trained in inclusive education, resource material, and appropriate curricula. Patients in some mental-health institutions faced food shortages, inadequate sanitary conditions, and lack of adequate medical care. HRW reported women and girls with disabilities occasionally were forced into mental hospitals against their will.

In April HRW released its Sexual Violence against Women and Girls with Disabilities in India report. According to the report, girls and women with disabilities who experienced sexual violence faced challenges reporting abuse to police, obtaining proper medical care, and navigating the court system. In August three hearing-and-speech-impaired girls reported sexual abuse in a private hostel in Bhopal. Madhya Pradesh police arrested the director of the private hostel and convened a special investigation team to probe into sexual abuse reports.
On March 22, the Tamil Nadu State Cooperative Societies Election Commission issued orders stating that nominations of persons with disabilities to elections of cooperative associations must not be rejected on the grounds of disability and that basic amenities for persons with disabilities must be put in place. The order came in the wake of protests by members of the Joint Action Committee of the Association for the Disabled against a state government official who allegedly ridiculed two visually impaired individuals and rejected their applications to contest elections for the post of director of a cooperative association.

National/Racial/Ethnic Minorities

The constitution prohibits caste discrimination. The registration of castes and tribes continued for the purpose of affirmative action programs, as the federal and state governments continued to implement programs for members of lower caste groups to provide better-quality housing, quotas in schools, government jobs, and access to subsidized foods. On September 21, data published in the UN’s 2018 Multidimensional Poverty Index showed a “positive trend” during the decade between 2005-06 and 2015-16 in the country, with Muslims, members of the Scheduled Tribes, and Dalits experiencing the greatest reduction in poverty. Discrimination based on caste, however, remained prevalent, particularly in rural areas. Critics claimed many of the programs to assist the lower castes suffered from poor implementation, corruption, or both.

The term “Dalit,” derived from Sanskrit for “oppressed” or “crushed,” refers to members of what society regarded as the lowest of the Scheduled Castes (SC). According to the 2011 census, SC members constituted 17 percent of the population (approximately 200 million persons).

Although the law protects Dalits, there were numerous reports of violence and significant discrimination in access to services such as health care, education, access to justice, freedom of movement, access to institutions such as temples, and marriage. Many Dalits were malnourished. Most bonded laborers were Dalits, and those who asserted their rights were often victims of attacks, especially in rural areas. As agricultural laborers for higher-caste landowners, Dalits reportedly often worked without monetary remuneration. Reports from the UN Committee on the Elimination of Racial Discrimination described systematic abuse of Dalits, including extrajudicial killings and sexual violence against Dalit women. Crimes committed against Dalits reportedly often went unpunished, either because authorities failed to prosecute perpetrators or because victims did not report crimes due to fear of retaliation.
On April 18, as many as 28 Dalit men from the Churu village in Rajasthan were subjected to clinical trials without their consent for Glenmark Pharmaceuticals. According to media reports, the men were transported to Jaipur’s Malpani Hospital with the promise of work at a medical camp but were locked in the hospital basement upon arrival and subjected to the trials.

On June 21, Madhya Pradesh police arrested four upper caste men for burning alive 55-year old Dalit farmer Kishorilal Jatav after he opposed their illegal tilling his land in a village in Bhopal district. The case continued at year’s end.

NGOs reported Dalit students were sometimes denied admission to certain schools because of their caste, required to present caste certification prior to admission, barred from morning prayers, asked to sit in the back of the class, or forced to clean school toilets while being denied access to the same facilities. There were also reports teachers refused to correct the homework of Dalit children, refused to provide midday meals to Dalit children, and asked Dalit children to sit separately from children of upper-caste families.

Manual scavenging--the removal of animal or human waste by Dalits--continued despite its legal prohibition. HRW reported that children of manual scavengers faced discrimination, humiliation, and segregation at village schools. Their occupation often exposed manual scavengers to infections that affected their skin, eyes, respiratory, and gastrointestinal systems. Health practitioners suggested children exposed to such bacteria were often unable to maintain a healthy body weight and suffered from stunted growth.

**Indigenous People**

The constitution provides for the social, economic, and political rights of disadvantaged groups of indigenous persons. The law provides special status for indigenous individuals, but authorities often denied them their rights.

In most of the northeastern states, where indigenous groups constituted the majority of the states’ populations, the law provides for tribal rights, although some local authorities disregarded these provisions. The law prohibits any nontribal person, including citizens from other states, from crossing a government-established inner boundary without a valid permit. No one may remove rubber, wax, ivory, or other forest products from protected areas without authorization. Tribal authorities must also approve the sale of land to nontribal persons.
In May the Gujarat High Court requested Sabarkantha district officials to explain why they imprisoned 10 tribal members for more than a week due to their objection to a private company buying land to build a solar plant. Following the high court’s notice, the individuals were released.

**Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

On September 6, the Supreme Court decriminalized same-sex relations in a unanimous verdict. Activists welcomed the verdict but stated it was too early to determine how the verdict would translate into social acceptance, including safe and equal opportunities at workspaces and educational institutions.

Lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons faced physical attacks, rape, and blackmail. LGBTI groups reported they faced widespread societal discrimination and violence, particularly in rural areas. Activists reported that transgender persons continued to face difficulty obtaining medical treatment. Some police committed crimes against LGBTI persons and used the threat of arrest to coerce victims not to report the incidents. With the aid of NGOs, several states offered education and sensitivity training to police.

**HIV and AIDS Social Stigma**

The number of new HIV cases decreased by 57 percent over the past decade. According to official government records, there were 191,493 newly diagnosed cases in 2017. The epidemic persisted among the most vulnerable/high-risk populations that include female sex workers, men who have sex with men, transgender persons, and persons who inject drugs. According to the National AIDS Control Organization’s *HIV Sentinel Surveillance 2017* report, high prevalence states such as Andhra Pradesh and Karnataka saw declining HIV trends among all high-risk groups in 2017.

The National AIDS Control Program prioritized HIV prevention, care, and treatment interventions for high-risk groups and advocated for the rights of persons living with HIV. Antiretroviral drug stock outages in a few states led to treatment interruption. The National AIDS Control Organization worked actively with NGOs to train women’s HIV/AIDS self-help groups. Police engaged in programs to strengthen their role in protecting communities vulnerable to human rights violations and HIV.
In August in response to a Public Interest Litigation, the Delhi High Court issued a notice inquiring why the Ministry of Health had not implemented the HIV and AIDS (Prevention and Control) Bill that was passed in April 2017. The bill was designed to prevent discrimination in health care, employment, education, housing, economic participation, and political representation for those with HIV and AIDS. On September 10, the Health Ministry announced through an official gazette announcement the creation of rules to implement the act.

**Other Societal Violence or Discrimination**

Societal violence based on religion and caste and by religiously associated groups continued to be a serious concern. Muslims and lower-caste Dalit groups continued to be the most vulnerable. Ministry of Home Affairs 2016-17 data showed 703 incidents of communal (religious) violence occurred, in which 86 persons were killed and 2,321 injured.

Amnesty International recorded 98 hate crimes across the country between January and June. In July the Supreme Court condemned the rise of hate crimes, urging state governments to enact laws against mob violence. The Supreme Court recommended each state should establish a special task force to monitor hate speech and investigate vigilante groups.

Reports of mob lynching increased in the past year. As of July 27, 24 persons were killed due to mob Lynchings, a two-fold increase over 2017. Many of the acts of mob violence arose after rumors circulated over social media that a child had been kidnapped or a cow killed. Jharkhand had the highest number of mob-related deaths at seven reported cases, Maharashtra was second with five deaths. On March 20, a Jharkhand court sentenced 11 persons to life in prison for beating to death Alimuddin Ansari, a Muslim, who was suspected of trading in beef. On May 30, the body of cattle trader Hussainabba was found near Udupi, Karnataka. According to the complaint registered by his family members, Hussainabba was assaulted by members of a Hindu right-wing group while transporting 13 cattle and subsequently died of his injuries.

**Section 7. Worker Rights**

a. **Freedom of Association and the Right to Collective Bargaining**
The law provides for the right to form and join unions and to bargain collectively, although there is no legal obligation for employers to recognize a union or engage in collective bargaining. In the state of Sikkim, trade union registration was subject to prior permission from the state government. The law limits the organizing rights of federal and state government employees.

The law provides for the right to strike but places restrictions on this right for some workers. For instance, in export processing zones (EPZs), a 45-day notice is required because of the EPZs’ designation as a “public utility.” The law also allows the government to ban strikes in government-owned enterprises and requires arbitration in specified “essential industries.” Definitions of essential industries vary from state to state. The law prohibits antiunion discrimination and retribution for involvement in legal strikes and provides for reinstatement of employees fired for union activity.

Enforcement of the law varied from state to state and from sector to sector. Enforcement was generally better in the larger, organized-sector industries. Authorities generally prosecuted and punished individuals responsible for intimidation or suppression of legitimate trade union activities in the industrial sector. Civil judicial procedures addressed abuses because the Trade Union Act does not specify penalties for such abuses. Specialized labor courts adjudicate labor disputes, but there were long delays and a backlog of unresolved cases.

Employers generally respected freedom of association and the right to organize and bargain collectively in the formal industrial sector but not in the larger, informal economy. Most union members worked in the formal sector, and trade unions represented a small number of agricultural and informal-sector workers. Membership-based organizations, such as the Self-Employed Women’s Association, successfully organized informal-sector workers and helped them to gain higher payment for their work or products.

An estimated 80 percent of unionized workers were affiliated with one of the five major trade union federations. Unions were independent of the government, but four of the five major federations were associated with major political parties.

State and local authorities occasionally used their power to declare strikes illegal and force adjudication. Labor groups reported that some employers continued to refuse to recognize established unions and some, instead, established “workers’ committees” and employer-controlled unions to prevent independent unions from
organizing. EPZs often employed workers on temporary contracts. Additionally, employee-only restrictions on entry to the EPZs limited union organizers’ access.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor, but forced labor, including bonded child labor (see section 7.c.), remained widespread.

Enforcement and compensation for victims is the responsibility of state and local governments and varied in effectiveness. The government generally did not effectively enforce laws related to bonded labor or labor trafficking laws, such as the Bonded Labor System (Abolition) Act. Prosecutions were rare. When inspectors referred violations for prosecution, court backlogs, inadequate preparation, and a lack of prioritization of these cases by prosecuting authorities sometimes resulted in acquittals.

Penalties under law varied based on the type of forced labor and included fines and prison terms; not all were sufficiently stringent. For example, bonded labor was specifically criminalized under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, which prescribes sufficiently stringent penalties of up to five years’ imprisonment, and the Bonded Labor System (Abolition) Act, which prescribes penalties of up to three years’ imprisonment, which were not sufficiently stringent.

The Ministry of Labor and Employment continued to work with the International Labor Organization (ILO) to combat bonded labor. Based on the ILO’s concluded “convergence program,” the Odisha government entered into agreements with brick kiln owners in Andhra Pradesh and Telangana to protect workers vulnerable to bonded labor.

The Ministry of Labor and Employment reported the federally funded, state-run Centrally Sponsored Scheme assisted in the release of 5,295 bonded laborers during the period April 2017 through March. Some NGOs reported delays in obtaining release certificates for rescued bonded laborers that were required to certify that employers had held them in bondage and entitled them to compensation under the law. The distribution of rehabilitation funds was uneven across states.

Estimates of the number of bonded laborers varied widely. Official government estimates place the number at 18 million workers in debt bondage. Most bonded labor occurred in agriculture. Nonagricultural sectors with a high incidence of
bonded labor were stone quarries, brick kilns, rice mills, construction, embroidery factories, and beedi (hand-rolled cigarettes) production.

Bonded labor continued to be a concern in several states. On March 15, 155 migrant bonded laborers, including 31 children and 63 women, were rescued from a brick kiln in Tiruvallur, Tamil Nadu, by an NGO in cooperation with the district administration. Most of the rescued persons were paid less than 200 rupees ($3.00) a week. Police registered a case against the owner of the brick kiln. On August 1, government officials in Karimnagar District, Telangana, invoked section 342 (punishment for wrongful confinement) of the Indian Penal Code to rescue 32 tribal workers from labor bondage at an irrigation canal worksite. The investigation revealed that each worker was paid an advance remuneration of 20,000 rupees ($280) for 12 hours of work every day for nine months.

Scheduled Caste and Scheduled Tribe members lived and worked under traditional arrangements of servitude in many areas of the country. Although the central government had long abolished forced labor servitude, these social groups remained impoverished and vulnerable to forced exploitation, especially in Arunachal Pradesh.

Also see the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

The law prohibits employment of children younger than age 14. The law also prohibits the employment of children between the ages of 14 and 18 in hazardous work. Children are prohibited from using flammable substances, explosives, or other hazardous material, as defined by the law. In 2017 the Ministry of Labor and Employment added 16 industries and 59 processes to the list of hazardous industries where employment of children younger than age 18 is prohibited, and where children younger than age 14 are prohibited from helping, including family enterprises. The law, however, permits employment of children in family-owned enterprises involving nonhazardous activities after school hours. Nevertheless, child labor remained widespread.

State governments enforced labor laws and employed labor inspectors, while the Ministry of Labor and Employment provided oversight and coordination. Violations remained common. The law establishes a penalty in the range of 20,000 rupees ($280) to 50,000 rupees ($700) per child employed in hazardous industries.
Such fines were often insufficient to deter violations, and authorities sporadically enforced them. The fines are deposited in a welfare fund for formerly employed children.

The Ministry of Labor and Employment coordinated its efforts with states to raise awareness about child labor by funding various outreach events such as plays and community activities.

The majority of child labor occurred in agriculture and the informal economy, in particular in stone quarries, in the rolling of cigarettes, and in informal food service establishments. Commercial sexual exploitation of children occurred (see section 6, Children). The NGO Child Rights and You stated in a July report that 23 million children between ages 15 and 18 worked in nonhazardous industries.

According to news reports, in a series of raids in February, district authorities and NGOs jointly rescued more than 150 child workers from roadside eateries, vehicle repair shops, artificial jewelry making units, and textile shops in the Krishna District of Andhra Pradesh.

Forced child labor, including bonded labor, also remained a serious problem. Employers engaged children in forced or indentured labor as domestic servants and beggars, as well as in quarrying, brick kilns, rice mills, silk-thread production, and textile embroidery.

Also see the Department of Labor’s *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/reports/child-labor/findings/](http://www.dol.gov/ilab/reports/child-labor/findings/).

d. **Discrimination with Respect to Employment and Occupation**

The law and regulations prohibit discrimination based on race, sex, gender, disability, language, sexual orientation, gender identity, or social status with respect to employment and occupation. The law does not prohibit discrimination against individuals with HIV/AIDS or other communicable diseases, color, religion, political opinion, national origin, or citizenship.

The government effectively enforces the law and regulations within the formal sector. Penalties for violations included fines up to 93,750 rupees ($1,320), prison term ranging from three months to two years, or both. The law and regulations, however, do not protect those working within the informal sector (industries and
establishments that do not fall under the purview of the Factories Act), who made up an estimated 90 percent of the workforce.

Discrimination occurred in the informal sector with respect to Dalits, indigenous persons, and persons with disabilities. Gender discrimination with respect to wages was prevalent. Foreign migrant workers were largely undocumented and typically did not enjoy the legal protections available to workers who are nationals of the country.

e. Acceptable Conditions of Work

Federal law sets safety and health standards, but state government laws set minimum wages, hours of work, and additional state-specific safety and health standards. The daily minimum wage varied but was more than the official estimate of poverty-level income. State governments set a separate minimum wage for agricultural workers. Laws on wages, hours, and occupational health and safety do not apply to the large informal sector.

The law mandates a maximum eight-hour workday and 48-hour workweek, as well as safe working conditions, which include provisions for restrooms, cafeterias, medical facilities, and ventilation. The law mandates a minimum rest period of 30 minutes after every four hours of work and premium pay for overtime, but it does not mandate paid holidays. The law prohibits compulsory overtime, but it does not limit the amount of overtime a worker can perform. Occupational safety and health standards set by the government were generally up to date and covered the main industries in the country.

State governments are responsible for enforcing minimum wages, hours of work, and safety and health standards. The number of inspectors generally was insufficient to enforce labor law. State governments often did not effectively enforce the minimum wage law for agricultural workers. Enforcement of safety and health standards was poor, especially in the informal sector, but also in some formal sector industries. Penalties for violation of occupational safety and health standards range from a fine of 100,000 rupees ($1,410) to imprisonment for up to two years, but they were not sufficient to deter violations.

Violations of wage, overtime, and occupational safety and health standards were common in the informal sector. Small, low-technology factories frequently exposed workers to hazardous working conditions. Undocumented foreign workers did not receive basic occupational health and safety protections. In many
instances, workers could not remove themselves from situations that endangered health or safety without jeopardizing their employment.

On February 16, seven workers at a farm in Chittoor District, Andhra Pradesh, died allegedly due to asphyxiation caused by inhaling poisonous gases when they stepped into a septic tank without wearing protective gear to clean a flushing machine. On September 10, five workers in West Delhi engaged to clean a septic tank for an apartment building died when they were overcome by fumes.
Tab 2
India is a multiparty, federal, parliamentary democracy with a bicameral legislature. The president, elected by an electoral college composed of the state assemblies and parliament, is the head of state, and the prime minister is the head of the government. Under the constitution the 29 states and seven union territories have a high degree of autonomy and have primary responsibility for law and order. Voters elected President Ram Nath Kovind in July to a five-year term, and Narendra Modi became prime minister following the victory of the National Democratic Alliance coalition led by the Bharatiya Janata Party in the 2014 general elections. Observers considered these elections, which included more than 551 million participants, free and fair despite isolated instances of violence.

Civilian authorities maintained effective control over the security forces.

The most significant human rights issues included police and security force abuses, such as extrajudicial killings, disappearances, torture, arbitrary arrest and detention, rape, harsh and life-threatening prison conditions, and lengthy pretrial detention. Widespread corruption; reports of political prisoners in certain states; and instances of censorship and harassment of media outlets, including some critical of the government continued. There were government restrictions on foreign funding of some nongovernmental organizations (NGOs), including on those with views the government stated were not in the “national interest,” thereby curtailing the work of these NGOs. Legal restrictions on religious conversion in eight states; lack of criminal investigations or accountability for cases related to rape, domestic violence, dowry-related deaths, honor killings, sexual harassment; and discrimination against women and girls remained serious problems. Violence and discrimination based on religious affiliation, sexual orientation, and caste or tribe, including indigenous persons, also persisted due to a lack of accountability.

A lack of accountability for misconduct at all levels of government persisted, contributing to widespread impunity. Investigations and prosecutions of individual cases took place, but lax enforcement, a shortage of trained police officers, and an overburdened and underresourced court system contributed to a small number of convictions.

Separatist insurgents and terrorists in the state of Jammu and Kashmir, the northeast, and the Maoist-affected areas committed serious abuses, including
killings and torture of armed forces personnel, police, government officials, and of civilians, and recruitment and use of child soldiers.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were reports the government and its agents committed arbitrary or unlawful killings, including extrajudicial killings of suspected criminals and insurgents.

During the year the South Asian Terrorism Portal, run by the nonprofit Institute for Conflict Management, reported the deaths of 111 civilians, 15 security force members, and 210 terrorists or insurgents as of June 2. Data from the institute also showed 317 fatalities from terrorist violence were recorded in the state of Jammu and Kashmir through August, compared with 329 for 2016.

There were 108 reported deaths as a result of “encounter killings”—a term used to describe any encounter between the security or police forces and alleged criminals or insurgents that resulted in a death—documented countrywide by the Investigation Division of the National Human Rights Commission (NHRC), according to Ministry of Home Affairs 2016-17 data.

On June 6, police killed six individuals during a protest in Madhya Pradesh. The Madhya Pradesh government appointed a one-member commission to investigate police action and paid 10 million rupees ($160,000) to each of the victims’ families. By year’s end the investigation had not concluded.

Reports of custodial death cases, in which prisoners or detainees were killed or died in police custody, continued. Decisions by central and state authorities not to prosecute police or security officials despite reports of evidence in certain cases remained a problem. The National Crime Records Bureau (NCRB) reported 92 cases of custodial deaths nationwide in 2016 with Maharashtra reporting the highest number of cases at 16. Madhya Pradesh and Gujarat reported 11 cases, and Uttar Pradesh, nine cases. According to a media report, in response to a “Right to Information” (RTI) petition, the NHRC stated that 74 persons died in police custody from January 1 through August 2.

On July 24, the Supreme Court sought an update from the government’s Central Bureau of Investigation (CBI) and the Madhya Pradesh state government on a
court-monitored investigation into the October 2016 killings of eight suspected members of the outlawed Students’ Islamic Movement of India after they allegedly killed a guard and escaped from a high security prison. In November 2016 the NHRC issued a formal complaint against the state government, police, and prison authorities, expressing doubt that the men were killed while attempting to escape, classifying them instead as custodial deaths. A relative of one of the deceased, in her petition to the Supreme Court, criticized the Madhya Pradesh government for only appointing only a one-person investigative commission.

On October 25, a special CBI court brought charges against 16 law enforcement officers for their alleged involvement in the encounter deaths of Sohrabuddin Sheikh and Tulsiram Prajapati. A joint Rajasthan and Gujarat antiterrorist squad allegedly killed Sheikh on a highway near Ahmedabad in November 2005; later, police allegedly killed his wife Kausar Bi and Tulsiram Prajapati, a key witness in the case. According to the CBI, charges were not brought against those accused who had applications pending in the Bombay High Court or the Supreme Court.

On March 25, the High Court of Madras directed the Tamil Nadu government to pay one million rupees ($16,000) to the family of a man named Ramesh, known as “Nambu,” who died in 2010 after reportedly being tortured while in police custody on suspicion of theft. The court also imposed a fine of 50,000 rupees ($800) on the municipal administration secretary of the Tamil Nadu government for failing to provide compensation to the family of the victim. A probe into the case by the additional director general of police confirmed in July that Nambu was subjected to “ill treatment” during his illegal detention and died as a result of this treatment.

Three individuals died in separate incidents due to alleged torture while in Telangana state police custody. On April 7, Mohan Krishna died on the way to a hospital after he returned from Begumpet police station in Hyderabad, where he was detained and questioned in a case of alleged sexual harassment of a minor. On April 21, a man identified as “Ganesh” died on the way to a hospital after he was interrogated in the Hayathnagar police station near Hyderabad for “suspicious movement” on the road. On March 18, Bhim Singh died in a Hyderabad police station after being detained for questioning following an altercation. In all these instances, police denied that detainees were tortured, citing previous illnesses as the cause of death.

The Armed Forces Special Powers Act (AFSPA) remained in effect in Nagaland, Manipur, Assam, and parts of Mizoram, and a version of the law was in effect in the state of Jammu and Kashmir. The government also declared Meghalaya’s
border areas adjoining Assam and three districts in Arunachal Pradesh as “disturbed” for two more months from August through October. While the Nagaland government demanded the AFSPA be lifted in the state, the central government extended it through December.

Under the AFSPA, a central government designation of a state or union territory as a “disturbed area” authorizes security forces in the state to use deadly force to “maintain law and order” and arrest any person “against whom reasonable suspicion exists” without informing the detainee of the grounds for arrest. The law also provides security forces immunity from civilian prosecution for acts committed in regions under the AFSPA, although in 2016 the Supreme Court concluded that every death caused by the armed forces in a disturbed area, whether a common person or a terrorist, should be thoroughly investigated, adding that the law must be equally applied.

There was considerable public support for repeal of the AFSPA, particularly in areas that experienced a significant decrease in insurgent attacks. Human rights organizations also continued to call for the repeal of the law, citing numerous alleged human rights violations over the years. On July 14, the Supreme Court directed the CBI to set up a five-member team to examine at least 87 of 1,528 alleged killings by police, army, and paramilitary forces between 1979 and 2012 in Manipur. This order was in response to a petition filed by victims’ families and NGOs. According to rights activists, until mid-December the CBI had not summoned any victims or witnesses and was still collecting documents related to the killings from the courts and the government of Manipur. The Supreme Court judgment stated the CBI must file formal charges by December 31.

The NGO Commonwealth Human Rights Initiative noted in its 2016 report that of 186 complaints of human rights violations reported against the armed forces in states under the AFSPA, between 2012 and 2016, 49.5 percent were from the state of Jammu and Kashmir. The data supplied by the Ministry of Home Affairs under the RTI Act did not, however, indicate whether complaints were deemed to have merit.

On June 27, the Gujarat High Court granted bail to Atul Vaidya, one of 24 individuals convicted in the 2002 Gulbarg Society killings, when a rioting mob killed 69 individuals during communal unrest. The Gujarat government did not allow the Supreme Court-appointed special investigation to appeal to the Supreme Court to enhance the sentences awarded to some of the 24 persons convicted or to challenge the acquittal of 14 others accused. On October 5, the Gujarat High Court
dismissed Zakia Jafri’s plea, upholding a lower court’s verdict exonerating senior Gujarat government officials, citing lack of prosecutable evidence following her allegations of “a larger conspiracy” behind the 2002 riots. The court allowed Jafri to appeal in higher courts.

Nongovernmental forces, including organized insurgents and terrorists, committed numerous killings and bombings in the state of Jammu and Kashmir, the northeastern states, and Maoist-affected areas (see section 1.g.). Maoists in Jharkhand and Bihar continued to attack security forces and key infrastructure facilities such as roads, railways, and communication towers. On April 24, Maoist insurgents attacked a convoy in Chhattisgarh, killing 25 Central Reserve Police Force personnel and critically injuring six.

b. Disappearance

There were allegations police failed to file required arrest reports for detained persons, resulting in hundreds of unresolved disappearances. Police and government officials denied these claims. The central government reported that state government screening committees informed families about the status of detainees. There were reports, however, that prison guards sometimes required bribes from families to confirm the detention of their relatives.

Disappearances attributed to government forces, paramilitary forces, and insurgents occurred in areas of conflict during the year (see section 1.g.).

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture, but NGOs reported torture occurred during the year. Police beatings of prisoners resulted in custodial deaths (see section 1.a.).

The law does not permit authorities to admit coerced confessions into evidence, but NGOs and citizens alleged authorities used torture to coerce confessions. In some instances authorities submitted these confessions as evidence in capital cases. Authorities allegedly also used torture as a means to extort money or as summary punishment. According to human rights experts, the government continued to try individuals arrested and charged under the repealed Prevention of Terrorism Act and Terrorist and Disruptive Activities Act. Under the repealed laws, authorities treated a confession made to a police officer as admissible evidence in court.
On June 19, Abhay Singh, an antiques dealer, died while in custody in Odisha, allegedly following seven days of torture. Police took Singh into custody on May 30 to investigate the theft of a mobile phone, subsequently charged him with drug trafficking, and transported him to a hospital on June 10 where his health reportedly deteriorated. The NHRC and Odisha State Human Rights Commission (SHRC) ordered the state human rights protection cell of police to investigate and submit a report. At year’s end there were no updates to the case.

On July 18, a 19-year-old lower-caste man reportedly committed suicide at Engadiyur in Kerala’s Thrissur District a day after he was released from police custody for not having proper motor vehicle registration papers. His father and friends alleged instead that he died from injuries sustained from police brutality while in custody, and a postmortem report confirmed he had injuries consistent with torture. Based on the complaint by the victim’s father, a case was filed against several police officers under the Criminal Procedure Code and the Scheduled Caste/Scheduled Tribes Prevention of Atrocities Act. Two police officers were suspended for the death, and the case was transferred to the Crime Bureau for further investigation.

There were continued reports that police raped female and male detainees. The government authorized the NHRC to investigate rape cases involving police officers. By law the NHRC may also request information about cases involving the army and paramilitary forces, but it has no mandate to investigate those cases. NGOs claimed the NHRC underestimated the number of rapes committed in police custody. Some rape victims were unwilling to report crimes due to social stigma and the possibility of retribution, compounded by a perception of a lack of oversight and accountability, especially if the perpetrator was a police officer or other official. There were reports police officials refused to register rape cases.

**Prison and Detention Center Conditions**

Prison conditions were frequently life threatening, most notably due to inadequate sanitary conditions and medical care and extreme overcrowding. Prisons did not meet international standards.

**Physical Conditions:** Prisons were often severely overcrowded, and food, medical care, sanitation, and environmental conditions often were inadequate. Potable water was often unavailable. Prisons and detention centers remained underfunded,
understaffed, and lacking sufficient infrastructure. Prisoners were physically mistreated.

According to the NCRB *Prison Statistics India 2015* report, there were 1,401 prisons in the country with an authorized capacity of 366,781 persons. The actual incarcerated population was 419,623. Persons awaiting trial accounted for more than two-thirds of the prison population. The law requires detention of juveniles in rehabilitative facilities, although at times authorities detained them in adult prisons, especially in rural areas. Authorities often detained pretrial detainees along with convicted prisoners. In Uttar Pradesh occupancy at most prisons was two and sometimes three times the permitted capacity, according to an adviser appointed by the Supreme Court.

In November 2016 the Commonwealth Human Rights Initiative launched two reports on the “alarming conditions” in prisons. According to the reports, those awaiting trial included 67 percent of the country’s prison population, and independent monitors regularly inspected less than 1 percent of prisons.

According to the NCRB *Prison Statistics India 2015* report, overcrowding was most severe in Dadra and Nagar Haveli at 277 percent of capacity, while Chhattisgarh prisons were at 234 percent of capacity and Delhi prisons, at 227 percent of capacity. On August 8, Minister of State for Home Affairs Hansraj Gangaram Ahir quoted NCRB data to inform the lower house of parliament that 149 out of 1,401 jails in the country had an overcrowding rate of more than 200 percent at the end of 2015.

In March, Minister of State for Home Affairs Ahir informed the lower house of parliament that there were 4,391 female jail staff for a population of 17,834 female prisoners as of 2015.

On September 26, police submitted charges in a local court against six prison officials for the death of Manjula Shetye, a female convict in Mumbai. On July 8, Mumbai police arrested six prison officials who allegedly assaulted Shetye following her complaint about inadequate food. Her death resulted in violent protests by 200 prison inmates, who were later charged with rioting. On July 31, the Bombay High Court ordered an inquiry into the cause of Shetye’s death. A government doctor who signed the death certificate was suspended.
Authorities permitted visitors some access to prisoners, although some family members claimed authorities denied access to relatives, particularly in conflict areas, including the state of Jammu and Kashmir.

On August 4, through an alternative dispute resolution mechanism, the Tamil Nadu State Legal Services Authority released 570 pretrial detainees (in nine Central Prisons and five Special Prisons for women in Tamil Nadu) who had been detained for longer than the minimum term prescribed for their alleged crimes.

Independent Monitoring: The NHRC received and investigated prisoner complaints of human rights violations throughout the year, but civil society representatives believed few prisoners filed complaints due to fear of retribution from prison guards or officials. On May 26, the NHRC ordered an investigation into torture allegations by 21 inmates on trial in a jail in Bhopal.

Authorities permitted prisoners to register complaints with state and national human rights commissions, but the authority of the commissions extended only to recommending that authorities redress grievances. Government officials reportedly often failed to comply with a Supreme Court order instructing the central government and local authorities to conduct regular checks on police stations to monitor custodial violence.

In many states the NHRC made unannounced visits to state prisons, but NHRC jurisdiction does not extend to military detention centers. An NHRC special rapporteur visited state prisons to verify that authorities provided medical care to all inmates. The rapporteur visited prisons on a regular basis throughout the year but did not release a report to the public or the press.

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, but both occurred during the year. Police also used special security laws to postpone judicial reviews of arrests. Pretrial detention was arbitrary and lengthy, sometimes exceeding the duration of the sentence given to those convicted.

According to human rights NGOs, some police used torture, mistreatment, and arbitrary detention to obtain forced or false confessions. In some cases police reportedly held suspects without registering their arrests and denied detainees sufficient food and water.
Role of the Police and Security Apparatus

The 29 states and seven union territories have primary responsibility for maintaining law and order, with policy oversight from the central government. Police are under state jurisdiction. The Ministry of Home Affairs controls most paramilitary forces, the internal intelligence bureaus, and national law enforcement agencies, and provides training for senior officials from state police forces. According to Human Rights Watch (HRW), cases of arbitrary arrest, torture, and forced confessions by security forces remained common. Police continued to be overworked, underpaid, and subjected to political pressure, in some cases contributing to corruption. The HRW 2017 India country report found that officials were rarely prosecuted for crimes committed because the law made it “difficult, if not impossible” to prosecute public officials.

The effectiveness of law enforcement and security forces varied widely throughout the country. According to the law, courts may not hear a case against a police officer unless the central or state government first authorizes prosecution. Nonetheless, NGOs reported that in many instances police refused to register victim’s complaints, termed “first information reports” (FIR), on crimes reported against officers, effectively preventing victims from pursuing justice. Additionally, NGOs reported that victims were sometimes reluctant to report crimes committed by police due to fear of retribution. There were cases of officers at all levels acting with impunity, but there were also cases of security officials held accountable for illegal actions. Military courts investigated cases of abuse by the armed forces and paramilitary forces. Authorities tried cases against law enforcement officers in public courts but sometimes did not adhere to due process. Authorities sometimes transferred officers after convicting them of a crime.

The NHRC recommended the Criminal Investigations Department of the state police investigate all deaths taking place during police pursuits, arrests, or escape attempts. Many states did not follow this nonbinding recommendation and continued to conduct internal reviews at the discretion of senior officers.

While NHRC guidelines call for state governments to report all cases of deaths from police actions to the NHRC within 48 hours, state governments did not consistently adhere to those guidelines. The NHRC also called for state governments to provide monetary compensation to families of victims, but the state governments did not consistently adhere to this practice. Authorities did not require the armed forces to report custodial deaths to the NHRC.
On July 27, the Armed Forces Tribunal suspended the life sentences of five army personnel involved in the 2010 killing of three civilians from the state of Jammu and Kashmir. The civilians were reportedly killed in a staged encounter and later accused of being foreign militants.

**Arrest Procedures and Treatment of Detainees**

Police may detain an individual without charge for up to 30 days, although an arrested person must be brought before a judge within 24 hours of arrest. Lengthy arbitrary detention remained a significant problem due to overburdened and under resourced court systems and a lack of legal safeguards.

Arraignment of detainees must occur within 24 hours unless authorities hold the suspect under a preventive detention law. State authorities invoked preventive detention laws, most frequently in Delhi but also in the states of Gujarat, Maharashtra, Uttar Pradesh, Punjab, and Jammu and Kashmir.

Authorities must promptly inform persons detained on criminal charges of the charges against them and of their right to legal counsel. By law a magistrate may authorize the detention of an accused person for a period of no more than 90 days prior to filing charges. Under standard criminal procedure, authorities must release the accused on bail after 90 days if charges are not filed. The law also allows police to summon individuals for questioning, but it does not grant police prearrest investigative detention authority. There were incidents in which authorities allegedly detained suspects beyond legal limits.

The law also permits authorities to hold a detainee in judicial custody without charge for up to 180 days (including the 30 days in police custody). The Unlawful Activities Prevention Act (UAPA), which gives authorities the ability to detain persons without charge in cases related to insurgency or terrorism, makes no bail provisions for foreign nationals and allows courts to deny bail in the case of detained citizens. It presumes the accused to be guilty if the prosecution can produce evidence of the possession of arms or explosives, or the presence of fingerprints at a crime scene, regardless of whether authorities demonstrate criminal intent. State governments also reportedly held persons without bail for extended periods before filing formal charges under the UAPA.

The law permits preventive detention in certain cases. The National Security Act allows police to detain persons considered security risks anywhere in the country, except the state of Jammu and Kashmir, without charge or trial for as long as one
year. The law allows family members and lawyers to visit national security
detainees and requires authorities to inform a detainee of the grounds for detention
within five days, or 10 to 15 days in exceptional circumstances.

The Public Safety Act, which applies only in the state of Jammu and Kashmir
permits state authorities to detain persons without charge or judicial review for up
to two years without visitation from family members. Authorities allowed
detainees access to a lawyer during interrogation, but police in the state of Jammu
and Kashmir allegedly routinely employed arbitrary detention and denied detainees
access to lawyers and medical attention.

Accused individuals have a right to free legal assistance, including for their first
hearing after arrest. The constitution specifies that the state should furnish legal
aid to provide that opportunities for securing justice are not denied to any citizen
by reason of economic or other disabilities, but authorities did not assess this need
systematically.

There were reported cases in which police denied suspects the right to meet with
legal counsel as well as cases in which police unlawfully monitored suspects’
conversations and violated confidentiality rights. By law authorities must allow
family members access to detainees, but this was not always observed.

Arbitrary Arrest: The law prohibits arbitrary arrest or detention, but in some cases
police reportedly continued to arrest citizens arbitrarily. There were reports of
police detaining individuals for custodial interrogation without identifying
themselves or providing arrest warrants.

Pretrial Detention: The Center for Constitutional Right, Research and Advocacy
(CCRRRA) in Kochi, Kerala, reported certain prisoners with mental disabilities in
the Kerala central prison considered “not fit for trial” had awaited trial for 10 to 26
years. According to the NGO, the prisoners in some cases were in detention far
longer than their potential sentences. In 2013 CCRRRA’s founder filed a writ
petition with the Kerala High Court for the release of those prisoners. The court
responded by issuing an order directing the state government to provide adequate
medical treatment to the accused to render them fit for trial. The case was pending
in the Kerala High Court at year’s end.

The government continued efforts to reduce lengthy detentions and alleviate prison
overcrowding by using “fast track” courts, which specified trial deadlines,
provided directions for case management, and encouraged the use of bail. Some
NGOs criticized these courts for failing to uphold due process and requiring detainees unable to afford bail remain in detention.

NCRB data from 2015 showed most individuals awaiting trial spent more than three months in jail before they could secure bail, and nearly 65 percent spent between three months and five years before being released on bail. The NCRB’s 2016 report did not include updated statistics.

e. Denial of Fair Public Trial

The law provides for an independent judiciary, but judicial corruption was widespread. For example, in May, *The Hindu* newspaper reported on the case of five judges facing impeachment proceedings for a variety of offenses, including allegations of corruption.

The judicial system remained seriously overburdened and lacked modern case management systems, often delaying or denying justice. According to 2015-16 data released by the Supreme Court, there was a 43 percent vacancy of judges in the country’s 24 high courts.

There were developments related to the 2010 killing of Amit Jethwa, an RTI activist. In June the Gujarat High Court ordered a retrial after concluding that Dinu Solanki, a member of parliament at the time he was accused of ordering Jethwa’s killing, had tampered with witnesses after 105 out of 195 witnesses turned hostile during the trial. On October 30, the Supreme Court cancelled Solanki’s bail and directed him to surrender to police. The court also ordered the trial to be held on a day-to-day basis and directed that Solanki not be in Gujarat unless required in the case.

**Trial Procedures**

The law provides for public trials, except in proceedings that involve official secrets or state security. Defendants enjoy the presumption of innocence, except as described under UAPA conditions, and may choose their counsel. The state provides free legal counsel to defendants who cannot afford it, but circumstances often limited access to competent counsel, and an overburdened justice system resulted in lengthy delays in court cases, with disposition sometimes taking more than a decade.
While defendants have the right to confront accusers and present their own witnesses and evidence, defendants sometimes did not exercise this right due to lack of proper legal representation. Defendants have the right not to testify or confess guilt. Courts must announce sentences publicly, and there are effective channels for appeal at most levels of the judicial system.

**Political Prisoners and Detainees**

There were reports of political prisoners and detainees. NGOs reported the state of Jammu and Kashmir held political prisoners and temporarily detained individuals under the Public Safety Act (PSA). More than 650 such cases were registered by the Jammu and Kashmir state government under the PSA through June and referred to the Jammu and Kashmir High Court.

**Civil Judicial Procedures and Remedies**

Individuals, or NGOs on behalf of individuals or groups, may file public-interest litigation (PIL) petitions in any high court or directly to the Supreme Court to seek judicial redress of public injury. Grievances may include a breach of public duty by a government agent or a violation of a constitutional provision. NGOs credited PIL petitions with making government officials accountable to civil society organizations in cases involving allegations of corruption and partiality.

In January 2016 the Bombay High Court addressed a two-fold rise in reported custodial death and police torture cases from 2014 to 2015 and directed the Maharashtra government to submit a report to the court. The court also criticized the government for its failure to install closed-circuit television cameras in police stations. In January the Maharashtra government allocated 27.5 million rupees ($440,000) to install closed-circuit television cameras in 25 of the 91 police stations in Mumbai in the first phase of implementation of a court order to install them in all police stations.

**f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**

While the constitution does not contain an explicit right to privacy, the Supreme Court has found such a right implicit in other constitutional provisions. In August the Supreme Court ruled that privacy is a “fundamental right” in a case involving government collection of biographical information. The law, with some exceptions, prohibits arbitrary interference. The government generally respected
this provision, although at times authorities infringed upon the privacy rights of citizens. The law requires police to obtain warrants to conduct searches and seizures, except in cases in which such actions would cause undue delay. Police must justify warrantless searches in writing to the nearest magistrate with jurisdiction over the offense.

The law hindered transparency and accountability with regard to electronic surveillance. According to a government report quoting NCRB provisional data for 2016, Minister of State for Home Affairs Ahir cited 30 registered cases in violation of the law in 2016 compared with nine in 2015.

Both the central and state governments intercepted communications under legal authority. The Group of Experts on Privacy convened in 2012 by the Government of India Planning Commission, the most recent review available, noted that the differences between two provisions of law had created an unclear regulatory regime that was, according to the report, “inconsistent, nontransparent, prone to misuse, and does not provide remedy or compensation to aggrieved individuals.”

The UAPA provides an additional legal basis for warrantless searches. The UAPA also allows use of evidence obtained from intercepted communications in terrorist cases. In the states of Jammu and Kashmir, Punjab, and Manipur, security officials have special authorities to search and arrest without a warrant.

The Chhattisgarh Special Public Security Act (CSPSA) of 2005 allows police to detain a person without charge for as long as 90 days. Opponents argued the law, which authorizes detention of individuals with a “tendency to pose an obstacle to the administration of law,” infringed upon privacy and free speech. The government detained two journalists under the CSPSA, accusing them of complicity in a deadly attack on police by Naxalite insurgents; some media reports indicated authorities imprisoned the journalists because of their reporting. A local court acquitted one of the two journalists in July 2016. On February 27, the Supreme Court granted bail to Santosh Yadav, a freelance journalist from Chhattisgarh’s Bastar District jailed under the CSPSA and the Unlawful Activities Prevention Act (UAPA) for alleged links with Maoist insurgents.

g. Abuses in Internal Conflict

The country’s armed forces, the security forces of individual states, and paramilitary forces engaged in armed conflict with insurgent groups in several northeastern states, and with Maoist insurgents in the north, central, and eastern
parts of the country—although the intensity of these conflicts continued to decrease significantly. Army and central security forces remained stationed at conflict areas in the northeast.

The use of force by all parties to the conflicts resulted in deaths and injuries to both conflict participants and civilians. There were reports government security forces committed extrajudicial killings, including staging encounter killings to conceal the deaths of captured militants. Human rights groups claimed police refused to release bodies in cases of alleged “encounters.” Authorities did not require the armed forces to report custodial deaths to the NHRC.

In July the SHRC directed the state of Jammu and Kashmir to pay one million rupees ($16,000) as compensation to a textile worker who was tied to the front bumper of a military jeep by an army major and used as a human shield against demonstrators in central Kashmir in May. Media reported Major Nitin Gogoi used the victim to prevent an angry mob from attacking military personnel during a parliamentary by-election on April 9. Human rights activists also criticized Army Chief General Bipin Rawat’s statement backing Gogoi’s actions. Gogoi was also awarded the army chief’s commendation card for his action and was not individually punished.

The central and state governments and armed forces investigated complaints and punished some violations committed by government forces. Authorities arrested and tried insurgents under terrorism-related legislation.

There were few investigations and prosecutions of human rights violations arising from internal conflicts. NGOs claimed that due to AFSPA immunity provisions, authorities did not hold the armed forces responsible for the deaths of civilians killed in the state of Jammu and Kashmir in previous years.

Killings: Various domestic and international human rights organizations continued to express serious concern at the use of pellet guns by security forces for crowd control purposes in the state of Jammu and Kashmir. In 143 instances in which pellet guns were reportedly used across 12 districts of the Kashmir Valley through July 31, one civilian was killed and 36 were injured. By comparison in 2016 777 instances of pellet gun use across the state of Jammu and Kashmir, mostly during violent protests following the July 2016 killing of Hizbul Mujahideen terrorist Burhan Wani, left at least 15 civilians dead and 396 injured. In a report during the year, Amnesty International detailed cases of 88 individuals in the country whose eyesight was damaged by metal pellets fired by the state of Jammu and Kashmir.
police and the Central Reserve Police Force in the years 2014-17. Both national and international media sources and NGOs have reported on the harm, both physical and psychological, to individuals injured by pellet guns.

In Maoist-affected areas, there were reports of abuses by security forces and insurgents. On March 29, two tribal-affiliated citizens died in Assam’s Chirang District after an encounter with security forces. The two were believed to be members of a banned armed insurgent group called the National Democratic Front of Bodoland. In a report filed by the Assam Police, the security forces stated they came under heavy fire from the group and that retaliatory fire from the security forces killed the two men. An inquiry conducted by the inspector general of the Central Reserve Police Force (CRPF), however, stated that the two men, already in police custody, were taken to a nearby village, shot, and killed. The report also found that security forces planted arms and ammunition, including a hand grenade with Chinese markings, as incriminating evidence. The CRPF refused to make the inspector general’s report public, although a pirated, online version was available.

On March 12, Maoist insurgents killed 13 paramilitary personnel near the Bheji village of Sukma in Chhattisgarh. On April 25, Maoist insurgents killed 25 paramilitary personnel and injured six others, also in Chhattisgarh. The soldiers were providing security for road construction at the time of the attack.

Abductions: Human rights groups maintained that military, paramilitary, and insurgent forces abducted numerous persons in Manipur, Jharkhand, and Maoist-affected areas. Human rights activists alleged cases of prisoners tortured or killed during detention. During the year media outlets reported cases of abduction by insurgent groups in Manipur. According to media reports, in May militants abducted three Kuki tribal members in Manipur and killed two of them. No one claimed responsibility for the incident. United NGOs Mission Manipur reported 291 cases of extrajudicial killing, rape, and disappearance committed by security forces, including Assam Rifles, Manipur Police, and the army as of June.

Physical Abuse, Punishment, and Torture: There were reports government security forces tortured, raped, and mistreated insurgents and alleged terrorists in custody and injured demonstrators.

Child Soldiers: Insurgent groups reportedly used children to attack government entities. The Ministry of Home Affairs reported Maoist groups conscripted boys and girls ages six to 12 into specific children’s units (Bal Dasta and Bal Sangham) in the states of Bihar, Jharkhand, Chhattisgarh, and Odisha. The Maoist groups
used the children in combat and intelligence-gathering roles. Insurgents trained children as spies and couriers, as well as in the use of arms, planting explosives, and intelligence gathering.

Although the United Nations was not able to verify all allegations of child soldiers, reports submitted to parliament contained similar allegations. Recruitment of children by Maoist armed groups allegedly continued. Observers reported children as young as age 12 were members of Maoist youth groups and allied militia. The children reportedly handled weapons and improvised explosive devices (IEDs). Maoists reportedly held children against their will and threatened severe reprisals, including the killing of family members, if the children attempted to escape. The government claimed, based on statements of several women formerly associated with Maoist groups, that sexual violence, including rape and other forms of abuse, was a practice in some Maoist camps. NGOs quoting police contacts stated that children employed by Maoist groups in Jharkhand were made to carry IED triggers with them. Police did not engage the children to retrieve these triggering devices.

According to government sources, Maoist armed groups used children as human shields in confrontations with security forces. Attacks on schools by Maoists continued to affect children’s access to education in affected areas. There were continued reports on the use of schools as military barracks and bases. The deployment of government security forces near schools remained a concern. There were reports armed groups recruited children from schools in Chhattisgarh.

**Other Conflict-related Abuse:** The Internal Displacement Monitoring Center estimated that conflicts, violence, and natural disasters in the country displaced 2.8 million persons in 2016.

In August, Minister of State for Home Affairs Ahir informed parliament’s lower house there were approximately 62,000 registered Kashmiri migrant families in the country. The Jammu and Kashmir state government reported threats to Kashmiri Pandits (Hindus) in the Kashmir Valley during the year. Tens of thousands of Kashmiri Pandits have fled the Kashmir Valley to Jammu, Delhi, and other areas in the country since 1990 because of conflict and violent intimidation, including destruction of houses of worship, sexual abuse, and theft of property, by Kashmiri separatists.

During the year the state of Jammu and Kashmir allotted apartments to 31 Kashmiri Pandit migrant families who did not leave the valley during the 1990s.
These flats were constructed under a program approved by the central government for rehabilitation of Kashmiri migrants.

In the central and eastern areas, armed conflicts between Maoist insurgents and government security forces over land and mineral resources in tribal forest areas continued. According to the South Asian Terrorism Portal’s existing conflict map, Maoist-affected states included Madhya Pradesh, Maharashtra, Karnataka, Kerala, Tamil Nadu, Andhra Pradesh, Telangana, Odisha, Chhattisgarh, Jharkhand, West Bengal, Bihar, Uttar Pradesh, and Assam. Human rights advocates alleged the government’s operations sought not only to suppress the Maoists but also to force tribal populations from their land, allowing for purchase by the private sector.

Internally displaced person (IDP) camps continued to operate in Chhattisgarh for tribal persons displaced during the 2005 fighting between Maoists and the subsequently disbanded state-sponsored militia Salwa Judum.

Throughout the year there were reports by media organizations and academic institutions of corporations’ abuses against tea workers, including violations of the law. In some cases violent strikes resulted from companies withholding medical care required by law. Other reports indicated workers had difficulty accessing clean water, with open sewage flowing through company housing areas.

On January 6, the NHRC found that Chhattisgarh police personnel in Bijapur District raped 16 tribal women in 2015. The NHRC directed state authorities to compensate the victims and initiate action against the perpetrators. The NHRC also began an investigation into details of the sexual assault allegations, which the victims reported in January 2016. There was no update on the status of the investigation or delivery of compensation by year’s end.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Expression, Including for the Press

The constitution provides for freedom of speech and expression, but it does not explicitly mention freedom of the press. The government generally respected these rights, although there were instances in which the government allegedly pressured or harassed media outlets critical of the government.

Freedom of Expression: Individuals routinely criticized the government publicly and privately. According to HRW, however, sedition and criminal defamation
laws were sometimes used to prosecute citizens who criticized government officials or opposed state policies. In certain cases local authorities arrested individuals under laws against hate speech for expressions of political views. Freedom House asserted the view that freedom of expression is eroding in the country, noting the government’s silence regarding direct attacks on free speech. In some instances the government reportedly withheld public-sector advertising from outlets that criticized the government, causing some outlets to practice self-censorship. According to media watchdog The Hoot’s India Freedom Report detailing cases between January 2016 and April 2017, “there was an overall sense of shrinking liberty not experienced in recent years.” The report detailed 54 alleged attacks on journalists, at least three cases of television news channels being banned, 45 internet shutdowns, and 45 sedition cases against individuals and groups.

On March 12, a graduate student from Periyar University in Tamil Nadu state was apprehended by police while distributing pamphlets in support of continuing protests against government oil exploration projects at Neduvasal in Pudukottai District and Kadiramangalam in Thanjavur District. Police invoked a provision of the Goondas Act, which allows preventive detention of a habitual offender for up to one year without the possibility of bail. Chief Minister Edappadi K. Palaniswami, who also holds the home portfolio, defended the student’s detention, saying that she “was causing disturbances to the public by taking part in various protests.”

On September 13, Akhil Gogoi, an RTI activist and president of the anticorruption organization Krishak Mukti Sangram Samiti, was arrested in Assam on charges of sedition a day after he gave a speech criticizing various policies of the ruling Bharatiya Janata Party (BJP). Additionally, Gogoi was labelled a Maoist by the government. His case continued at year’s end.

Press and Media Freedom: Independent media generally expressed a wide variety of views. The law prohibits content that could harm religious sentiments or provoke enmity among groups, and authorities invoked these provisions to restrict print media, broadcast media, and publication or distribution of books.

On June 5, CBI officials searched the offices and residence of NDTV founder Prannoy Roy due to fraud allegations. NDTV called the raids “a blatant political attack on the freedom of the press.” Other news agencies characterized the raids as political in light of NDTV’s critical reports of BJP leadership. The Editors Guild of India expressed concern about the raids and called on the CBI to uphold due
process of law and freedom of expression for media. On September 11, *Hindustan Times* (HT) owner Shobhana Bhartia announced editor in chief Bobby Ghosh’s exit from the media outlet. Ghosh had been critical of BJP leadership, including Prime Minister Modi, and was the creator of HT’s “Hate Tracker” regarding violence against Muslims; Dalits; women; lesbian, gay, bisexual, transgender, and intersex individuals (LGBTI); and other discriminated groups.

On November 5, cartoonist G. Bala was arrested for posting a cartoon critical of Tamil Nadu Chief Minister Edappadi K. Palaniswami and other state government officials on his Facebook page. Bala’s cartoon suggested officials were preoccupied with enriching themselves rather than addressing the problems of citizens. Police confirmed Bala was arrested and charged with publishing obscene materials in electronic form and printing defamatory material. He was granted bail on November 6.

The government maintained a monopoly on AM radio stations, limiting broadcasting to the state-owned All India Radio (AIR), and restricted FM radio licenses for entertainment and educational content. Widely distributed private satellite television provided competition for Doordarshan, the government-owned television network. There have been some accusations of political interference in the state-owned broadcasters. On August 15, the Chief Minister of Tripura, Manik Sarkar, alleged that Doordarshan and AIR refused to broadcast his Independence Day remarks. State governments banned the import or sale of some books due to material government censors deemed inflammatory or could provoke communal or religious tensions.

**Violence and Harassment:** Some journalists and media persons reportedly experienced violence and harassment in response to their reporting. During the year a subcommittee of the Press Council of India issued a report to the government on the protection and preservation of the freedom of the press and integrity of journalists; the report highlighted that at least 80 journalists had been killed since 1990 and only one conviction had been made.

Online and mobile harassment, particularly of female journalists, was prevalent, with some female activists and journalists reporting that they receive thousands of abusive tweets from “trolls” every week. The HT launched an antitrolling campaign to call attention to this problem.

The Committee to Protect Journalists (CPJ) expressed concern over attacks on journalists. For example, according to the CPJ, supporters of a legislator
associated with the ruling Telugu Desam Party allegedly chased and attacked a reporter with a local Telugu newspaper in Andhra Pradesh on February 5. The attack, which was recorded anonymously on video, was allegedly in retribution for an investigative report published in a local journal, which accused the legislator and his brother of illegally mining sand and defaulting on bank loans.

On September 5, senior journalist and activist Gauri Lankesh was shot and killed by three assailants at her home in Bengaluru. The Karnataka government instituted a Special Investigation Team to probe the killing. On September 11, UN High Commissioner for Human Rights Zeid Ra’ad al-Hussein highlighted the killing of Lankesh as a journalist who addressed the corrosive effect of sectarianism and hatred. No arrests were made, and the investigation continued at year’s end.

On September 20, television journalist Shantau Bhowmik was beaten and stabbed to death while reporting on a clash between police and the Indigenous People’s Front of Tripura. The National Union of Journalists India and others have condemned Bhowmik’s death and called for a journalist protection act to provide safety for journalists.

In an October 3 report, Reporters without Borders reported that journalist Deeksha Sharma received messages threatening her with rape and death. The report also included threats against Asian News International’s Abhay Kumar, The Hindu’s Mohammad Ali, Firstpost’s Debobrat Ghose, and NDTV’s Sonal Mehrotra Kapoor, among others.

Censorship or Content Restrictions: In June the Union Ministry of Information and Broadcasting denied permission to screen three films at a film festival in Kerala. Films screened at festivals do not require certification by the Central Board of Film Certification (CBFC), but they need a censor exemption from the ministry. The three films were about protests at the Jawaharlal Nehru University, the unrest in Kashmir, and the suicide of doctoral student activist Rohith Vemula.

In July the CBFC refused to approve a documentary on Nobel Laureate Economist Amartya Sen for public viewing. According to media reports, the CBFC objected to sections in the documentary where Sen used the terms “cow,” “Gujarat,” “Hindu India,” and “Hindutva.” The maker of the documentary, Suman Ghosh, refused to accede to the CBFC instruction to mute these four terms.

Libel/Slander Laws: In April the BJP filed a complaint against Delhi Chief Minister Arvind Kejriwal for accusing the National Election Commission of
manipulating voting machines, the use of which Kejriwal’s Aam Aadmi Party had contested and lost, in the Punjab state elections.

**National Security:** In some cases government authorities cited laws protecting national interest to restrict media content. For example, on April 26, the state of Jammu and Kashmir ordered internet service providers to block 22 social media and instant messaging sites, including Facebook, WhatsApp, and Twitter, for one month after persistent street demonstrations. This was the first time the state government banned individual social media websites rather than restricting internet and data services.

**Nongovernmental Impact:** In a statement released in June 2016, UN special rapporteurs on human rights expressed the view that Foreign Contribution Regulation Act (FCRA) “provisions were increasingly being used…to silence organizations involved in advocating civil, political, economic, social, environmental, or cultural priorities, which may differ from those backed by the [g]overnment.” The statement highlighted the suspension of foreign banking licenses for NGOs including Greenpeace India, Lawyers Collective, and the Sabrang Trust. In May, HRW urged UN member countries to call on India to stop targeting NGOs and others who criticized the government or its policies.

**Internet Freedom**

There were some government restrictions on access to the internet, disruptions of access to the internet, and censorship of online content. There were also reports the government occasionally monitored users of digital media, such as chat rooms and person-to-person communications. The law permits the government to block internet sites and content and criminalizes sending messages the government deems inflammatory or offensive. Both central and state governments have the power to issue directions for blocking, intercepting, monitoring, or decrypting computer information.

In 2015 the Supreme Court struck down a provision of information technology law that had resulted in a significant number of arrests between 2012 and 2015 for content published on social media. The Supreme Court upheld other provisions authorizing the government to block certain online content. One provision gives the government authority to issue orders to block online content “in the interest of sovereignty and integrity of India, defense of India, security of the State, and friendly relations with foreign states or public order” without court approval.
On August 7, the central Ministry of Communications announced new rules allowing the government to shut telephone and internet services temporarily during a “public emergency” or for “public safety.” Experts noted these rules meant internet shutdowns could be carried out in a more organized manner but raised concerns over arbitrary censorship. According to HRW from January to June, the government temporarily shut the internet 20 times in different locations across the country. In 2016 there were 31 reported shutdowns.

Internet access and services were frequently curtailed during several weeks of violence and curfew in the state of Jammu and Kashmir and occasionally in other parts of the country, including in Haryana during large-scale demonstrations by the Dera Sacha Sauda religious sect in August. The government claimed that it was sometimes necessary to restrict access to the internet to prevent violence fueled by social media. According to HRW authorities sometimes failed to follow legal procedures and in some instances ordered shutdowns unnecessarily.

In July media watchdog The Hoot reported internet shutdowns had risen from eight in the first half of 2016 to 23 in the first half of the year.

In July and August, the central government’s Ministry of Electronics and Information Technology, based on a complaint filed by the State of Jammu and Kashmir Police, reportedly asked Twitter to block 248 accounts, tweets, and hashtags in view of threats posed by them. The ministry requested that a list of 115 accounts and tweets, which were found “propagating objectionable contents,” be blocked “in the interest of the public order as well as for preventing any cognizable offense….”

Persons continued to be charged with posting offensive or derogatory material on social media. For example, the BJP filed charges against Delhi Chief Minister Arvind Kejriwal for posting election-related material on Facebook. An individual was arrested in Madhya Pradesh on charges of hurting religious sentiments by posting a picture of a holy man buying meat. Following Hindu nationalist Yogi Adityanath’s appointment as chief minister of Uttar Pradesh, several critics were reportedly charged over their social media posts.

The Central Monitoring System (CMS) continued to allow governmental agencies to monitor electronic communications in real time without informing the subject or a judge. The CMS is a mass electronic surveillance data-mining program installed by the Center for Development of Telematics, a government-owned telecommunications technology development center. The CMS gives security
agencies and income tax officials centralized access to the telecommunication network and the ability to hear and record mobile, landline, and satellite telephone calls and Voice over Internet Protocol, to read private emails and mobile phone text messages, and to track geographical locations of individuals in real time. Authorities can also use it to monitor posts shared on social media and track users’ search histories on search engines, without oversight by courts or parliament. This monitoring facility was available to nine security agencies, including the Intelligence Bureau, the Research and Analysis Wing, and the Home Affairs Ministry.

In August, Minister of State in the Ministry of Communications Manoj Singh informed parliament’s upper house that the government decided to set up the CMS to automate the process of lawful interception and monitoring of telecommunications. The law governing interception and monitoring provides an oversight mechanism to prevent unauthorized interceptions. Punishment for unauthorized interception includes fines and/or a maximum prison sentence of three years.

Freedom House, in its 2016 India Country Report, rated the country “partly free” with respect to internet user rights, including accessibility, limits on content, and violations of individual rights. According to Freedom House, internet freedom declined slightly in 2016, offsets gains made in 2014 and 2015. The NGO reported the number of network shutdowns ordered by local authorities increased. The report documented incidents of physical attacks on internet users for content posted online and stated at least 17 individuals were arrested for information circulated on WhatsApp, including group administrators based on content shared by other group members.

Authorities may hold search engines liable for displaying prohibited content, and the government sometimes requested user data from internet companies. According to Facebook’s April transparency report, the government made 7,289 data requests in the second half of 2016, and Facebook complied with 52 percent of those requests. Google also highlighted an increase in government requests for user data in its most recent transparency report. From January 1 through June 30, Twitter reported 261 account information requests from the government—a 55-percent increase over the previous six months—and 102 requests for accounts to be removed.

**Academic Freedom and Cultural Events**
The government occasionally applied restrictions on the travel and activities of visiting foreign experts and scholars; however, in most cases the government supported and issued visas for international academic conferences and exchanges.

Police in Telangana and Andhra Pradesh filed cases against lower-caste Dalit academician Kancha Ilaiah Shepherd after complaints were received from Vysya caste groups that his book, *Samajika Smuggluru Komatollu*, portrayed the community in a negative light. On September 12, Hyderabad police registered three cases following complaints lodged by Vysya caste associations and Ilaiah against each other. Ilaiah also complained of receiving abusive calls and death threats. On September 19, the Andhra Pradesh Crime Investigation Department filed a case against Ilaiah on the charge of “promoting enmity between different groups based on religion, place, and through other means.” Andhra Pradesh Director General of Police N. Sambasiva Rao stated police were examining if there was a need to ban the book.

b. Freedoms of Peaceful Assembly and Association

The law provides for the freedoms of peaceful assembly and association, and the government generally respected those rights.

**Freedom of Peaceful Assembly**

The law provides for freedom of assembly. Authorities often required permits and notification before parades or demonstrations, and local governments generally respected the right to protest peacefully, except in the state of Jammu and Kashmir, where the state government sometimes denied permits to separatist political parties for public gatherings, and security forces sometimes reportedly detained and assaulted members of political groups engaged in peaceful protest (see section 1.g.). During periods of civil unrest in the state of Jammu and Kashmir, authorities used the law to ban public assemblies or impose curfews.

Security forces, including local police, often disrupted demonstrations and used excessive force when attempting to disperse protesters.

From January 17-23, thousands of protesters assembled in Chennai and other parts of Tamil Nadu demanding legalization of the traditional Tamil sport Jallikattu, a form of bullfighting, which was banned in 2014. Some protesters alleged police used disproportionate force to disband peaceful gatherings on January 23, leading to widespread unrest with pockets of violence across the state.
There were restrictions on the organization of international conferences. Authorities required NGOs to secure approval from the Ministry of Home Affairs before organizing international conferences. Authorities routinely granted permission, although in some cases the approval process was lengthy. Some human rights groups claimed this practice provided the government with tacit control over the work of NGOs and constituted a restriction on freedoms of assembly and association.

**Freedom of Association**

The law provides for freedom of association. While the government generally respected that right, the government’s increased regulation of NGO activities that receive foreign funding has caused concern. In certain cases, for example, the government required “prior approval” for some NGOs to receive foreign funds, and in other instances canceled or declined to renew FCRA registrations. According to media reports, the government took action to suspend foreign banking licenses or freeze accounts of NGOs that allegedly received foreign funding without the proper clearances or illegally combined foreign and domestic funding streams. Some human rights organizations claimed these actions were sometimes used to target specific NGOs.

In March the NGO Compassion International, which had been placed on the government’s prior approval list, closed its operations due to the inability to transfer funds to its implementing partners. The human rights NGO The Lawyer’s Collective was unable to reregister after its FCRA registration was cancelled in 2016. According to media reports, on April 10, the Ministry of Home Affairs also cancelled the license of the Public Health Foundation of India (PHFI), a public health advocacy group. The PHFI filed a request with the government for reinstatement of its license, which continued under government review at year’s end.

In July, Minister of State for Home Affairs Kiren Rijiju told parliament’s lower house more than 1,000 NGOs were barred from receiving foreign aid after they were found to have “misutilized” such funds. He said more than 2,000 NGOs have been asked to validate their existing bank accounts designated for receiving funds from abroad. All organizations that received financial aid from abroad must be registered under FCRA.
NGOs continued to express concern regarding the government’s enforcement of the FCRA, provisions of which bar some foreign-funded NGOs from engaging in activities the government believed were not in the “national or public interest,” curtailing the work of some civil society organizations. Some NGOs expressed concern over politically motivated enforcement of the law to intimidate organizations that address social issues or criticize the government or its policies, arguing that the law’s uses of broad and vague terms such as “public interest” and “national interest” have left it open to abuse. Some multi-national and domestic companies also stated in some instances the law made it difficult to comply with government-mandated corporate social responsibility obligations due to lengthy and complicated registration processes.

Experts also reported that it was increasingly difficult to secure FCRA registrations for new NGOs. Although the law imposes a limit of 90 days for application processing, FCRA applications were sometimes pending months longer.

In April 2016 the UN special rapporteur on freedom of assembly and association published a legal analysis asserting that the FCRA did not conform to international law, principles, and standards. In June 2016 the UN special rapporteurs on human rights defenders, freedom of expression, and freedom of assembly and association called on the government to repeal the FCRA.

c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation. The government generally respected these rights. In 2015 the implementation of a land boundary agreement between India and Bangladesh enfranchised more than 50,000 previously stateless residents, providing access to education and health services.

The country hosts a large refugee population, including 108,005 Tibetan refugees and approximately 63,000 from Sri Lanka. The government generally allows the Office of the High Commissioner for Refugees (UNHCR) to assist the 36,000 asylum seekers and refugees from noncontiguous countries and Burma. In some
cases refugees and asylum seekers under UNHCR’s mandate have faced challenges regularizing their status through long-term visas and residence permits.

Abuse of Migrants, Refugees, and Stateless Persons: The law does not contain the term “refugee,” treating refugees as any other foreigners. Undocumented physical presence in the country is a criminal offense. Persons without documentation were vulnerable to forced returns and abuse.

The courts appropriately protected refugees and asylum seekers in accordance with the constitution.

Refugees reported exploitation by nongovernment actors, including assaults, gender-based violence, frauds, and labor exploitation. Also, problems of domestic violence, sexual abuse, and early and forced marriage continued. Gender-based violence and sexual abuse were common in camps for Sri Lankans. Most urban refugees worked in the informal sector or in occupations such as street vending, where they suffered from police extortion, nonpayment of wages, and exploitation.

On August 9, Minister of State for Home Affairs Kiren Rijiju stated in parliament that Rohingya were “illegal immigrants in India and as per law they stand to be deported.” A Home Ministry spokesperson later clarified that the government was trying to identify how many refugees were in the country and asking states to develop plans proactively.

In-country Movement: The central government relaxed restrictions on travel by foreigners to Arunachal Pradesh, Nagaland, Mizoram, Manipur, and parts of Jammu and Kashmir, excluding foreign nationals from Pakistan, China, and Burma. The Ministry of Home Affairs and state governments required citizens to obtain special permits upon arrival when traveling to certain restricted areas.

Foreign Travel: The government may legally deny a passport to any applicant for engaging in activities outside the country “prejudicial to the sovereignty and integrity of the nation.”

The trend of delaying issuance and renewal of passports to citizens from the state of Jammu and Kashmir continued, sometimes up to two years. The government reportedly subjected applicants born in the state of Jammu and Kashmir, including children born to military officers deployed in the state, to additional scrutiny and police clearances before issuing them passports.
Internally Displaced Persons (IDPs)

Authorities located IDP settlements throughout the country, including those containing groups displaced by internal armed conflicts in the state of Jammu and Kashmir, Maoist-affected areas, the northeastern states (see section 1.g.), and Gujarat. The 2016 annual report of the Internal Displacement Monitoring Center asserted that longstanding regional conflicts had displaced at least 796,000 persons. Estimating precise numbers of those displaced by conflict or violence was difficult, because the government does not monitor the movements of displaced persons, and humanitarian and human rights agencies had limited access to camps and affected regions. While authorities registered residents of IDP camps, an unknown number of displaced persons resided outside camps. Many IDPs lacked sufficient food, clean water, shelter, and health care (see section 1.g., Other Conflict-related Abuse).

Paramilitary operations against Maoists displaced members of the Gotti Koya tribe in the Dandakaranya forests in Chhattisgarh, who migrated to the neighboring Khammam and Bhupalapalli Districts in Telangana. Following the bifurcation of Andhra Pradesh to form the new state of Telangana in 2014, the state governments transferred parts of Khammam District with Gotti Koya settlements to Andhra Pradesh.

NGOs estimated the number of IDPs in Chhattisgarh at 50,000 and in Telangana and Andhra Pradesh combined at 27,000. The Chhattisgarh government reportedly did not acknowledge IDPs in Andhra Pradesh and Telangana camps as Chhattisgarh residents, and the Andhra Pradesh and Telangana governments reportedly provided them basic support, including food rations and education for children. Telangana forest authorities, however, reportedly destroyed several settlements of the Gotti Koya in Bhupalapally District on the charge that they were engaging in unsustainable farming practices by cutting down trees. On April 21, several Gotti Koya huts were burned, and on September 16, 36 huts were pulled down as a woman tied herself to a tree in an effort to stop authorities from carrying out the operation. On October 13, the Hyderabad High Court directed the Telangana government not to displace the Gotti Koya tribal members or demolish their dwelling units.

National policy or legislation did not address the issue of internal displacement resulting from armed conflict or from ethnic or communal violence. Responsibility for the welfare of IDPs was generally the purview of state governments and local authorities, allowing for gaps in services and poor
accountability. The central government provided limited assistance to IDPs, but they had access to NGOs and human rights organizations, although neither access nor assistance was standard for all IDPs or all situations.

In May the Mizoram state government, which had previously refused to accept the repatriation of Bru refugees, submitted a plan to the Ministry of Home Affairs to repatriate more than 20,000 Brus, including 11,500 minors. Bru IDPs were lodged in six relief camps in North Tripura District. The ministry approved the Mizoram plan in July. The repatriation process could not start until August, because Bru IDPs raised new demands about land, security, and resettlement.

Protection of Refugees

Refoulement: Media reported instances of the government detaining Rohingya in the states of West Bengal and Manipur. After serving the allotted time for illegal entry into the country, the government reportedly sought to return some Rohingya to Burma. During negotiations the Burmese government claimed there was no record of the individuals ever having Burmese citizenship. In most cases the Indian government kept the persons in detainment.

Access to Asylum: Absent a legal framework, the government sometimes granted asylum on a situational basis on humanitarian grounds in accordance with international law. This approach resulted in varying standards of protection for different refugee and asylum seeker groups. The government recognized refugees from Tibet and Sri Lanka and honored UNHCR decisions on refugee status determination for individuals from other countries.

UNHCR did not maintain an official presence in the country, but the government permitted UNHCR staff access to refugees in urban centers and allowed it to operate in Tamil Nadu to assist with Sri Lankan refugee repatriation. UNHCR registered asylum seekers and conducted refugee status determination for refugees from noncontiguous countries and Burma. Authorities did not permit UNHCR direct access to Sri Lankan refugee camps, Tibetan settlements, or asylum seekers in Mizoram; but it permitted asylum seekers from Mizoram to travel to New Delhi to meet UNHCR officials. UNHCR did not have access to asylum seekers in Mizoram. The government generally permitted NGOs, international humanitarian organizations, and foreign governments access to Sri Lankan refugee camps and Tibetan settlements but generally denied access to asylum seekers in Mizoram.
After the end of the Sri Lankan civil war, the government ceased registering Sri Lankans as refugees. The Tamil Nadu government assisted UNHCR by providing exit permission for Sri Lankan refugees to repatriate voluntarily.

The benefits provided to Sri Lankan Tamil refugees by the state government of Tamil Nadu were applicable only within Tamil Nadu. NGOs working with Sri Lankan refugees in Tamil Nadu reported a decreased willingness within the state government to assist on refugee issues since the death of the previous chief minister.

Refugees outside Delhi faced added expense and time to register their asylum claims.

**Employment:** The government granted work authorization to many UNHCR-registered refugees, and others found employment in the informal sector. Some refugees reported discrimination by employers.

**Access to Basic Services:** Although the country generally allowed recognized refugees and asylum seekers access to housing, primary and secondary education, health care, and the courts, access varied by state and by population. Refugees were able to access public services. In most cases where refugees were denied access, it was due to a lack of knowledge of refugee rights by the service provider. In many cases UNHCR was able to intervene successfully and advocate for refugee access. The government allowed UNHCR-registered refugees and asylum seekers to apply for long-term visas that would provide work authorization and access to higher education. For undocumented asylum seekers, UNHCR provided a letter upon registration indicating the person was under consideration for UNHCR mandate refugee status.

The government did not fully complete a 2012 Ministry of Home Affairs directive to issue long-term visas to Rohingya. These visas would allow refugees to access formal employment in addition to education, health services, and bank accounts.

Government services such as mother-child health programs were available. Refugees were able to request protection from police and courts as needed.

Sri Lankan refugees were permitted to work in Tamil Nadu. Police, however, reportedly summoned refugees back into the camps on short notice, particularly during sensitive political times such as elections, and required refugees or asylum seekers to remain in the camps for several days.
The government did not accept refugees for resettlement from other countries.

**Stateless Persons**

By law parents confer citizenship, and birth in the country does not automatically result in citizenship. Any person born in the country on or after January 26, 1950, but before July 1, 1987, obtained Indian citizenship by birth. A child born in the country on or after July 1, 1987, obtained citizenship if either parent was an Indian citizen at the time of the child’s birth. Authorities considered those born in the country on or after December 3, 2004, citizens only if at least one parent was a citizen and the other was not illegally present in the country at the time of the child’s birth. Authorities considered persons born outside the country on or after December 10, 1992, citizens if either parent was a citizen at the time of birth, but authorities did not consider those born outside the country after December 3, 2004, citizens unless their birth was registered at an Indian consulate within one year of the date of birth. Authorities could also confer citizenship through registration under specific categories and via naturalization after residing in the country for 12 years. Tibetans reportedly sometimes faced difficulty acquiring citizenship despite meeting the legal requirements.

According to UNHCR and NGOs, the country had a large population of stateless persons, but there were no reliable estimates. Stateless populations included Chakmas and Hajongs, who entered the country decades ago from present-day Bangladesh, and groups affected by the 1947 partition of the subcontinent into India and Pakistan.

Approximately 70,000 stateless Bangladeshi Chakma persons lived in Arunachal Pradesh. During the year the Supreme Court ordered the central government and the Arunachal Pradesh state government to consider citizenship for Chakma and Hajong refugees who have lived in the state for almost 50 years. In the early 1960s, Buddhist Chakmas and Hajongs fled persecution from former East Pakistan (Bangladesh) and approximately 15,000 settled in the Changlang District of Arunachal Pradesh.

Children born in Sri Lankan refugee camps received Indian birth certificates. While Indian birth certificates alone do not entitle refugees to Indian citizenship, refugees may present Indian birth certificates to the Sri Lankan High Commission to obtain a consular birth certificate, which entitles them to pursue Sri Lankan citizenship later. According to the Organization for Eelam Refugees’
Rehabilitation, approximately 16,000 of 27,000 Sri Lankan refugee children born in the refugee camps have presented birth certificates to the Sri Lankan High Commission in Chennai. During the year the Sri Lankan High Commission in Chennai issued approximately 2,400 consular birth certificates.

UNHCR and refugee advocacy groups estimated that between 25,000 and 28,000 of the approximately 100,000 Sri Lankan Tamil refugees living in Tamil Nadu were “hill country” Tamils. While Sri Lankan law allows “hill country” refugees to present affidavits to secure Sri Lankan citizenship, UNHCR believed that until the Sri Lankan government processes the paperwork, such refugees were at risk of becoming stateless.

Section 3. Freedom to Participate in the Political Process

The constitution provides citizens the ability to choose their government in free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

Elections and Political Participation

Recent Elections: The Election Commission of India is an independent constitutional body responsible for administering all elections at the central and state level throughout the country. During the year a national electoral college elected President Ramnath Kovind to a five-year term. The seven states of Uttar Pradesh, Gujarat, Punjab, Uttarakhand, Goa, Himachal Pradesh, and Manipur held elections for their state assemblies. Observers considered these elections, which included more than 300 million participants, free and fair, despite very isolated instances of violence.

Political Parties and Political Participation: The constitution provides for universal voting rights for all citizens age 18 and above. There were no restrictions placed on the formation of political parties or on individuals of any communities from participating in the election process. The election law bans the use of government resources for political campaigning, and the Election Commission effectively enforced the law. The commission’s guidelines ban opinion polls 48 hours prior to an election, and exit poll results may not be released until completion of the last phase (in a multiphase election).

Participation of Women and Minorities: The law reserves one-third of the seats in local councils for women. Religious, cultural, and traditional practices and ideas
prevented women from proportional participation in political office. Nonetheless, women held many high-level political offices, including positions as ministers, members of parliament, and state chief ministers. No laws limit participation of women or members of minorities in the political process, and they did participate.

The constitution stipulates that to protect historically marginalized groups and provide for representation in the lower house of parliament, each state must reserve seats for Scheduled Castes and Scheduled Tribes in proportion to their population in the state. Only candidates belonging to these groups may contest elections in reserved constituencies. Members of minority populations previously served as prime minister, vice president, cabinet ministers, Supreme Court justices, and members of parliament.

Some Christians and Muslims were identified as Dalits, but the government limited reservations for Dalits to Hindus, Sikhs, and Jains.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials at all levels of government. Officials frequently engaged, however, in corrupt practices with impunity. There were numerous reports of government corruption during the year.

Corruption: Corruption was present at all levels of government. According to Crime in India 2016 data, the CBI registered 673 corruption-related cases. NGOs reported the payment of bribes to expedite services, such as police protection, school admission, water supply, or government assistance. Civil society organizations drew public attention to corruption throughout the year, including through demonstrations and websites that featured stories of corruption.

Media reports, NGOs, and activists reported links between contractors, militant groups, and security forces in infrastructure projects, narcotics trafficking, and timber smuggling in the northeastern states. These reports alleged ties among politicians, bureaucrats, security personnel, and insurgent groups. In Manipur and Nagaland, allegations of bribes paid to secure state government jobs were prevalent, especially in police and education departments.

Corruption sometimes hampered government programs to investigate allegations of government corruption. On February 14, V. K. Sasikala, general secretary of the Tamil Nadu ruling party, All India Anna Dravida Munnetra Kazhagam-Amma, was convicted of corruption after the Supreme Court restored the trial court verdict
in a 21-year-old case. Additionally, by law Sasikala was barred from contesting any election for six years following her prison term.

In 2015 the Supreme Court ordered the CBI to take over a Madhya Pradesh state government investigation of fraud within the Professional Examination Board, a state government body that conducts school entrance and government service exams. Arrests in the case since the investigation began in 2013 included more than 2,000 individuals. In August 2016 the CBI filed formal complaints against 60 individuals and filed charges against a student candidate and an impersonator. The Madhya Pradesh High Court granted bail to some of the accused. The CBI was also investigating the deaths of 48 individuals over the span of five years, including a journalist who reported on the alleged fraud. On February 13, the Supreme Court cancelled the admission of more than 600 Madhya Pradesh medical students who they believed used examination malpractice to pass.

On April 10, the Anticorruption Bureau (ACB) registered a complaint against Eknath Khadse, the former Maharashtra agriculture and revenue minister, his wife, son-in-law, and an aide in Pune for alleged corruption in a land deal. On March 8, the state government informed the court that the ACB would take over investigations from the local police. Khadse had resigned as a minister in June 2016 when the allegations surfaced. There was no update on the case by year’s end.

Financial Disclosure: The law mandates asset declarations for all officers in the Indian Administrative Services. Both the Election Commission and the Supreme Court upheld mandatory disclosure of criminal and financial records for election candidates.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights

Most domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. In some circumstances groups faced restrictions. Government officials were generally responsive to NGO requests. There were more than three million NGOs in the country advocating for social justice, sustainable development, and human rights. The government generally met with domestic NGOs, responded to their inquiries, and took action in response to their reports or recommendations. The NHRC worked cooperatively with numerous NGOs. Several NHRC committees had NGO representation. Human rights monitors in the state of
Jammu and Kashmir were able to document human rights violations, but security forces, police, and other law enforcement authorities reportedly restrained or harassed them at times.

Representatives of certain international human rights NGOs sometimes faced difficulties obtaining visas and reported that occasional official harassment and restrictions limited their public distribution of materials.

On July 10, the Supreme Court rejected the relief plea of activists Teesta Setalvad, Javed Anand, and their colleagues associated with Citizens for Justice and Peace from charges of corruption and misappropriation of funds. Police authorities in Gujarat charged the activists with embezzling 1.5 million rupees ($24,000) collected to build a memorial to victims of the 2002 Gujarat riots. The activists alleged authorities filed the case in retaliation for their work on behalf of the riot victims.

The United Nations or Other International Bodies: The government continued to limit access by the United Nations to the northeastern states and Maoist-controlled areas.

Government Human Rights Bodies: The NHRC is an independent and impartial investigatory and advisory body, established by the central government, with a dual mandate to investigate and remedy instances of human rights violations and to promote public awareness of human rights. It is directly accountable to parliament but works in close coordination with the Ministry of Home Affairs and the Ministry of Law and Justice. It has a mandate to address official violations of human rights or negligence in the prevention of violations, intervene in judicial proceedings involving allegations of human rights violations, and review any factors (including acts of terrorism) that infringe on human rights. The law authorizes the NHRC to issue summonses and compel testimony, produce documentation, and requisition public records. The NHRC also recommends appropriate remedies for abuses in the form of compensation to the victims of government killings or their families. It has neither the authority to enforce the implementation of its recommendations nor the power to address allegations against military and paramilitary personnel.

Human rights groups claimed these limitations hampered the work of the NHRC. Some human rights NGOs criticized the NHRC’s budgetary dependence on the government and its policy of not investigating abuses more than one year old. Some claimed the NHRC did not register all complaints, dismissed cases
arbitrarily, did not investigate cases thoroughly, rerouted complaints back to the alleged violator, and did not adequately protect complainants.

Twenty-four of 29 states have human rights commissions, which operated independently under the auspices of the NHRC. In six states the position of chairperson remained vacant. Some human rights groups alleged local politics influenced state committees, which were less likely to offer fair judgments than the NHRC.

In the course of its nationwide evaluation of state human rights committees, the Human Rights Law Network (HRLN) observed most state committees had few or no minority, civil society, or female representatives. The HRLN claimed the committees were ineffective and at times hostile toward victims, hampered by political appointments, understaffed, and underfunded.

The Jammu and Kashmir commission does not have the authority to investigate alleged human rights violations committed by members of paramilitary security forces. The NHRC has jurisdiction over all human rights violations, except in certain cases involving the army. The NHRC has authority to investigate cases of human rights violations committed by Ministry of Home Affairs paramilitary forces operating under the AFSPA in the northeast states and in the state of Jammu and Kashmir.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: The law criminalizes rape in most cases, although marital rape is not illegal when the woman is over the age of 15. Official statistics pointed to rape as the country’s fastest growing crime, prompted at least in part by the increasing willingness of victims to report rapes, although observers believed the number of rapes still remained vastly underreported.

Law enforcement and legal recourse for rape victims were inadequate, overtaxed, and unable to address the problem effectively. Police officers sometimes worked to reconcile rape victims and their attackers, in some cases encouraging female rape victims to marry their attackers. NGO Lawyers Collective noted the length of trials, lack of victim support, and inadequate protection of witnesses and victims remained major concerns. Doctors continued to carry out the invasive “two-finger test” to speculate on sexual history, despite the Supreme Court’s holding that the
test violated a victim’s right to privacy. In 2015 the government introduced new guidelines for health professionals for medical examinations of victims of sexual violence. It included provisions regarding consent of the victim during various stages of examination, which some NGOs claimed was an improvement to recording incidents.

Women in conflict areas, such as in the state of Jammu and Kashmir, the northeast, Jharkhand, and Chhattisgarh, as well as vulnerable Dalit or tribal women, were often victims of rape or threats of rape. National crime statistics indicated Dalit women were disproportionately victimized compared with other caste affiliations.

Domestic violence continued to be a problem. Acid attacks against women caused death and permanent disfigurement. During the year Chhattisgarh became the first state to establish one-stop crisis centers for women in distress, called “Sakhi centers,” in all its 27 districts, supported with federal funds from the Ministry of Women and Child Development. These centers provide medical, legal, counseling, and shelter services for women facing various types of violence, but primarily domestic violence related to dowry disputes and sexual violence. The NCRB estimated the conviction rate for crimes against women to be 18.9 percent.

In 2015 the Supreme Court directed all private hospitals to provide medical assistance to victims of acid attacks. Implementation of the policy began in Chennai in 2016. In April the government announced that acid attack victims were to be included in the provisions of the Rights of Persons with Disabilities Act 2016.

In July 2016 the central government launched a revised Central Victim Compensation Fund scheme to reduce disparities in compensation for victims of crime including rape, acid attacks, crime against children, and human trafficking.

Female Genital Mutilation/Cutting (FGM/C): No national law addresses the practice of FGM/C. According to human rights groups and media reports, between 70 and 90 percent of Dawoodi Bohras, a population of approximately one million concentrated in Maharashtra, Gujarat, Rajasthan, and Delhi, practiced FGM/C.

On June 26, the Supreme Court sought responses from the national government and the states of Gujarat, Maharashtra, Rajasthan, and Delhi following a public interest litigation (PIL) petition seeking a ban on FGM/C. In May national
Minister for Women and Child Development Maneka Gandhi said FGM/C should be a criminal offense.

Other Harmful Traditional Practices: The law forbids the provision or acceptance of a dowry, but families continued to offer and accept dowries, and dowry disputes remained a serious problem. NCRB data showed authorities arrested 19,973 persons for dowry deaths in 2015.

“Sumangali schemes” affected an estimated 120,000 young women. These plans, named after the Tamil word for “happily married woman,” are a form of bonded labor in which young women or girls work to earn money for a dowry to be able to marry. The promised lump-sum compensation ranged from 80,000 to 100,000 rupees ($1,300 to $1,600), which is normally withheld until the end of three to five years of employment. Compensation, however, sometimes went partially or entirely unpaid. While in bonded labor, employers reportedly subjected women to serious workplace abuses, severe restrictions on freedom of movement and communication, sexual abuse, sexual exploitation, sex trafficking, and being killed. The majority of sumangali-bonded laborers came from the Scheduled Castes (SC) and, of those, employers subjected Dalits, the lowest-ranking Arunthathiyars, and migrants from the northern part of the country, to particular abuse. Authorities did not allow trade unions in sumangali factories, and some sumangali workers reportedly did not report abuses due to fear of retribution. A 2014 case study by NGO Vaan Muhil described health problems among workers and working conditions reportedly involving physical and sexual exploitation. In 2016 the Madras High Court ordered the Tamil Nadu government to evaluate the legality of sumangali schemes. It is unclear whether the state has complied with the court order.

Most states employed dowry prohibition officers. A 2010 Supreme Court ruling makes it mandatory for all trial courts to charge defendants in dowry-death cases with murder.

So-called honor killings remained a problem, especially in Punjab, Uttar Pradesh, and Haryana. These states also had low female birth ratios due to gender-selective abortions. On August 21, the Supreme Court sought suggestions from NGO Shakti Vahini and khap panchayats on ways to prevent harassment and killings of young couples in the name of family honor. The most common justification for the killings cited by the accused or by their relatives was that the victim married against her family’s wishes.
In a case of suspected honor killing in Telangana, police found a lower-caste Dalit man M. Madhukar dead from injuries on March 13. Dalit rights organizations rejected the police contention that it was a case of suicide and asserted the family members of an upper-caste girl were involved in his death. On April 6, the Hyderabad High Court ordered another autopsy on the body following protests and allegations that a local member of parliament was involved in a cover-up operation. There were no updates to the case at year’s end.

There were reports women and girls in the “devadasi” system of symbolic marriages to Hindu deities were victims of rape or sexual abuse at the hands of priests and temple patrons, a form of sex trafficking. NGOs suggested families forced some SC girls into prostitution in temples to mitigate household financial burdens and the prospect of marriage dowries. Some states have laws to curb prostitution or sexual abuse of women and girls in temple service. Enforcement of these laws remained lax, and the problem was widespread. Some observers estimated more than 450,000 women and girls engaged in temple-related prostitution.

There was no federal law addressing accusations of witchcraft; however, authorities may use other legal provisions as an alternative for a victim accused of witchcraft. Bihar, Odisha, Chhattisgarh, Rajasthan, Assam, and Jharkhand have laws criminalizing those who accuse others of witchcraft. Most reports stated villagers and local councils usually banned those accused of witchcraft from the village.

Sexual Harassment: Sexual harassment remains a serious problem. Authorities required all state departments and institutions with more than 50 employees to operate committees to prevent and address sexual harassment, often referred to as “eve teasing.”

Coercion in Population Control: There were reports of coerced and involuntary sterilization.

Some women reportedly were pressured to have tubal ligations, hysterecomies, or other forms of sterilization because of the payment structures for health workers and insurance payments for private facilities. This pressure appeared to affect disproportionately poor and lower-caste women. In September 2016 the Supreme Court ordered the closure of all sterilization camps within three years.
The country continued to have deaths related to unsafe abortion, maternal mortality, and coercive family planning practices, including coerced or unethical sterilization and policies restricting access to entitlements for women with more than two children. Policies and guideline initiatives penalizing families with more than two children remained in place in seven states, but some authorities did not enforce them. Certain states maintained government reservations for government jobs and subsidies for adults with no more than two children and reduced subsidies and access to health care for those who have more than two.

Rajasthan, one of 11 states to adopt a two-child limit for elected officials at the local level, was the first to adopt the law in 1992. Despite efforts at the state level to reverse or amend the law, it remained unchanged during the year. According to NGO Lawyers Collective, such policies often induced families to carry out sex-selection for the second birth to assure they have at least one son, without sacrificing future eligibility for political office.

Although national health officials noted the central government did not have the authority to regulate state decisions on population issues, the central government creates guidelines and funds state level reproductive health programs. A Supreme Court decision deemed the national government responsible for providing quality care for sterilization services at the state level. Almost all states also introduced “girl child promotion” schemes, intended to counter sex selection, some of which required a certificate of sterilization for the parents to collect benefits.

The government has promoted female sterilization as a form of family planning for decades and, as a result, female sterilization made up 86 percent of all contraceptive use in the country. Despite recent efforts to expand the range of contraceptive choices, the government sometimes promoted permanent female sterilization to the exclusion of alternate forms of contraception.


Discrimination: The law prohibits discrimination in the workplace and requires equal pay for equal work, but employers often paid women less than men for the same job, discriminated against women in employment and credit applications, and promoted women less frequently than men.
Many tribal land systems, including in Bihar, deny tribal women the right to own land.

In January 2016 the Bihar government approved a 35-percent quota for women in state government jobs at all levels.

**Gender-biased Sex Selection:** According to the latest census (2011), the national average male-female sex ratio at birth was 1,000 to 943. The law prohibits prenatal sex selection, but authorities rarely enforced it.

**Children**

**Birth Registration:** The law establishes state government procedures for birth registration. UNICEF estimated authorities registered 58 percent of national births each year. Children lacking citizenship or registration may not be able to access public services, enroll in school, or obtain identification documents later in life.

**Education:** The constitution provides for free education for all children from ages six to 14, but the government did not always comply with this requirement. The NGO Pratham’s 2016 *Annual Survey of Education* noted that in the states of Uttar Pradesh, Bihar, Manipur, West Bengal, and Madhya Pradesh, female student attendance rates ranged between 50 to 60 percent.

According to the *National Survey of Out of School Children 2014* report, 28 percent of children with disabilities ages six to 13 did not attend school.

**Child Abuse:** The law prohibits child abuse, but it does not recognize physical abuse by caregivers, neglect, or psychological abuse as punishable offenses. Although banned, teachers often used corporal punishment. The government often failed to educate the public adequately against child abuse or to enforce the law.

In May humanitarian aid organization World Vision India conducted a survey of 45,844 children between the ages of 12 and 18 across 26 states and found that one in every two children was a victim of sexual abuse. The Counsel to Secure Justice reported nearly 30 percent of child sexual abuse cases involved incest and 99 percent of overall child sexual abuse cases were not reported.

The government sponsored a toll-free 24-hour helpline for children in distress working with 640 partners in 402 locations.
Early and Forced Marriage: The law sets the legal age of marriage for women at 18 and men at 21, and it empowers courts to annul child marriages. It also sets penalties for persons who perform, arrange, or participate in such marriages. Authorities did not consistently enforce the law nor address rape of girls forced into marriage. The law does not characterize a marriage between a girl below age 18 and a boy below age 21 as “illegal,” but it recognizes such unions as voidable. According to international and local NGOs, procedural limitations effectively left married minors with no legal remedy in most situations.

The law establishes a full-time child-marriage prohibition officer in every state to prevent and police child marriage. These individuals have the power to intervene when a child marriage is taking place, document violations of the law, file charges against parents, remove children from dangerous situations, and deliver them to local child-protection authorities.

In May Karnataka amended existing legislation to declare every child marriage illegal and empowered police to take specific action.

On July 20, Minister of State for Women and Child Development Krishna Raj informed the upper house of parliament that 2015-16 data from NFHS-4 revealed a decline in the percentage of women between ages 20 and 24 married before age 18.

Sexual Exploitation of Children: The law prohibits child pornography and sets the legal age of consent at 18. It is illegal to pay for sex with a minor, to induce a minor into prostitution or any form of “illicit sexual intercourse,” or to sell or buy a minor for the purposes of prostitution. Violators are subjected to 10 years’ imprisonment and a fine.

Special Courts to try child sexual abuse cases existed in all six Delhi courts. Civil society groups observed, however, that large caseloads severely limited judges’ abilities to take on cases in a timely manner.

Child Soldiers: No information was available on how many persons under age 18 were serving in the armed forces. NGOs estimated there were at least 2,500 children associated with insurgent armed groups in Maoist-affected areas as well as child soldiers in insurgent groups in the state of Jammu and Kashmir. There were allegations government-supported, anti-Maoist village defense forces recruited children (see section 1.g., Child Soldiers).
Displaced Children: Displaced children, including refugees, IDPs, and street children, faced restrictions on access to government services (see also section 2.d.).

Institutionalized Children: Lax law enforcement and a lack of safeguards encouraged an atmosphere of impunity in a number of group homes and orphanages.

The Calcutta Research Group reported police sometimes separated families detained at the India-Bangladesh border in the state of West Bengal by institutionalizing children in Juvenile Justice Homes with limited and restricted access to their families.


Anti-Semitism

Jewish groups from the 4,650-member Jewish community cited no reports of anti-Semitic acts during the year.

Trafficking in Persons

See the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

The constitution does not explicitly mention disability. The law provides equal rights for persons with a variety of disabilities, and the Rights of Persons with Disabilities Act 2016 increased the number of recognized disabilities, including Parkinson’s disease and acid attacks. The law set a two-year deadline for the government to provide persons with disabilities with unrestricted free access to physical infrastructure and public transportation systems.

The law also reserves 3 percent of all educational places for persons with disabilities, and 4 percent of government jobs. In June 2016 the Supreme Court directed the government to extend the 4-percent reservation to all government posts. In June a government panel decided that private news networks must
accompany public broadcasts with sign language interpretations and closed captions to accommodate persons with disabilities better. The government allocated funds to programs and NGO partners to increase the number of jobs filled.

Despite these efforts, problems remained. Private-sector employment of persons with disabilities remained low, despite governmental incentives.

Discrimination against persons with disabilities in employment, education, and access to health care was more pervasive in rural areas, and 45 percent of the country’s population of persons with disabilities was illiterate. There was limited accessibility to public buildings. A PIL file was pending in the Supreme Court on accessibility to buildings and roads.

A Department of School Education and Literacy program provided special educators and resource centers for students with disabilities. Mainstream schools remained inadequately equipped with teachers trained in inclusive education, resource material, and appropriate curricula.

The Ministry of Health and Family Welfare estimated of the individuals with mental disabilities, 25 percent were homeless.

Patients in some mental-health institutions faced food shortages, inadequate sanitary conditions, and lack of adequate medical care. HRW reported women and girls with disabilities occasionally were forced into mental hospitals against their will.

In June 2016 the Supreme Court directed the government to extend the 4-percent reservation to all government posts.

National/Racial/Ethnic Minorities

The constitution prohibits caste discrimination. The registration of castes and tribes continued for the purpose of affirmative action programs, as the government implemented programs to empower members of the low castes. Discrimination based on caste remained prevalent particularly in rural areas.

The term “Dalit,” derived from the Sanskrit for “oppressed” or “crushed,” refers to members of what society regarded as the lowest Hindu castes, the Scheduled Castes (SC). Many SC members continued to face impediments to social
advancement, including education, jobs, access to justice, freedom of movement, and access to institutions and services. According to the 2011 census, SC members constituted 17 percent (approximately 200 million persons) of the population.

Although the law protects Dalits, there were numerous reports of violence and significant discrimination in access to services, such as health care, education, temple attendance, and marriage. Many Dalits were malnourished. Most bonded laborers were Dalits. Dalits who asserted their rights were often victims of attacks, especially in rural areas. As agricultural laborers for higher-caste landowners, Dalits reportedly often worked without monetary remuneration. Reports from the UN Committee on the Elimination of Racial Discrimination described systematic abuse of Dalits, including extrajudicial killings and sexual violence against Dalit women. Crimes committed against Dalits reportedly often went unpunished, either because authorities failed to prosecute perpetrators or because victims did not report crimes due to fear of retaliation.

NGOs reported widespread discrimination, including prohibiting Dalits from walking on public pathways, wearing footwear, accessing water from public taps in upper-caste neighborhoods, participating in some temple festivals, bathing in public pools, or using certain cremation grounds. In Gujarat, for example, Dalits were reportedly denied entry to temples and denied educational and employment opportunities.

NGOs reported that Dalit students were sometimes denied admission to certain schools because of their caste or were required to present caste certification prior to admission. There were reports that school officials barred Dalit children from morning prayers, asked Dalit children to sit in the back of the class, or forced them to clean school toilets while denying them access to the same facilities. There were also reports that teachers refused to correct the homework of Dalit children, refused to provide midday meals to Dalit children, and asked Dalit children to sit separately from children of upper-caste families.

In April the supporters of Bhim Army, a lower-caste Dalit advocacy group in Uttar Pradesh, reportedly faced violence at the hands of organized upper-caste Thakur landlords in Uttar Pradesh. More than 50 Dalit houses were reportedly burned and many individuals injured in the violence. In May thousands of Dalits, led by the Bhim Army, staged a demonstration against the violence. As confrontations between the communities escalated, police arrested several Bhim Army activists, including leader Chandrshekhar Azad. State police reportedly did not detain upper-caste participants.
The federal and state governments continued to implement programs for members of lower caste groups to provide better-quality housing, quotas in schools, government jobs, and access to subsidized foods. Critics claimed many of these programs suffered from poor implementation and/or corruption.

Manual scavenging--the removal of animal or human waste by Dalits--continued in spite of its legal prohibition. NGO activists claimed elected village councils employed a majority of manual scavengers that belonged to Other Backward Classes and Dalit populations. Media regularly published articles and pictures of persons cleaning manholes and sewers without protective gear. On March 16, the Ministry of Social Justice and Empowerment stated that there were 12,737 manual scavengers in 13 states and union territories. NGOs maintained the actual numbers were higher.

HRW reported that children of manual scavengers faced discrimination, humiliation, and segregation at village schools. Their occupation often exposed manual scavengers to infections that affected their skin, eyes, respiratory, and gastrointestinal systems. Health practitioners suggested children exposed to such bacteria were often unable to maintain a healthy body weight and suffered from stunted growth.

The law prohibits the employment of scavengers or the construction of dry (nonflush) latrines, and penalties range from imprisonment for up to one year, a fine of 2,000 rupees ($32), or both.

Indigenous People

The constitution provides for the social, economic, and political rights of disadvantaged groups of indigenous persons. The law provides special status for indigenous individuals, but authorities often denied them their rights.

In most of the northeastern states, where indigenous groups constituted the majority of the states’ populations, the law provides for tribal rights, although some local authorities disregarded these provisions. The law prohibits any nontribal person, including citizens from other states, from crossing a government-established inner boundary without a valid permit. No one may remove rubber, wax, ivory, or other forest products from protected areas without authorization. Tribal authorities must approve the sale of land to nontribal persons.
Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

The law criminalizes homosexual sex. The country recognizes Hijras (male-to-female transgender persons) as a third gender, separate from men or women. Lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons faced physical attacks, rape, and blackmail. Some police committed crimes against LGBTI persons and used the threat of arrest to coerce victims not to report the incidents. With the aid of NGOs, several states offered education and sensitivity training to police.

LGBTI groups reported they faced widespread societal discrimination and violence, particularly in rural areas. Activists reported that transgender persons, who were HIV positive, continued to face difficulty obtaining medical treatment.

In January 2015 a high court dismissed petitions challenging the 2013 Supreme Court judgment reinstating a colonial-era legal provision criminalizing homosexual sex. It has since agreed to review that ruling. Additionally, in an August ruling that the country’s citizens have a constitutional right to privacy, the Supreme Court termed sexual orientation “an essential attribute of privacy.”

In February the Ministry of Health and Family Welfare unveiled the 2017 Saathiya Education Plan, resource material related to sex education, which recognized that persons can feel attraction for any individual of the same or opposite sex.

In April K. Prithika Yashini became India’s first transgender individual to join a state police force in Dharmapuri, Tamil Nadu. She was initially denied police service employment until the Madras High Court intervened and ruled in her favor.

In May the Kerala government hired 21 transgender citizens in Kochi, but several weeks later many of the transgender workers quit their jobs, reportedly because of difficulty finding rental accommodation in Kochi due to their gender identities.

HIV and AIDS Social Stigma

The number of new HIV cases decreased by 57 percent over the past decade. The epidemic persisted among the most vulnerable populations: high-risk groups, which include female sex workers; men who have sex with men; transgender persons; and persons who inject drugs.
Additionally, antiretroviral drug stock outages in a few states led to treatment interruption. On April 11, the government passed the HIV and AIDS (Prevention and Control) Bill. The bill is designed to prevent discrimination in regards to health care, employment, education, housing, economic participation, or political representation.

The National AIDS Control Program prioritized HIV prevention, care, and treatment interventions for high-risk groups and rights of persons living with HIV. The National AIDS Control Organization worked actively with NGOs to train women’s HIV/AIDS self-help groups.

Police engaged in programs to strengthen their role in protecting communities vulnerable to human rights violations and HIV.

**Other Societal Violence or Discrimination**

Societal violence based on religion and caste and by religiously associated groups continued to be a serious concern. Ministry of Home Affairs 2016-17 data showed 703 incidents of communal (religious) violence took place, which killed 86 persons and injured 2,321.

On July 26, the upper house of parliament issued a statement in response to hate crimes, expressing the need for the Union and the Ministry of Home Affairs to take proactive measures in order to create a heightened sense of security and inclusion for citizens from the northeastern region. In response to a recommendation of the Supreme Court, a committee was established to address such concerns.

The year saw an increase in cow vigilante attacks, typically associated with Hindu extremists. Since 2010 61 of the 63 reported attacks targeted Muslims, and 24 out of 28 of those killed in the attacks were Muslim. According to HRW cow vigilante violence has resulted in the death of at least 10 Muslims since 2015, including a 12-year-old boy. In several instances police filed charges against the assault victims under existing laws prohibiting cow slaughter. According to a report by IndiaSpend, an independent journalism outlet, moblynchings of minorities took place in Jharkhand, Madhya Pradesh, Rajasthan, and Uttar Pradesh. In the first six months of the year, 20 cow-related vigilante attacks were reported, a more than 75-percent increase over 2016.

According to media reports, on June 22, 16-year-old Junaid Khan was stabbed to death on a train in Haryana by a mob who accused him and his three companions
of transporting beef. The Haryana police arrested six accused individuals in connection with the case. On July 9, Maharashtra police arrested Naresh Kumar, the prime suspect in the case, and as of August, four of the six accused had been granted bail.

On September 11, UN High Commissioner for Human Rights Zeid Ra’ad al-Hussein told the 36th opening session of the Human Rights Council he was dismayed by a broader rise of intolerance towards religious and other minorities in the country. He stated, “The current wave of violent, and often lethal, mob attacks against persons under the pretext of protecting the lives of cows is alarming.”

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right to form and join unions and bargain collectively, although there is no legal obligation for employers to recognize a union or engage in collective bargaining. In the state of Sikkim, trade union registration was subject to prior permission from the state government. The law limits the organizing rights of federal and state government employees.

The law provides for the right to strike but places restrictions on this right for some workers. For instance, in export processing zones (EPZs), a 45-day notice is required because of the EPZs’ designations as “public utilities.” The law also allows the government to ban strikes in government-owned enterprises and requires arbitration in specified “essential industries.” Definitions of essential industries vary from state to state. The law prohibits antiunion discrimination and retribution for involvement in legal strikes and provides for reinstatement of employees fired for union activity.

Enforcement of the law varied from state to state and from sector to sector. Enforcement was generally better in the larger, organized-sector industries. Authorities generally prosecuted and punished individuals responsible for intimidation or suppression of legitimate trade union activities in the industrial sector. Civil judicial procedures addressed abuses because the Trade Union Act does not specify penalties for such abuses. Specialized labor courts adjudicate labor disputes, but there were long delays and a backlog of unresolved cases.

Employers generally respected freedom of association and the right to organize and bargain collectively in the formal industrial sector but not in the large, informal
economy. Most union members worked in the formal sector, and trade unions represented a small number of agricultural and informal-sector workers. An estimated 80 percent of unionized workers affiliated with one of the five major trade union federations. Unions were independent of the government, but four of the five major federations were associated with major political parties. According to the Ministry of Labor and Employment, there were 163 strikes in 2015. State and local authorities occasionally used their power to declare strikes illegal and force adjudication. Membership-based organizations, such as the Self Employed Women’s Association, successfully organized informal-sector workers and helped them to gain higher payment for their work or products.

On May 31, 425 workers of Aisin Automotive company in Rohtak, Haryana, were arrested while protesting the dismissal of coworkers who had sought to form a trade union. The arrested workers were charged with assault and obstructing the functioning of government officials and released on bail. Labor groups reported that some employers continued to refuse to recognize established unions and some, instead, established “workers’ committees” and employer-controlled unions to prevent independent unions from organizing. EPZs often employed workers on temporary contracts. Additionally, employee-only restrictions on entry to the EPZs limited union organizers’ access. On August 22, nearly one million employees of state owned banks went on strike to protest the federal government’s plans to merge various banks.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor, but this problem, including bonded child labor (see section 7.c.), remained widespread.

Estimates of the number of bonded laborers varied widely, although some NGOs placed the number in the tens of millions. Most bonded labor occurred in agriculture. Nonagricultural sectors with a high incidence of bonded labor were stone quarries, brick kilns, rice mills, construction, embroidery factories, and beedi (hand-rolled cigarettes) production.

Enforcement and compensation for victims is the responsibility of state and local governments and varied in effectiveness. The government generally did not effectively enforce laws related to bonded labor or labor trafficking laws, such as the Bonded Labor System (Abolition) Act. When inspectors referred violations for prosecution, court backlogs, inadequate prosecution, and a lack of prioritization sometimes resulted in acquittals. Prosecutions were rare.
The Ministry of Labor and Employment continued to work with the International Labor Organization to combat bonded labor, including the “convergence program” in the states of Andhra Pradesh and Odisha to target workers vulnerable to bonded labor.

The Ministry of Labor and Employment reported the federally funded, state-run Centrally Sponsored Scheme allowed the release of 2,607 bonded laborers during the period April 2016 through March. Some NGOs reported delays in obtaining release certificates for rescued bonded laborers that were required to certify employers held them in bondage and entitled them to compensation under the law. The distribution of rehabilitation funds was uneven across states. In May 2016 the government revised its bonded labor rehabilitation program and increased the compensation for victims from 20,000 rupees ($320) to 100,000 rupees ($1,600) for male victims, 200,000 rupees ($3,200) for women and child victims, and 300,000 rupees ($4,800) for sexually exploited women and child victims.

Bonded labor, particularly in brick kilns, continued to be a concern in several states. In March, Uttar Pradesh authorities, with assistance from an NGO, rescued 149 bonded laborers from two brick kilns in the state.

On March 10, a Karnataka district court sentenced a brick kiln owner who employed 12 workers as bonded laborers to 10 years in prison with hard labor. The court imposed a penalty of approximately 15,500 rupees ($250) for employing bonded labor in his premises. Authorities had charged the perpetrator under the Bonded Labor System (Abolition) Act along with Section 370 of the Indian Penal Code.

On July 24, nearly 88 bonded laborers, including 25 children and 29 women, were rescued from a brick kiln following a complaint received by the Delhi-based National Campaign Committee for Eradication of Bonded Labor.

SC and ST members lived and worked under traditional arrangements of servitude in many areas of the country. Although the central government had long abolished forced labor servitude, these social groups remained impoverished and vulnerable to forced exploitation, especially in Arunachal Pradesh.

Also see the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.
c. Prohibition of Child Labor and Minimum Age for Employment

The government amended the Child Labor (Abolition) Act in August 2016 to ban employment of children below the age of 14. The amended law also prohibits the employment of children between the ages of 14 and 18 in hazardous work except in mines. Children are prohibited from using flammable substances, explosives, or other hazardous material, as defined by the law. In March the Ministry of Labor and Employment added 16 industries and 59 processes to the list of hazardous industries where employment of children below the age of 18 is prohibited and where children under 14 are prohibited from helping, including family enterprises. The law, however, permits employment of children in family-owned enterprises, involving nonhazardous activities, after school hours. Nevertheless, child labor remained widespread.

State governments enforced labor law and employed labor inspectors, while the Ministry of Labor and Employment provided oversight and coordination. Nevertheless, violations were common. The amended law establishes a penalty in the range of 20,000 rupees ($320) to 50,000 rupees ($800) per child employed in hazardous industries. Such fines were often insufficient to deter violations, and authorities sporadically enforced them. The fines are deposited in a welfare fund for formerly employed children.

The Ministry of Labor and Employment coordinated its efforts with states to raise awareness about child labor by funding various outreach events such as plays and community activities. On June 13, the government ratified two instrumental conventions of the International Labor Organization, Conventions 138 and 182, which set the minimum age for admission to employment and prohibit the worst forms of child labor, respectively.

According to news reports, the Rajasthan government’s antihuman trafficking unit rescued more than 500 children from roadside eateries, grocery shops, and vehicle repair shops in Kota, Bundi, Baran, and Jhalawar Districts during a month-long campaign in May and June.

The majority of child labor occurred in agriculture and the informal economy, in particular in stone quarries, in the rolling of cigarettes, and in informal food service establishments. Commercial sexual exploitation of children occurred (see section 6, Children).
The V. V. Giri National Institute of Labor reported that the two cities with the highest numbers of cases in the country were Hyderabad with 67,366 child workers and Jalore with 50,440.

Forced child labor, including bonded labor, also remained a serious problem. Employers engaged children in forced or indentured labor as domestic servants and beggars, as well as in quarrying, brick kilns, rice mills, silk-thread production, and textile embroidery.

Also see the Department of Labor’s Findings on the Worst Forms of Child Labor at [www.dol.gov/ilab/reports/child-labor/findings/](http://www.dol.gov/ilab/reports/child-labor/findings/).

d. Discrimination with Respect to Employment and Occupation

The law and regulations prohibit discrimination with respect to employment and occupation, with respect to race, sex, gender, disability, language, sexual orientation, and/or gender identity, or social status. The law does not prohibit discrimination against individuals with HIV/AIDS or other communicable diseases, color, religion, political opinion, national origin, or citizenship. The government effectively enforced the law and regulations within the formal sector. The law and regulations, however, do not protect those working within the informal sector, who made up an estimated 90 percent of the workforce.

 Discrimination occurred in the informal sector with respect to Dalits, indigenous persons, and persons with disabilities. Legal protections are the same for all, but gender discrimination with respect to wages was prevalent. Foreign migrant workers were largely undocumented and typically did not enjoy the legal protection available to workers who are nationals of the country.

e. Acceptable Conditions of Work

Federal law sets safety and health standards, but state government laws set minimum wages, hours of work, and additional state-specific safety and health standards. The daily minimum wage varied but was more than the official estimate of poverty level income. State governments set a separate minimum wage for agricultural workers.

Laws on wages, hours, and occupational health and safety do not apply to the large informal sector.
The law mandates a maximum eight-hour workday and 48-hour workweek, as well as safe working conditions, which include provisions for restrooms, cafeterias, medical facilities, and ventilation. The law mandates a minimum rest period of 30 minutes after every four hours of work and premium pay for overtime, but it does not mandate paid holidays. The law prohibits compulsory overtime, but it does not limit the amount of overtime a worker can work. Occupational safety and health standards set by the government were generally up to date and covered the main industries in the country.

State governments are responsible for enforcing minimum wages, hours of work, and safety and health standards. The number of inspectors generally was insufficient to enforce labor law. State governments often did not effectively enforce the minimum wage law for agricultural workers. Enforcement of safety and health standards was poor, especially in the informal sector but also in some formal sector industries. Penalties for violation of occupational safety and health standards range from a fine of 100,000 rupees ($1,600) to imprisonment for up to two years, but they were not sufficient to deter violations.

Violations of wage, overtime, and occupational safety and health standards were common in the informal sector (industries and/or establishments that do not fall under the purview of the Factories Act), which employed an estimated 90 percent of the workforce. Small, low-technology factories frequently exposed workers to hazardous working conditions. Undocumented foreign workers did not receive basic occupational health and safety protections. In many instances workers could not remove themselves from situations that endangered health or safety without jeopardizing their employment.

On March 15, two contracted sanitation workers of the Vijayawada Municipal Corporation in Andhra Pradesh died of suffocation inside an underground sewage line. Police registered a case of negligent death against their employer. According to an estimate by NGO Safai Karmachari Andolan, a longtime campaigner for eradication of manual scavenging, an estimated 1,500 individuals died cleaning septic tanks across the country between 2014 and 2016.

According to a 2016 Asian Human Rights Commission report, although the Supreme Court ordered enforcement of the law prohibiting employment as manual scavengers, calling for their rehabilitation, and banning manual cleaning of sewage lines, authorities rarely enforced the law. The commission quoted a Dalit rights activist who asserted that at least 700 deaths in manholes occurred every year.
EXECUTIVE SUMMARY

India is a multiparty, federal, parliamentary democracy with a bicameral parliament. The president, elected by an electoral college, is the head of state, and the prime minister is the head of the government. Under the constitution, the 29 states and seven union territories have a high degree of autonomy and have primary responsibility for law and order. Voters elected President Pranab Mukherjee in 2012 to a five-year term, and Narendra Modi became prime minister following the victory of the National Democratic Alliance coalition led by the Bharatiya Janata Party in the May 2014 general elections. Observers considered these elections, which included more than 551 million participants, free and fair, despite isolated instances of violence.

Civilian authorities maintained effective control over the security forces.

The most significant human rights problems involved instances of police and security force abuses, including extrajudicial killings, torture, and rape; corruption, which remained widespread and contributed to ineffective responses to crimes, including those against women, children, and members of Scheduled Castes (SCs) or Scheduled Tribes (STs); and societal violence based on gender, religious affiliation, and caste or tribe.

Other human rights problems included disappearances, hazardous prison conditions, arbitrary arrest and detention, and lengthy pretrial detention. Court backlogs delayed or denied justice, including through lengthy pretrial detention and denial of due process. The government placed restrictions on foreign funding of nongovernmental organizations (NGOs), including some whose views the government believed were not in the “national or public interest,” curtailing the work of civil society. There were instances of infringement of privacy rights. The law in six states restricted religious conversion, and there were reports of arrests but no reports of convictions under those laws. Some limits on the freedom of movement continued. Rape, domestic violence, dowry-related deaths, honor killings, sexual harassment, and discrimination against women and girls remained serious societal problems. Child abuse, female genital mutilation and cutting, and forced and early marriage were problems. Trafficking in persons, including widespread bonded and forced labor of children and adults, and sex trafficking of children and adults for prostitution, were serious problems. Societal discrimination against persons with disabilities and indigenous persons continued, as did
discrimination and violence based on gender identity, sexual orientation, and persons with HIV.

A lack of accountability for misconduct at all levels of government persisted, contributing to widespread impunity. Investigations and prosecutions of individual cases took place, but lax enforcement, a shortage of trained police officers, and an overburdened and under resourced court system contributed to infrequent convictions.

Separatist insurgents and terrorists in Jammu and Kashmir, the northeastern states, and the Maoist belt committed serious abuses, including killings of armed forces personnel, police, government officials, and civilians.

Section 1. Respect for the Integrity of the Person, Including Freedom from:

a. Arbitrary Deprivation of Life and other Unlawful or Politically Motivated Killings

There were reports the government and its agents committed arbitrary or unlawful killings, including extrajudicial killings of suspected criminals and insurgents. During the year the South Asian Terrorism Portal (SATP), run by the nonprofit Institute for Conflict Management, reported fatalities due to terrorism and insurgency (other than Maoist extremism), to include 145 civilians, 114 security force members, and 324 terrorists or insurgents. According to the SATP, fatalities due to terrorist violence in the northeastern states decreased from 273 deaths in 2015 to 119 during the year. Data compiled by the Institute of Conflict Management showed fatalities from terrorist violence in Jammu and Kashmir increased to 223 between January and October 2016 compared with 174 in 2015. Furthermore, the 2016 figure does not include 90 persons, including violent protesters, reportedly killed by security forces during a four-month period of unrest in the summer.

There were 104 reported police “encounter deaths”—a term used to describe any encounter between the security or police forces and alleged criminals or insurgents that results in a death—registered countrywide by the Investigation Division of the National Human Rights Commission (NHRC), according to Ministry of Home Affairs 2015 data. The Telangana government established a special investigation team to investigate the April 2015 deaths of five prisoners killed by police in Nalgonda District, Telangana, while being transported to a court in Hyderabad for
trial. At the year’s end, the special investigation team had yet to submit its report to the High Court of Judicature at Hyderabad.

In August 2015 the NHRC ordered the central government to pay 500,000 rupees ($7,500) as compensation for the 2011 Border Security Force killing of Felani Khatun. During the year the central government rejected the NHRC recommendation and did not pay the compensation. Felani’s family and Kolkata-based rights group MASUM petitioned the Supreme Court against the government’s refusal to pay compensation.

On August 8, Telangana security personnel fatally shot an individual, described by police as a former Maoist insurgent, who was a witness in an alleged 2005 “encounter” case involving a joint Rajasthan and Gujarat antiterrorism squad. A special Central Bureau of Investigation (CBI) court trial in Mumbai continued its deliberations on the 2005 case.

On October 31, Madhya Pradesh police reportedly killed eight suspected members of the outlawed Students’ Islamic Movement of India, after they allegedly murdered a prison guard and escaped from the high-security Central Jail of Bhopal. On November 1, the NHRC issued a formal complaint against the state government, police, and prison authorities, expressing concern about deaths. The Madhya Pradesh police appointed a special investigation team to investigate the killings.

There continued to be reports of custodial death cases, in which prisoners or detainees were killed or died in police custody. Decisions by central and state authorities not to prosecute police or security officials despite reports of evidence in certain cases remained a problem. The National Crime Records Bureau (NCRB) reported 97 cases of custodial deaths in 2015 with Maharashtra reporting the highest number of cases at 19. Uttar Pradesh reported nine cases and Punjab three cases.

On March 14, the Tamil Nadu government awarded 500,000 rupees ($7,500) compensation to relatives of an auto-rickshaw driver after determining a Nagapattinam District police inspector used excessive force, which led to the driver’s death in 2014. The Madras High Court oversaw the departmental inquiry after the NGO Campaign for Custodial Justice and Abolition of Torture filed a public interest petition in April 2014. Criminal and departmental proceedings against the inspector were pending.
On April 9, 20-year-old Sunil Yadav was found dead in Umri police station in Madhya Pradesh, four days after his arrest on charges of theft. Madhya Pradesh police suspended four police personnel and ordered a judicial inquiry.

The Armed Forces Special Powers Act (AFSPA) remained in effect in Nagaland, Manipur, Assam, and parts of Mizoram, and a version of the law was in effect in Jammu and Kashmir. Under the AFSPA, a central government designation of state or union territory as a “disturbed area,” authorizes security forces in the state to use deadly force to “maintain law and order” and arrest any person “against whom reasonable suspicion exists” without informing the detainee of the grounds for arrest. The law also provides security forces immunity from civilian prosecution for acts committed in regions under the AFSPA. There were no official records available of enforcement actions or human rights abuses by security forces under the AFSPA during the year. In September the central government denied a request to visit Jammu and Kashmir by the Office of the UN High Commissioner for Human Rights and the NHRC. The government also denied NHRC access to Manipur.

There was considerable public support for repeal of the AFSPA, particularly in areas that experienced a significant decrease in insurgent attacks. On July 8, the Supreme Court ruled 1,528 alleged “encounter” cases in Manipur during the last 20 years must be investigated and armed forces personnel should not be immune from prosecution if the investigations disclosed criminal conduct. The ruling stated the indefinite deployment of armed forces under AFSPA “mocks India’s democratic process.”

On August 9, human rights activist Irom Sharmila ended her 16-year hunger strike to protest the imposition of AFSPA in Manipur. Sharmila remained in police custody for 16 years for violating a law that criminalizes attempted suicide. She initiated her strike after federal paramilitary forces killed 10 civilians in 2000.

On June 17, a Gujarat special court convicted 24 individuals (11 of whom were sentenced to life imprisonment), and acquitted 36 others for their role in the Gulberg Society killings in 2002, when a rioting mob killed 69 individuals during communal unrest. A separate case filed by Zakia Jafri one of the Gulberg Society survivors, remained pending in the Gujarat High Court. The High Court also affirmed a 2013 lower court verdict exonerating senior Gujarat government officials from culpability in the communal violence that engulfed the state from February to May 2002.
Nongovernmental forces, including organized insurgents and terrorists, committed numerous killings and bombings in Punjab, Jammu and Kashmir, the northeastern states, and the Maoist belt (see section 1.g.). Maoists in Jharkhand and Bihar continued to attack security forces and key infrastructure facilities such as railways and communication towers. On July 19, Maoist rebels conducted improvised explosive device attacks, killing 10 paramilitary soldiers on the border of Gaya and Aurangabad districts in Bihar.

b. Disappearance

There were allegations police failed to file required arrest reports for detained persons, resulting in hundreds of unresolved disappearances. Police and government officials denied these claims. The central government reported that state government screening committees informed families about the status of detainees. There were reports, however, that prison guards sometimes required bribes from families to confirm the detention of their relatives.

Disappearances attributed to government forces, paramilitary forces, and insurgents occurred in areas of conflict during the year (see section 1.g.).

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture, but NGOs reported torture occurred during the year.

Police beatings of prisoners resulted in custodial deaths (see section 1.a.).

The law does not permit authorities to admit coerced confessions into evidence, but NGOs and citizens alleged authorities used torture to coerce confessions. In some instances authorities submitted these confessions as evidence in capital cases. Authorities allegedly also used torture as a means to extort money or as summary punishment. According to human rights experts, the government continued to try individuals arrested and charged under the repealed Prevention of Terrorism Act and Terrorist and Disruptive Activities Act. Under the repealed law, authorities treated a confession made to a police officer as admissible as evidence in court.

According to a National Law University, Delhi study released in May, a significant percentage of prisoners on death row reported that they lived in inhumane conditions, were denied due process, and were subjected to torture. The university’s Death Penalty Research Project interviewed 373 of 385 current death
row inmates between July 2013 and January 2015. Of the 270 prisoners who spoke about their experience in police custody, 216 said they had been tortured. Among states with 10 or more death row prisoners, Haryana had the highest proportion of those that reported being tortured in custody. The study categorized three out of four death row inmates as “economically vulnerable” and indicated social and economic factors often determined how authorities treated a person in jail.

On July 8, police arrested environmental and human rights activist Piyush Manush and his associates, Esan Karthik and Muthu, for protesting the construction of a railway overpass in Salem, Tamil Nadu. The court granted bail to Karthik and Muthu on July 15. Manush did not receive bail and NGOs alleged that while in Salem Central Prison police bound his hands, beat him, and placed him in solitary confinement. On July 24, the NHRC issued a notice to the Tamil Nadu government requesting a response to the allegations.

On April 5, the Supreme Court granted bail to disabled Delhi University professor G.N. Saibaba on medical grounds after Maharashtra police arrested him in 2014 for alleged links with Maoist insurgents and for violating the Unlawful Activities Prevention Act (UAPA). In 2014 Amnesty International and civil rights activists campaigned for Saibaba’s release and alleged jail authorities denied him medical and sanitary facilities.

In January the CBI charged two police officials in Dharavi, Maharashtra with culpable homicide after a detainee died, allegedly from multiple injuries inflicted by the officers. Police initially claimed his death was due to meningitis. In June 2014 the Bombay High Court instructed CBI to takeover the investigation from the Mumbai Crime Branch.

There were continued reports that police raped male and female detainees. The government authorized the NHRC to investigate rape cases involving police officers. By law the NHRC can also request information about cases involving the army and paramilitary forces, but it has no mandate to investigate those cases. NGOs claimed the NHRC underestimated the number of rapes committed in police custody. Some rape victims were unwilling to report crimes due to social stigma and the possibility of retribution, compounded by a perception of a lack of oversight and accountability, especially if the perpetrator was a police officer or other official. There were reports police officials refused to register rape cases.
In April Kanyakumari District police arrested and detained 17 persons from the Kurava tribal community for alleged theft. According to local NGOs, police allegedly beat, tortured, and sexually assaulted the detainees over a period of 63 days. On July 8, the Tamil Nadu State Human Rights Commission initiated a probe into the conduct of the Kanyakumari Police.

**Prison and Detention Center Conditions**

Prison conditions were frequently life threatening and did not meet international standards.

**Physical Conditions:** Prisons were often severely overcrowded, and food, medical care, sanitation, and environmental conditions often were inadequate. Potable water was only occasionally available. Prisons and detention centers remained underfunded, understaffed, and lacking sufficient infrastructure. Prisoners were physically mistreated.

According to the NCRB *Prison Statistics India 2015* report, there were 1,401 prisons in the country with an authorized capacity of 366,781 persons. The actual incarcerated population was 419,623. Persons awaiting trial accounted for more than two-thirds of the prison population. Authorities held men and women separately. The law requires the detention of juveniles in rehabilitative facilities, although at times authorities detained them in adult prisons, especially in rural areas. Authorities often detained pretrial detainees along with convicted prisoners. In Uttar Pradesh, occupancy at most prisons was two and sometimes three times the permitted capacity, according to an advisor appointed by the Supreme Court.

According to NCRB, authorities convicted three out of an estimated 600 inmates in a prison in Dantewada, Chhattisgarh. The remainder of prisoners awaited trial in a jail built for a capacity of 150. According to the NCRB 2015 report, overcrowding was most severe in Dadra and Nagar Haveli at 277 percent of capacity, while Chhattisgarh prisons were at 234 percent of capacity; and Delhi prisons at 227 percent of capacity. A 2016 study on Indian prison monitoring by Commonwealth Human Rights Initiative cited little oversight of prisons, neglect of facilities, and breaches of prisoner rights.

**Administration:** Authorities permitted visitors some access to prisoners, although some family members claimed authorities denied access to relatives, particularly in conflict areas, including Jammu and Kashmir. There was no ombudsman for
detention facilities, but authorities allowed prisoners to submit complaints to judicial authorities.

**Independent Monitoring:** The NHRC received and investigated prisoner complaints of human rights violations throughout the year, but civil society representatives believed few prisoners filed complaints due to fear of retribution from prison guards or officials.

Authorities permitted prisoners to register complaints with state and national human rights commissions, but the authority of the commissions extended only to recommending that authorities redress grievances. Government officials reportedly often failed to comply with a 2012 Supreme Court order instructing the central government and local authorities to conduct regular checks on police stations to monitor custodial violence.

In many states the NHRC made unannounced visits to state prisons, but NHRC jurisdiction does not extend to military detention centers. An NHRC special rapporteur visited state prisons to verify that authorities provided medical care to all inmates. The rapporteur visited prisons on a regular basis throughout the year but did not release a report to the public or the press.

**d. Arbitrary Arrest or Detention**

The law prohibits arbitrary arrest and detention, but both occurred during the year. Police also used special security laws to postpone judicial reviews of arrests. Pretrial detention was arbitrary and lengthy, sometimes exceeding the duration of the sentence given to those convicted.

According to human rights NGOs, some police used torture, mistreatment, and arbitrary detention to obtain forced or false confessions. In some cases police reportedly held suspects without registering their arrests and denied detainees sufficient food and water.

**Role of the Police and Security Apparatus**

The 29 states and seven union territories have primary responsibility for maintaining law and order, with policy oversight from the central government. Police are under state jurisdiction. The Ministry of Home Affairs controls most paramilitary forces, the internal intelligence bureaus, and national law enforcement agencies, and provides training for senior officials from state police forces.
According to Human Rights Watch, cases of arbitrary arrest, torture, and forced confessions by security forces remained common. Police forces continued to be overworked, underpaid, and subjected to political pressure, in some cases contributing to corruption.

The effectiveness of law enforcement and security forces varied widely throughout the country. According to the code of criminal procedure, Section 197, courts may not hear a case against a police officer unless the central or state government first authorizes prosecution. Nonetheless, NGOs reported that in many instances police refused to register victim’s complaints, termed “first information reports” (FIR), on crimes reported against officers, effectively preventing victims from pursuing justice. In addition, NGOs reported that victims were sometimes reluctant to report crimes committed by police due to fear of retribution. There were cases of officers at all levels acting with impunity, but there were also cases of security officials held accountable for illegal actions. Military courts investigated cases of abuse by the armed forces and paramilitary forces. Authorities tried cases against law enforcement officers in public courts. Authorities sometimes transferred officers after convicting them of a crime.

The NHRC recommended the Criminal Investigations Department investigate all deaths taking place during police pursuits, arrests, or escape attempts. Many states did not follow this nonbinding recommendation and continued to conduct internal reviews at the discretion of senior officers.

While NHRC guidelines call for state governments to report all cases of deaths from police actions to the NHRC within 48 hours, state governments did not consistently adhere to those guidelines. The NHRC also called for state governments to provide monetary compensation to families of victims, but the state governments did not consistently adhere to this practice. Authorities did not require the armed forces to report custodial deaths to the NHRC.

On January 30, a video released by the Aam Aadmi Party allegedly showed three policemen in New Delhi beating students protesting the death of Dalit student Rohith Vemula. The protesters claimed their protest was peaceful and did not justify the treatment by the police or the subsequent charges.

On October 1, four persons died and nearly 30 were injured after police reportedly fired on protesting villagers in Hazaribagh District, Jharkhand. According to media reports, the villagers were protesting acquisition of land for the development
of coal mines by the central government-owned National Thermal Power Corporation.

**Arrest Procedures and Treatment of Detainees**

**Arbitrary Arrest:** The code of criminal procedure prohibits arbitrary arrest or detention, but in some cases police reportedly continued to arrest citizens arbitrarily. There were reports of police detaining individuals for custodial interrogation without identifying themselves or providing arrest warrants.

**Pretrial Detention:** Authorities must promptly inform persons detained on criminal charges of the charges against them and of their right to legal counsel. Under the criminal code, a magistrate may authorize the detention of an accused person for a period of no more than 90 days prior to filing charges. Under standard criminal procedure, authorities must release the accused on bail after 90 days. The code also allows police to summon individuals for questioning, but it does not grant police prearrest investigative detention authority. There were incidents in which authorities allegedly detained suspects beyond legal limits.

There were reported cases in which police denied suspects the right to meet with legal counsel as well as cases in which police unlawfully monitored suspects’ conversations and violated confidentiality rights. The constitution mandates that authorities provide defendants with “economic or other disabilities” free legal counsel, but authorities do not assess this need systematically. By law authorities must allow family members access to detainees, but this was not always observed. Arraignment of detainees must occur within 24 hours unless authorities hold the suspect under a preventive detention law. State authorities invoked preventive detention laws, most frequently in Delhi but also in the states of Gujarat, Maharashtra, Uttar Pradesh, Punjab, and Kashmir.

Police may detain an individual without charge for up to 30 days. The law also permits authorities to hold a detainee in judicial custody without charge for up to 180 days (including the 30 days in police custody). The UAPA, which gives authorities the ability to detain persons without charge in cases related to insurgency or terrorism, makes no bail provisions for foreign nationals, and allows courts to deny bail in the case of detained citizens. It presumes the accused to be guilty if the prosecution can produce evidence of the possession of arms or explosives, or the presence of fingerprints at a crime scene, regardless of whether authorities demonstrate criminal intent. State governments also reportedly held
persons without bail for extended periods before filing formal charges under the UAPA.

The law permits preventive detention in certain cases. The National Security Act allows police to detain persons considered security risks anywhere in the country, except Jammu and Kashmir, without charge or trial for as long as one year. The law allows family members and lawyers to visit national security detainees and requires authorities to inform a detainee of the grounds for detention within five days, or 10 to 15 days in exceptional circumstances.

The Public Safety Act, which applies only in Jammu and Kashmir, permits state authorities to detain persons without charge or judicial review for up to two years without visitation from family members. Authorities allowed detainees access to a lawyer during interrogation, but police in Jammu and Kashmir allegedly routinely employed arbitrary detention and denied detainees access to lawyers and medical attention. According to media reports, approximately 440 individuals in Jammu and Kashmir have been detained without trial since the beginning of large-scale protests in July. Human rights activist Khurram Pervez was arrested and detained by security forces in September prior to his departure to address the UN Human Rights Council on the human rights situation in Jammu and Kashmir. On October 19, UN experts called on the government to release Pervez immediately. On November 30, authorities released Pervez after a court ruled his detention illegal.

The Human Rights Law Network (HRLN) in Kochi, Kerala, reported certain prisoners with mental disabilities in the Kerala central prison considered “not fit for trial” had awaited trial for 10 to 26 years. According to the NGO, the prisoners in some cases were in detention far longer than their potential sentences. In 2013 the HRLN filed a writ petition with the Kerala High Court for the release of those prisoners. The court responded by issuing an order directing the state government to provide adequate medical treatment to the accused to render them fit for trial. The case was pending in the Kerala High Court at year’s end.

Lengthy arbitrary detention remained a significant problem due to overburdened and under resourced court systems and a lack of legal safeguards. The government continued efforts to reduce lengthy detentions and alleviate prison overcrowding by using “fast track” courts, which specified trial deadlines, provided directions for case management, and encouraged the use of bail. Some NGOs criticized these courts for failing to uphold due process and requiring detainees unable to afford bail remain in detention.
NCRB data showed most individuals awaiting trial spent more than three months in jail before they could secure bail, and nearly 65 percent spent between three months to five years before being released on bail.

**e. Denial of Fair Public Trial**

The law provides for an independent judiciary, but judicial corruption was widespread.

The judicial system remained seriously overburdened and lacked modern case management systems, often delaying or denying justice. According to 2015-16 data released by the Supreme Court, there was a 43 percent vacancy of judges in the country’s 24 high courts as of October 1.

On April 25, after a 10-year investigation, the special Maharashtra Control of Organized Crime Act court in Mumbai acquitted nine Muslim defendants accused of bomb attacks in Malegaon, Maharashtra, in 2006 and 2008, which killed 31 and injured 312, The National Investigation Agency also filed charges against Hindu nationalists for perpetrating the same attacks. After investigations by three agencies--the Maharashtra Antiterrorism Squad, the Central Bureau of Investigation, and the National Investigation Agency--the court dismissed all terror charges due to lack of evidence.

**Trial Procedures**

The criminal procedure code provides for public trials, except in proceedings that involve official secrets or state security. Defendants enjoy the presumption of innocence, except as described under UAPA conditions, and may choose their counsel. The state provides free legal counsel to defendants who cannot afford it, but circumstances often limited access to competent counsel, and an overburdened justice system resulted in lengthy delays in court cases, with disposition sometimes taking more than a decade.

The law allows defendants access to relevant government evidence in most civil and criminal cases, but the government reserved the right to withhold information and did so in cases it considered sensitive. While defendants have the right to confront accusers and present their own witnesses and evidence, defendants sometimes did not exercise this right due to lack of proper legal representation. Defendants have the right not to testify or confess guilt. Courts must announce
sentences publicly, and there are effective channels for appeal at most levels of the judicial system.

**Political Prisoners and Detainees**

There were reports of political prisoners and detainees. NGOs reported the Jammu and Kashmir government held political prisoners and between 2005 and 2014 temporarily detained more than 690 persons characterized as terrorists, insurgents, and separatists under the Public Safety Act. On July 20, a Kolkata court acquitted veteran Communist Party India (Maoist) spokesperson Gour Chakraborty, who was arrested in 2009 and charged with several offenses, including sedition. The court released Chakraborty after the prosecution failed to substantiate the charges.

**Civil Judicial Procedures and Remedies**

Individuals, or NGOs on behalf of individuals or groups, may file public interest litigation petitions in any high court or directly to the Supreme Court to seek judicial redress of public injury. Grievances can include a breach of public duty by a government agent or a violation of a provision of the constitution. NGOs credited public-interest litigation petitions with making government officials accountable to civil society organizations in cases involving allegations of corruption and partiality.

On January 13, the Bombay High Court addressed a two-fold rise in reported custodial death and police torture cases from 2014 to 2015 and directed the Maharashtra government to submit a report to the court. The court criticized the government for its failure to install closed-circuit television cameras in police stations, despite a court order.

**f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**

While the constitution does not contain an explicit right to privacy, the Supreme Court has found such a right implicit in other constitutional provisions, most notably Article 21. The law, with some exceptions, prohibits arbitrary interference. The government generally respected this provision, although at times authorities infringed upon the privacy rights of citizens. The law requires police to obtain warrants to conduct searches and seizures, except in cases in which such actions would cause undue delay. Police must justify warrantless searches in writing to the nearest magistrate with jurisdiction over the offense.
The Official Secrets Act hindered transparency and accountability with regard to electronic surveillance. Responding to a query in the lower house of parliament in August, the Union Home Ministry stated the government set up an interministerial committee to examine the provisions of the Official Secrets Act and that the matter was under consideration.

Both the central and state governments intercepted communications under the authority of the Telegraph Act 1885, section 5(2), and under section 69 of the Information Technology Act 2000, as amended. The Group of Experts on Privacy convened in 2012 by the Government of India Planning Commission, the most recent review available, noted that the differences between these two statutes had created an unclear regulatory regime that was, according to the report, “inconsistent, nontransparent, prone to misuse, and does not provide remedy or compensation to aggrieved individuals.”

The UAPA provides an additional legal basis for warrantless searches. The UAPA also allows use of evidence obtained from intercepted communications in terrorist cases. In Jammu and Kashmir, Punjab and Manipur, security officials have special authorities to search and arrest without a warrant.

The Chhattisgarh Special Public Security Act (CSPSA) of 2005 allows police to detain a person without charge for as long as 90 days. Opponents argued the law, which authorizes detention of individuals with a “tendency to pose an obstacle to the administration of law,” infringed upon privacy and free speech. The government detained two journalists under the CSPSA, accusing them of complicity in a deadly attack on police by Naxalite insurgents; some media reports indicated authorities imprisoned the journalists because of their reporting. A local court acquitted one of the two journalists on July 21.

g. Abuses in Internal Conflict

The country’s armed forces, the security forces of individual states, and paramilitary forces engaged in armed conflict with insurgent groups in several northeastern states, and with Maoist insurgents in the north, central, and eastern parts of the country—although the intensity of these conflicts continued to decrease significantly. Army and central security forces remained stationed at conflict areas in the northeast.
The use of force by all parties to the conflicts resulted in deaths and injuries to both conflict participants and civilians. There were reports government security forces committed extrajudicial killings, including staging encounter killings to conceal the deaths of captured militants. Human rights groups claimed police refused to release bodies in cases of alleged “encounters.” Authorities did not require the armed forces to report custodial deaths to the NHRC.

The July 8 killing of Hizbul Mujahidden commander Burhan Wani led to continuing civilian protests in the Kashmir Valley and resulted in 90 deaths, including 88 civilians and two police officers. According to media reports, more than 4,500 civilians and more than 4,000 security personnel were injured. Schools, markets, offices, and businesses remained closed for extended periods.

The central and state governments and the armed forces investigated complaints and punished some violations committed by government forces. Authorities arrested and tried insurgents under terrorism-related legislation.

There were few investigations and prosecutions of human rights violations arising from internal conflicts. NGOs claimed that due to AFSPA immunity provisions, authorities did not hold the armed forces responsible for the deaths of civilians killed in Jammu and Kashmir in previous years.

Insurgents and terrorists reportedly committed attacks on roads and railways.

**Killings:** According to NGO and media reports, the apparently indiscriminate use of shotguns loaded with birdshot by security forces to control crowds, including violent protests, in Jammu and Kashmir resulted in 87 civilian deaths and blinded hundreds more, including children.

In Maoist-affected districts, there were reports of abuses by security forces and insurgents. On February 27, security forces killed Manda Kadraka, a member of an Odisha tribal community, during an exchange of gunfire with Maoists in Rayagada District. Police claimed Kadraka was a Maoist and died after exchanging fire with security forces. The Niyamgiri Surakhya Samithi, an organization that works for the welfare of the Dongria Kondh tribal group, maintained Kadraka was not a combatant and that the police killed him to suppress protests against mining in the surrounding area. In July, 10 soldiers were killed in an attack by Maoist insurgents in the Dumrinala area, 100 miles outside Patna, the capital of Bihar. According to state police officials, the insurgents employed improvised explosive devices and small arms in the attack on soldiers.
Abductions: Human rights groups maintained military, paramilitary, and insurgent forces abducted numerous persons in Manipur, Jharkhand, and the Maoist belt. Human rights activists alleged cases of prisoners tortured or killed during detention. During the year media outlets reported cases of abduction by insurgent groups in Manipur. On June 28, the Assam Rifles disrupted a plot by the People’s Revolutionary Party of Kangleipak insurgent group to abduct and extort petroleum truck drivers. Contractors working on a railway project connecting Manipur’s capital Imphal to Jiribam also reported abduction and extortion threats by militant groups. In April police recovered the body of a driver from Lhangnom village in Manipur’s Senapati District. The driver was allegedly abducted by insurgents on March 3.

Physical Abuse, Punishment, and Torture: There were reports government security forces tortured, raped, and mistreated insurgents and alleged terrorists in custody and injured demonstrators. All parties to the conflicts injured civilians.

Child Soldiers: Insurgent groups reportedly used children to attack government entities in roles such as bomb couriers. The Ministry of Home Affairs reported Maoist groups conscripted boys and girls ages six to 12 into specific children’s units (Bal Dasta and Bal Sangham) in Bihar, Jharkhand, Chhattisgarh, and Odisha States. The Maoist groups used the children in combat and intelligence-gathering roles. Insurgents trained children as spies and couriers, as well as in the use of arms, planting explosives, and intelligence gathering. NGOs in Manipur reported the National Socialist Council of Nagaland Isak-Muivah (NSCN-IM) recruited nearly 3,000 personnel, a large percentage of whom were minors, between January and April. Security officials in Manipur corroborated the trend.

Although the United Nations was not able to verify all allegations, reports submitted to parliament contained similar allegations. Recruitment of children by Maoist armed groups allegedly continued. Observers reported children as young as 12 were members of Maoist youth groups and allied militia. They reportedly handled weapons and improvised explosive devices. Maoists reportedly held children against their will and threatened severe reprisals, including the killing of family members, if the children attempted to escape. There were reports of girls serving in Maoist groups. The government claimed, based on statements of several women formerly associated with Maoist groups, that sexual violence, including rape and other forms of abuse, was a practice in some Maoist camps.
According to government sources, Maoist armed groups used children as human shields in confrontations with security forces. Attacks on schools by Maoists continued to affect children’s access to education in affected areas. There were continued reports on the use of schools as military barracks and bases. The deployment of government security forces near schools remained a concern. There were reports armed groups recruited children from schools in Chhattisgarh.

Other Conflict-related Abuse: As of July the Internal Displacement Monitoring Center estimated conflicts and instability in the country displaced 3.7 million persons.

Tens of thousands of Kashmiri Pandits (Hindus) have fled the Kashmir Valley to Jammu, Delhi, and other areas in the country since 1990 because of conflict and violent intimidation, including destruction of houses of worship, sexual abuse, and theft of property, by Kashmiri separatists. The Kashmiri Pandits began to leave Kashmir after the 1990 onset of insurgency against the Indian state. In Jammu and Kashmir, central government assistance to displaced Kashmiri Pandits consisted of monthly cash allowances and food rations, but some members of the group claimed the assistance failed to address their livelihood needs. In May 2015 thousands of Kashmiri Pandits and members of the National Conference protested against state government plans to resettle the group in secluded enclaves in Kashmir without consultation.

In the central and eastern areas, armed conflicts between Maoist insurgents and government security forces over land and mineral resources in tribal forest areas continued, affecting 182 of the country’s 626 districts in 20 of its 29 states. Human rights advocates alleged the government’s operations sought not only to suppress the Maoists but also to force tribal persons off their land, allowing for commercial exploitation.

Internally displaced person (IDP) camps continued to operate in Chhattisgarh for tribal persons displaced during the 2005 fighting between Maoists and state-sponsored militia Salwa Judum.

Throughout the year there were reports by media organizations and academic institutions of corporations’ human rights abuses against tea workers, including violations of the Plantation Labor Act. In some cases violent strikes resulted from companies withholding medical care required by law. Other reports indicated workers had difficulty accessing clean water, with open sewage flowing through company housing areas. The tea industry is among the largest private-sector
employers in the country, providing work for more than one million permanent workers and up to two million seasonal laborers.

Between January 11 and 14, tribal women alleged rape and sexual assault by security forces during search operations in Nendra, Chhattisgarh. Six tribal women from the village of Kunna alleged security forces assaulted them on January 12. On January 25, Amnesty International called for an investigation of police inaction in 13 sexual assault cases of tribal women in Nendra village. In April the National Commission for Scheduled Tribes (NCST) claimed mass sexual abuse by security forces during counterinsurgency operations. The NCST recommended that investigation of three specific cases be transferred from district police authorities to the state’s Criminal Investigation Department.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The constitution provides for freedom of speech and expression, but it does not explicitly mention freedom of the press. The government generally respected these rights.

Freedom of Speech and Expression: Individuals routinely criticized the government publicly and privately. According to Human Rights Watch, however, sedition and criminal defamation laws were used to prosecute citizens who criticize government officials or oppose state policies. In certain cases local authorities arrested individuals under laws against hate speech for expressions of political views.

On February 12, Delhi police arrested Jawaharlal Nehru University students’ union president Kanhaiya Kumar and seven other students, charging them with sedition for allegedly shouting “anti-India” slogans at a February 9 protest. The arrests and subsequent administrative disciplinary measures resulted in protests on other university campuses. According to the NHRC, Kumar was “abused and physically assaulted” at court when he appeared for a bail hearing on February 17. In March the Delhi High Court released Kumar and two other students on bail, which was extended to August 26. On September 6, the Delhi High Court extended bail and enjoined the university administration from taking administrative action against Kumar until the next hearing.
On September 5, the Supreme Court stated the government could not bring charges of sedition against a person for criticizing the government or its policies. This ruling was in response to a petition filed by NGO Common Cause to curb the use of sedition provisions under the Indian Penal Code to restrict speech.

Press and Media Freedoms: Independent media generally expressed a wide variety of views without restriction. The law prohibits content that could harm religious sentiments or provoke enmity among groups, and authorities invoked these laws to restrict print media, broadcast media, and publication or distribution of books.

On March 21, the Chhattisgarh police arrested journalist Prabhat Singh in Dantewada for allegedly sharing a message critical of the state police on a messaging application and charged him under the Information Technology Act. On March 26, Chhattisgarh police arrested journalist Deepak Jaiswal for inquiring about the Prabhat Singh case. A court granted Jaiswal bail on June 6, and the Chhattisgarh High Court granted Prabhat Singh bail on June 22.

The government maintained a monopoly on AM radio stations and restricted FM radio licenses for entertainment and educational content. Widely distributed private satellite television provided competition for Doordarshan, the government-owned television network. State governments banned the import or sale of some books due to material government censors deemed inflammatory or could provoke communal or religious tensions.

Violence and Harassment: Some journalists and media persons reportedly experienced violence and harassment in response to their reporting. In February Asianet News channel anchor Sindhu Sooryakumar reportedly received more than 2,000 abusive calls and death threats after moderating a debate on Hinduism. On February 28, police arrested five persons in connection with these threats.

Censorship or Content Restrictions: In August 2015 the Central Board of Film Certification (CBFC) in Chennai refused to certify the film Muttrupulliya, which portrays Tamil life in post-war Sri Lanka, over concerns the film glorified the war. In September 2015 the filmmakers appealed the CBFC refusal before the Film Certification Appellate Tribunal. In March the filmmakers won the appeal, and the CBFC lifted the ban on the film.

Libel/Slander Laws: In July the Supreme Court reviewed an appeal from a Tamil Nadu trial court filed by politician Vijaykanth, challenging the constitutionality of a law permitting prosecutors to file defamation cases on behalf of public servants.
The court also ordered the state government to provide a list of criminal defamation cases brought on behalf of then chief minister Jayalalithaa by Tamil Nadu prosecutors. According to media reports, the list submitted by the Tamil Nadu government on August 17 included 213 cases filed from May 2011 through July 2016.

National Security: In some cases government authorities cited laws protecting national interest to restrict media content.

On June 9, Sakshi TV was taken off the air in Andhra Pradesh until June 22, after it publicized the hunger strike of Kapu caste leader Mudragada Padmanabham. Deputy Chief Minister N. Chinarajappa stated the channel would remain off-air as long as the hunger strike continued, since covering the protest could potentially disturb law and order in the state.

In July the Jammu and Kashmir government reportedly raided local printing presses, stopped publication, and detained press staff while enforcing a news blackout during a period of unrest. In addition to restrictions on newspaper publication, internet and cellular communication was also heavily restricted.

Nongovernmental Impact: In a statement released on June 16, UN Special rapporteurs on human rights expressed the view that FCRA Foreign Contribution Regulation Act (FCRA) “provisions were increasingly being used…to silence organizations involved in advocating civil, political, economic, social, environmental, or cultural priorities, which may differ from those backed by the Government.” The statement highlighted the suspension of foreign banking licenses for NGOs including Greenpeace India, Lawyers Collective, and the Sabrang Trust.

Internet Freedom

There were some government restrictions on access to the internet, disruptions of access to the internet, and censorship of online content. There were also reports the government occasionally monitored users of digital media, such as chat rooms and person-to-person communications. The IT Act permits the government to block internet sites and content and criminalizes sending messages the government deems inflammatory or offensive. Both central and state governments have the power to issue directions for blocking, intercepting, monitoring, or decrypting computer information.
In 2015 the Supreme Court struck down section 66A of the IT Act, which had resulted in a significant number of arrests between 2012 and 2015 for content published on social media. According to NCRB data, police made 3,137 arrests under 66A in 2015, compared with 2,423 arrests in 2014. As of January 1, 575 individuals remained incarcerated under all sections of the IT Act. The Supreme Court upheld other provisions of the act authorizing the government to block certain online content. Under section 69A of the act, the government can still order content blocks without court approval.

The central monitoring system (CMS), which began pilot operations in 2013, continued to allow governmental agencies to monitor electronic communications in real time without informing the subject or a judge. The CMS is a mass electronic surveillance data-mining program installed by the Center for Development of Telematics, a government-owned telecommunications technology development center. The CMS gives security agencies and income tax officials centralized access to the telecommunication network and the ability to hear and record mobile, landline, and satellite telephone calls and Voice over Internet Protocol, to read private e-mails and mobile texts, and to track geographical locations of individuals in real time. Authorities can also use it to monitor posts shared on social media and track users’ search histories on Google, without oversight by courts or parliament. This monitoring facility was available to nine security agencies, including the Intelligence Bureau, the Research and Analysis Wing, and the Home Affairs Ministry. In May 2015 former communications minister Milind Deora expressed concern that without comprehensive privacy laws, the system was not sufficiently accountable and could impinge on freedom of speech.

Freedom House, a civil liberty organization, released a report in October 2015 rating the country “partly free” with respect to internet user rights, including accessibility, limits on content, and violations of individual’s rights. The NGO reported the government decreased the number of incidents concerning connectivity, restricted access, and documented incidents of physical attacks on internet users for content posted online. According to the report, key internet controls that existed between May 2014 and May 2015 included blocking of political, social, and religious content. The report cited the CMS as a potential internet freedom concern.

Government regulations on internet content prohibit many types of material including “harmful” and “insulting” content. Authorities may hold search engines liable for displaying prohibited content. Authorities require cyber cafes to install
surveillance cameras and provide the government with records of user browsing activity.

On January 6, media reported 24-year-old Anwar Sadiq of Malappuram in Kerala was charged with sedition for social media comments he allegedly made about a military officer killed during a counterterror operation at Pathankot Air Force Base.

On March 25, two students from a town in Puttur, Karnataka, were arrested and later released for posting “Pakistan Ki Jai” (Hail Pakistan) on a phone messaging application during the India-Pakistan World T20 cricket match, according to media reports.

The government requested user data from internet companies. According to Facebook’s January 2016 transparency report for the second half of 2015, the government made 5,561 requests. Facebook complied with 51 percent of those requests. Google also highlighted in its most recent transparency report an increase in government requests to share user data.

According to industry experts, approximately 35 percent of the population had access to the internet in 2016.

**Academic Freedom and Cultural Events**

In rare cases the government applied restrictions to the travel and activities of visiting experts and scholars; however, in most cases the government supported and issued visas for international academic conferences and exchanges.

**b. Freedom of Peaceful Assembly and Association**

The law provides for the freedoms of assembly and association, and the government generally respected those rights.

**Freedom of Assembly**

The law provides for freedom of assembly. Authorities often required permits and notification before parades or demonstrations, and local governments generally respected the right to protest peacefully, except in Jammu and Kashmir, where the state government sometimes denied permits to separatist political parties for public gatherings, and security forces sometimes reportedly detained and assaulted
members of political groups engaged in peaceful protest (see section 1.g.). During periods of civil unrest in Jammu and Kashmir, authorities used the criminal procedure code to ban public assemblies or impose a curfew.

Security forces, including local police, often disrupted demonstrations and used excessive force when attempting to disperse protesters.

On March 22, following the suicide of Dalit doctoral student Rohith Vemula, police responded to protests by teachers and students against the University of Hyderabad administration. Students and human rights NGOs alleged the police used disproportionate force. Two teachers and 36 students were detained.

There were restrictions on the organization of international conferences. Authorities required NGOs to secure approval from the Ministry of Home Affairs before organizing international conferences. Authorities routinely granted permission, although in some cases the approval process was lengthy. Some human rights groups claimed this practice provided the government with tacit control over the work of NGOs and constituted a restriction on freedom of assembly and association.

**Freedom of Association**

The law provides for freedom of association. While the government generally respected that right, the government’s increased regulation of NGO activities that receive foreign funding has caused concern. In certain cases, for example, the government required “prior approval” of some NGOs foreign funds, and in other instances declined to renew NGOs’ FCRA registration.

NGOs expressed continued concern regarding the government’s enforcement of FCRA, provisions of which bar some foreign-funded NGOs from engaging in activities the government believed were not in the “national or public interest,” curtailing the work of some civil society organizations. Some NGOs expressed concern over politically motivated enforcement of the act to intimidate organizations that address social issues or criticize the government or its policies, arguing that the law’s use of broad and vague terms such as “public interest” and “national interest” have left it open to abuse. Some multi-national and domestic companies also stated that in some instances the act made it difficult to comply with government-mandated corporate social responsibility obligations due to lengthy and complicated registration processes.
According to media reports, in early November the Ministry of Home Affairs rejected FCRA registration renewals of 25 NGOs, including Lawyer’s Collective and Compassion International’s two primary partners. In addition, some NGOs were placed on a “prior permissions” list, which requires government preapproval of any transfer of funds from abroad. Several NGOs stated these actions threaten their ability to continue to operate in the country.

In April the UN special rapporteur on freedom of assembly and association published a legal analysis asserting that the FCRA did not conform to international law, principles, and standards. In June the UN special rapporteurs on human rights defenders, on freedom of expression, and on freedom of association called on the government to repeal the FCRA.

According to media reports, the government took action to suspend foreign banking licenses or freeze accounts for NGOs on the basis that they received foreign funding without the proper clearances or illegally combined foreign and domestic funding streams, although some human rights organizations reported these types of actions were sometimes used to target specific NGOs.

c. Freedom of Religion

See the Department of State’s International Religious Freedom Report at www.state.gov/religiousfreedomreport/.


The law provides for freedom of internal movement, foreign travel, emigration, and repatriation. The government generally respected these rights. In August 2015 the implementation of a land boundary agreement between India and Bangladesh enfranchised more than 50,000 previously stateless residents, providing access to education and health services.

The government generally cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to some IDPs, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern. The government generally allowed UNHCR to assist only those asylum seekers and refugees from noncontiguous countries. The country hosted a large refugee population, including 110,000 Tibetan refugees, notably the Dalai Lama.
In-country Movement: The central government relaxed restrictions on travel by foreigners to Arunachal Pradesh, Nagaland, Mizoram, Manipur, and parts of Jammu and Kashmir, excluding foreign nationals from Pakistan, China, and Burma. The Ministry of Home Affairs and state governments required citizens to obtain special permits upon arrival when traveling to certain restricted areas.

Security forces often searched and questioned travelers at vehicle checkpoints in areas of the Kashmir Valley and before public events in New Delhi, or after major terrorist attacks.

Foreign Travel: The government may legally deny a passport to any applicant for engaging in activities outside the country “prejudicial to the sovereignty and integrity of the nation.”

Citizens from Jammu and Kashmir faced extended delays, sometimes up to two years, for issuance or renewal of passports. The government reportedly subjected applicants born in Jammu and Kashmir, including children born to military officers deployed in the state, to additional scrutiny and police clearances before issuing them passports.

Internally Displaced Persons

Authorities located IDP settlements throughout the country, including those containing groups displaced by internal armed conflicts in Jammu and Kashmir, the Maoist belt, the northeastern states (see section 1.g.), and Gujarat. According to International Displacement Monitoring Center (IDMC) statistics from December 31, 2015, longstanding regional conflicts had displaced at least 612,000 persons. Estimating the exact number of those displaced by conflict or violence was difficult, because no central government agency was responsible for monitoring the movements of displaced persons, and humanitarian and human rights agencies had limited access to camps and affected regions. While authorities registered residents of IDP camps, an unknown number of displaced persons resided outside camps. Many IDPs lacked sufficient food, clean water, shelter, and health care (see additional reporting on IDPs in section 1.g.).

Paramilitary operations against Maoists displaced members of the Gutti Koya tribe in the Dandakaranya forests in Chhattisgarh, who migrated to the neighboring Khammam and Warangal districts in Telangana. Following bifurcation of Andhra Pradesh to form the new state of Telangana in 2014, the state governments
transferred parts of Khammam District with Gutti Koya settlements to Andhra Pradesh.

The IDMC estimated the number of IDPs in Chhattisgarh at 50,000, in Telangana at 13,820, and in Andhra Pradesh at 6,240. The Chhattisgarh government reportedly did not acknowledge IDPs in Andhra Pradesh camps as Chhattisgarh residents, and the Andhra Pradesh government reportedly provided them little support. Repatriation of IDPs was difficult due to development projects on Adivasi forestland and rural-urban migration trends.

National policy or legislation did not address the issue of internal displacement resulting from armed conflict or from ethnic or communal violence. Responsibility for the welfare of IDPs was generally the purview of state governments and local authorities, allowing for gaps in services and poor accountability. The central government provided limited assistance to IDPs. IDPs had access to NGOs and human rights organizations, but neither access nor assistance was standard for all IDPs or all situations.

Protection of Refugees

The 1946 Foreigners Act does not contain the term “refugee,” treating refugees as any other foreigners. Undocumented physical presence in the country is a criminal offense. Refugees without documentation were vulnerable to forced repatriation and reportedly to abuse. The government generally provided protection against the expulsion or return of refugees to countries where refugees would face threats to their safety or freedom due to race, religion, nationality, membership in a particular social group, or political opinion.

Access to Asylum: Absent a legal framework, the government sometimes granted asylum on a situational basis on humanitarian grounds in accordance with international law. This approach resulted in varying standards of protection for different refugee and asylum seeker groups. The government recognized refugees from Tibet and Sri Lanka and honored UNHCR decisions on refugee status determination for individuals from other countries.

UNHCR did not maintain an official presence in the country, but the government permitted UNHCR staff access to refugees in urban centers and allowed it to operate in Tamil Nadu to assist with Sri Lankan refugee repatriation. UNHCR registered asylum seekers and conducted refugee status determination for refugees from noncontiguous countries and Burma. Authorities did not permit UNHCR
direct access to Sri Lankan refugee camps, Tibetan settlements, or asylum seekers in Mizoram; but it permitted asylum seekers from Mizoram to travel to New Delhi to meet UNHCR officials. UNHCR did not have access to asylum seekers in Mizoram. The government generally permitted NGOs, international humanitarian organizations, and foreign governments access to Sri Lankan refugee camps and Tibetan settlements but generally denied access to asylum seekers in Mizoram. UNHCR estimated registration of 6,870 Rohingya and 6,855 Chin from Burma in New Delhi and estimated tens of thousands of additional asylum seekers remained unregistered.

According to Chin Human Rights Organization (CHRO) activists in Mizoram, some Chins living in Mizoram returned to Burma after the installation of the new government in that country. Faced with falling numbers, CHRO and its affiliates reduced their scale of operations in Mizoram.

After the end of the Sri Lankan civil war, the government ceased registering Sri Lankans as refugees. The Tamil Nadu government assisted UNHCR by providing exit permission for Sri Lankan refugees to repatriate voluntarily.

The benefits provided to Sri Lankan Tamil refugees by the state government of Tamil Nadu were applicable only within Tamil Nadu.

Refugees outside Delhi faced added expense and time to register their asylum claims.

Refugee Abuse: The government did not target refugees for harassment, and police and courts appropriately protected refugees. Refugees, however, reported exploitation by nongovernment actors, including assaults, gender-based violence, frauds, and labor exploitation.

Problems of domestic violence, sexual abuse, and early and forced marriage continued. Gender-based violence and sexual abuse was common in camps for Sri Lankans. Many urban refugees worked in the informal sector or in occupations such as street vending, where they suffered from police extortion, nonpayment of wages, and exploitation.

Employment: The government granted work authorization to many UNHCR-registered refugees, and others found employment in the informal sector. Some refugees reported discrimination by employers.
Access to Basic Services: Although the country generally allowed recognized refugees and asylum seekers access to housing, primary and secondary education, health care, and the courts, access varied by state and by population. Refugees were able to access public services. In most cases where refugees were denied access, it was due to a lack of knowledge on refugee rights by the service provider. In many cases UNHCR was able to intervene successfully and advocate for refugee access. In 2012 the government began allowing UNHCR-registered refugees and asylum seekers to apply for long-term visas that would provide work authorization and access to higher education. For undocumented asylum seekers, UNHCR provided a letter upon registration indicating the person was under consideration for UNHCR mandate refugee status.

The 80,000 to 100,000 Burmese Chin asylum seekers in Mizoram generally reported adequate access to housing, education, and health services. Because most Chin asylum seekers lacked legal status and were unable to work legally, they were often unable to meet basic needs and remained vulnerable to abuse, discrimination, and harassment.

During the year several NGOs working with Rohingya refugees in Haryana complained of difficulties in enrolling Rohingya children without state-issued identification cards in government schools. Local school officials claimed all refugee children were welcome with a state-issued identity certificate.

The government did not fully fulfill a 2012 Ministry of Home Affairs directive to issue long-term visas to Rohingya. These visas would allow refugees to access formal employment in addition to education, health services, and bank accounts.

Government services such as mother-child health programs were available. Refugees were able to request protection from the police and courts as needed.

Sri Lankan refugees were permitted to work in Tamil Nadu. Police, however, reportedly summoned refugees back into the camps on short notice, particularly during sensitive political times such as elections, and required refugees or asylum seekers to remain in the camps for several days.

The government did not accept refugees for resettlement from other countries.

Stateless Persons
By law parents confer citizenship, and birth in the country does not automatically result in citizenship. Any person born in the country on or after January 26, 1950, but before July 1, 1987, obtained Indian citizenship by birth. A child born in the country on or after July 1, 1987, obtained citizenship if either parent was an Indian citizen at the time of the child’s birth. Authorities considered those born in the country on or after December 3, 2004, citizens only if at least one parent was a citizen and the other was not illegally present in the country at the time of the child’s birth. Authorities considered persons born outside the country on or after December 10, 1992, citizens if either parent was a citizen at the time of birth, but authorities did not consider those born outside the country after December 3, 2004, citizens unless their birth was registered at an Indian consulate within one year of the date of birth. Authorities could also confer citizenship through registration under specific categories and via naturalization after residing in the country for 12 years. Tibetans reportedly sometimes faced difficulty acquiring citizenship despite meeting the legal requirements.

According to UNHCR and NGOs, the country had a large population of stateless persons, but there were no reliable estimates of the number. Stateless populations included Chakmas and Hajongs, who entered the country decades ago from present-day Bangladesh, and groups affected by the 1947 partition of the subcontinent into India and Pakistan.

Kolkata-based Mahanirban Calcutta Research Group estimated the presence of approximately 45,000 unregistered Rohingyas in addition to those registered with UNHCR.

Approximately 70,000 stateless Bangladeshi Chakma persons lived in Arunachal Pradesh. On September 20, the Supreme Court ordered the central government and the Arunachal Pradesh state government to consider citizenship for Chakma and Hajong refugees who have lived in the state for almost 50 years. In the early 1960s, Buddhist Chakmas and Hajongs fled persecution from former East Pakistan (Bangladesh) and approximately 15,000 settled in the Changlang District of Arunachal Pradesh.

In May the Mizoram State government, which had previously refused to accept the repatriation of Bru refugees, submitted a plan to the Ministry of Home Affairs to repatriate more than 20,000 Brus, including 11,500 minors. Bru IDPs were lodged in six relief camps in North Tripura District. The ministry approved the Mizoram plan in July.
Children born in Sri Lankan refugee camps received Indian birth certificates. While Indian birth certificates alone do not entitle refugees to Indian citizenship, refugees may present Indian birth certificates to the Sri Lankan High Commission to commence registration as Sri Lankan citizens. Approximately 16,000 of 27,000 Sri Lankan refugee children born in the refugee camps have presented birth certificates to the Sri Lankan High Commission in Chennai.

UNHCR and refugee advocacy groups estimated that between 25,000 and 28,000 of the approximately 100,000 Sri Lankan Tamil refugees living in Tamil Nadu were “hill country” Tamils. While Sri Lankan law allows “hill country” refugees to present affidavits to secure Sri Lankan citizenship, UNHCR believed that until the Sri Lankan government processes their paperwork, authorities may consider such refugees potentially stateless.

Section 3. Freedom to Participate in the Political Process

The constitution provides citizens the ability to choose their government through free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

Elections and Political Participation

Recent Elections: Voters elected President Pranab Mukherjee in 2012 to a five-year term, and Narendra Modi became prime minister following the victory of the National Democratic Alliance coalition led by the Bharatiya Janata Party in the May 2014 general elections. Observers considered these elections, which included more than 551 million participants, free and fair, despite isolated instances of violence.

The Election Commission of India is an independent constitutional body responsible for administering all elections at the central and state level throughout the country. International organizations reported fair and effective oversight by the commission during the April assembly elections in Assam, and May elections in West Bengal, Kerala, Tamil Nadu, and the Union Territory of Puducherry.

The Election Commission seized approximately one billion rupees ($15 million) in cash from various parts of Tamil Nadu in advance of the Legislative Assembly elections. The commission deferred voting in Aravakurichi and Thanjavur assembly districts following seizure of more than 60 million rupees ($902,000) in cash and other gifts.
Political Parties and Political Participation: The constitution provides for universal voting rights for all citizens age 18 and above. There were no restrictions placed on the formation of political parties or on individuals of any communities from participating in the election process. The election law bans the use of government resources for political campaigning and the Election Commission effectively enforced the law. The commission’s guidelines ban opinion polls 48 hours prior to an election and cannot release results of exit polls until completion of the last phase (in a multiphase election).

Participation of Women and Minorities: The law reserves one-third of the seats in local councils for women. Religious, cultural, and traditional practices and ideas prevented women from proportional participation in political office. Nonetheless, women held many high-level political offices, including positions as ministers, members of parliament, and state chief ministers.

The constitution stipulates that to protect historically marginalized groups and provide for representation in the lower house of parliament, each state must reserve seats for Scheduled Castes and Scheduled Tribes in proportion to their population in the state. Only candidates belonging to these groups may contest elections in reserved constituencies. Members of minority populations served as prime minister, vice president, cabinet ministers, Supreme Court justices, and members of parliament.

Some Christians and Muslims were identified as Dalits, but the government limited reservations for Dalits to Hindus, Sikhs, and Jains.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials at all levels of government. Officials frequently engaged, however, in corrupt practices with impunity. There were numerous reports of government corruption during the year.

Corruption: Corruption was present at all levels of government. The CBI registered 237 cases of corruption between January and June. The commission operated a public hotline and a web portal. NGOs reported the payment of bribes to expedite services, such as police protection, school admission, water supply, or government assistance. Civil society organizations drew public attention to corruption throughout the year, including through demonstrations and websites that featured stories of corruption.
Media reports, NGOs, and activists reported links between contractors, militant groups, and security forces in infrastructure projects, narcotics trafficking, and timber smuggling in the northeastern states. These reports alleged ties among politicians, bureaucrats, security personnel, and insurgent groups. In Manipur and Nagaland, allegations of bribes paid to secure state government jobs were prevalent, especially in police and education departments.

Corruption sometimes hampered government programs to investigate allegations of government corruption. In July 2015 a Special Investigation Team (SIT) alleged officials from Lokayukta, an anticorruption statutory body, exchanged bribes for protection from potential corruption raids in Karnataka and arrested 10 individuals, including local officials. In response the Karnataka government amended the Lokayukta Act to allow for the removal of anticorruption officials. Corruption ombudsman Justice Bhaskar Rao resigned in December 2015. On August 4, the SIT charged Justice Rao with abetting conspiracy and corruption-related activities.

In July 2015 the Supreme Court ordered the CBI to take over a Madhya Pradesh state government investigation of fraud within the Professional Examination Board (Vyapam), a state government body that conducts school entrance and government service exams. Arrests in the case since the investigation began in 2013 included more than 2,000 individuals. In August the CBI registered a complaint against 60 individuals and filed charges against a student candidate and an impersonator. The Madhya Pradesh High Court granted bail to some of the accused. The CBI was also investigating the deaths of 48 individuals over the span of five years, including a journalist, who reported on the fraud.

On June 4, the Maharashtra agriculture and revenue minister, Eknath Khadse, resigned following allegations of corruption in a land deal involving his wife and son-in-law. On June 5, the Maharashtra chief minister, Devendra Fadnav, appointed a retired high court judge to investigate the corruption allegations.

Financial Disclosure: The law mandates asset declarations for all officers in the Indian Administrative Services. Both the Election Commission and the Supreme Court upheld mandatory disclosure of criminal and financial records for election candidates.

Public Access to Information: The law provides for public access to information. Although the government was often slow to respond to requests, the public could
access personal documentation, city plans, and other public records through the Right to Information (RTI) online portal. RTI requests are limited to Indian citizens. The government charged a fee of 11 rupees (16 cents) per request. Citizens may appeal request denials to the Central Information Commission and then to the appropriate high court. Activists expressed concern that public authorities were sometimes unable to implement the RTI Act adequately and that rural inhabitants were not always aware of their rights under the act. Other activists credited the RTI act for increasing transparency, noting it was used to expose corrupt activities across the country. In May, media reported the removal of a chapter in textbooks for Rajasthan middle school students related to the right to information across the country.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

Most domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. In some circumstances groups faced restrictions. Government officials were generally responsive to NGO requests. There were more than three million NGOs in the country advocating for social justice, sustainable development, and human rights. The government generally met with domestic NGOs, responded to their inquiries, and took action in response to their reports or recommendations. The NHRC worked cooperatively with numerous NGOs. Several NHRC committees had NGO representation. Human rights monitors in Jammu and Kashmir were able to document human rights violations, but security forces, police, and counterinsurgents at times reportedly restrained or harassed them.

Representatives of certain international human rights NGOs sometimes faced difficulties obtaining visas and reported that occasional official harassment and restrictions limited their public distribution of materials.

Police charged activists Teesta Setalvad, Javed Anand, Salim Sandhi, Feroz Gulzar, Mohammed Pathan, and Tanvir Jafri with embezzlement after donors claimed Setalvad, founder of Citizens for Justice and Peace (CJP) misused 1.5 million rupees ($22,500) collected to build a memorial to victims of the 2002 Gujarat riots. The Supreme Court granted defendants anticipatory bail after several denials in lower courts in Gujarat. The Gujarat state government froze CJP bank accounts in January 2014 pending the investigation. On August 17, the Supreme Court formally notified the Gujarat government it was seeking a response on a CJP appeal.
In July 2015 the CBI launched a second investigation of Setalvad and Anand for alleged misuse of grants from foreign donors. On March 9, the Supreme Court extended the interim bail to Setalvad and Anand. The activists alleged authorities filed the case in retaliation for their work on behalf of the victims in the Gujarat 2002 riots.

The United Nations or Other International Bodies: The government continued to restrict access by the United Nations to the northeastern states and Maoist-controlled areas. On August 17, UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein expressed regret at the failure of government authorities to grant UNHCR access to Jammu and Kashmir given “grave concerns about recent allegations of serious human rights violations.”

Government Human Rights Bodies: The NHRC is an independent and impartial investigatory and advisory body, established by the central government, with a dual mandate to investigate and remedy instances of human rights violations and to promote public awareness of human rights. It is directly accountable to parliament but works in close coordination with the Ministry of Home Affairs and the Ministry of Law and Justice. It has a mandate to address official violations of human rights or negligence in the prevention of violations, intervene in judicial proceedings involving allegations of human rights violations, and review any factors (including acts of terrorism) that infringe on human rights. The law authorizes the NHRC to issue summonses and compel testimony, produce documentation, and requisition public records. The NHRC also recommends appropriate remedies for abuses in the form of compensation to the victims of government killings or their families. It has neither the authority to enforce the implementation of its recommendations nor the power to address allegations against military and paramilitary personnel.

Human rights groups claimed these limitations hampered the work of the NHRC. While the NHRC has the authority to initiate investigations and to request state governments submit reports, it has no ability to enforce these requests, press charges, or grant compensation. It cannot investigate human rights violations by the armed forces. Some human rights NGOs criticized the NHRC’s budgetary dependence on the government and its policy of not investigating abuses more than one year old. Some claimed the NHRC did not register all complaints, dismissed cases arbitrarily, did not investigate cases thoroughly, rerouted complaints back to the alleged violator, and did not adequately protect complainants.
Twenty-three of 29 states have human rights commissions, which operated independently under the auspices of the NHRC. In seven states the position of chairperson remained vacant. Some human rights groups alleged local politics influenced state committees, which were less likely to offer fair judgments than the NHRC.

In the course of its nationwide evaluation of state human rights committees, the HRLN observed most state committees had few or no minority, civil society, or female representatives. The HRLN claimed the committees were ineffective and at times hostile toward victims, hampered by political appointments, understaffed, and underfunded.

The Jammu and Kashmir commission does not have the authority to investigate alleged human rights violations committed by members of paramilitary security forces. The NHRC has jurisdiction over all human rights violations, except in certain cases involving the army. The NHRC has authority to investigate cases of human rights violations committed by Ministry of Home Affairs paramilitary forces operating under the AFSPA in the northeast states and in Jammu and Kashmir.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Women

Rape and Domestic Violence: The law criminalizes rape, except spousal rape when the woman is over the age of 15. Punishment ranges from prison terms of two years to life in prison, a fine of 20,418 rupees ($306), or both. Official statistics pointed to rape as the country’s fastest growing crime, prompted by the increasing willingness of victims to report rapes, although observers believed the number of rapes remained underreported. Law enforcement and legal recourse for rape victims was inadequate, overtaxed, and unable to address the problem effectively. Police officers sometimes worked to reconcile rape victims and their attackers, in some cases encouraging female rape victims to marry their attackers. NGO Lawyers Collective noted the length of trials, lack of victim support, and inadequate protection of witnesses and victims remained major concerns. Doctors continued to carry out the invasive “two-finger test” to speculate sexual history, despite the Supreme Court holding that that the test violates a victim’s right to privacy. In 2015 the government introduced new guidelines for health professionals for medical examinations of victims of sexual violence. It included provisions regarding consent of the victim during various stages of examination,
which some NGOs claimed was an improvement to recording incidents. Some sources maintained that despite these directions, many medical professionals remained unaware of state guidelines for treating survivors of sexual violence.

Women in conflict areas, such as in Jammu and Kashmir, the northeast, Jharkhand, and Chhattisgarh, as well as vulnerable Dalit or tribal women, were often victims of rape or threats of rape. National crime statistics indicated Dalit women were disproportionately victimized compared with other caste affiliations.

The law provides for protection against some forms of abuse against women in the home, including verbal, emotional, and economic abuse, as well as the threat of abuse. The law recognizes the right of a woman to reside in a shared household with her spouse or partner while a dispute continues, although a woman may seek accommodations at the partner’s expense. Although the law also provides women with the right to police assistance, legal aid, shelter, and medical care, domestic abuse remained a serious problem. Lack of law enforcement safeguards and pervasive corruption limited the effectiveness of the law.

The Ministry of Women and Child Development promulgated guidelines for the establishment of social services for women, but due to lack of funding, personnel, and proper training, services were primarily available only in metropolitan areas. Some police officials, especially in smaller towns, were reluctant to register cases of crimes against women, especially against persons of influence.

On May 17, the Ministry of Women and Child Development unveiled the “National Policy for Women 2016,” a roadmap on women’s issues for government action over the next 15 to 20 years. Drafted after consultations with NGOs and civil society, the policy addresses cybercrime, maternity leave, nutrition, education, and a review of the criminalization of marital rape among other issues.

Domestic violence continued to be a problem, and the National Family Health Survey revealed more than 50 percent of women reported experiencing some form of violence in their home. Advocates reported many women refrained from reporting domestic abuses due to social pressures. According to some NGOs, the lack of consolidated data was a disadvantage in framing policies and taking appropriate action. Attitudes of law enforcement officials treating domestic violence as a “private matter” also remained a concern for NGOs.

Gender-based violence remained one of the key issues facing women in Jammu and Kashmir. According to the state’s Commission for Women, the number of
incidents of crime against women registered an increase of about 11 percent in 2016 compared with 2015.

Crimes against women, including kidnapping, rape, dowry deaths, and domestic abuse, remained a significant problem. The NCRB noted underreporting of such crimes was likely. The NCRB estimated the conviction rate for crimes against women to be 19.6 percent. Acid attacks against women caused death and permanent disfigurement. According to the NCRB, the number of acid attack victims increased from 241 in 2014 to 305 in 2015, an increase of 27 percent.

Acid, commonly used as a household cleaner, was available at local markets. Despite a 2013 Supreme Court order regulating the sale of acid across the country, media reports indicated acid was easily available. In June 2015, pursuant to the Supreme Court directive, the Karnataka State Commission for Women increased compensation for acid and kerosene attack victims from 200,000 rupees ($3,000) to 300,000 rupees ($4,500). The sum awarded is irrespective of the degree of harm sustained. In April 2015 the Supreme Court directed all private hospitals to provide medical assistance to victims of acid attacks. During the year implementation of the policy began in Chennai.

In the first conviction for an acid attack in the country, on September 9, a special court convicted Ankur Panwar for a fatal acid attack of 23-year-old Preeti Rathi at a railway station in Mumbai in 2013. In July the central government launched a revised Central Victim Compensation Fund scheme to reduce disparities in compensation for victims of crime including rape, acid attacks, crime against children, and human trafficking across India. Started with a one-time grant of two billion rupees ($300 million) under the Nirbhaya Fund, the scheme will provide a minimum compensation of 300,000 rupees ($4,500) for acid attack victims. Compensation increases by 50 percent if the victim is less than 14.

Media reported rioters raped at least 10 women traveling on a national highway through Haryana on February 22. The alleged rapes occurred during a series of protests organized across Haryana, Uttar Pradesh, Rajasthan, and Delhi by the Jat community demanding reservations in government jobs. After initially denying the allegations, the Haryana government acknowledged to the Punjab and Haryana High Court in August that state police investigations indicated rapes appeared to have occurred. Although the report of the government-appointed Special Investigating Team was presented to the court, the government counsel claimed no witnesses came forward to file complaints. He also informed the court the
investigation continued and that five persons had been arrested in connection to the case.

Female Genital Mutilation/Cutting (FGM/C): No national law addresses the practice of FGM/C. According to human rights groups and media reports, between 70 and 90 percent of Dawoodi Bohras, a population of approximately one million concentrated in Maharashtra and Gujarat, practiced various forms of FGM/C. On June 4, the Bohra spiritual head, Syedna Mufaddal Saifuddin, for the first time spoke publicly about the practice of FGM/C as an “act of religious purity,” and a religious obligation for all women and girls in the community. Prior to this statement, local congregations had issued directives calling on their members to refrain from practicing FGM/C where the procedure is legally banned. On May 7, a rival claimant for the sect’s leadership, Syedna Taher Fakhruddin, issued a public statement condemning FGM/C as “an un-Islamic and horrific practice” that should only be allowed after a girl attained adulthood and of her free volition.

Other Harmful Traditional Practices: The law forbids the provision or acceptance of a dowry, but families continued to offer and accept dowries, and dowry disputes remained a serious problem. The law also bans harassment in the form of dowry demands and empowers magistrates to issue protection orders. NCRB data showed authorities arrested 19,973 persons for dowry deaths in 2015.

“Sumangali schemes” affected an estimated 120,000 young women. These plans, named after the Tamil word for “happily married woman,” are a form of bonded labor in which young women or girls work to earn money for a dowry to be able to marry. The promised lump-sum compensation ranged from 80,000 to 100,000 rupees ($1,200 to $1,500), which was withheld until the end of three to five years of employment. Compensation, however, sometimes went partially or entirely unpaid. While in bonded labor, employers reportedly subjected women to serious workplace abuses, severe restrictions on freedom of movement and communication, sexual abuse, sexual exploitation, sex trafficking, and murder. The majority of sumangali-bonded laborers came from the Scheduled Castes, and of those, employers subjected Dalits, the lowest-ranking Arunthathiyars, and migrants from northern India, to particular abuse. Authorities did not allow trade unions in sumangali factories, and some sumangali workers reportedly did not report abuses due to fear of retribution. A 2014 case study by NGO Vaan Muhil described health problems among workers and working conditions reportedly involving physical and sexual exploitation. In July the Madras High Court ordered the Tamil Nadu government to evaluate the legality of sumangali schemes.
Most states employed dowry prohibition officers, with the exception of Mizoram and Nagaland, states that do not have a tradition of dowry. The Dowry Prohibition Act does not apply to Jammu and Kashmir. A 2010 Supreme Court ruling makes it mandatory for all trial courts to charge defendants in dowry-death cases with murder.

So-called honor killings remained a problem, especially in Punjab, Uttar Pradesh, and Haryana. These states also had low female birth ratios due to gender-selective abortions. Some killings resulted from extrajudicial decisions by traditional community elders, such as “khap panchayats,” unelected caste-based village assemblies that have no legal standing. The NGO Center for Social Research conducted extensive awareness campaigns in several districts in Haryana and noted that khap panchayats had not publicly deliberated on the issue of honor killings during the year. In December Junior Home Minister Hansraj Ahir told lawmakers that police registered 251 cases of honor killing in 2015, compared with 28 in 2014 when the country began counting them separately from murder. The most common justification for the killings cited by the accused or by their relatives was that the victim married against her family’s wishes. Statistics for honor killings remained difficult to verify since many killings were either unreported or reported as natural deaths or suicides by family members.

There were reports women and girls in the “devadasi” system of symbolic marriages to Hindu deities were victims of rape or sexual abuse at the hands of priests and temple patrons—a form of sex trafficking. NGOs suggested families forced some SC girls into prostitution in temples to mitigate household financial burdens and the prospect of marriage dowries. Some states have laws to curb prostitution or sexual abuse of women and girls in temple service. Enforcement of these laws remained lax, and the problem was widespread. Some observers estimated more than 450,000 women and girls engaged in temple-related prostitution.

There was no federal law addressing accusations of witchcraft; however, authorities can use provisions under the penal code as an alternative for a victim accused of witchcraft. Bihar, Odisha, Chhattisgarh, Rajasthan, Assam, and Jharkhand have laws criminalizing those who accuse others of witchcraft. In August 2015 the Assam state legislature unanimously passed a law making “witch-hunting” a criminal offense. Most reports stated villagers and local council usually banned the accused from the village. The Committee for Skeptical Inquiry think tank reported many accusations and related violence have roots in property disputes and local politics.
According to a Partners for Law in Development on Contemporary Practices of Witch Hunting 2015 study, special laws against witch hunting were rarely, if at all, invoked in Chhattisgarh, Bihar, and Jharkhand, where the fieldwork for the study was undertaken. The study claimed action was more likely under the penal code when violence escalated and preventive action was unlikely.

More than a year after Rajasthan passed its 2015 Prevention of Witch Hunting Bill, victims were still awaiting justice. While official figures showed approximately 20 women were accused of witchcraft in Bhilwara, NGOs stated there were 61 cases of witch hunting between 1998 and 2016. Women were killed in three cases, and the accused were in jail briefly before they were granted bail. The NHRC issued a notice to the Rajasthan government regarding the plight of women accused of witchcraft in Rajasthan’s Bhilwara District.

Discrimination against widows occurred throughout the country. According to some cultural traditions, widows were inauspicious and sometimes cast out by their own families. Many widows became destitute and resorted to begging for survival.

Sexual Harassment: Authorities required all state departments and institutions with more than 50 employees to operate committees to prevent and address sexual harassment, often referred to as “Eve teasing.” By law sexual harassment includes one or more unwelcome acts or behavior, such as physical contact, a request for sexual favors, making sexually suggestive remarks, or showing pornography. Employers who fail to establish complaint committees faced fines of up to 50,000 rupees ($750). The law also includes penalties for false or malicious charges.

Reproductive Rights: Lack of access to quality reproductive and maternal health care services, skilled attendants at birth, contraception to space pregnancies, and unsafe abortion continued to contribute to high rates of maternal mortality. According to UN estimates, the maternal mortality ratio was 174 deaths per 100,000 live births in 2015. A woman’s lifetime risk of maternal death was one in 220, and 45,000 women died during pregnancy and childbirth. The 2010-12 Sample Registration Report of the registrar general, released in 2013, showed during three years Assam’s maternal mortality rate was the highest in the country at 300, followed by Uttar Pradesh/Uttarakhand at 285. Kerala at 66, Maharashtra at 68, and Tamil Nadu at 79 had the lowest rates. Maternal mortality rates were difficult to calculate in many northeast states, which suffered from inadequate infrastructure and insufficiently trained medical staff.
According to the law, contraceptive information and services must be available, accessible, acceptable, and of reliable quality. Official policy promotes the right of a woman to access contraceptive information and services; however, there were often limited resources available. UN research in 2015 indicated 13 percent of married women between the ages of 15 and 49 did not wish to have additional children or wished to space births but could not access contraception.

Some women reportedly were pressured to have tubal ligations, hysterectomies, or other forms of sterilization because of the payment structures for health workers and insurance payments for private facilities. This pressure appeared to affect disproportionately poor and lower-caste women. In September the Supreme Court ordered the closure of all sterilization camps within three years, citing concerns regarding unsafe and unsanitary conditions that resulted in high rates of illness and mortality.

Although the government achieved a significant increase in institutional births, there were reports health facilities continued to be overburdened, underequipped, and undersupplied, in addition to demonstrating substandard regard for hygiene and patient dignity.

In community health centers, 70 percent of gynecologist positions remained unfilled, according to a 2012 report by the Ministry of Health and Family Welfare on rural health statistics. Only 13 percent of the centers had the requisite number of specialists. Poor health infrastructure disproportionately affected marginalized women, including homeless, Dalit and tribal women, those working on tea estates or in the informal labor sector, and women with disabilities.

The government permitted health clinics and local NGOs to operate freely in disseminating information about family planning. The country continued nevertheless to have unmet needs for contraception, deaths related to unsafe abortion, maternal mortality, and coercive family planning practices, including coerced or unethical sterilization and policies restricting access to entitlements for women with more than two children. Policies and guideline initiatives penalizing families with more than two children remained in place in seven states, but some authorities did not enforce them. Certain states maintained government reservations for government jobs and subsidies for adults with no more than two children and reduced subsidies and access to health care for those who have more than two.
Rajasthan, one of 11 states to adopt a two-child limit for elected officials at the local level, was the first to adopt the law in 1992. Despite efforts at the state level to reverse or amend the law, it remained unchanged during the year. Originally seen as a targeted way to reduce family size, a 2015 study by Ideas for India indicated the law resulted in reduced birthrates but had a negative impact on the male to female sex ratio.

Government efforts to reduce the fertility rate were occasionally coercive during the year. Authorities in some areas paid health workers and facilities in some areas a fixed amount for each sterilization procedure and reviewed them against quotas for female sterilizations. In some states authorities threatened health workers with pay cuts or dismissal for failing to meet quotas. Some reports described a “sterilization season,” in which health-care workers pressed to reach quotas for sterilizations before the end of the fiscal year on March 31. Some doctors reportedly withheld health services unless a woman agreed to sterilization.

Women reportedly were more likely to be sterilized after they had given birth to at least one son.

Although national health officials noted the central government did not have the authority to regulate state decisions on population issues, the central government creates guidelines and funds state level reproductive health programs. A 2005 Supreme Court decision deemed the national government responsible for providing quality care for sterilization services at the state level. Almost all states also introduced “girl child promotion” schemes, intended to counter sex selection, some of which required a certificate of sterilization for the parents to collect benefits. Administrative hurdles and high demands for documentation reportedly made these schemes inaccessible to many marginalized families.

According to a 2013 National Health Survey, health workers had sterilized more than one in three women between the ages of 15 and 45. One in two women over the age of 35 was sterilized. Most sterilizations were performed on women when they were between the ages of 20 and 35, but one out of every hundred teenage girls was also sterilized. According to the same survey, on average three women died every week from botched sterilizations. The government has aggressively promoted female sterilization as a form of family planning for decades and, as a result, female sterilization comprised 63 percent of all contraceptive use in the country. The HRLN filed more than a dozen complaints regarding the government’s failure to provide counseling and information on the Family
Planning Indemnity Scheme on behalf of women who received failed sterilizations or died in the government health camps.

There were no formal restrictions on the right to access contraceptives, but the government sometimes promoted permanent female sterilization to the exclusion of alternate forms of contraception. Repeated studies by the government and NGOs suggested most women had little familiarity with nonpermanent forms of contraceptives offered through the public health system, such as birth control pills, intrauterine devices, and condoms. The highest unmet need for contraceptives reportedly was among women with one child who wanted to delay a second pregnancy. Reports from NGOs claimed pharmacists across the country, especially in Maharashtra, limited women’s access to legal over-the-counter emergency contraceptive pills and to legal medical termination prescription drugs.

Discrimination: The law prohibits discrimination in the workplace and requires equal pay for equal work, but employers sometimes paid women less than men for the same job, discriminated against women in employment and credit applications, and promoted women less frequently than men.

Many tribal land systems, including in Bihar, deny tribal women the right to own land. Muslim personal law traditionally governs land inheritance for Muslim women, allotting them less than allotted to men. Other laws relating to the ownership of assets and land accord women little control over land use, retention, or sale. Several exceptions existed, such as in Kerala, Ladakh District, Meghalaya, and Himachal Pradesh, where women control family property and have inheritance rights.

In January the Bihar government approved a 35 percent quota for women in state government jobs at all levels.

Gender-biased Sex Selection: According to the latest census (2011), the national average male-female sex ratio at birth was 1,000 to 943. In 2011 the national child sex ratio, covering children between ages zero and six, was 1,000 boys to 918 girls. The state of Kerala had the lowest male-female sex ratio at birth at 1,000 to 1,084, and the state of Haryana had the highest ratio, at 1,000 to 877. A 2002 law prohibits prenatal sex selection, but authorities rarely enforced it. When state governments obtained convictions, doctors did not always lose their professional license, although the Medical Council in 2015 canceled the license to practice medicine of six doctors from Maharashtra convicted under the law.
In October 2015 the Delhi government issued “show-cause” notices to 89 hospitals and diagnostic centers with sex ratios at birth significantly lower than the state average. The average sex ratio in Delhi is 896 females for every 1,000 males. Based on the results of a survey conducted by the Delhi Health Ministry, these 89 institutions exposed sex ratios ranged from 285 to 788 live female births for every 1,000 male births.

Numerous NGOs throughout the country and some states attempted to increase awareness of the problem of prenatal sex selection, promote female births, and prevent female infanticide and abandonment.

**Children**

**Birth Registration:** The law establishes state government procedures for birth registration. The UN Children’s Fund (UNICEF) estimated authorities registered 58 percent of national births each year. Children lacking citizenship or registration may not be able to access public services, enroll in school, or obtain identification documents later in life.

**Education:** The constitution provides for free education for all children from ages six to 14, but the government did not always comply with this requirement. The NGO Pratham’s 2013 *Annual Survey of Education* claimed only 70 percent of girls enrolled in primary school actually attended classes in 2013. The same report noted in the states of Uttar Pradesh, Bihar, Manipur, West Bengal, Jharkhand, and Madhya Pradesh, attendance was less than 60 percent. Girls between ages 11 and 14 were most frequently not enrolled.

There were numerous reports of schools refusing admission to underprivileged students.

**Child Abuse:** The law prohibits child abuse, but it does not recognize physical abuse by caregivers, neglect, or psychological abuse as punishable offenses. All types of abuse remained common, including in school and institutional settings. The government often failed to educate the public adequately against child abuse or to enforce the law. Although banned, teachers often used corporal punishment.

According to the NGO Global Perspectives’ August 2015 report, the number of abused children in the country was 200,000. In a 2014 study published by the *Journal of Anxiety Disorders* on 702 adolescents from Jammu and Kashmir.
between the ages of 13 to 17 years, boys reported a higher rate of sexual abuse than
dido girls (57 percent compared with 35 percent).

The government sponsored a toll-free 24-hour helpline for children in distress
working with 640 partners in 402 locations. A network of NGOs staffed the
“Childline 1098 Service” number, accessible by either a child or an adult to request
immediate assistance, including medical care, shelter, restoration, rescue,
sponsorship, and counseling.

On August 26, the Ministry of Women and Child Development launched an “e-
box” for online and confidential registration of child sexual abuse complaints. The
Minister of Women and Child Development Maneka Gandhi stated victims
generally do not report offenses since the offenders are often family members,
relatives, or acquaintances. The e-box is hosted on the home page of the National
Commission for Protection of Child Rights.

**Early and Forced Marriage:** The law sets the legal age of marriage for women at
18 and men at 21, and it empowers courts to annul child marriages. It also sets
penalties for persons who perform, arrange, or participate in such marriages.
NGOs assess that reporting of early and forced marriage remains low. Authorities
did not consistently enforce the law nor address rape of girls forced into marriage.
Some religiously based personal laws allow marriages at an age earlier than the
general law. The law does not characterize a marriage between a girl below age 18
and a boy below age 21 as “illegal,” but it recognizes such unions as voidable,
providing grounds for challenging them in court. Only the party who was a minor
at the time of marriage may seek nullification. If the party is still a minor, his or
her guardian must file a petition for nullification. A party may also file upon
becoming an adult but must do so within two years. According to international and
local NGOs, these limitations effectively left married minors with no legal remedy
in most situations.

The law establishes a full-time child-marriage prohibition officer in every state to
prevent and police child marriage. These individuals have the power to intervene
when a child marriage is taking place, document violations of the law, file charges
against parents, remove children from dangerous situations, and deliver them to
local child-protection authorities.

UNICEF’s *State of the World’s Children 2016* report noted between 2008 and
2014, 47 percent of girls married before age 18, and 18 percent were married
before the age of 15. According to the report, women married as children
contributed to the country’s high infant and maternal mortality rates, and observers estimated early motherhood contributed to the deaths of 6,000 adolescent mothers each year. The most recent National Family Health Survey, conducted in 2005-2006, showed one in six girls between the ages of 15 and 19 had become pregnant at least once.

Female Genital Mutilation/Cutting (FGM/C): See information in the women’s section above.

Sexual Exploitation of Children: The law prohibits child pornography and sets the legal age of consent at 18. It is illegal to pay for sex with a minor, to induce a minor into prostitution or any form of “illicit sexual intercourse,” or to sell or buy a minor for the purposes of prostitution. Violators are subject to 10 years’ imprisonment and a fine.

NGOs reported children under age 18 forced into prostitution in red-light districts in major cities. Child trafficking for sexual exploitation frequently occurred in urban and rural areas. The Ministry of Home Affairs stated criminals subjected significant numbers of missing children to trafficking after the children ran away from home.

Special Courts to try child sexual abuse cases under the Protection of Children from Sexual Offenses Act, 2012 existed in all six Delhi courts. Civil society groups observed, however, that large caseloads severely limited judges’ abilities to take on cases in a timely manner. Hearings were regularly adjourned with long delays between hearing dates, sometimes as long as nine months.

In March NGO Gopabandhu Seva Parishad, which worked in an urban slum in Puri, Odisha, stated that child sex tourism continued to flourish in tourist areas. They claimed boys between eight and 13 years of age were more vulnerable to sexual abuse than girls. The NGO recorded 106 cases of abuse during their interaction with the local community between 2013 and 2015.

On November 5, the Maharashtra state government shut down a government-run residential school for tribal children in Buldhana District after media reported at least two girls were raped at the school. The government suspended the school’s entire teaching and administrative staff, and police arrested 15 persons including school officials, teachers, and a former village council chief.
Child Soldiers: No information was available on how many persons under age 18 were serving in the armed forces. NGO estimated there were at least 2,500 children associated with insurgent armed groups in Maoist-affected areas. There were allegations government-supported, anti-Maoist village defense forces recruited children. Armed insurgent groups, including Maoists in the northeast states and Islamist groups in Jammu and Kashmir reportedly used children (see section 1.g.).

Displaced Children: Displaced children, including refugees, IDPs, and street children, faced restrictions on access to government services (see also section 2.d.) and were often unable to obtain medical care, education, proper nutrition, or shelter. Employers often abused such children physically and sexually and forced them to work in hazardous jobs, such as rag picking (sorting garbage for recyclables).

Institutionalized Children: Lax law enforcement and a lack of safeguards encouraged an atmosphere of impunity in a number of group homes and orphanages. NGOs alleged many such homes for children operated without government oversight or approval. Only 14 states had commissions for the protection of child rights, as mandated by law. On April 15, video footage from closed circuit cameras installed in a government-run childcare center in Karimnagar, Telangana, showed two women caretakers branding three children with a hot spoon as punishment for not eating food. District authorities suspended three caretakers, and police later arrested the two main accused. The children were relocated to another home for medical treatment and care.

The Calcutta Research Group reported police separated families detained at the India-Bangladesh border in the state of West Bengal by institutionalizing children in Juvenile Justice Homes with limited and restricted access to their families.


Anti-Semitism

Jewish groups from the 4,650-member Jewish community cited no reports of anti-Semitic acts during the year. In May Minister of State for Minority Affairs Mukhtar Abbas Naqvi told members of parliament the central government did not
have a timeline for declaring Jews as a minority community. In June Maharashtra became the second state in the country to grant minority status to the Jewish community, which ensures Jews are separately counted by the census.

**Trafficking in Persons**

See the Department of State’s *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

**Persons with Disabilities**

The constitution does not explicitly mention disability as a prohibited ground for discrimination. The Persons with Disabilities Act provides equal rights for persons with a variety of disabilities, including blindness, hearing disability, Hansen’s disease (leprosy), mobility disability, developmental disability, and mental disability. The law links implementation of programs to the “economic capacity and development” of the government. The act encourages governmental authorities to promote access, but it includes no specific enforcement provisions or sanctions for noncompliance.

According to the director of the National Center for Promotion of Employment for Disabled People, the law regards persons with disabilities as requiring social protection and medical care, rather than as possessing inherent rights as persons with disabilities.

Discrimination against persons with disabilities in employment, education, and access to health care was more pervasive in rural areas. The Kolkata High Court passed an order in 2013 mandating the state government to provide accessibility to roads and buildings. Despite legislation that all public buildings and transport be accessible to persons with disabilities, there was limited accessibility. A Public Interest File was pending in the Supreme Court on accessibility to buildings and roads.

A Department of School Education and Literacy program provided special educators and resource centers for students with disabilities. There was no data available on whether these students remained within the education system or if the system denied any individualized supports needed for their education. The law allows mainstream schools to admit children with disabilities, but mainstream schools remained inadequately equipped with teachers trained in inclusive education, resource material, and appropriate curricula.
In April, 11 residents with disabilities, including at least seven children, died at a government-run rehabilitation institute near Jaipur, Rajasthan, allegedly after drinking contaminated water. The NHRC issued notices to the Rajasthan government for failure to maintain the facility.

The law also reserves 3 percent of all educational places for persons with disabilities, although students with disabilities comprised only an estimated 1 percent of all students, according to the Ministry of Social Justice and Empowerment.

Some schools continued to segregate children with disabilities or deny them enrollment due to lack of infrastructure, equipment, and trained staff. The Ministry of Social Justice and Empowerment continued to offer scholarships to persons with disabilities to pursue higher education. University enrollment of students with disabilities remained low for several reasons, including inaccessible infrastructure, limited resources, nonimplementation of the 3 percent job reservation, and harassment.

The Ministry of Health and Family Welfare estimated 6 to 7 percent of the population experienced a mental or psychosocial disability. Of the individuals with mental disabilities, 25 percent were homeless, and many in rural areas did not have access to modern mental health-care facilities. Disability rights activists estimated there were 40 to 90 million persons with disabilities. There were three mental-health institutions run by the federal government and 40 state-operated mental hospitals. According to the Department of Empowerment of Persons with Disabilities’ 2016 annual report and 2011 Census data, 49.5 percent of persons with disabilities were issued disability certificates until August 2015.

Patients in some mental-health institutions faced food shortages, inadequate sanitary conditions, and lack of adequate medical care. Human Rights Watch reported women and girls with disabilities occasionally were forced into mental hospitals against their will.

On August 18, the NHRC issued notice to the government of West Bengal over alleged hazardous conditions of 430 residents at the Berhampore Mental Hospital. The commission took into account an NGO’s report that men and women with mental disabilities had not bathed or shaved for months and were lying without clothing on unsanitary floors. The NHRC sought a status report on all mental hospitals run by the state from the special rapporteur and chief secretary.
Most persons with mental disabilities depended on public health-care facilities, and fewer than half who required treatment or community support services received such assistance.

Persons with disabilities reported cases of discrimination by the Central Industrial Security Forces in airports despite framed guidelines providing for no discrimination based on disability in air travel.

The law reserves 3 percent of public-sector jobs for persons with physical, hearing, or vision disabilities. On June 30, the Supreme Court decided the implementation of policies granting rights to persons with disabilities remained inadequate and overruled the central government’s prior orders restricting reservation of jobs for persons with disabilities to the higher echelons of government service. The court directed the government to extend the 3 percent reservation to all government posts. In August Personnel, Public Grievances, and Pensions Minister of State Jitendra Singh informed members of parliament that a special government recruitment drive for persons with disabilities was launched in May 2015, resulting in the recruitment of 12,377 positions for 15,831 identified vacancies. Data on representation of persons with disabilities in different departments and ministries indicated an increase from 7,368 employees across 78 departments of the central government in January 2012 to 20,520 employees in 58 departments and ministries in January 2015.

The government continued to allocate funds to programs and NGO partners to increase the number of jobs filled. Private-sector employment of persons with disabilities remained low, despite governmental incentives that private companies establish a workforce of more than 5 percent with persons with disabilities.

In February advocacy groups organized a protest in Chennai against the inclusion of the term “destitute” in Tamil Nadu’s “Destitute Differently Abled Pension Scheme” and demanded less stringent conditions for pension eligibility. According to civil society, hundreds of protesters, including many with physical disabilities, were taken into custody on February 17 and held in a stadium that lacked accessible facilities. Police released the protesters, but hundreds chose to remain. On February 22, the Tamil Nadu Social Welfare and Nutritious Meal Program Department changed the eligibility criteria and removed “destitute” from the act’s name.

National/Racial/Ethnic Minorities
The national census categorized the population by language spoken, not by racial or ethnic groups. Traditionally, large segments of society are organized into castes or clans. Caste is a complex social hierarchy system that traditionally determines ritual purity and occupation. The constitution in 1949 prohibits caste discrimination. The registration of castes and tribes continued for the purpose of affirmative action programs, as the government implemented programs to empower members of the low castes. The law gives the president authority to identify disadvantaged castes and tribes for special quotas and benefits. Discrimination based on caste remained prevalent particularly in rural areas. According to a 2014 survey by the Indian National Council of Applied Economic Research and the University of Maryland, 27 percent of Indian households practice caste-based untouchability, with the highest untouchability practices found in Madhya Pradesh, Chhattisgarh, Rajasthan, Bihar, and Uttar Pradesh.

The term “Dalit,” derived from the Sanskrit for “oppressed” or “crushed,” refers to members of what society regarded as the lowest Hindu castes, the Scheduled Castes (SC). Many SC members continued to face impediments to the means of social advancement, including education, jobs, access to justice, freedom of movement, and access to institutions and services. According to the 2011 census, SC members constituted 17 percent (approximately 200 million persons) of the population.

Although the law protects Dalits, there were numerous reports of violence and significant discrimination in access to services, such as health care, education, temple attendance, and marriage. Many Dalits were malnourished. Most bonded laborers were Dalits. Dalits who asserted their rights were often victims of attacks, especially in rural areas. As agricultural laborers for higher-caste landowners, Dalits reportedly often worked without monetary remuneration. Reports from the UN Committee on the Elimination of Racial Discrimination described systematic abuse of Dalits, including extrajudicial killings and sexual violence against Dalit women. Crimes committed against Dalits reportedly often went unpunished, either because authorities failed to prosecute perpetrators or because victims did not report crimes due to fear of retaliation.

NGOs reported widespread discrimination, including prohibiting Dalits from walking on public pathways, wearing footwear, accessing water from public taps in upper-caste neighborhoods, participating in some temple festivals, bathing in public pools, or using certain cremation grounds. In Gujarat, for example, Dalits were reportedly denied entry to temples and denied educational and employment
opportunities. In Odisha, on June 3, a mob of upper-caste individuals allegedly burned 11 Dalit homes. A human rights NGO stated in a report that the arson occurred due to a dispute in February over the alleged caricaturing of Dalits by upper-caste villagers in a play. The NGO alleged the Dalit families faced a boycott and were denied access to shops and sources of potable water. Police lodged an FIR against 19 persons under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, but no arrests were made.

NGOs reported that Dalit students were sometimes denied admission to certain schools because of their caste or were required to present caste certification prior to admission. There were reports that school officials barred Dalit children from morning prayers, asked Dalit children to sit in the back of the class, or forced them to clean school toilets while denying them access to the same facilities. There were also reports that teachers refused to correct the homework of Dalit children, refused to provide midday meals to Dalit children, and asked Dalit children to sit separately from children of upper-caste families. In April Social Justice and Empowerment Minister of State Vijay Sampla told members of parliament the government did not have data regarding atrocities against Dalits in educational institutions.

On January 17, a University of Hyderabad doctoral Dalit student Rohith Vemula committed suicide after he and four others were suspended for allegedly beating another student. Vemula’s suicide sparked nationwide protests by students and activists calling for reforms in higher education to bar caste-based discrimination. The Human Resource Development ministry constituted a fact-finding committee, which acknowledged “the feeling of deprivation and discrimination among students from the socially and economically weaker sections” on the campus.

The federal and state governments continued to implement programs for SC members to provide better-quality housing, reserved seats in schools, government jobs, and access to subsidized foods, but critics claimed many of these programs suffered from poor implementation and/or corruption.

Manual scavenging--the removal of animal or human waste by Dalits--continued in spite of its legal prohibition. NGO activists claimed elected village councils employed a majority of manual scavengers that belonged to Other Backward Classes and Dalit populations. Media regularly published articles and pictures of persons cleaning manholes and sewers without protective gear. According to a March report from the UN special rapporteur on minority issues, local governments and municipalities continue to employ manual scavengers despite a
legislative prohibition. Officials countered the special rapporteur had exceeded her mandate, which was to promote the human rights of persons belonging to “national, or ethnic, religious minorities,” and therefore inapplicable to caste groups.

Human Rights Watch reported that children of manual scavengers faced discrimination, humiliation, and segregation at village schools. Their occupation often exposed manual scavengers to infections that affected their skin, eyes, respiratory, and gastrointestinal systems. Health practitioners suggested children exposed to such bacteria were often unable to maintain a healthy body weight and suffered from stunted growth.

The law prohibits the employment of scavengers or the construction of dry (nonflush) latrines, and penalties range from imprisonment for up to one year, a fine of 2,000 rupees ($30), or both. Nonetheless, Indian Railways acknowledged that it fitted approximately 30,000 passenger coaches with open-discharge toilets, “forcing” the railways to employ manual scavengers to clean the tracks. The railways proposed to install sealed toilet systems but without a fixed timeline for implementation.

In March media reported hundreds of Dalit bonded laborers protested caste discrimination outside the Uttarakhand Assembly and State Human Rights Commission. The protesters had reportedly fled their homes after decades of alleged oppression. The protesters petitioned the commission to take punitive action against state revenue police for alleged harassment and failure to register their complaints.

There were more than 50,000 Indian citizens of African descent, or “Siddis,” mostly descendants of Bantu people from East Africa brought to India as slaves from the eighth to nineteenth centuries. Residing primarily in Karnataka, Maharashtra, Andhra Pradesh, West Bengal, and Gujarat, Siddis were classified as “Scheduled Tribes” in 2003, but remained one of the poorest, most isolated, and economically disadvantaged groups in the country according to NGOs, which observe that Siddis continued to face widespread racial discrimination outside their communities.

Incidents of attacks against African nationals were reported during the year. On January 31, a Sudanese national allegedly drove his car over a 35-year-old Indian woman, killing her. A neighborhood mob set the car on fire as the suspect fled. The mob then pulled a Tanzanian woman from her car as she and two other
students drove by the scene. She was chased, stripped, and sexually assaulted. The Tanzanian High Commission registered a complaint prompting External Affairs Minister Sushma Swaraj and Karnataka Chief Minister K. Siddaramaiah to launch an investigation. The Ministries of External Affairs and of Home Affairs launched racism sensitization programs in neighborhoods focused on neighborhoods where people of African origin reside.

**Indigenous People**

The constitution provides for the social, economic, and political rights of disadvantaged groups of indigenous people. The law provides special status for indigenous people, but authorities often denied them their rights. There were more than 700 Scheduled Tribes (STs) in the country, and the 2011 census revealed the population of ST members as 84.3 million, approximately 8 percent of the total population. In 2011 a pilot survey to identify households below the poverty line found that ST and SC members constituted half the total of poor households. There were 75 particularly vulnerable tribal groups, characterized by primitive technology, stagnant or declining population, extremely low literacy, and a subsistence-level economy.

In most of the northeastern states, where indigenous groups constituted the majority of the states’ populations, laws provide for tribal rights, although some local authorities disregarded these provisions. The laws prohibit any nontribal person, including citizens from other states, from crossing a government-established inner boundary without a valid permit. No one can remove rubber, wax, ivory, or other forest products from protected areas without authorization. Tribal authorities must approve the sale of land to nontribal persons.

There were reports that tribal women employed as domestic workers often were neither properly paid nor protected from sexual exploitation. Encroachment on tribal lands continued in almost every state, despite efforts to combat the practice, since businesses and private parties continued to exert political pressure against local governments. Those displaced by the encroachments typically did not receive appropriate compensation.

Tribal movements demanded the protection of tribal land and property. Local activists claimed that authorities continued to ignore the rights of tribal and rural groups under the Forest Act. Weak enforcement of the act often circumvented the free and informed consent of tribal and rural groups prior to development.
Local villagers, many of whom are members of STs and oppose iron ore mining in insurgency-hit Kanker District in southern Chattisgarh, said there was an increased presence of paramilitary personnel from the Border Security Force. Villagers who protested the use of forest land for mining complained of arbitrary detentions, arrests, and false charges of linkages with Maoist (Naxalite) insurgents.

**Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

The law criminalizes homosexual sex. Lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons faced physical attacks, rape, and blackmail. Some police committed crimes against LGBTI persons and used the threat of arrest to coerce victims not to report the incidents. Several states, with the aid of NGOs, offered education and sensitivity training to police.

LGBTI groups reported they faced widespread societal discrimination and violence, particularly in rural areas. Activists reported that transgender persons, who were HIV positive, continued to face difficulty obtaining medical treatment. Advocacy organizations, such as the Mission for Indian Gay and Lesbian Empowerment, documented workplace discrimination against LGBTI persons, including slurs and unjustified dismissals. In June NGO MINGLE released results of its survey of LGBTI employees from the information technology, banking, and manufacturing sectors on workplace climate, which showed that 40 percent of LGBTI persons faced some form of harassment.

In January 2015 a high court dismissed petitions challenging the 2013 Supreme Court judgment reinstating a colonial-era penal code provision criminalizing homosexual sex. The Supreme Court ruled that only parliament may change Section 377 of the Indian Penal Code, the law that bans consensual same-sex sexual activity. Media, activists, prominent individuals, and some government officials strongly criticized the ruling. In June the Supreme Court refused to hear a petition challenging Section 377, and petitioners were asked to apply to the chief justice of India, who was hearing a separate case to strike down the ban.

In March 2015 Tamil Nadu Uniformed Services Recruitment Board rejected K. Prathika Yashini’s application because her name did not match her birth name, “K. Pradeep Kumar.” Yashini previously changed her name with all government agencies after undergoing gender reassignment surgery. Yashini successfully sued in Madras High Court for permission to take a written examination for the police
force. Yashini received appointment orders in February. Media reported that Tamil Nadu police offered positions to 21 other transgender persons.

**HIV and AIDS Social Stigma**

The number of new HIV cases decreased by 57 percent over the past decade. Of the estimated 2.09 million citizens infected with HIV, 39 percent were women and 7 percent were children under 15 years. Despite significant progress over the past 10 years, the epidemic persisted among the most vulnerable populations: high-risk groups, which include female sex workers; men who have sex with men; transgender persons; and persons who inject drugs.

The country has punitive laws criminalizing sex work. While the government focused on high-risk groups, civil society organizations committed to HIV work raised concern when the Supreme Court failed to overturn a section of the penal code that criminalizes same-gender sex acts. Additionally, antiretroviral drug stock outages in a few states led to treatment interruption.

The National AIDS Control Program prioritized HIV prevention, care, and treatment interventions for high-risk groups and rights of People Living with HIV. The program addressed stigma and discrimination by training health workers; mainstreaming the HIV response across the government; and promoting campaigns in health, work, and community settings to inform people with HIV/AIDS and high-risk groups of their rights and available services and to engage them in planning, monitoring, and evaluating HIV programs.

HIV/AIDS infection rates for women were highest in urban communities, while care was reportedly least available in rural areas. Early marriage, limited access to information and education, and limited access to health services, continued to leave women especially vulnerable to infection. The National AIDS Control Organization worked actively with NGOs to train women’s HIV/AIDS self-help groups.

Police engaged in programs to strengthen their role in protecting communities vulnerable to human rights violations and HIV. Similarly, social protection initiatives integrated with an AIDS response showed risk reduction and improved health-seeking behavior, including uptake of and adherence to HIV treatment.

On June 24, a child rights activist complained to district officials in Kendrapara, Odisha that a central government-run residential school did not allow a 13-year-old
girl suffering from HIV/AIDS to stay in the school hostel after objections from the parents of other students. The activist contended that although the school eventually permitted her to continue with her education, the principal’s action violated the student’s right to privacy and dignity.

**Other Societal Violence or Discrimination**

Societal violence based on religion and caste and by religiously associated groups continued to be a concern.

According to media reports, on July 11, seven Dalit men were reportedly stripped and publicly beaten by a Hindu mob for skinning dead cows. Police arrested 35 persons for the attack and suspended four police officers for negligence. Similarly, on July 26, a video uploaded by an eyewitness purportedly showed cow protection vigilantes beating two Muslim women outside a railway station in Mandsaur, Madhya Pradesh, as police watched from a distance. The police reportedly later arrested the women for beef possession. Although the meat was later determined to be buffalo, a local court charged the women with unlawful possession of meat and released them on bail on June 27. Police later arrested the two men accused of assaulting the women.

Ministry of Home Affairs data showed 751 incidents of communal violence took place, which killed 97 persons and injured 2,264.

On July 30, members of a right-wing Hindu group were charged with trespassing at the St. Thomas Aided Higher Primary School near Mangaluru and disrupting an Arabic class. The individuals reportedly accused the teacher of spreading extremism and seized textbooks from the children. The school suspended Urdu and Arabic classes after threats of further protests.

On June 28, Madurai-based NGO Evidence reported that some police personnel harassed and threatened its staff after the organization agreed to support the marriage of an inter-caste couple.

Civil society activists continued to express concern concerning the Gujarat government’s failure to hold accountable those responsible for the 2002 communal violence in Gujarat that resulted in the deaths of more than 1,200 persons, the majority of whom were Muslim.
On July 27, the Gujarat High court sentenced seven individuals to life imprisonment for killing three Muslims near a railway crossing in Viramgam, during the 2002 Gujarat communal violence. Life terms were also upheld for two persons previously convicted. The trial court previously found four guilty of lesser offenses and acquitted three of the accused.

On August 4, the Gujarat High Court sentenced to life imprisonment 11 of the 27 accused of burning a father and his daughter to death in Mehsana in 2002, during the communal riots. The Mehsana Fast Track Court had previously acquitted all 27 accused in 2005. The defense lawyer for the convicted stated that four of the 11 were still missing when the court ordered them to surrender within 10 weeks.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law provides for the right to form and join unions and bargain collectively, although there is no legal obligation for employers to recognize a union or engage in collective bargaining. In the state of Sikkim, trade union registration was subject to prior permission from the state government. The law limits the organizing rights of federal and state government employees.

The law provides for the right to strike but places restrictions on this right for some workers. For instance, in export processing zones (EPZs), a 45-day notice is required because of the EPZs’ designations as “public utilities.” The law also allows the government to ban strikes in government-owned enterprises and requires arbitration in specified “essential industries.” Definitions of essential industries vary from state to state. The law prohibits antiunion discrimination and retribution for involvement in legal strikes and provides for reinstatement of employees fired for union activity.

Enforcement of the law varied from state to state and from sector to sector. Enforcement was generally better in the larger, organized-sector industries. Authorities generally prosecuted and punished individuals responsible for intimidation or suppression of legitimate trade union activities in the industrial sector. Civil judicial procedures addressed violations because the Trade Union Act does not specify penalties for such violations. Specialized labor courts adjudicate labor disputes, but there were long delays and a backlog of unresolved cases.
Employers generally respected freedom of association and the right to organize and bargain collectively in the formal industrial sector but not in the large, informal economy. Most union members worked in the formal sector, and trade unions represented a small number of agricultural and informal-sector workers. An estimated 80 percent of unionized workers affiliated with one of the five major trade union federations. Unions were independent of the government, but four of the five major federations were associated with major political parties. According to the Ministry of Labor and Employment, there were 121 strikes and lockouts in 2014. State and local authorities occasionally used their power to declare strikes illegal and force adjudication. Membership-based organizations, such as the Self Employed Women’s Association, successfully organized informal-sector workers and helped them to gain higher payment for their work or products.

On March 22, police detained the president of the Maruti Suzuki Workers Union in Gurgaon, Haryana, for leading a February 19 protest following an attack on a Honda Motorcycle and Scooters India employee by his supervisor, allegedly for refusing to work overtime. The union president was released from police custody in April.

On September 2, Haryana police detained 12 workers of Maruti Suzuki for distributing leaflets that urged workers to join the September 5 national strike. Labor groups reported that some employers continued to refuse to recognize established unions, and they established “workers’ committees” and employer-controlled unions to prevent independent unions from being established. EPZs often employed workers on temporary contracts. Additionally, employee-only restrictions on entry to the EPZs limited union organizers’ access.

On June 2, Karnataka police arrested Karnataka Police Association president Shashidhar Venugopal and Working Police Families Welfare Committee member Basavaraj Koravankar. The men were organizing a law enforcement strike to protest low wages and poor working conditions. The men were charged with sedition as well as various sections of Essential Services Maintenance Act (ESMA) and Police Acts. The arrested were yet to be released on bail at the time of reporting.

On September 2, more than 100 million workers across the country participated in a one-day strike in support of 12 demands that included increasing the minimum wage and a rollback of the federal government’s decision to privatize the defense and railroad sectors.
b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor, but this problem, including bonded child labor (see section 7.c.), remained widespread.

Estimates of the number of bonded laborers varied widely, although some NGOs placed the number in the tens of millions. Most bonded labor occurred in agriculture. Nonagricultural sectors with a high incidence of bonded labor were stone quarries, brick kilns, rice mills, construction, embroidery factories, and beedi (hand-rolled cigarettes) production.

Enforcement and compensation for victims is the responsibility of state and local governments and varied in effectiveness. The government generally did not effectively enforce laws related to bonded labor or labor trafficking laws, such as the Bonded Labor System (Abolition) Act. When inspectors referred violations for prosecution, court backlogs, inadequate prosecution, and a lack of prioritization sometimes resulted in acquittals. Prosecutions were rare. According to the National Crime Records Bureau, police registered 92 cases nationwide under this law in 2015.

The Ministry of Labor and Employment continued to work with the International Labor Organization to combat bonded labor, including through the “convergence program” in the states of Andhra Pradesh and Odisha to target workers vulnerable to bonded labor.

The Ministry of Labor and Employment reported the federally funded, state-run Centrally Sponsored Scheme allowed the release of 2,216 bonded laborers during the period April 2015 through March 2016. Some NGOs reported delays in obtaining release certificates for rescued bonded laborers that were required to certify employers held them in bondage and entitles them to compensation under the law. The distribution of rehabilitation funds was uneven across states. In May, the government revised its bonded labor rehabilitation program and increased the compensation for victims from 19,000 rupees ($285) to 98,000 rupees ($1,470) for male victims, 196,000 rupees ($2,940) for women and child victims, and 294,000 rupees ($4,410) for sexually exploited women and child victims.

Bonded labor, particularly in brick kilns, continued to be a concern in several states. On March 2, Tamil Nadu authorities, with assistance from an NGO, rescued more than 550 bonded laborers from a brick kiln in Tiruvallur. On May
28, authorities worked with an NGO to rescue 328 persons, including 88 children, from another Tiruvallur brick kiln.

In May an NGO, working in partnership with law enforcement officials and the People’s Vigilance Committee on Human Rights, rescued 207 bonded laborers from brick kilns in Uttar Pradesh.

SC and ST members lived and worked under traditional arrangements of servitude in many areas of the country. Although the central government abolished Sulung servitude in 1964, the social group remained impoverished and vulnerable to forced exploitation in Arunachal Pradesh.

Also see the Department of State’s *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

The government amended the Child Labor (Abolition) Act in August to ban employment of children below the age of 14. The amended law permits employment of children between the ages of 14 and 18, except in mines. Children are prohibited from using flammable substances, explosives, or other hazardous material, as defined by the Indian Factories Act. The law, however, permits employment of children in family-owned enterprises after school hours.

State governments enforced labor laws and employed labor inspectors, while the Ministry of Labor and Employment provided oversight and coordination. Nevertheless, violations were common. The amended law establishes a penalty in the range of 20,000 rupees ($300) to 50,000 rupees ($750) per child employed in hazardous industries. Such fines were often insufficient to deter violations, and authorities sporadically enforced them. The fines are deposited in a welfare fund for formerly employed children.

The Ministry of Labor and Employment coordinated its efforts with states to raise awareness about child labor by funding various outreach events such as plays and community activities. In June children’s rights NGO Bachpan Bachao Andolan and local government officials rescued 52 children from roadside eateries, grocery shops, and vehicle repairs shops in Ranchi, Jharkand.

On May 19, the Delhi government, in collaboration with the Justice Ventures International, rescued eight children from a bindi (a traditional forehead
Child labor remained widespread. UNICEF estimated there were 29 million child laborers between the ages of five and 18. Some NGOs estimated the number to be significantly higher. According to the national census of 2011, there were 4.5 million child laborers between the ages of five and 14. The majority of child labor occurred in agriculture and the informal economy, in particular in stone quarries, in the rolling of cigarettes, and in informal food service establishments. Commercial sexual exploitation of children occurred (see section 6, Children).

Forced child labor, including bonded labor, also remained a serious problem. Employers engaged children in forced or indentured labor as domestic servants and beggars, as well as in quarrying, brick kilns, rice mills, silk-thread production, and textile embroidery.

Also see the Department of Labor’s Findings on the Worst Forms of Child Labor at www.dol.gov/ilab/reports/child-labor/findings/.

d. Discrimination with Respect to Employment and Occupation

The law and regulations prohibit discrimination with respect to employment and occupation, with respect to race, sex, gender, disability, language, sexual orientation, and/or gender identity, or social status. The law does not prohibit discrimination against individuals with HIV/AIDS or other communicable diseases, color, religion, political opinion, national origin or citizenship. The government effectively enforced those laws and regulations within the formal sector. The law and regulations, however, do not protect those working within the informal sector, who comprised an estimated 90 percent of the workforce.

Discrimination occurred in the informal sector with respect to Dalits, indigenous people, and persons with disabilities. Legal protections are the same for all, but gender discrimination with respect to wages was prevalent. Foreign migrant workers were largely undocumented and typically did not enjoy the protection of labor laws available to workers who are Indian nationals.

e. Acceptable Conditions of Work

Federal law sets safety and health standards, but state government laws set minimum wages, hours of work, and safety and health standards. The daily
minimum wage (with local cost of living allowance included) varied from 197 rupees ($2.89) in Bihar to 447 rupees ($6.57) in Delhi. The officially estimated poverty income level was less than 27 rupees ($0.43) per day. State governments set a separate minimum wage for agricultural workers.

Laws on wages, hours, and occupational health and safety do not apply to the large informal sector.

The law mandates a maximum eight-hour workday and 48-hour workweek, as well as safe working conditions, which include provisions for restrooms, cafeterias, medical facilities, and ventilation. The law mandates a minimum rest period of 30 minutes after every four hours of work and premium pay for overtime, but it does not mandate paid holidays. The law prohibits compulsory overtime, but it does not limit the amount of overtime a worker can work. Occupational safety and health standards set by the government were generally up to date and covered the main industries in the country.

State governments are responsible for enforcing minimum wages, hours of work, and safety and health standards. The number of inspectors generally was insufficient to enforce labor law. State governments often did not effectively enforce the minimum wage law for agricultural workers. Enforcement of safety and health standards was poor, especially in the informal sector but also in some formal sector industries. Penalties for violation of occupational safety and health standards range from a fine of 100,000 rupees ($1,600) to imprisonment of up to two years, but they were not sufficient to deter violations.

Violations of wage, overtime, and occupational safety and health standards were common in the informal sector (industries and/or establishments that do not fall under the purview of the Factories Act), which employed an estimated 90 percent of the workforce. Small, low-technology factories frequently exposed workers to hazardous working conditions. Undocumented foreign workers did not receive basic occupational health and safety protections. In many instances workers could not remove themselves from situations that endangered health or safety without jeopardizing their employment.

On August 13, three untrained and unskilled sanitation workers who entered a 25-foot manhole in Hyderabad died from exposure to poisonous gases. They were reportedly not provided with proper protective gear. A passerby who tried to rescue the workers also reportedly died of asphyxiation.
According to the Asian Human Rights Commission, although the Supreme Court ordered enforcement of the 2013 Prohibition of Employment as Manual Scavengers and their Rehabilitation Act and banned the manual cleaning of sewage lines, authorities rarely implemented the act and manual scavenging persisted. The commission quoted a Dalit rights activist who asserted that at least 700 deaths in manholes occurred every year.

From January through July, eight laborers reportedly suffocated while cleaning septic tanks and manholes in Tamil Nadu.

Industrial accidents occurred frequently. On May 26, an explosion at a chemical factory killed three workers in Dombivili, near Mumbai. On July 5, an explosion in an aluminum-molding factory killed five workers in Howrah, West Bengal.
| Tab 4 |
Upper Tribunal
(Immigration and Asylum Chamber)

MD (same-sex oriented males: risk) India CG [2014] UKUT 00065 (IAC)

THE IMMIGRATION ACTS

Heard at Field House
On 24 February 2012 & 10 October 2013

Determination promulgated

Before

UPPER TRIBUNAL JUDGE ESHUN
UPPER TRIBUNAL JUDGE O’CONNOR

Between

MD
(ANONYMITY DIRECTION MADE)

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

a. Section 377 of the Indian Penal Code 1860 criminalises same-sex sexual activity. On 2 July 2009 the Delhi High Court declared section 377 IPC to be in violation of the Indian Constitution insofar as it criminalises consensual sexual acts between adults in private. However, in a judgment of 11 December 2013, the Supreme Court held that section 377 IPC does not suffer from the vice of unconstitutionality and found the declaration of the Delhi High Court to be legally unsustainable.

b. Prosecutions for consensual sexual acts between males under section 377 IPC are, and have always been, extremely rare.

c. Some persons who are, or are perceived to be, same-sex oriented males suffer ill treatment, extortion, harassment and discrimination from the police and the general populace; however, the prevalence of such incidents is not such, even when taken cumulatively, that there can be said in general to be a real risk of an openly same-sex oriented male suffering treatment which is persecutory or which would otherwise
reach the threshold required for protection under the Refugee Convention, Article 15(b) of the Qualification Directive, or Article 3 ECHR.

d. Same-sex orientation is seen socially, and within the close familial context, as being unacceptable in India. Circumstances for same-sex oriented males are improving, but progress is slow.

e. It would not, in general, be unreasonable or unduly harsh for an open same-sex oriented male (or a person who is perceived to be such), who is able to demonstrate a real risk in his home area because of his particular circumstances, to relocate internally to a major city within India.

f. India has a large, robust and accessible LGBTI activist and support network, mainly to be found in the large cities.

**Representation:**

For the Appellant: Mr A Eaton, instructed by B.H.T. Immigration Legal Services

For the Respondent: Ms A Athi (24/2/12) and Ms A Everett (10/10/13), Senior Home Office Presenting Officers.

**DETERMINATION AND REASONS**

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Introduction

1. This appeal concerns a male national of India born in January 1986. The appellant entered the United Kingdom lawfully on 21 February 2007 and applied to the Secretary of State to be recognised as a refugee on 7 November 2007. This application was refused by way of a lengthy decision letter of the 22 November 2007. On the same date a decision was made to remove the appellant from the United Kingdom. The appellant appealed this decision to the then Asylum and Immigration Tribunal. Immigration Judge Mahmood dismissed the appeal on all grounds in a determination dated 12 February 2008. Senior Immigration Judge Jarvis subsequently made an order for reconsideration on 13 March 2008 and a panel of the Asylum and Immigration Tribunal (Designated Judge Barton and Immigration Judge James) thereafter reconsidered the appellant's appeal but dismissed it in a determination of the 31 October 2008.

2. After an oral hearing Lord Justice Sedley granted the appellant permission to appeal to the Court of Appeal, notice to this effect being sealed on 10 November 2010. By way of a further notice, sealed on 23 December 2010, Lord Justice Sullivan ordered that the appellant's appeal be allowed to the extent that it be remitted to the Upper Tribunal for reconsideration pursuant to paragraph 12 of Schedule 4 to the Transfer of Functions of the Asylum and Immigration Tribunal Order 2010 (SI 2010/21). The attached Statement of Reasons reads as follows:

“1. ...[T]he AIT made a finding that the appellant was a homosexual and noted (sic) accepted that anti-homosexual laws existed but that there are also areas and clubs where open displays of affection are accepted.

2. The appellant sought permission to appeal to the Court of Appeal. The matter was stayed for a period, awaiting the judgment in HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31. Permission was granted by Lord Justice Sedley on 10 November 2010.

3. The respondent accepts that the appellant's case will have to be reconsidered by the Upper Tribunal in light of HJ (Iran) and HT (Cameroon) v Secretary of State for the Home Department [2010] UKSC 31.

4. For this reason, the parties are agreed that the matter being remitted back to the Upper Tribunal of the Immigration and Asylum Chamber for rehearing of the reconsideration hearing by a Tribunal.”

3. The appeal next came before Upper Tribunal Judge Gleeson on 24 February 2012. After hearing from both Mr Eaton and Ms Athi, Judge Gleeson concluded as follows:
“5. The Court of Appeal having identified the error of law by the AIT in 2008, which may be summarised as its failure to anticipate the restatement of the correct approach to return to concealment in HJ and HT, I set aside the legal analysis in the First-tier Tribunal’s determination but the findings of fact and credibility are to be preserved.”

4. Judge Gleeson further identified this case as one in which the Tribunal could give country guidance on the risk to homosexuals returned to India. The case has thereafter been prepared on such basis. The hearing of the appeal was delayed in order to await the decision of the Indian Supreme Court in Koushal and another v Naz Foundation and Others (Civil Appeal No. 10972 of 2013) regarding the application and scope of section 377 of the Indian Penal Code of 1860, the provision in Indian law which criminalises, amongst other things, same-sex sexual activity. The proceedings were completed in March 2012. Given the length of delay it was eventually agreed between the parties, and by the Tribunal, that the hearing should proceed in the absence of such decision.

5. By this route, the appeal has come before us to re-make the decision. As it turned out the decision of the Indian Supreme Court was handed down on 11 December 2013. As a consequence we gave both parties opportunity to file written submissions in relation to the judgment, which we summarise below.

6. As indicated above the “findings of fact and credibility” of the AIT panel were preserved by Judge Gleeson. A Statement of Agreed Facts was prepared by the parties prior to the hearing of the appeal. As a consequence we heard only limited evidence from the appellant and his British citizen partner. We also heard oral evidence from an expert, Dr Akshay Khanna.

7. The UNHCR Guidelines on International Protection No. 9 – Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A (2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees (23 October 2012) uses the term “LGBTI” [lesbian, gay, bisexual, transgender and intersex] in preference to the term “homosexuals”; and the terms “gays” and “lesbians” in preference to “homosexual males” and “homosexual women”. Whilst we have generally sought to follow such preferences this has not been possible throughout because we have also had to reflect the language used in the evidence and submissions before us. Dr Khanna, the expert who provided evidence to the tribunal, uses the terms “Homosexuals”, “LGBT”, “LGBTIQ” [lesbian, gay, bisexual, transgender, intersex and questioning], “same-sex desiring males” and “queer folk”.

8. For cultural reasons the terms “gay man” and “homosexual male” are not apt to describe, as a generality, males in India with a same-sex orientation. We have used the term “same-sex oriented males” when reference is being made to the group which incorporates gay persons and other male by birth local Indian sexual and gender identities, such as Hijra and Kothi. In the very simplest of terms Hijras are physiological males who adopt feminine gender roles (many of whom have been castrated). Many Hijras live in well-defined Hijra communities often in the poorest urban areas of India, and they often work in the sex industry. They have no exact match in the western identification of sexual orientation. An effeminate male who
takes a "receptive" role in sexual activity with a man will often identify as a Kothi. Kothis are to be distinguished from Hijras, although they often live within Hijra communities; doing so with a degree of subservience. Both Hijra and Kothi have their own identifiable social spaces in India and generally live at the margins of society with a very low status.

9. We make findings in this determination only in relation to same-sex oriented males, and those perceived as such, whether they self identify as gay or not. Dr Khanna confirms that his evidence is not intended to relate to the experiences of women or other females assigned at birth and we are not satisfied we have a sufficiently complete picture to make findings as to the risk to any group other than same-sex oriented males; neither were we asked to make such findings.

Preserved and agreed facts

10. The findings of fact made by the AIT panel in its determination of 31 October 2008 were detailed and closely reasoned. Its conclusions are summarised in paragraphs 111-112 of the determination:

"111. The following findings have been made by the Tribunal to the reasonable degree of likelihood standard: that the appellant is gay (that is, he is homosexual and likes to wear make up, but he makes no claim that he is a cross-dresser, Hijra and transgendered); that he did not openly express his sexual preferences when he was in India prior to his arrival in the UK, and that he was aware of discriminatory practices and social stigma of homosexuality, as well as the presence of homosexuals, in his home country; there was a serious family argument about the educational funding and sexual orientation of the appellant necessitating him leaving the family home; the appellant was sacked from the restaurant in Mumbai and lost his accommodation which was connected to his employment; it is accepted the appellant was reported for prostitution by Shiv Sena to the police, which led to his arrest and detention by the police; it is accepted the appellant was beaten by the police which led to bruising; that the appellant was detained for a few days by police; he returned from India to the UK using his own identity and passport to resume his life as an openly gay man in Brighton.

112. We reject the account of the appellant having received serious ill treatment by the Mumbai police, that he required hospital treatment; that he remained in custody during hospitalisation, that he escaped from custody with the help of a doctor, that he was able to leave India only by employing a disguise, and that there continued police interest in him and a warrant for his arrest."

11. The Statement of Agreed Facts reads:

a. The Appellant is a homosexual man from India.

b. The Appellant freely expresses his sexual identity through relationships, personal appearance.

c. The Appellant was engaged in a serious family argument which resulted in him leaving his family home.
d. The Appellant lost the employment he subsequently secured as a result of wearing make up.

e. The Appellant was reported to the police for prostitution.

f. The Appellant was subsequently arrested, detained and beaten by the police, an assault which resulted in the Appellant sustaining injuries.

g. The Appellant enjoys an openly gay life style in Brighton, Sussex and has no wish to hide his sexual orientation.

Evidence

12. In addition to the evidence of the appellant, his partner RD and the expert Dr Khanna, there was also a considerable amount of documentary evidence before us, a schedule of which is attached. We have had regard to all of this material when coming to our conclusions, whether referred to specifically in the body of the determination or not.

Dr Akshay Khanna - Country background evidence

13. Dr Khanna provided the Tribunal with lengthy written evidence in the form of a report dated 15 September 2013. He also made himself available to provide oral evidence, for which we express our gratitude.

14. Dr Khanna is a Research Fellow working with the Participation, Power and Social Change Team at the Institute of Development Studies, University of Sussex. He has a doctorate in Social Anthropology from the University of Edinburgh, a Masters in Medical Anthropology from the School of Oriental and African Studies, University of London as well as a degree in law from the National Law School of India University, Bangalore, India. He is currently the convener of the Sexuality and Development Programme at the Institute of Development Studies and lead on international research programmes related to sexuality, law, poverty, HIV/AIDS and human rights relating to sexual minorities in the global South including India, Uganda and Brazil. The focus of Dr Khanna’s doctoral research, and his subsequent research, has been on the challenges faced by people identifying as lesbian, gay, bisexual, transgender, Kothi, Hijra, Aravani, Jogappa and other local sexual and gender identities, and by the “Queer movement” in India. He is currently engaged in research examining the relationship between law and violence faced by sexual and gender minorities in India and Uganda.

15. Dr Khanna describes his relevant on the ground experience in the following terms in his written report of 15 September 2013:

“I have been working on issues of discrimination and violence against, and the human rights of sexual and gender minorities in India since 1998. After my degree in Law, I worked as a human rights lawyer with The Lawyers Collective, a leading NGO in India. I have worked as a research officer on issues relating to domestic violence, and was responsible for the first draft of what is now the law relating to domestic, familial
and intimate violence against women. This has given me a deep understanding of the conditions of familial violence in India. Between the years 2000 and 2002 I worked with a project dealing with legal, ethical and rights issues arising out of the HIV/AIDS epidemic. In addition to the provision of legal services to communities with an exacerbated vulnerability to HIV/AIDS due to social, political and economic marginalisation (working especially closely with groups of men who have sex with men, commercial sex workers and injecting drug users), this work involved designing, implementing and co-ordinating research projects on the vulnerability of most-at-risk populations, with a special focus of the role of criminal law in exacerbating such vulnerability. It is relevant here to note that this included working closely with the Queer movement in India and that I have been involved in providing legal, social and other support to people facing violence on the basis of their sexual orientation and identity and their gender non-conformity for several years. Since then, as a person associated with the movement, I have had the experience of supporting and working with people fleeing from extreme violence and discrimination due to their sexual or gender non-conformity. This experience has been based primarily the state of Delhi, but has also included working with groups in Bangalore, Calcutta/Kolkata, Bombay/Mumbai and other parts of the country.

[3] I have been engaged in various capacities (as a lawyer, a member of the Queer community, and as a researcher) in the ongoing litigation challenging the Constitutional validity of Section 377 of the Indian Penal Code of 1860, the anti-sodomy law that has been the primary law used in the negation of the human and fundamental rights of sexual minorities, right from the inception of the legal challenge. I am a founder-member of the Delhi-based sexual rights group ‘Prism’ which is a member of the civil society coalition ‘Voices Against 377’, which is a party to the litigation in the Supreme Court of India.”

16. His last visit to India prior to the hearing of the appeal was between December 2012 and January 2013, during which time he interviewed lawyers engaged in the Supreme Court case referred to earlier in the determination. He also attended hearings at the Supreme Court of India.

17. Section A of Dr Khanna’s report provides a brief description of the cultural and political conditions of same sex desire in India. It is observed that there are 1.2 billion people living in India with a “confounding range of religious, ethnic, linguistic communities and identities”. Historically there has been a broad acceptance of sexual and gender diversity in several parts of India including the states of Tamil Nadu, Karnataka and Maharashtra. However, unlike in the Euro-North American context, the nature of desire does not historically define the [self] identity of a person, a point emphasised by Dr Khanna on a number of occasions within his report as well as during his oral evidence. In recent years the connection between desire and identity has been made and the idea that there are categories of people based on sexual preferences has become a reality. This, Dr Khanna suggests, implies the recognition of non-normative sexual desires as being different, stigmatised and criminalised. Dr Khanna refers to the fact that “Queerness, in the sense of multiple genders and forms of sexualness, is far from marginal to India Society”. There are a large and increasing number of people in India identifying as “gay”.
18. In section B of his report Dr Khanna responds to specific questions asked of him by the appellant’s representatives. This evidence can be summarised as follows:

a. Same-sex sexual activity was present, recognised and in some cases celebrated in pre-colonial India. British colonisation ‘heterosexualised’ India. The British introduced section 377 of the Indian Penal Code of 1860, which has been used to target male homosexuals and working class identities such as the Hijra and Kothi.

b. The actual extent to which section 377 has been used against same-sex desiring males since its inception is difficult to ascertain. There is no centralised register for offences in India. The law is used most often as a threat rather than for actual prosecution. In the higher courts there is record of only 131 cases in 140 years, a large number of which relate to child sexual abuse or non-consensual sex. That is not to say that the provision has not been used in the lower courts.

c. LGBT groups had formed in most big cities in India by the late 1990’s. The 1990’s also saw the emergence of an ultra conservative, religious fundamentalist movement of Hindu nationalism, under the banner of ‘Hindutva’ who argued, with demonstrations of violence, that homosexuality was a ‘western evil’;

d. Dr Khanna’s report sets out the history of the section 377 litigation; including the arrest, detention and ill treatment in Lucknow of four workers from the Naz Foundation International [an NGO], and its sister organisation, in July 2001 which led to section 377 becoming a matter for the national media; the subsequent lodging of a vires challenge to section 377 in the High Court of Delhi in September 2001, the dismissal of such challenge in 2004 on the basis that it was an ‘academic question’; the overturning of the dismissal by the Supreme Court of India which directed that the application must be determined on its merits; and, finally, the decision of the Delhi High Court in July 2009 that section 377 must be read down so as to exclude consensual sex acts between adults in private. Dr Khanna observes that during the course of the litigation, support groups and “Queer activist collectives” engaged in the collection of evidence of human rights violations against LGBT people across the country and at the same time there were “concerted homophobic campaigns carried out by political groups”, leading to “activist groups ... almost constantly having to provide shelter, legal, economic and emotional support to a large number of LGBT people escaping extreme violence and death threats”;

e. The 2009 judgment of the High Court of Delhi has been appealed to the Supreme Court of India, although not by the government of India. The proceedings were completed in March 2012 and the judgment was reserved. The judgment has yet to be handed down, and the principal
Justice is due to retire in December 2013. If the judgment is not delivered by this date, it is expected that the matter will be reheard by a new constitution of the Court. The Justices of the Supreme Court are thought of by the legal community in India as being conservative.

f. The jurisdiction of the Delhi High Court is limited to the State of Delhi. However there are conflicting positions as to whether the judgment in the section 377 case has applicability outside Delhi. There have been no cases involving section 377 in the higher courts in India since the Delhi High Court’s judgment. Dr Khanna refers to reports of four instances, since the Delhi judgment, where section 377 has been used in the lower courts in the context of adult consensual sex.

g. Dr Khanna states that although LGBT activists can now speak as equal citizens there continue to be instances directed against them of extreme violence, discrimination and exclusion socially. The violence faced by LGBT people who fall outside the network of support groups and NGOs goes largely unrecorded. People who join such networks live under a constant threat of violence, especially from the police. Where there is the presence of a strong movement, poor LGBT people are less vulnerable, but this cannot be said of most cities. Dr Khanna then summarises (i) a fact-finding report authored by the People’s Union for Civil Liberties published in 2001, (ii) a further report from the same organisation published in 2004, (iii) Human Rights Watch reports from (a) 2002 relating to police harassment of outreach workers, (b) 2007, regarding the arrest of four men who had been falsely alleged to have engaged in “unnatural sex in a picnic spot” and the subsequent “entrapment” and arrest of gay men by an undercover police officer, (c) 2008, regarding a concerted campaign of eviction against more than 100 members of the Hijra community in Bangalore and subsequent arrest of 45 sexuality rights activists who had been protesting against the evictions (iv) affidavits presented in the section 377 litigation relaying (a) information about the torture of a Hijra in Bangalore in 2004, (b) the unjust arrest of 10-12 Khojas in Bangalore in 2006 and (c) the custodial rape of an LGBT person in Delhi in 2006, (v) a judgment of the High Court of Chennai relating to police torture, and subsequent suicide, of an Aravani in Tamil Nadu in 2006, (vi) newspaper stories relating to the suspension from his employment, and eviction from his university accommodation in 2010, of Professor Ramchandra Shrinivas Siras, after he was filmed having consensual sex with a rickshaw puller – the High Court suspended the effect of such decision but Dr Siras passed away shortly thereafter and (vii) reports of the murder of a gay man in north-east India in 2006 and of subsequent death threats made against other LGBT persons in area.

h. Blackmail is a common experience for LGBT persons across India, irrespective of class; cases of blackmail having been reported in the social media almost every month, if not every week, in recent years. The
preponderance of cases relate to entrapment by police personnel; the most recent example being the assault and blackmail of a gay man in Mumbai by two plain clothed police officers reported in March 2013;

i. The culture of ridicule and shaming of LGBT persons in India is pervasive. "Working class Queer males tend to face violence at the hands of ... masculine petty criminals who often work in gangs." There is no recourse to justice in such circumstances because approaching the police might result in further violence, although the common experience of those who approach the police is to be “laughed at, sexually teased and dismissed off-hand, with no action taken and no report filed.”

j. There is discrimination against LGBT persons in the workplace, as evidenced by Dr Siras’ case and several other cases. Information about the latter cannot be divulged because it is sensitive and could lead to further discrimination. Obtaining employment is particularly difficult for working class effeminate males.

k. There are several well-documented cases of discrimination against LGBT persons in the provision of healthcare. “…[m]en who have sex with men, and other stigmatised communities such as sex workers and injecting drug users are either refused treatment, given differential treatment, or made to wait until all other patients have been treated.” There is prevalence for the use of aversion therapy as a treatment for homosexuality amongst mental health practitioners in India; including electro-shock therapy and the use of psychotropic drugs in an attempt to ‘cure’ individuals, although such practices are not approved by the Indian Psychiatrists Association.

l. According to Dr Khanna, there are differences in the levels of police violence against LGBT persons as between states. Tamil Nadu has been at the forefront of establishing a positive legal and policy stance towards third gender identities. In Karnataka there is a very strong movement especially in the cities. In some cities, such as Bangalore, movement has grown strong enough to demand accountability from the police in relation to this violence. However, Kerala is notorious for higher levels of violence against LGBT persons. In the north, Uttar Pradesh has the most public instances of concerted campaigns against homosexuals. In Delhi there is a pattern of migration from neighbouring states of Punjab and Haryana, again related to the high levels of violence in those states. There is an emergence of the phenomenon of moral policing in several cities in India, typically when high-level police functionaries are of the Hindu right wing affiliation. There is the possibility of the most militant Hinduvta taking power in the coming general elections in 2014.

19. Dr Khanna acknowledges in his report that because of the diversity of the experience of sexuality in India, it is difficult to arrive at generalisations as to the type of
personal characteristics of an individual that might heighten the risk of ill treatment as a consequence of such person's sexuality. Upper caste Hindu groups are most averse to homosexuality, the Hindutva groups representing a certain upper caste Hindu ideology. Various Christian groups have also been publicly opposed to sexuality rights whereas the reactions of Muslim groups have been less vociferous.

20. The expert continues by commenting that the question of class is crucial; low caste poor and working-class LBGT persons, especially effeminate males, face the most extreme forms of exclusion, violence and discrimination. This is partly related to the fact that working class and poor people cannot afford privacy and thus intimacies are forced into the public sphere. Exclusion of LGBT persons from the family, as well as the difficulty in getting employment, leads to further vulnerability, abuse and violence. “There has been a long disjuncture between upper class Gay men and working class queer males, such as Kothis. While the upper class Gay man is in a position to reap the benefits of the Delhi High Court judgment by performing ‘good citizenship’ in a way so as to fit in with the conservative elite, he does so by pushing the working class Kothi further to the edges, further into precarity.” As more morality emerges where there is legitimate homosexual sex in private, the sexuality of those who cannot afford privacy is deemed even more illegitimate and morally reprehensible.

21. There is limited evidence available on the issue of violence in villages (as opposed to cities), but LGBT groups are constantly engaged in providing support to LGBT persons running away from extreme violence from small towns. In Dr Khanna’s opinion the problem of homophobia is primarily an urban phenomenon, although he accepts that further research is required on this matter.

22. Dr Khanna responds to the question of whether there are any areas within India which would provide a safe haven for any gay man, by stating that, in so far as the person does not belong to the community concerned, it is possible for a gay person to make a life in India, but it is not an easy task if one does not have the financial means. He continued by stating that if one is able, and willing, to suppress the public expression of one’s sexuality and gender so as to make it invisible then this is a possibility. There is also the possibility of finding a community that might provide support, including housing and employment. There are several groups in several cities that one can access in this regard; although in Dr Khanna’s view this would be particularly difficult if one has experienced extreme violence in the past and therefore has difficulty trusting strangers. He confirms that if one is explicit about being gay, and is not upper class, it would be difficult to find both housing and employment. The main cities where people facing violence tend to migrate to are Bangalore, Delhi, Calcutta and Mumbai. If one is able to make a connection with the LGBT community in any city this might ease relocation.

23. When asked whether gay couples cohabit in India Dr Khanna confirmed that they do, “but with difficulty.” If one is upper class and property-owning this is easier. Obtaining housing as a middle-class same-sex couple is also possible but under the guise of friendship. Renting a property as an openly gay couple would be very
difficult in middle-class urban India and would often require alienation from the biological family.

24. India is the first country in the world to recognise gender plurality; there being three options for gender (male, female and other) - this is true in the electoral roll, on official identity documents such as passports and in the census.

25. In oral evidence Dr Khanna attested to the accuracy of his written report and expanded further on matters raised therein. He observed that LGBT support groups are generally informal collectives of people, most of whom have been rejected by their own families. They are groups of people that gather in urban areas to provide support networks for the LGBT community. HIV or human rights NGOs assist with the provision of space for group meetings. Contact with these support groups can be made through HIV NGO's, who often have outreach programs in particular spaces, such as public parks.

26. These support networks assist persons to stay on the run from the police, provide emotional and financial support until a person is able to stand on their own feet and provide assistance in obtaining employment through community contacts. Such support is generally provided for a maximum of six months by which time hopefully the person being supported had established themselves within the community and found regular employment. People often move to different cities for support. Most people in the support communities have to juggle employment with their support work. There are some interesting initiatives underway in India such as the attempt in Gujarat to set up homes for old age LGBT persons because the usual social networks do not exist.

27. Dr Khanna emphasised the information provided in his report about the ongoing section 377 litigation, and the prospect of the matter having to be reheard. He also gave additional evidence of the situation in Bangalore, indicating that there is a political sense to the LGBT movement in that city, it deriving from the trade unions and untouchable castes; whereas as in other cities the movements have been instigated by civil society or NGO's not political collectives. Consequently there is a difference to the way police accountability can be demanded. In Bangalore if there is an instance of extreme violence the community can be mobilised quickly. Despite all this however the attitudes of the police on the ground in Bangalore have not changed.

28. When asked what he meant by the use of the phrase "good citizenship" [as referenced in paragraph 19 above] Dr Khanna confirmed that an upper-class gay man would be able to present himself as a tax paying citizen. The idea of a ‘gay person’ emerged from the mainstream media after the section 377 judgment. This idea relates to an upper-class gay person and any action that militates against this “normality” of a gay person becomes even more illegitimate. There have been instances in which upper-class gay persons have acted aggressively towards Kothi for tarnishing the name of gay persons.
29. Dr Khanna then confirmed that in his opinion upper-class gay couples can cohabit in India but persons outside of this group would have to present themselves as friends and “perform the idiom of bachelorhood”. He personally knows several persons who were evicted from their accommodation the minute there was a hint of homosexuality. It is possible for non-upper-class gay couples to cohabit but they would either have to be careful to make people think they were just heterosexual friends living together, find a “queer landlord”, or alternatively find space in a slum close to a Hijra community, which has its own dangers.

30. Dr Khanna was asked to comment on the Secretary of State's assertion that his report cited only a few instances of police misconduct, mostly from 2006-2007, but offered no background evidence as to the overall incidence of such conduct by the police in relation to LGBT persons. In response he stated that it was impossible to provide detailed evidence of overall incidence, because nobody is doing research on such experiences. During the section 377 litigation NGOs would travel around India and document the experiences. Public records are actively silent about homophobic violence. The LGBT activist groups do not have the resources. The lack of evidence does not point to an absence of violence. He accepted the assertion that LGBT persons are not the only victims of police corruption in India.

31. As to the comments made in his report about aversion therapy, Dr Khanna confirmed that he knows some people who have gone through such treatment. People end up in such therapy after having been taken by their parents or having referred themselves to therapy because of an internal self-hatred. He accepted that such therapy was undertaken on a purely voluntary basis.

32. Under cross-examination Dr Khanna was invited to comment on whether a Kothi could obtain assistance from a support group. In response he stated that it depended on the city they were in, not all cities having organisations with sufficient resources. He was uncertain as to the extent such a person would fall within the radar of a support group. Kothi tend to live where there are Hijra communities and they access protection in this way. In exchange they “perform subservience” to the Hijra community. Access to privacy would lessen the risk but Kothi tend to live in shared spaces with other people and consequently would have limited privacy. It is the same in general for gay persons because in all likelihood their families would have thrown them out. In a heterosexual household matters are arranged in such a way that individuals and couples would have “private time” at home.

33. Working class vendors face police violence and extortion but this is exacerbated if somebody is visibly “queer”. Dr Khanna noted that in Delhi there are checkpoints every couple of kilometres; if you look normal you will not be stopped, but if you look “queer” you will be stopped. There are checkpoints on the outskirts of the slums and people need to pay a bribe to get past. He then clarified the comments made in his report that the support groups assist in helping people stay on the run from the police; stating that by this he had had in mind circumstances where a family had made a complaint that their son had been kidnapped by a certain type of person and consequently the police would be looking for the son.
34. Dr Khanna accepted that people do relocate away from areas where they have had problems, and that there are patterns of migration in this respect. He emphasised however that the problem with relocating is the need to retain the support of the community in the place of relocation.

35. Dr Khanna finally confirmed that the support communities grow by people establishing themselves during the time they are being supported and thereafter becoming part of the community which provides support to the next person. He thought it typical that a supported person would either find employment or move elsewhere prior to the end of the six month period of support.

**Dr Khanna - evidence relating to the appellant**

36. In Section C of his report Dr Khanna considers the personal circumstances of the appellant. He observes that the claimed reaction of the appellant's father to disclosure of the appellant's homosexuality is plausible and a very common experience in India, as is the appellant's arrest at the behest of the local Shiv Sena group, and the fact that he would have been put under guard whilst in hospital.

37. As to the risk to the appellant should he return to India, the expert confirms that it is not plausible that the appellant remains a person of interest to the authorities or that he would be identified at the airport. There is a probability however of the appellant suffering from extreme violence from his family, who could also reactivate the machinery of the law. Dr Khanna asserts that it would be difficult for the appellant to obtain employment or housing without community support and, consequently, that returning to sex work on the streets might be his only option. He could start life afresh, but this would require him “to get the support of local groups, a relevant skill set and the confidence to take on a difficult challenge.”

38. In oral evidence, Dr Khanna confirmed that having interviewed the appellant he believed him to be a middle-class person from a small town in India. It would be possible for him to relocate; however, the difficulties he would have in doing so would depend on his ability to hide the fact that he is a homosexual. When asked why the appellant would need to hide his homosexuality Dr Khanna responded by stating that this was because he was not connected to a community. In order to be openly gay one either has to be upper-class and propertied or culturally intelligible as an effeminate man, such a Kothi or Hijra. The appellant is neither and consequently he would have to hide the fact that he is gay, for example when seeking to rent a property, even in Bangalore.

39. When asked whether the appellant could simply access initial support from a community group in Bangalore, Dr Khanna did not think this to be impossible but was of the opinion that the appellant would not fall within the category of persons to whom support would be provided because “he does not make sense”; his sexual identity having developed during the lengthy period he has lived in the United Kingdom. The gay male space in India is an upper-class space and the appellant is not upper-class.
40. Dr Khanna thought it difficult to imagine the appellant obtaining employment, even in a western owned business, such businesses not being run by westerners. The appellant would have to find employment in a business where a gay person had risen to a managerial position and then be discreet as to his homosexuality. As to the self-employed economy, there are opportunities to make a livelihood in large Indian cities and LGBT activists have started self-help groups in this regard.

41. Dr Khanna finally gave evidence that in his opinion it would also be difficult for the appellant to find accommodation; this being the case generally for gay people and Muslims. Hijra have their own community space.

Other Country Information

42. The most recent Home Office Country of Origin Report (COIR) for India, dated March 2012, sets out, under the heading “Lesbian, Gay, Bisexual and Transgender (LGBT) persons – Legal Rights”, passages relating to the Delhi High Court’s judgment on section 377 from reports and articles authored, inter alia, by Human Rights Watch, the US State Department, BBC News and the International Gay and Lesbian Human Rights Commission. The fact and terms of the judgment, as well as the fact of the subsequent appeal, are noted and it is further noted that Human Rights Watch are of the belief that although the judgment applies purely to Delhi it is likely to influence the legal establishment across the nation.

43. The US State Department report for 2012 (dated April 2013) observes that:

“Although LGBT groups were active throughout the country, sponsoring events and activities including rallies, gay pride marches, film series, and speeches, they faced discrimination and violence throughout society, particularly in rural areas. Activists reported that transgender persons who were HIV positive often had difficulty obtaining medical treatment. Activists also reported that some employers fired LGBT persons who were open about their sexual orientation or gender identity. LGBT persons also faced physical attacks, rape, and blackmail. Some police committed crimes against LGBT persons and used the threat of arrest to coerce victims not to report the incidents. Several states, with the aid of NGOs, offered police education and sensitivity training.”

44. More generally, the US State Department report cites continuing societal violence against persons with HIV and on religious grounds [generally against Muslims], the existence of discrimination in employment, education and access to health care against persons with physical and mental disabilities and instances of unlawful killings and torture by state bodies of persons, particularly in the conflict areas of Jammu and Kashmir, the North-eastern States and the Naxalite belt, as well as the rape of women in detention. Such matters are also reflected in the March COI report, which cites further reports detailing widespread police impunity.

45. An article published in the Times of India on 3 July 2010 noted some significant changes affecting the LGBT community in the 12 months since the judgment of the Delhi High Court, observing in particular that activists had stated that there had been a spurt of gay activity in the open, and that some of the stigma about being gay had
been taken away, although the judgment “...[d]id not automatically bring with it a change in societal attitudes”. In a July 2011 report from the Times of India [cited in the Australian Refugee Review Tribunal’s Country Advice on India of 12 January 2012: headed “India: IND 39685 - Homosexuals - Sikhs - Relocation”] reference is made to the emergence of at least half a dozen “gay clubs” in the engineering, medical and journalism colleges in Chennai. In addition, Mumbai now has an LGBT store, dedicated LGBT websites, an LGBT film festival, a Pride week and LGBT nights at popular bars and clubs [report from the Research Directorate of the Immigration and Refugee Board of Canada 2 May 2012: titled “India: Treatment of sexual minorities, including legislation, state protection, and support services (April 2009-March 2012)”].

46. One of India’s first gay weddings took place in a small township in central India in 2001. Kolkata saw its first march by gay men in June 2003 and the first Gay Pride march took place in Mumbai in December 2003 [report from the Research Directorate of the Immigration and Refugee Board of Canada, 13 May 2004 titled; “India: Update... on the situation of homosexuals (26 June 1999-April 2004)]. A significant number of the major cities in India now have annual Gay Pride marches [Al Jazeera, 5 July 2011; referenced in the report from the Research Directorate of the Immigration and Refugee Board of Canada 2 May 2012], and New Delhi, Calcutta, Bangalore and Mumbai held events to mark the anniversary of the Delhi High Court’s judgment. The organiser of an event in Mumbai to mark this anniversary is quoted as stating that there had been a reduction ‘in the incidents of police harassment’ since the judgment [Associated Press, July 2010: cited in Australian Refugee Review Tribunal’s Country Advice of 12 January 2012].

47. In a speech of the 12 February 2011, Mr Justice Sathasivam, Justice of the Indian Supreme Court, observes that India’s transsexuals have been “listed as ‘others’, distinct from males and females, on electoral rolls and voter identity cards since 2009”. In April 2010, according to 2010 US State Department report, Tamil Nadu hosted a week long transgender festival to facilitate the acceptance of transgender persons into mainstream society. The state also established a Transgender Welfare Board in 2008.

48. According to paragraph 22.21 of the Secretary of State’s Country Information of Origin report (COI), the Indian Network for Sexual Minorities (INFOSEM) website lists organisations in India that offer counselling and support to sexual minorities. Further, the Naz Foundation, based in Lucknow and a party to the ongoing section 377 proceedings, provides advocacy and support to LGBT communities and its website has links to organisations and institutions working on issues of gender, sexualities and HIV.

49. In its Country Advice on India of the 12 January 2012 the Australian Refugee Review Tribunal state that:

“Homosexuals in India continue to be subject to various forms of mistreatment, including harassment, violence and issues with accessing employment. There are reports which indicate that the level of police harassment has dropped, although there is also information available which refers to it continuing...
There is contrasting information available regarding the recent treatment of homosexuals by Indian security forces...

Homosexuals may experience discrimination in hiring, promotion, assignment of work duties, compensation and termination, as well as various forms of harassment. Some employers have reportedly fired gay men who do not hide their sexual orientation, although specific examples were not located to describe where and in which industries this is most prevalent. In 2011, the organisers of a public celebration in Delhi to mark the second anniversary of the Delhi High Court decision regarding Section 377 distributed a pamphlet which called for an end to employment discrimination. The aforementioned January 2012 Deccan Herald report refers to claims from Mitr members that they were denied employment “because employers are uncomfortable with their social identities.”

50. In its report of 2 May 2012, the Research Directorate of the Immigration and Refugee Board of Canada, states, inter alia, as follows:

“Al Jazeera notes that "homosexuals have slowly gained a degree of acceptance in a few parts of India, especially in big cities" (5 July 2012). A Wall Street Journal (WSJ) article on its India Real Time blog indicates that Mumbai is "arguably the least hostile environment for the LGBT community in the country" (9 Mar. 2012). According to the article, Mumbai has an LGBT store, which is temporarily in Goa, as well as six local websites and media platforms, an LGBT film festival, a pride week, and LGBT nights at popular bars and clubs (WSJ 9 Mar. 2012)...

Country Reports 2010 indicates that, although LGBT groups were active throughout India, "they faced discrimination and violence in many areas of society, particularly in rural areas" (US 8 Apr. 2011, Sec. 6). Similarly, a UN report by the Special Rapporteur on the situation of human rights defenders, based on a mission to India from 10 to 21 of January in 2011, states that LGBT rights defenders in India "face discrimination, stigmatization and threats reportedly from many parts of society, especially in rural areas" (UN 6 Feb. 2012, para. 122). The UN report also notes that "[o]n some occasions, the police attacked LGBT activists for raising issues pertaining to the situation of the LGBT community" (ibid.)...

Section 377 has been used against LGBT people in India to "target" (South Asia LGBT Network Feb. 2011, 41; US 8 Apr. 2011, Sec. 6), "harass" (Al Jazeera 5 July 2011; US 8 Apr. 2011, Sec. 6), and "punish" them (ibid.). In a lecture on transgender rights delivered to civil judges on 12 February 2011, Supreme Court judge P. Sathasivam noted that Section 377 "has been extensively used by the law enforcers to harass and exploit homosexuals and transgender persons" (12 Feb. 2011, 3). Similarly, the Associate Professor noted that the police use the law to "blackmail" LGBT persons (16 Apr. 2012)...

Sangini [i.e. Sangini (India) Trust], an organization that works primarily with women attracted to women and individuals dealing with issues around their gender orientation] stated that there are no government services or protection specifically offered to sexual minorities (14 Apr. 2012). Similarly, the Associate Professor [at York University and a faculty associate at York's Centre for Feminist Research] noted that the government does not offer protection to sexual minorities...

Sangini also indicated that when LBT individuals decide to leave their parental home and live with their partner, there have been instances of forced repatriation to the parental
home through police intervention, false cases have been put on people, so that the police can intervene. It is relatively easy for the parents/families to convince the police to support them in the search for their daughter. Then emotional blackmail is used to force the [individual] back to his/her parents, partners often face charges of abduction...

According to the South Asia LGBT Network report, "India has a robust and effective LGBT activist movement, and largely supportive civil society and mass media that supports LGBT rights" (Feb. 2011, 41). The Associate Professor explained that the main purpose of LGBT NGOs in India is to provide a "social space" where sexual minorities can meet and organize, as well as education on health and sexual minorities (16 Apr. 2012). She added that NGOs can also respond to cases in which LGBT persons have been arrested or affected by the law; however, they cannot provide assistance in cases of LGBT discrimination affecting employment or housing (Associate Professor 16 Apr. 2012). The Associate Professor also noted that NGOs are not able to provide protection for LGBT members on an "ongoing basis" (ibid.)...

51. On 17 July 2012 the World Bank issued a discussion paper titled “Charting the Programmatic Roadmap for Sexual Minority Group in India”. Its title page indicates that the information provided therein comes with the significant caveat that (i) the ‘findings, interpretations and conclusions expressed’ therein do not necessarily reflect the views of The World Bank or its affiliate organisations and (ii) that The World Bank does not guarantee the accuracy of the data in the report. The report refers to the Delhi High Court’s judgment on section 377 and postulates that the LGBT community in India stands at a cross roads. It further refers to the existence of violence and discrimination against the LGBT community in India, as well as poor access to health services and education. It is also said that the World Bank’s consultation process revealed that most cases of discrimination against LGBT persons went unreported or “took place...covertly”.

Appellant’s evidence

52. The appellant relied upon the contents of a statement signed on 23 September 2013.

53. In this statement he asserts that he first met RD at the end of 2005, and thereafter enjoyed a brief relationship with him until about June 2006. Upon his (the appellant’s) return to the United Kingdom from India in February 2007 (he having left the United Kingdom in January 2007) he contacted RD and subsequently lived for a short period with RD in RD’s parents’ house. Sometime in 2008 or 2009 he and RD entered into a ‘proper’ relationship, which continues to this day.

54. RD has financially supported the appellant since his return to United Kingdom. He presently pays the appellant’s rent of £95 per week (which includes all household bills) and also provides the appellant with additional monies which allows him to buy personal items such as toiletries and clothes.

55. The appellant maintains that he loves RD, and observes that RD is generous, caring, honest and funny. He cites a number of RD’s mannerisms which he finds "adorable". It has not been possible for him and RD to be entirely open about their relationship in the United Kingdom because RD lives with his parents and who were born in Iran
and retain certain “conservative values”. The appellant visits RD’s family house approximately twice per month, usually having a meal whilst there. He gets on well with RD’s parents and is now able to speak Farsi fluently. There is never any physical contact between the appellant and RD in front of RD’s family and they have never mentioned to RD’s family that they are in a relationship. RD’s family have never commented on the nature of the appellant’s relationship with RD, although the appellant is sure that they are aware of the relationship.

56. RD has recently completed a law degree, and also owns his own pizza business. He intends to study at the law school in London from September 2014 onwards and the plan is that the appellant and RD live together in London at this time. It is their intention to get married but they have yet to fix a date for this. They have discussed the possibility of adopting, although this is not something that will happen in the immediate future.

57. The appellant’s evidence continues by stating that “apart from actually living together we do everything that a normal couple in a long-term relationship would do. I see him almost every single day. We try to have at least one meal together every day... I don’t stay overnight at his family home but he spends around two nights a week in my room. We’ll go out together at the weekend to pubs and clubs in Brighton. Sometimes we will go to London for a weekend. We also take day trips together... and go to the gym together regularly... There is no doubt in my mind that my relationship with RD is a permanent one. I am really looking forward to us growing old together...”

58. The appellant gives further evidence in his statement that RD would not want to give up his pizza business and legal career in the UK to move to India. He (the appellant) does not want to go back to India given the bad experiences he had there in the past. He has not had contact with anyone in India for a long time. He wrote to his sister in November 2012 but has not received a response.

59. The appellant also gave oral evidence to the tribunal, adopting the contents of his witness statement when doing so. He confirmed that he wrote to his sister because she was the closest member of his family to him. He has not spoken to any member of his family since 2007.

60. Turning to his relationship with RD, he stated that RD gives him cash for his rent, which he then passes on to the landlord. He intends to move to London next September with RD, at which time RD and he will enter into a civil partnership.

61. Under cross-examination the appellant accepted that it was not possible to be open about his sexuality in the United Kingdom either with RD’s family or whilst within the Iranian community. When asked why he and RD were waiting until next September to enter into a civil partnership, the appellant stated that as RD still lives with his parents he has to have a reason to move out of the family house; in his culture one cannot simply move out of the family house without good reason. He will have such a reason next September. The appellant continued by stating that he thought that RD’s parents already knew about the relationship.
62. The appellant finally stated that if he were not successful in his appeal, and he therefore had to return to India, RD would send him money and also assist him with his application to return to the United Kingdom.

Evidence of RD

63. RD relies on the contents of statements drawn in his name on 4 May 2012 and 23 September 2013, as well as a statement previously provided to the First-tier Tribunal dated 23 January 2008.

64. In his 2012 statement RD confirms that he is an Iranian national by the birth, but was naturalised as a British citizen in 2004. At that time he saw the appellant two to three times a week, staying over at the appellant's house. He confirmed that he fully supports the appellant financially, paying his rent and providing him with small amounts of cash for his personal needs. In addition to the ownership of the pizza takeaway he was, at that time, studying for a law degree.

65. It has been difficult for himself and the appellant to openly express and celebrate their relationship because of the background he (RD) comes from. Being gay is not something that it is considered normal in the Iranian community. His parents know that he is gay but do not talk about it; indeed they still ask when he will settle down with a wife and child. He would be surprised if his parents did not know the appellant was his boyfriend although they never openly talked about this fact. The appellant has never been introduced in that manner. When he and the appellant go out together they are careful not to behave in an overtly physical or friendly way as they do not want to be seen to be gay by members of the Iranian community. If they want a 'proper' night out together they go to London.

66. RD believes the appellant to be an honest and reliable person and very committed to the relationship. The long-term plan is for him and the appellant to move in together in London when he (RD) moves there to do the Legal Practice Course. He and the appellant want to enter a civil partnership. There is no doubt in their minds that they will be together for the long term.

67. If the appellant were to be sent back to India it would be heartbreaking. The appellant would have serious problems there and it would probably mean the end of the relationship or, at the very least, a significant period of separation. RD confirmed that he has never been to India and that all of his family live in the United Kingdom. If the appellant were returned to India RD would do all he could to ensure that he could return legally to United Kingdom.

68. In his statement made shortly before the hearing, RD confirmed that he had now completed his law degree and postponed attending law school until September 2014. He still lives with his family and continues to enjoy a relationship with the appellant, whom he now sees every day. They have had serious talks about entering into a civil partnership but it has been decided that it is better to wait until they are living in London together because they would need to be secretive. The relationship is still kept “low-key” because of his (RD's) family and members of the Iranian community.
RD has no doubts that he wants to spend the rest of his life with the appellant. They have researched the possibility of adopting a child and this is something that they would very much like to do in the future. If the appellant were to be sent back to India, RD would not follow him there because (i) he has nothing in that country, (ii) it is a very difficult place for gay couples to live and (iii) he has his studies and business in the United Kingdom and he wants to make a career.

In his oral evidence RD adopted the contents of the above statements as being true and accurate. He further confirmed that he pays cash to the appellant for his rent and that it is his intention to enter into a civil partnership next September, at which time he and the appellant will start a new life living together in London. They cannot be open about their relationship at present because of his (RD’s) family background. Whilst the family are aware that he is gay, they do not talk about it. RD informed his sister few years ago and she was not happy.

Under cross-examination RD stated that his family believe the appellant to be a good friend. He would not tell his family about entering into a civil partnership with the appellant. He could not live with the appellant in Brighton because of his (RD’s) family and community culture. In Iranian culture the child does not move out of the family house until marriage, however, moving to London for the Legal Practice Course would provide a good excuse for RD to move out.

RD finally indicated that he had not thought about whether he would support the appellant financially in India, although he could afford to do so.

Submissions

The parties submitted detailed skeleton arguments, which we summarise below. Each supplemented their skeleton argument with oral submissions.

During the hearing both parties made submissions as to the relevance of the opinion of Advocate General Sharpston in the cases which are now referenced as Court of Justice of the European Union decision X, Y and Z v Minister voor Immigratie en Asiel [C-199, 200 and 201/12]. The decision of the CJEU in these matters was handed down after the close of the hearing before us, on the 7 November 2013. As a consequence we gave the both parties an opportunity to provided further written submissions in relation to this judgment. Additionally, as identified above, the Supreme Court of India also handed down its judgment in the section 377 litigation (Koushal) after the close of the hearing before us, on the 11 December 2013. Again, we gave both parties opportunity to make further written submission in relation to this judgment.

Respondent’s submissions

In summary, Ms Everett observed and submitted that:

a. The Naz Foundation Trust, the principal respondent in the section 377 Supreme Court case, have advised that they are not aware of any persons being tried and
convicted under section 377, in a case involving adult consensual sex, in any Indian state in the past couple of years. The foundation also confirms that it has seen a lot more openness in relationships in urban areas and that “many couples are living together”;

b. There is no real evidence in Dr Khanna’s report to show that there is still violence perpetrated against same-sex desiring males, or that such violence is, or ever has been, widespread;

c. Detailed information has not been made available to the COI service pertaining to the examples given in paragraph 28 of Dr Khanna’s report that since the Delhi High Court judgment section 377 has been used in the context of cases involving adult consensual sex;

d. Dr Khanna’s report cites only a few incidents of police misconduct, mostly from 2006 to 2007, and offers no background evidence as the overall incidence of such conduct by the police in relation to LGBT persons. There are several thousand police stations in India and the states and union territories have their own police forces and law courts. LGBT persons are not the only victims of police corruption in India;

e. The propositions drawn by the expert from the case of Professor Ramchandra Siras are “sweeping”;

f. Dr Khanna’s report does not provide any evidence to support the conclusion that aversion therapy is “prevalent”;

g. Dr Khanna appears to accept that there are certain states within India in which there is a more enlightened and positive attitude towards LGBT communities.

76. Attention is also drawn in her skeleton argument to the fact that “according to the National Crime Records Bureau, there were 275,165 violent crimes reported in India in 2012, including 34,434 murders” and that a Humsafar Trust survey, quoted by the Dr Khanna, shows that, amongst ‘transgender’ respondents (to the ‘community survey’), 54% felt that the Delhi High Court judgment had affected their lives; 75% thought that the change in law had made the state acknowledge the presence of sexual minority communities, 98% felt an increased sense of belonging to the community and felt that Indian cinema had begun portraying gay characters better, 96% reported feeling more confident going to a counsellor and felt that gay issues were more openly discussed, 98% perceived other community members being more approachable, and 90% reported that they could talk to the police to stop harassment.

77. The skeleton argument further addresses the position of the appellant, submitting that:

a. Even if the appellant had been pursued under section 377 in the past it is not likely that he would be so pursued again given the evidence of the Naz Foundation;
b. It is no longer plausible that section 377 can be effectively used by police or others for extortion or blackmail purposes;

c. 70% of working people in India are self-employed, and consequently the appellant would not need to maintain a low profile in terms of his sexuality in order to earn a living;

d. The appellant and his partner maintain a low profile in terms of their sexuality in United Kingdom, for social reasons. The appellant could, therefore, be expected to do so in India;

e. If necessary the appellant could access support in India and start his life afresh;

f. In relation to Article 8 ECHR, it would not be disproportionate to require the appellant to return to India and make an entry clearance application to return as RD’s partner, should he wish to do so. In any event, any interference with their relationship would not be disproportionate to the legitimate aim pursued.

78. In her oral submissions, Ms Everett relied upon the contents of her skeleton argument and submitted that it was clear that the appellant could not make out a claim that all openly gay people are ill-treated in India. She drew attention to passages within the report of the expert which, she asserted, demonstrate that it is difficult to identify a coherent set of risk factors for gay people in India given the vastness and diversity of the country. Same-sex relationships are a part of the culture of the population. There has been a change on the ground for LGBT persons as a consequence of the Delhi High Court's decision in relation to section 377.

79. Ms Everett further asserted that clear evidence had been provided that there are accessible support groups for LGBT persons in India. If an individual does have a problem in any particular area of the country internal relocation is available to places such as Tamil Nadu or Bangalore where there are more politicised LBGT movements that hold the police accountable for their actions.

80. As to the assertion that an openly gay person would find it almost impossible to find employment in India, she submitted that (i) this was not borne out by the evidence and, in any event (ii) the vast majority of Indian people are self-employed and there is no satisfactory evidence to support the proposition that an openly gay person could not earn a living from being self-employed. She further asserted that in relation to accommodation a gay person could, in the worst case scenario, find this with a gay-friendly landlord, whether independently or via a support group; alternatively, accommodation could be found within the Hijra communities.

81. Ms Everett submitted that it is inconceivable, given the appellant’s skill set, that he would not be able to access support if he were to return to India. In addition, she observed that the expert had given evidence that the appellant could relocate within India. It was further submitted that, given that the appellant was discreet in the United Kingdom for social reasons, he could be expected to be so in India. It would not therefore be known that he is a gay person and consequently the difficulties
detailed by the expert in his report regarding access to employment and accommodation for openly gay people were not present themselves to this appellant.

82. As to the article 8 grounds, Ms Everett accepted that the appellant was in a long-standing relationship with RD, although she did not accept this relationship was akin to a marriage. Despite the latter she accepted that the relationship constituted family life for the purposes of article 8. It was submitted, however, that it would be proportionate to require the appellant to return to India permanently or, in the alternative, to return to India to make an application for entry clearance. In support of the latter submission Ms Everett placed reliance on the decision of Blake J in Kussin v Secretary of State for the Home Department [2009] EWHC 358 (Admin).

83. In her written submissions made in relation to the decision in X, Y and Z Ms Everett observed the CJEU had concluded that (i) the existence of legislation criminalising homosexual acts cannot be regarded as so significant that it reaches the level of seriousness necessary for a finding that it constitutes persecution, but that imprisonment pursuant to such provision might amount to persecution and (ii) it would be wrong to require a person to conceal their sexuality in order to avoid persecution. She maintained, in relation to the appellant that (i) he would conceal his identity not through fear of persecution but for other reasons and, in any event, (ii) that any treatment he might face upon return to India, even if he were to be open about his sexuality, would not amount to persecution.

84. As to the respondent’s further written submissions made in relation to the judgment of the Indian Supreme Court in Koushal, received by the tribunal on 10 January 2014, these set out the history of the litigation, note the fact of the Supreme Court’s judgment and then state as follows:

“Significance of Supreme Court Decision

8. As Section 377 has been enforced only very rarely in cases involving consenting adults, and because the Delhi High Court’s ruling of July 2009 was only applicable within the union territory of Delhi, we would submit that the Supreme Court’s judgment of 11 December is of little practical consequence to the situation of gay men in India. Amnesty International and Human Rights Watch both expressed their disappointment at the SC’s decision, but they did not predict any material change to the treatment of LGBT persons arising from it.

Update

9. BBC News reported on 20 December 2013 that the Government of India had filed a petition in the Supreme Court, asking it to review its decision of 11 December 2013. The Government stated that "the position of the central government on this issue has been that the Delhi High Court verdict... is correct." The President of the ruling Indian National Congress party described Section 377 as "an archaic, unjust law". Various government ministers have echoed this view.”

85. Attached to these submissions was a letter dated 4 September 2013 from the Migration Delivery Officer at the British High Commission in New Delhi to the
Home Office Country of Origin Information Service (COIS). The letter sets out questions sent to the Executive Director of the Naz Foundation at the request of the COIS and the replies thereto. Those replies accord with, and appear to be the source for, the information set out by the respondent in paragraph 3 of her skeleton argument (summarised in paragraph 75(a) above). No application has been made by the respondent to produce this evidence, and no explanation has been provided as to why it was only been produced on 10 January 2014 despite being dated in September 2013; a date prior to the final hearing. Having considered all of the circumstances, we decline to admit this evidence.

Appellant’s submissions

86. In his skeleton argument, Mr Eaton cites numerous passages from (i) the decision of the Supreme Court in HJ (Iran) (ii) the Advocate General’s opinion in the case of X, Y and Z (iii) the Secretary of State for the Home Department’s guidance on “Sexual Orientation Issues in the asylum claim” and (iv) the “UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation...” There is no development thereafter of the conclusions he seeks to persuade the Tribunal to draw from these sources.

87. The skeleton argument then turns to the background situation in India. The following general submissions are made, and each is followed in the skeleton argument by an extract from background material before the Tribunal that is said to support such proposition:

a. The existence of section 377 has allowed public bodies in general, and in particular the police, to harass intimidate and persecute gay men in India;

b. There is no settled view on the applicability of the decision of the High Court of Delhi to other states within the Republic of India;

c. There is evidence of continued use of section 377 following the decision of the High Court of Delhi;

d. There is still intimidation, harassment, ridicule and violence perpetrated against gay men in India;

e. Gay men suffer discrimination in accessing health care;

f. There is very little space for a gay man to live safely in India, without fitting into one of the prescribed forms of “third gender” identities. A poor or low caste gay man, who does not fit within one of the accepted third gender groups, is most at risk of violence and intimidation. Gay Indians, who are not wealthy, are reliant on the family support in establishing a sustainable life, which includes contacts enabling them to find employment and education and to assess housing;

g. The family for many gay Indians is the “first and main force of persecution”; “the Indian police are the main organ of persecution of gay men in India”;
h. The capacity to internally relocate is dependent on the ability to access a support network in the area of relocation; however the long-term viability of a safe haven continues to be dependent on the gay man hiding his sexuality. After relocation there is unlikely to be any of the usual mechanisms, through family, of accessing education, housing and work;

i. The capacity of support networks to assist is hampered by the scale of the problem and they also have to work in a climate of harassment and violence;

j. It is accepted that some states “have developed a modicum of protection for third gender groups”, whilst the anonymity of India's biggest cities can at times provide protection for those able to hide their sexual identity.

88. Specifically in relation to the appellant, Mr Eaton’s written submissions state:

a. The appellant freely expresses his sexual identity through his personal appearance, including wearing make up. It is not his intention to live discreetly as a gay man in India;

b. In the past he has been forced to leave the family home because of his sexuality, lost his employment in the restaurant in Mumbai, had to rely upon prostitution to support himself and was reported to the police by an ultra nationalist political group which led to him being detained and beaten;

c. It is accepted there would be no ongoing interest in the appellant from the police; however, it was submitted that he would continue to be at risk from his family either in the form of personal violence perpetrated against him, or by operation of the machinery of law;

d. Upon return to India the appellant would be without the necessary support mechanisms. He is not a member of a third gender group and is likely to fall back into street prostitution. He could only access LGBT support groups in the short term. The only meaningful strategy to avoid violence is to hide his identity as a gay man.

89. As to article 8 ECHR, it is submitted that the appellant has a family life in the United Kingdom akin to marriage with RD; he has amassed a substantial private life in the United Kingdom; removal would interfere with his private and family life and such interference would be of sufficient severity so as to engage article 8. Turning to the issue of proportionality, Mr Eaton draws attention to (i) the fact that the appellant is able to openly express his sexuality in the United Kingdom, (ii) he can enter into a civil partnership here and (iii) he can adopt a child here. This, it was submitted, must be contrasted with the circumstances that face the appellant in India, where he would be subjected to constant discrimination and possibly harassment and violence. It is not reasonable to expect RD to move to India and neither would it be proportionate to require the appellant to leave the United Kingdom simply in order to make an application for entry clearance. In relation to this latter submission Mr Eaton placed reliance on the decision of the Court of Appeal in MA (Pakistan) [2009] EWCA 953.
He consequently submitted that the appellant's removal would be disproportionate to the legitimate aim being pursued.

90. In his oral submissions, Mr Eaton drew our attention to various passages within the decision of the Supreme Court in *HJ Iran* [2010] UKSC 31, and further submitted that following the Advocate General's opinion in *X, Y and Z* it is clear that a consideration of whether the appellant should act discreetly upon return must be based upon objective and not subjective considerations. We were further reminded that an accumulation of discriminatory actions against an individual could, when taken together, amount to persecution.

91. Mr Eaton then took us through passages in Dr Khanna's written evidence, asserting there to be a strong culture of discrimination against LGBT persons in India from both the police and the public which, when looked at as a whole, amounted to persecutory treatment. Attention was particularly drawn to evidence given by Dr Khanna in relation to the lack of employment opportunities for openly gay persons in India. It was submitted that the same discriminatory treatment must apply to those openly gay persons in self-employment: although Mr Eaton accepted that Dr Khanna had not given evidence to this effect before us.

92. Mr Eaton accepted that not all gay men are at risk in India, and that there are groups of gay persons who can find space to express their homosexuality there, such as (i) gay persons who have property and wealth (ii) the third gender identities such as the Hijra and (iii) gay persons with supportive family networks. He submitted, however, that all other groups of gay persons are at risk of persecution, with the urban poor (including Kothi) being most at risk as a consequence of their limited ability to (i) obtain privacy and (ii) access the LGBT support networks, which in any event do not provide a sufficiency of protection given their limited budgets and the fact that they work within a climate of discrimination and violence.

93. As to the possibility of internal relocation, it was the expert's evidence that it is not the case that Tamil Nadu provides a greater protection for gay men, but that it simply recognises third genders in their legal system. Neither is the risk of violence to gay men ameliorated by living in Bangalore, Dr Khanna having given evidence to the effect that although LGBT groups in Bangalore have a political background and are consequently able to hold the police to account, this has not affected the actions of the police on the ground.

94. Turning to the appellant's particular case, he observed that the appellant is not content to be discreet about the fact he is a gay person and that he is only being discreet about his relationship with RD in Brighton in the short term.

95. He submitted that if the appellant were to return to India he would fall within a group of persons not able to find their own space to live an openly gay lifestyle. He has no family support in India and his identity as a western gay person is not a grouping that has any resonance there. When the appellant previously lived in India without support he lost his employment, was forced into prostitution, was targeted
by a nationalist group and was arrested and beaten by the police. This, it was submitted, are the circumstances that would face the appellant should he return to India. He accepted that the appellant may be able to mitigate his circumstances if he were able to access a supportive LGBT group, however, this would only be a possibility in the short term.

96. As to article 8 ECHR, Mr Eaton observed that it had been accepted that the appellant has a family life with RD in the United Kingdom and that his removal would lead to an interference with his private and family life here. As to the issue of proportionality he submitted that it was not proportionate to require the appellant to return to India to make an application for entry clearance, the decision of Blake J in Kussin was to be distinguished. Further, in order to survive in India the appellant would have to act discreetly in order to avoid being persecuted, such matter being relevant even if the tribunal were to conclude that the risk to the appellant was not at a level so as to lead to a breach of the Refugee Convention or Article 3 ECHR.

97. In his written submissions made in relation to the relevance of the CJEU’s judgment in X, Y and Z Mr Eaton first summarised the questions asked of the court, then the court’s ruling; observing in particular that the CJEU had concluded that “a Member State could not require a LGBT person to behave in a more restrained manner than a heterosexual person, in order to avoid persecution, as long as their conduct would not amount to a criminal offence in a Member State.”

98. It was submitted, in reliance on the CJEU’s ruling, that (i) LGBT persons form a particular social group in India for the purposes of the Qualification Directive and (ii) although prosecutions pursuant to section 377 are historically uncommon the existence of this provision has allowed public bodies in general to harass and persecute gay men in India.

99. In his further written submissions made in relation to the decision of the Indian Supreme Court in Koushal, Mr Eaton summarised the terms of the judgment, observed once again that the CJEU in X, Y and Z had concluded that the mere existence of legislation criminalising homosexual acts could not be regarded as so significant that it reaches the level of seriousness necessary to constitute persecution, and accepted that recorded prosecutions under section 377 were relatively uncommon.

100. He continued his written submissions by asserting that the tone of the Indian Supreme Court’s judgment reflected the deep lying prejudice against LGBT persons that pervades much of Indian Society and that section 377 had been used as an “umbrella for the harassment, blackmail and torture of LGBT by the Indian police and non-state actors.” Mr Eaton observed that the Naz Foundation had pursued its case in the Supreme Court in reliance on the fact of such harassment, blackmail and torture of LGBT persons; submitting that the Supreme Court had not rejected the evidence that such acts took place, but rather concluded that (i) it was not the intention of section 377 that it be used in such a manner and (ii) that’s its misuse by the police and others did not make it unconstitutional.
101. Mr Eaton contended that any advances in the space carved out by LGBT persons since the 2009 judgment of the Delhi High Court would likely be lost as a consequence of the judgment in Koushal. He further identified as matters relevant to the tribunal’s considerations the fact that (i) the Indian government had not legislated to repeal section 377 in the intervening period between the Delhi High Court’s judgement and the judgment of the Supreme Court and (ii) 2014 is an election year in India and that Dr Khanna had given evidence that there is a possibility that the BJP, which has been consistent in its opposition to LGBT rights, might take the lead in the next government. He finally submitted that it is reasonable to speculate that the judgment in Koushal would embolden those in India who carry out attacks on LGBT persons.

Legal Framework


103. Article 9 of the Directive defines acts of persecution as follows:

"1. Acts of persecution within the meaning of Article 1A of the Geneva Convention must

    (a) be sufficiently serious by their nature or repetition as to constitute a severe violation of basic human rights, in particular the rights from which derogation cannot be made under Article 15(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms; or

    (b) be an accumulation of various measures, including violations of human rights which is sufficiently severe as to affect an individual in a similar manner as mentioned in (a).

2. Acts of persecution as qualified in paragraph 1, can, inter alia, take the form of:

    (a) acts of physical or mental violence, including acts of sexual violence;

    (b) legal, administrative, police, and/or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory measure;

    (c) prosecution or punishment which is disproportionate or discriminatory;

    (d) denial of judicial redress resulting in a disproportionate or discriminatory punishment;"
(e) prosecution or punishment for refusal to perform military service in a conflict, where performing military service would include crimes or acts falling under the exclusion clauses as set out in Article 12(2);

(f) acts of gender-specific or child-specific nature.

3. In accordance with Article 2(c) there must be a connection between the reasons mentioned in Article 10 and the acts of persecution as qualified in paragraph 1.

104. Article 10 of the Directive identifies the reasons for persecutory treatment capable of engaging the Directive (and indeed the Refugee Convention). These include the following:

“1(d) a group shall be considered to form an innate social group where in particular;

1. members of that group share an innate characteristic or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to identity or conscience that a person should not be forced to renounce it, and

2. that group has a distinct identity in the relevant country because it is perceived as being different by the surrounding society;

depending on the circumstances in the country of origin, a particular social group might include a group based on a common characteristic of sexual orientation...”

105. Paragraph 65 of HJ and HT [2010] UKSC 31 summarises the basis of protection provided:

“...so far as the social group of gay people is concerned the underlying rationale of the Convention is that they should be able to live freely and openly as gay men and lesbian women, without fearing that they may suffer harm of the requisite intensity or duration because they are gay or lesbian. Their home state should protect them and so enable them to live in that way. If it does not and they will be threatened with serious harm if they live openly, then most people threatened with persecution will be forced to take what steps they can to avoid it.”

106. Lord Rodger at [82] sets out the assessment to be carried out by a decision-maker:

i. When an applicant applies for asylum on the ground of a well-founded fear of persecution because he is gay, the tribunal must first ask itself whether it is satisfied on the evidence that he is gay, or that he would be treated as gay by potential persecutors in his country of nationality.

ii. If so, the tribunal must then ask itself whether it is satisfied on the available evidence that gay people who lived openly would be liable to persecution in the applicant’s country of nationality.

iii. If so, the tribunal must go on to consider what the individual applicant would do if he were returned to that country.
iv. If the applicant would in fact live openly and thereby be exposed to a real risk of persecution, then he has a well-founded fear of persecution - even if he could avoid the risk by living "discreetly".

v. If, on the other hand, the tribunal concludes that the applicant would in fact live discreetly and so avoid persecution, it must go on to ask itself why he would do so.

vi. If the tribunal concludes that the applicant would choose to live discreetly simply because that was how he himself would wish to live, or because of social pressures, e.g., not wanting to distress his parents or embarrass his friends, then his application should be rejected. Social pressures of that kind do not amount to persecution and the Convention does not offer protection against them. Such a person has no well-founded fear of persecution because, for reasons that have nothing to do with any fear of persecution, he himself chooses to adopt a way of life which means that he is not in fact liable to be persecuted because he is gay.

vii. If, on the other hand, the tribunal concludes that a material reason for the applicant living discreetly on his return would be a fear of the persecution which would follow if he were to live openly as a gay man, then, other things being equal, his application should be accepted. Such a person has a well-founded fear of persecution. To reject his application on the ground that he could avoid the persecution by living discreetly would be to defeat the very right which the Convention exists to protect - his right to live freely and openly as a gay man without fear of persecution. By admitting him to asylum and allowing him to live freely and openly as a gay man without fear of persecution, the receiving state gives effect to that right by affording the applicant a surrogate for the protection from persecution which his country of nationality should have afforded him.

107. The Supreme Court in RT (Zimbabwe) [2012] UKSC 38 at [24] considered whether there could be a distinction between core and marginally held rights or beliefs and in discussion [40-52] concluded [51] that:

"...nothing...supports the idea that it is relevant to determine how important the right is to the individual. There is no scope for the application of the core/marginal distinction (as explained above) in any of the appeals which are before this court. The situation in Zimbabwe as disclosed by RN is not that the right to hold political beliefs is generally accepted subject only to some arguably peripheral or minor restrictions. It is that anyone who is not thought to be a supporter of the regime is treated harshly. That is persecution."

108. In X, Y and Z the CJEU considered the case of three asylum applicants in the Netherlands from Sierra Leone, Uganda and Senegal. In each country homosexuality is a criminal offence punishable by a term of imprisonment. The Raad van State requested a preliminary ruling from the CJEU on the following matters:

"(1) Do foreign nationals with a homosexual orientation form a particular social group as referred to in Article 10(1)(d) [of the Directive]?

(2) If the first question is to be answered in the affirmative: which homosexual activities fall within the scope of the Directive and, in the case of acts of persecution in respect
of those activities and if the other requirements are met, can that lead to the granting of refugee status? That question encompasses the following subquestions:

(a) Can foreign nationals with a homosexual orientation be expected to conceal their orientation from everyone in their [respective] country of origin in order to avoid persecution?

(b) If the previous question is to be answered in the negative, can foreign nationals with a homosexual orientation be expected to exercise restraint, and if so, to what extent, when giving expression to that orientation in their country of origin, in order to avoid persecution? Moreover, can greater restraint be expected of homosexuals than of heterosexuals?

(c) If, in that regard, a distinction can be made between forms of expression which relate to the core area of the orientation and forms of expression which do not, what should be understood to constitute the core area of the orientation and in what way can it be determined?

(3) Do the criminalisation of homosexual activities and the threat of imprisonment in relation thereto, as set out in the Offences against the Person Act 1861 of Sierra Leone (Case C-199/12), the Penal Code Act 1950 of Uganda (Case C-200/12) or the Senegalese Penal Code (Case C-201/12) constitute an act of persecution within the meaning of Article 9(1)(a), read in conjunction with Article 9(2)(c) of the Directive? If not, under what circumstances would that be the case?"

109. The CJEU ruled as follows:

“1. Article 10(1)(d) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or Stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that the existence of criminal laws, such as those at issue in each of the cases in the main proceedings, which specifically target homosexuals, supports the finding that those persons must be regarded as forming a particular social group.

2. Article 9(1) of Directive 2004/83, read together with Article 9(2)(c) thereof, must be interpreted as meaning that the criminalisation of homosexual acts per se does not constitute an act of persecution. However, a term of imprisonment which sanctions homosexual acts and which is actually applied in the country of origin which adopted such legislation must be regarded as being a punishment which is disproportionate or discriminatory and thus constitutes an act of persecution.

3. Article 10(1)(d) of Directive 2004/83, read together with Article 2(c) thereof, must be interpreted as meaning that only homosexual acts which are criminal in accordance with the national law of the Member States are excluded from its scope. When assessing an application for refugee status, the competent authorities cannot reasonably expect, in order to avoid the risk of persecution, the applicant for asylum to conceal his homosexuality in his country of origin or to exercise reserve in the expression of his sexual orientation.”
Discussion

110. We now turn to our assessment of the expert and other background evidence.

111. In summary, Dr Khanna’s evidence is to the effect that “same-sex desiring” males, except those in the upper classes, are generally at risk of suffering from violence and extortion from the police in India, as well as violence and other discrimination from the general populace including discrimination in the accessing housing, employment, health care and education. He further opines that LGBT persons do not receive protection from the police and that although there are NGOs and LGBT support groups, the assistance they can provide is short-term and is difficult to access.

112. Dr Khanna’s curriculum vitae is formidable. There can be no doubt that he has relevant academic credentials and substantial experience in India, in particular within the field of the consideration of the human rights of sexual and gender minorities. He also has long held allegiances and associations with the “Queer movement” in India, is a founder member of a Delhi based sexual rights group, has provided legal, social and other support to people facing violence in India on the basis of their sexual orientation, and has been engaged in various capacities in the ongoing litigation challenging the validity of section 377.

113. Dr Khanna clearly has a close sympathy with the difficulties faced by same-sex oriented persons in India and we consider that his views as an expert have been shaped in part by this sympathy and also his avowed support for the rights of such persons. This is reflected in the tenor of his evidence and we have borne it in mind in our evaluation of his evidence.

Male same-sex sexual activity - identity defining

114. Our assessment of the current circumstances prevailing in India for same-sex oriented males, or those perceived as such, has been much assisted by Dr Khanna’s evidence as to the history of same sex desire, gender plurality and homosexuality in India.

115. It is not in dispute that same sex sexual activity was present, recognised and indeed celebrated in pre-colonial India, across the different religions. Unlike in the Euro-North American context, same sex desire did not, at that time, define self identity; although it has to an extent come to do so in the post colonial era. The emergence of the idea of sexuality as defining identity fuelled the recognition of non-heterosexual sexual desires as being different, which in turn led to such desires becoming stigmatised.

116. Self-identification as “gay” is most common in the middle and upper classes of Indian society. Same-sex oriented males of lower or working class tend not to self identify as gay but instead have their own social spaces or descriptors (such as Hijra and Kothi), as explained in Dr Khanna’s evidence and referred to in paragraph 8 above.
Evidence of change - an overall picture

117. In our conclusion the general circumstances for same sex oriented males in India are improving and have been doing so for some time, albeit progress is still slow. Examples of such improvement can be seen in the fact that in 2001 India had one of its first gay weddings; gay pride marches first took place in Kolkata and Mumbai in 2003 and now take place annually in a significant number of major cities in India; Mumbai now has a dedicated LGBT store, dedicated LGBT websites, an LGBT film festival and dedicated LGBT nights at bars and clubs. Chennai also has a number of “gay clubs”. Although these clubs and bars are on occasion subjected to police raids there open existence is a matter which, on the evidence before us, is not something which would have been a possibility until relatively recently. The conclusions we draw from these examples are re-enforced by other evidence before us to the effect that some Indian state authorities, with the assistance of NGO’s, have offered the police education and sensitivity training in relation to their dealings with LGBT persons and that incidents of police harassment of LGBT persons are, although still occurring, in decline.

118. We agree with the observations made in an article in Al Jazeera in July 2012 [cited in the report from the Research Directorate of the Immigration and Refugee Board of Canada] that “Homosexuals have slowly gained a degree of acceptance in a few parts of India, especially in big cities”. The reality is that although homosexuality remains taboo and is still seen as socially unacceptable in India it is emerging into the public sphere. We do not accept that the decision of the Supreme Court in Koushal will lead to a national or general reversal of the positive changes that have occurred in India for LGBTI persons and in particular for same-sex oriented males.

Prosecution

119. It was made clear in X, Y and Z that article 9(1) of Qualification Directive, read together with Article 9(2)(c) thereof, must be interpreted as meaning that the mere existence of legislation criminalising homosexual acts is not to be regarded as constituting persecution, although a term of imprisonment which accompanies a legislative provision punishing a homosexual act is capable of amounting to persecution provided that there is a real risk of it being applied in any given case. We endorse and apply this conclusion. It has not been argued before us that the existence of legislation criminalising homosexual acts can of itself amount to persecutory treatment as defined in any other of the subparagraphs of Article 9 of the Directive, or within Article 1A(2) of the Refugee Convention. In such circumstances, and given the judgment in X, Y and Z, we proceed on the basis that does not.

120. Turning to the history of the criminalisation of homosexual acts in India, this begins with the introduction of such laws in England. The Buggery Act of 1533 was an Act of the Parliament of England passed during the reign of Henry VIII. It defined “buggery” as an unnatural sexual act against the will of God and man and prescribed capital punishment for commission of the offence. This provision was re-enacted by Queen Elizabeth I, after which it became the charter for subsequent criminalisation of
sodomy in the British Colonies. The Act was repealed in England by the Offences against the Person Act 1828, and in India by Section 125 of the Criminal Law (India) Act 1928, when it was replaced by Section 63 of the same Act, which provided that buggery would continue to be a capital offence.

121. Following Lord Macaulay’s Draft Penal Code of 1837, the Indian Penal Code was eventually introduced into Indian law in 1860, consolidating penal law in India. Section 377 of that Code remains in force today and reads:

“Unnatural Offences: 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 to ten years, and shall also be liable to fine”.

122. Three things are immediately apparent from the terms of section 377: (i) that whilst homosexual acts have been held to fall within its ambit, they do not do so exclusively, (ii) it applies to acts of carnal intercourse, even where the parties to such act consent to its undertaking and (iii) it is not relevant whether such an act takes place in a public or a private place.

123. The constitutional challenges to section 377 began as long ago as 1994, when the AIDS Bhedbhav Virohi Andolan (ABVA – the campaign against AIDS-related discrimination) filed a challenge in the Delhi High Court in response to the Inspector General of Prisons refusal to issue condoms to prisoners on the basis that to do so would encourage male homosexual behaviour in prisons. This petition was dismissed without consideration having been given to its substantive merit.

124. Thereafter, the arrest of four workers from the Naz Foundation India Trust in Lucknow (referred to in detail in paragraph 18(d) above) attracted international attention and instigated the formation of new activist collectives in India. In September 2001 an NGO called the Lawyers Collective filed a public interest suit in the Delhi High Court on behalf of the Naz Foundation India Trust, challenging the constitutional vires of section 377. The government of India at that time (the Bharatiya Janta Party (BJP)) opposed the petition. The petition was dismissed by the Delhi High Court in 2004 for reason that (i) it was academic, and (ii) the petitioner had no locus standi. However, this decision was set aside by the Indian Supreme Court in 2006 and the application was ‘remanded’ back to the Delhi High Court to be heard substantively.

125. The Delhi High Court heard evidence and submissions over a twelve day period and gave its judgment some 8 months later, on the 2 July 2009; it concluded as follows:

“We declare that Section 377 IPC, insofar it criminalises consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Constitution. The provisions of Section 377 IPC will continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors. By ‘adult’ we mean everyone who is 18 years of age and above. A person below 18 would be presumed not to be able to consent to a sexual act. This clarification will hold till, of course, Parliament chooses to amend the law to
effectuate the recommendation of the Law Commission of India in its 172nd Report which we believe removes a great deal of confusion.”

126. Sixteen petitioners filed challenges to the Delhi High Court’s judgment with the Supreme Court. The petitioners include amongst them individuals, numerous religious organisations and the Delhi Commission for the Protection of Child Rights. Significantly the government of India did not appeal the judgment.

127. There were also a significant number of interventions before the Supreme Court in support of the High Court’s judgment, including from groups representing the parents of LGBT children, mental health professionals, academics and a collective formed as a “Voice against 377”. The proceedings were completed on 27 March 2012 and the judgment reserved.

128. As we have indicated above the judgment of the Indian Supreme Court in Koushal was handed down on the 11 December 2013: the court concluding that section 377 of the Indian Penal Code “does not suffer from the vice of unconstitutionality”, and ruling the declaration of the Delhi High Court to be legally unsustainable.

129. Despite the breadth of its terms, prosecutions under section 377 have been rare. Dr Khanna refers to studies from 2000 and 2001 identifying 131 prosecutions under section 377 reaching the higher courts in India (State High Courts, the Supreme Court and previously the Privy Council) in the 140 years since its introduction. The report from the Research Directorate of the Immigration and Refugee Board of Canada of May 2004 refers to studies by the Peoples Union of Civil Liberties identifying the fact that only 30 prosecutions under section 377 had reached the higher courts between 1860 and 1992. In its judgment in Koushal the Indian Supreme Court referred to their having been “less than 200 persons prosecuted for committing offence under Section 377 IPC” in the last 150 years. Putting these figures in context, India currently has a population of approximately 1.2 billion people and the Indian Supreme Court cited evidence that the total population of “MSM” [men who have sex with men] was estimated to be 25,000,000 as of 2006.

130. The Supreme Court did not stay the effect of the judgment of the Delhi High Court pending the hearing of the appeal. Dr Khanna observes that there were conflicting positions on the applicability of the judgment outside the jurisdiction of Delhi High Court, a view that is mirrored in other evidence before us. The evidence does disclose that in January 2012 a Magistrates Court in Mumbai rejected an application to dismiss a charge brought under section 377, declaring that “section 377 was still alive in statute”, but does not further identify the ultimate outcome of the matter or the reasons therefore.

131. Drawing all of this together, whilst we note Dr Khanna’s assertion that the fact that prosecutions under section 377 only rarely reach the higher courts does not of itself mean that prosecutions under section 377 are rare, we nevertheless find, given the complete absence of evidence before us capable of leading us to a contrary conclusion, that such prosecutions are extremely rare, and have always been so. In coming to this conclusion we have taken fully into account Dr Khanna’s evidence
that it would be impossible to provide evidence of the overall incidence of such prosecutions given the lack of national records against which to make the relevant checks; however, be that as it may, this does not satisfactorily explain the extent of the dearth of examples of such prosecutions before us. Not only is there a lack of evidence relating to the frequency of prosecutions in the lower courts, but such evidence as there is about prosecutions suggests that a large proportion of whatever number there are relate to child rape cases or cases of non-consensual sex.

132. We conclude, therefore, that on the evidence before us we are not satisfied that there is a real risk of consensual sexual activities between males being prosecuted in India. This was the case before the 2009 judgment of the Delhi High Court, and remains so now.

Police violence and extortion

133. Although the central government provides guidance and support to state authorities, the 28 states and seven union territories of India maintain primary responsibility for maintaining law and order. The police are under state jurisdiction.

134. The fact that police officials extort money and ill treat same-sex oriented males is a common thread running throughout the evidence before us, as indeed are examples of police officials in India arbitrarily arresting and ill-treating non-LGBT persons.

135. The US State Department report for 2012 confirms that LGBT persons faced “physical attacks, rape and blackmail” and that “some police committed crimes against LGBT persons and used the threat of arrest to coerce victims not to report incidents”. The same report also observes that several states, with the assistance of NGOs, now offer police education and sensitivity training. This evidence is entirely consistent with information from other sources before us, including that contained within the Australian government’s Country Advice on India of January 2012 which makes reference to the fact that whilst violence against homosexuals continues, “the level of police harassment has dropped.”

136. In his written evidence Dr Khanna states that there is “ample evidence” of a culture of violence by the police towards LGBT persons. In doing so he draws on information disclosed in a number of reports pre-dating the Delhi High Court’s judgment. In addition reliance was placed on the suspension from employment, and subsequent eviction from his university accommodation, of Professor Siras in 2010 and the detention of 100 people after a raid on an all male party in a bar in Hyderabad in September 2013, the bar workers eventually being arrested for enabling obscene acts.

137. Dr Khanna’s view is clear: that the question of class is crucial to determining the risk to a same-sex oriented male in India; the poor and working class persons, especially

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1 Two reports authored by the Peoples Union for Civil Liberties, from 2001 and 2004 respectively, a 2002 report from Human Rights Watch, a report of an incidence of torture by the police in 2004, a further two reports of incidents of arrest and ill treatment by the police in 2006, the murder of a gay person in the same year by persons unknown, one incident of extreme torture of an Aravani (a third gender identity) in Tamil Nadu in 2007, the forceful eviction of 100 members of a Hijra community in 2008.
effeminate males, being most likely to face extreme violence, exclusion and discrimination, whereas the upper class gay person is not at risk of ill treatment.

138. As to instances of blackmail and extortion by the police of LGBT persons, Dr Khanna concludes that this is a common experience. When doing so he refers to, but does not provide details of, reports from social media networks relating to such blackmail and extortion. He observes that reports of blackmail and extortion are made on a monthly, and sometimes more frequent, basis. He further provides by way of example the fact that he was stopped at one of the many checkpoints in Delhi ‘because of his looks’.

139. In the Indian Supreme Court the Naz Foundation attacked section 377 on the ground that it has been used to perpetrate harassment, blackmail and torture on certain persons, especially those belonging to the LGBT community. At paragraph 51 of its judgment the Indian Supreme Court stated in relation to this argument that:

“... [t]his treatment is neither mandated by the section nor condoned by it and the mere fact that the section is misused by police authorities and others is not a reflection of the vires of the section.”

140. Mr Eaton submits that the fact that the Court did not conclude that section 377 had not been used in this way is supportive of the fact that it has been so used. A number of points can be made in relation to this aspect of the Indian Supreme Court’s decision and Mr Eaton’s submission. First, we do not accept that the Indian Supreme Court was implicitly accepting that such acts against LGBT persons had taken, or continue to take, place. It did not need to address this issue given its conclusion that any misuse of section 377 by the police authorities and others does not reflect on the vires of the section. Second, insofar as it did refer to the evidence relevant to such issue, it found it to be of poor quality. For example, in paragraph 40 of its judgment the Supreme Court refers to the fact that in its opinion the Naz Foundation had “miserably failed to furnish particulars of the incidents of discriminatory attitude exhibited by the State agencies towards sexual minorities and consequential denial of basic human rights to them.” Later in the same paragraph the Court conclude that “[T]hese details are wholly insufficient for recording a finding that homosexuals, gays, etc., are being subjected to discriminatory treatment either by the State or its agencies or the society.” Third, even if the Supreme Court did accept the fact that section 377 had been misused by the police authorities and others, it made no observation as to the prevalence of such misuse, either historically or at the present time.

141. It is additionally relevant that there is a significant LGBT rights network of NGOs in India, and the case before the Delhi High Court and the Supreme Court has brought together and focused the work of such organisations. There is also a lively social media with interest in LGBT rights. Whilst we accept Dr Khanna’s evidence that it is likely that a significant number of cases of police violence and extortion of LGBT persons go unreported, had the practice of violence and blackmail of LGBT persons by the police been at the level Dr Khanna suggested it is, or at such a level that it could be said that there is a real risk to any particular same-sex oriented male, we
would have expected this to have been better reflected by the examples of such treatment given in the evidence before us.

142. Whilst reference is made in Dr Khanna's evidence to a police raid of an all male party at a bar in Hyderabad in September 2013, it is significant that although it is said that 100 persons were detained, there is no mention of these persons being ill-treated or subject to extortion attempts by the police whilst in detention.

143. In addition, in the section of his report headed ‘Blackmail of LGBT people’, Dr Khanna states, in relation to blackmail by the police, that “[T]he most recent example of this is a case in Bombay/Mumbai, where a 28 year old gay man was assaulted in a lavatory at Vasai railway station, by two plainclothes policemen, who then proceeded to force him to withdraw cash at an auto-teller machine...”. The article to which this incident is referenced is dated 2 March 2013. It is to be recalled that Dr Khanna’s written report is dated 18 September 2013. We find it surprising that if such incidents were as common as Dr Khanna suggests that the ‘most recent’ example of blackmail that Dr Khanna was aware of, as of 18 September 2013, was an incident that occurred over 6 months earlier.

144. There can be no dispute that violence and extortion of same-sex oriented males still occurs in India and that those of lower caste, or working class (such as the Hijra or Kothi), are more vulnerable to such actions. However, the evidence before us comes nowhere near establishing that the scale and frequency of police violence against, or extortion and blackmail of, same-sex oriented males is so prevalent as to constitute a real risk to any given same-sex oriented male, whatever their class or status in Indian society. The generally historic nature of the examples that have been provided and the dearth of up-to-date examples of such practices serve only to highlight this point. We find nothing in the recent judgment of the Indian Supreme Court in Koushal that leads us to a different conclusion.

145. Further, the evidence before us does not support a conclusion that the fact of the Supreme Court’s judgment will trigger any, or any significant, increase in the levels of violence or extortion attempts levelled at same-sex oriented males by the police, or indeed by non-state actors, such that there will be a real risk to any particular same-sex oriented male of being subjected to such treatment. There was no real risk of a same-sex oriented male being subjected to such treatment in the years immediately preceding the 2009 judgment of the Delhi High Court, and since the section 377 litigation began, homosexuality has emerged into the public sphere and the number and reach of the LBGTQ support organisations has steadily grown.

Violence other than from the police or state authorities [i.e. from non-state actors]

146. We here consider the current position relating to risks of violence against openly same-sex oriented males, where such violence is said to emanate from persons other than the police or state authorities; including family members of the same-sex oriented males.
147. Dr Khanna considers that (i) upper-class gay persons are in the best position to reap the benefits of the Delhi judgement, such persons being likely to own property and to have their own social space. The upper-class gay person is not, according to Dr Khanna, at risk of suffering from violent treatment at the hands of non-state actors in India; (ii) although working class same-sex oriented males, such as the Kothi and Hijra, have a social space and are culturally intelligible, they are nevertheless subjected to high levels of violence, particularly those who work in the sex trade. He observes that most people he interviewed for the purposes of his research had, at some time, faced physical violence and other forms of abuse and (iii) middle class gay persons have no social space and are not culturally intelligible in India. As a consequence they have no ability to access privacy, and face ridicule, taunting and casual violence on an everyday basis.

148. Dr Khanna’s evidence on this aspect has some degree of resonance with other background evidence before us, but there are features of his evidence that present an altogether more extreme picture for same-sex oriented males than that generally presented elsewhere. There is, we consider, an element of overstatement in his position.

149. We accept that homophobic violence does occur in India and that (i) it is more prevalent in urban areas and (ii) those of ‘working class’ are the most likely to be subjected to violent acts. However, we do not consider that the evidence establishes that there is generally a real risk of an openly same-sex oriented male, whether upper, middle or working class, being the subject of such violence.

150. Dr Khanna supports his conclusions as to the high level of risks occasioned by those working in the sex industry (which in reality are those of the working or lower castes) by reference to information he received directly from such persons during the course of his research in India. However, he does not provide any details of the research methods he used, how many persons he interviewed for the purposes of his research, when such interviews took place, or what criteria he used to choose the persons whom he interviewed. Dr Khanna’s conclusions as to the levels of risk generally and the particularly high levels of risk to those working in the sex industry are not further sourced or referenced in his report, nor did he identify any examples or sources during the course of his oral testimony in support of his conclusions.

151. In so far as the other evidence before us assists in ascertaining the extent of violence occasioned by non-state actors, it does no more than support the conclusion that such violence exists; however it comes no where near demonstrating that there is a real risk to any particular individual of suffering ill treatment at the hands of non-state actors. The Australian government’s Country Advice on India (January 2012) cites evidence from 2011 which makes reference to homosexuals being subject to mistreatment in Calcutta and Hyderabad, as well as evidence that members of the Mitr Trust (a Delhi based LGBT organisation whose members now number close to 20,000) report that they have been the subject of harassment from members of the public (as well as the police), but provides no detail or scale to such occurrences. The same is the case for the other evidence before us.
152. Absent further detail, we find that neither Dr Khanna’s evidence, nor the generalised and unsourced evidence found elsewhere before us, assists to any great degree in establishing the level of risk of ill treatment from non state actors faced by an openly same-sex oriented male in India. Such evidence as is before does not demonstrate that there is a real risk that any particular same-sex oriented male, or a person perceived as such, will be subjected violence from a non-state actor.

153. As to the risks arising to same-sex oriented males from family members, such cases have to be considered on their individual facts. It is plainly the case that it cannot be said that there is a general risk to all same-sex oriented males from their own family members. Each family will treat the disclosure of homosexuality differently, although we accept that there is a strong cultural family expectation that a son/daughter will engage in a heterosexual marriage. Insofar as it can be established that a family of a particular same-sex oriented male have the willingness and ability to persecute such person, there is no reason why internal relocation to a major city away from the family members should not ameliorate any risk to a level where it can no longer be considered to be ‘real’.

154. There is very limited evidence before us of families successfully using the police in an attempt to track down those family members who have fled, with a view to those persons being ‘repatriated’ back to the family. In any event, India is a country of 1.2 billion people and we have not been drawn to any evidence that there is a central registration system in place which would enable the police to check the whereabouts of inhabitants in their own state, let alone in any of the other states or unions within the country. We consider the possibility of the police, or any other person or body, being able to locate, at the behest of an individual’s family, a person who has fled to another state or union in India, to be remote.

Employment

155. We accept that there is some discrimination in employment of those who are known to be, or who are openly or perceived to be, same-sex oriented males.

156. The Australian Government’s report of 2012 indicates that there is evidence to suggest that [emphasis added] “some employers have reportedly fired gay men who do not hide their sexual orientation”; although no examples were provided and the report itself observes that the source evidence it relies upon does not describe where and in what industries such actions are most prevalent. The Australian report also references reports that some Mitr Trust members have stated that they were denied employment because employers felt uncomfortable with their social identities. This evidence is consistent with that set out in the 2012 US State Department Report, which indicates that “Activists also reported that some employers fired LGBT persons who were open about their sexual orientation or gender identity”.

157. We do not, however, accept that the difficulty in obtaining, or keeping, employment in India for openly homosexual males is of the scale suggested by Dr Khanna in his oral evidence i.e. that it is ‘difficult to imagine’ a person known to be a homosexual obtaining employment in India, unless it is in a business where a homosexual person
had risen to a managerial level and homosexuality is not discussed at work. We think that there is a gap in the evidence which shows the conclusions reached by Dr Khanna to be too sweeping.

158. In support of his conclusion Dr Khanna makes reference to the circumstances of Professor Siras. We have set out the facts of Professor Siras’ case in paragraph 18(g) above, at least insofar as they are recited in Dr Khanna’s report. Those details are limited and do not include either the actual reasons given by the University for dismissing the Professor and withdrawing his use of University accommodation, or of Professor Siras’ response. This is a case, of course, in which a video of the Professor engaging in same-sex sexual activities became publicly available. Whether his dismissal was motivated purely by the fact that Professor Siras had been disclosed to be gay, or whether other factors were involved in the decision, such as the possible damage to the University’s reputation caused by the publicly available video, is impossible to tell. What is known is that the Professor had the opportunity to seek legal redress, an opportunity he took and which led to him obtaining a stay of the order suspending him from employment. He unfortunately died before these proceedings could be pursued further. At its highest, this incident provides one example of discrimination of a gay person in employment; however, the facts of this example are somewhat unusual and, as identified above, it also provides an example of the availability of legal redress.

159. Other than Professor Siras’ case, Dr Khanna indicates that he has personally come across several other cases where people have either been dismissed, or conditions made so difficult for them, that they had been forced to resign from their employment once it was known that they were homosexual. Dr Khanna declined to provide any details of these cases, it is said, as a consequence of his concern that the divulgence of such information would lead to further discrimination. As is the case with many of Dr Khanna’s conclusions, the supporting evidential foundation, insofar as it was put before us, was sparse and of limited value. Such evidence is insufficient to warrant extrapolation into the sweeping conclusions drawn by Dr Khanna.

160. Given Dr Khanna’s evidence as to the limited possibility of an openly same-sex oriented male obtaining employment in India, we invited his opinion as to the prospects of such a person obtaining an income by way of self-employment. We observed that a significant proportion of the working population of India are self-employed. In response, Dr Khanna accepted that there were opportunities for same-sex oriented males to make a living as self-employed persons in a large Indian city. In his submissions, Mr Eaton asked us to find that openly same-sex oriented males would not be able to make a living from self employment, outside of the sex trade, given the level of discrimination that they were likely to encounter. He accepted, however, that the evidence of Dr Khanna did not support this submission.

161. We find that there is an ability for a same-sex oriented male to ‘make a living’ in India outside of the sex trade. Whilst there is discrimination against persons, or persons perceived to be, same-sex oriented males in obtaining and keeping employment, this is not on the scale postulated by Dr Khanna. In the event that
employment cannot be found, it is open to an openly same-sex oriented male to enter the large self-employed economy in India.

Other discrimination

162. Dr Khanna makes reference to discrimination of “stigmatised communities”, in the provision of health care, such discrimination particularly acting against persons such as men who have sex with men, sex workers and injecting drug users, whom, it is said, are either refused healthcare treatment or given differential treatment. In support of his conclusions Dr Khanna refers to (i) the existence of research publications relating to Kothi and “men who have sex with men and transgender people” and (ii) preliminary findings of current research taking place on discrimination in health care in different parts of India, which, it is said, suggests that levels of discrimination remain high.

163. Dr Khanna does not provide extracts or any detail from the aforementioned sources and neither does he indicate that he has any independent and direct experience of occurrences of such discrimination. We observe, however, that the World Bank, in its report of 2012, also identifies the fact of “poor access” to health care in India for LGBT persons. The other evidence before us is largely silent on this issue.

164. On the basis of the limited evidence available to us we are prepared to accept that there is some discrimination against LGBT persons in the provision of health care in India, but we do not conclude that there is a reasonable degree of likelihood or a real risk of an openly same sex oriented male being denied healthcare altogether, or indeed of an openly same sex oriented male being given differential treatment to the general populace.

165. As to the prevalence of aversion therapy as a ‘cure’ for homosexuality amongst mental health professionals in India, it was clarified by Dr Khanna during in his oral evidence that such therapy was not forcibly given to anyone.

166. Turning to the issue of the availability of accommodation for same-sex oriented males; Hijra have their own communities within which they live, and Kothi tend also to live within those communities. According Dr Khanna, upper class gay males who own their own property are able to cohabit as male couples without any real difficulty. It is said, though, that the same is not the case for middle class gay males who, if they wish to cohabit with each other, need to present themselves to a landlord as ‘friends’. Dr Khanna further observes that it is common in India for landlords to share the same accommodation as the tenant, which increases the difficulties of a gay person being able to hide his sexual orientation.

167. Dr Khanna provides evidence that he is personally aware of several persons who have been evicted from their accommodation when suspicions were raised that they might be gay. Given the prejudice against gay persons in India, we have no difficulty in accepting that there are landlords who also hold such prejudices and that those landlords would be reluctant to rent their properties to openly gay persons, let alone to a gay couple. However, the evidence does not disclose that this problem is
endemic or anywhere approaching it. Dr Khanna’s evidence, that the only possibilities for a gay person or couple wishing to rent are to (i) live discreetly so that the landlord does not become aware of a person’s sexuality, (ii) find a LGBT landlord, or (iii) live in an area close to a Hijra community, suggests that in his view the problem is virtually universal. This conclusion must, though, be based on the underlying presumption that all non-LGBT landlords hold homophobic prejudices to the extent that they would not rent to a known gay person or couple. The evidence before us does not bear this out.

168. If a same-sex oriented male, or couple, do have difficulties in obtaining accommodation because of the prejudice of the landlords they have approached, assistance in finding accommodation can be obtained, certainly in the major cities, from LGBT support organisations. We deal with the role of these groups further below.

LGBT support organisations

169. LGBT support organisations had formed in most of the major cities in India by the late 1990s, and it was the formation of these groups which brought to the fore the experiences of violence and discrimination against LGBT persons at that time. The challenges to section 377 also provided a rallying point for such organisations and over time a nascent movement emerged focussed on decriminalising homosexuality and same-sex orientation in males.

170. In his oral evidence Dr Khanna observed that LGBT support groups are in general informal collectives of people in urban areas who come together with the purpose of building support networks for the LGBT community. Group meetings often take place in the offices of HIV or human rights NGOs. These groups provide a range of assistance to LGBT persons including (i) “keeping them underground” if the police are looking for them, (ii) emotional and financial support, and (iii) the providing of community connections and assistance to enable the supported person to obtain employment and accommodation. Dr Khanna gives an example of an LGBT support group in Gujarat also setting up a home for elderly LGBT persons who are not able to access the normal familial support networks. The LBGT support communities continue to grow as a consequence of persons previously supported by such communities becoming a part of the support structure of the community themselves.

171. Dr Khanna’s evidence on this issue generally chimes with that found elsewhere before us. A report from the South Asia LGBT Network confirms that “India has a robust and effective LGBT activist movement, and largely supportive civil society and mass media that support LGBT rights”. The May 2012 report from the Immigration and Refugee Board of Canada records an Associate Professor at the research unit of the University of York explaining that the “main purpose of LGBT NGOs in India is to provide a social space where sexual minorities can meet and organise, as well as education on health... but that NGOs are not able to provide protection for LGBT members on an ongoing basis.”
172. Dr Khanna observes that because of a general lack of resources, support from an LGBT network would be unlikely to be available for more than 6 months. When asked what would happen to the supported person at the end of the 6 month period, Dr Khanna replied by indicating that “typically” the supported person would by that time have found employment or, alternatively, would have moved to another city to access further support there.

173. Whilst there is evidence before us, which we accept, that on occasion the LGBT support networks themselves, or at least those operating them, are the subject of violence and discriminatory acts as a direct consequence of the work they are doing, the support networks, nevertheless, continue to function, and indeed to grow; the latter as a consequence of previously supported people becoming a part of the support structure. The attacks and discrimination appear to have little impact on the willingness of these support communities to continue to assist those in the LGBT community who require support and the section 377 litigation appears to have strengthened ranks of the support networks.

Country Guidance

174. On the basis of the evidence before us we give the following guidance:

a. Section 377 of the Indian Penal Code 1860 criminalises same-sex sexual activity. On 2 July 2009 the Delhi High Court declared section 377 IPC to be in violation of the Indian Constitution insofar as it criminalises consensual sexual acts between adults in private. However, in a judgment of 11 December 2013, the Supreme Court held that section 377 IPC does not suffer from the vice of unconstitutionality and found the declaration of the Delhi High Court to be legally unsustainable.

b. Prosecutions for consensual sexual acts between males under section 377 IPC are, and have always been, extremely rare.

c. Some persons who are, or perceived to be, same-sex oriented males suffer ill treatment, extortion, harassment and discrimination from the police and the general populace; however, the prevalence of such incidents is not such, even when taken cumulatively, that there can be said to be in general a real risk of an openly same-sex oriented male suffering treatment which is persecutory or which would otherwise reach the threshold required for protection under the Refugee Convention, Article 15(b) of the Qualification Directive, or Article 3 ECHR.

d. Same-sex orientation is seen socially, and within the close familial context, as being unacceptable in India. Circumstances for same-sex oriented males are improving, but progress is slow.

e. It would not, in general, be unreasonable or unduly harsh for an open same-sex oriented male (or a person who is perceived to be such), who is able to
demonstrate a real risk in his home area because of his particular circumstances, to relocate internally to a major city within India.

f. India has a large, robust and accessible LGBTI activist and support network, mainly to be found in the large cities.

**Determination of the appellant’s appeal**

175. We have set out the preserved and agreed facts in paragraphs 10 and 11 above. It is not disputed that the appellant is a gay person who likes to wear makeup. He came to the United Kingdom in October 2004 as a student but abandoned those studies in October 2005. He thereafter remained in the United Kingdom until January 2007 “enjoying life with partners”. The appellant admits breaching the conditions of his student visa during this time [paragraph 27 First-tier Tribunal’s determination].

176. The appellant returned to his family home in India on 23 January 2007 but shortly thereafter he was required to leave the house, having had a serious family argument about the waste of his educational funding and about his sexual orientation. He travelled to Mumbai and obtained employment in a restaurant. He then lost his employment, and was evicted from his accommodation, because his employer found out that the appellant had lied about his sexual orientation. He subsequently entered the sex trade, providing sexual services to men. Shiv Sena reported his activities to the police who arrested him under the auspices of section 377. He was detained for a few days and beaten, although not to the extent claimed. He was then released and travelled back to the United Kingdom in his own identity and on his own passport, arriving here on 21 February 2007.

177. The appellant asserts that if he returns to India he will suffer the same fate as he suffered in 2007; we do not, however, accept that this is reasonably likely to be so. Even if he were open about his sexual orientation on return, applying the guidance we have set out above, he is not now reasonably likely to be at risk of suffering persecutory treatment from the police, other state bodies or non-state actors; particularly in one of the major cities.

178. Since he was last in India the circumstances for same-sex oriented males have improved in part, although not wholly, because of the Delhi Judgment in 2009. There is no reason why he would need to return to the sex trade. He has skills from his time in the United Kingdom, including his fluency in English and indeed Farsi, which will no doubt be of benefit to him in the employment market. Alternatively, he could join the 70% of the working population of India in the self-employed economy. He also clearly has the wherewithal to locate and obtain assistance from an LGBT support group should he require short-term assistance in finding employment and accommodation. We do not accept that such organisations would not assist the appellant because ‘he does not make sense’ in Indian culture as a consequence of the fact that his sexual identity was derived from his time in the west. Dr Khanna provided no supporting evidence for his assertion that LGBT support groups would limit those to whom they provide assistance in this way.
179. Nor is it reasonably likely, given the facts accepted by the First-tier Tribunal, that the police in Mumbai, or in any other city or state, have any current interest in the appellant; as Dr Khanna accepts. There is also no evidence that the appellant’s family have an intention, or the ability, to seek him out upon his return to India in order to persecute him. Indeed, no evidence has been provided as to how they would even know he has returned to India should they have such an intention.

180. In summary, we find, in relation to the Refugee Convention, that although, if he were not to act discreetly upon return, the appellant may be the subject of some discrimination in his daily life, for example in finding employment or obtaining accommodation, we do not accept that even if such discrimination is taken cumulatively, it is capable of amounting to a real risk of being persecuted in India. For the same reasons we find that requiring him to return to India would not lead to a breach of the Qualification Directive or Article 3 ECHR.

181. Turning to article 8 ECHR and following the familiar Razgar [2004] UKHL 27 steps, it is not in dispute that (i) the appellant is in a long-term relationship with RD and (ii) that this relationship amounts to family life for article 8 purposes. The extent of the relationship we find is as described by the appellant and RD in their evidence. It is not yet a relationship akin to marriage, but the appellant and RD have an intention to begin living together in September 2014, when RD will be moving out of his family home in order to study the Legal Practice Course in London. They also intend, at around the same time, to enter into a civil partnership. There has also been discussion about the possibility of adoption of children by the couple at some future time.

182. There is little evidence of a wider private life in the United Kingdom for this appellant save for those aspects of his life which he shares with RD. He has lived here for approximately 9 years, save for a short period in 2007.

183. We find that if the appellant were to be returned to India this would cause an interference with his private and family life of sufficient severity so as to engage Article 8. It is not suggested that the appellant’s removal to India would be anything other than in accordance with the law (in the wider sense given to this phrase when the ECHR is under consideration), nor it is said that it is not being done in pursuance of a legitimate aim.

184. The core issue before us in relation to article 8 is that of proportionality. Ms Everett submits that (i) it would be proportionate to require the appellant to leave the country to make an entry clearance in order to return, and, in any event, (ii) it is proportionate to require him to permanently leave the United Kingdom.

185. In support of her former submission she relied upon the decision of Collins J in Kussin [2009] EWHC 358 (Admin), whereas Mr Eaton relied, for a contrary position, on the more recent decision of the Court of Appeal in MA (Pakistan) v Secretary of State for the Home Department [2009] EWCA Civ 953.

186. We have had regard to both decisions, and also to the more recent, and well-known, decision from the Court of Appeal in Treebhowan and Hayat v Secretary of State for
the Home Department [2012] EWCA Civ 1054; which provides a detailed analysis of the case law relevant to a consideration of whether a person should be required to leave the UK in order to make an entry clearance application from abroad; including a consideration of the decision in MA (Pakistan).

187. The following passages are taken from the judgment of Elias LJ in Treebhowan and Hayat:-

"11. Lord Brown accepted that the maintenance and enforcement of immigration control was a legitimate aim. However, he was unpersuaded by the argument, accepted by Laws LJ in Mahmood, that others required to apply from abroad would feel it unfair if persons like the appellant who also fell within the policy were permitted to have their cases determined without first returning home. Consistency of treatment was not such a virtue that it dictated an unthinking enforcement of the policy. Lord Brown identified a different justification for the policy (paras 41-42):

"Is not the real rationale for the policy perhaps the rather different one of deterring people from coming to this country in the first place without having obtained entry clearance and to do so by subjecting those who do come to the very substantial disruption of their lives involved in returning them abroad?

Now I would certainly not say that such an objective is in itself necessarily objectionable. Sometimes, I accept, it will be reasonable and proportionate to take that course....."

12. He then identified situations where the enforcement of the policy would be appropriate, such as where a claimant's immigration history was poor, as in Ekinci. He also identified factors which might have a bearing on whether the policy should be implemented. For example, it would be relevant that an applicant who had arrived illegally had good reason to do so, such as where he has a genuine asylum claim; in an Article 8 family claim the prospective length and degree of disruption involved in requiring the applicant to return would be material; and it would be legitimate to enforce the policy where the entry clearance officer abroad was better placed to investigate the claim.

13. Moreover, Lord Brown emphasised that the routine dismissal of Article 8 cases on this basis was not consistent with a proper respect for Article 8 rights, and nor did it make sense in administrative terms (para 44):

"I am far from suggesting that the Secretary of State should routinely apply this policy in all but exceptional cases. Rather it seems to me that only comparatively rarely, certainly in family cases involving children, should an article 8 appeal be dismissed on the basis that it would be proportionate and more appropriate for the appellant to apply for leave from abroad. Besides the considerations already mentioned, it should be borne in mind that the 1999 Act introduced one-stop appeals. The article 8 policy instruction is not easily reconcilable with the new streamlined approach. Where a single appeal combines (as often it does) claims both for asylum
and for leave to remain under article 3 or article 8, the appellate authorities would necessarily have to dispose substantively of the asylum and article 3 claims. Suppose that these fail. Should the article 8 claim then be dismissed so that it can be advanced abroad, with the prospect of a later, second section 65 appeal if the claim fails before the ECO (with the disadvantage of the appellant then being out of the country)? Better surely that in most cases the article 8 claim be decided once and for all at the initial stage. If it is well-founded, leave should be granted. If not, it should be refused."

... 18. It may at first blush seem odd that Article 8 rights may be infringed by an unjustified insistence that the applicant should return home to make the application, even though a subsequent decision to refuse the application on the merits will not. The reason is that once there is an interference with family or private life, the decision maker must justify that interference. Where what is relied upon is an insistence on complying with formal procedures that may be insufficient to justify even a temporary disruption to family life. By contrast, a full consideration of the merits may readily identify features which justify a refusal to grant leave to remain.

... 26. ... Chikwamba provides that at least where Article 8 is engaged, the decision maker should not, absent some good reason, fail to engage with the merits and dismiss the claim on the ground that the application should be made from abroad."

188. Having considered a number of Court of Appeal authorities concerned with the application of Chikwamba [2008] UKHL 40, Elias LJ summarised the principles to be derived from them as follows:-

"a) Where an applicant who does not have lawful entry clearance pursues an Article 8 claim, a dismissal of the claim on the procedural ground that the policy requires that the applicant should have made the application from his home state may (but not necessarily will) constitute a disruption of family or private life sufficient to engage Article 8, particularly where children are adversely affected.

b) Where Article 8 is engaged, it will be a disproportionate interference with family or private life to enforce such a policy unless, to use the language of Sullivan LJ, there is a sensible reason for doing so.

c) Whether it is sensible to enforce that policy will necessarily be fact sensitive; Lord Brown identified certain potentially relevant factors in Chikwamba. They will include the prospective length and degree of disruption of family life and whether other members of the family are settled in the UK.

d) Where Article 8 is engaged and there is no sensible reason for enforcing the policy, the decision maker should determine the Article 8 claim on its substantive merits, having regard to all material factors, notwithstanding that the applicant has no lawful entry clearance.

e) It will be a very rare case where it is appropriate for the Court of Appeal, having concluded that a lower tribunal has disproportionately interfered with Article 8 rights in enforcing the policy, to make the substantive Article 8 decision for itself. Chikwamba
was such an exceptional case. Logically the court would have to be satisfied that there is only one proper answer to the Article 8 question before substituting its own finding on this factual question.

f) Nothing in Chikwamba was intended to alter the way the courts should approach substantive Article 8 issues as laid down in such well known cases as Razgar and Huang.

g) Although the cases do not say this in terms, in my judgment if the Secretary of State has no sensible reason for requiring the application to be made from the home state, the fact that he has failed to do so should not thereafter carry any weight in the substantive Article 8 balancing exercise."

189. Although in the first of his principles Elias LJ makes reference to applications from those who do not have lawful entry clearance, we observe that on the facts of Hayat itself, the claimant had made an application for an extension of his leave (the refusal of which was the decision appealed to the First-tier Tribunal) during the currency of his extant leave to enter as a student, as is the case in the instant appeal. Despite this fact the Court of Appeal concluded that the Upper Tribunal had been wrong to set aside the First-tier Tribunal’s determination; the First-tier Tribunal having concluded that it was proportionate to require Mr Hayat to return to Pakistan to make an entry clearance application.

190. Neither the opinions of their Lordship’s House in Chikwamba, nor the decision of the Court of Appeal in Trebhowan and Hayat, seek to set out a legal threshold as to when it would be appropriate, in any given case, to require an applicant to make an application from outside the United Kingdom; rather, each alludes to an expectation that in cases where the only matter weighing in the respondent’s side of the balance is the public policy of requiring a person to apply under the Rules from abroad, that legitimate objective will usually be outweighed by factors resting on the appellant’s side of the balance.

191. In the instant appeal the public policy of requiring a person to apply under the Immigration Rules from abroad is not the only matter weighing in the respondent’s side of the balance. There are other cogent reasons for requiring the appellant to return to India to make an application for entry clearance and, in our conclusion, it would be proportionate to require him to do so:

(1) It has not been suggested that the appellant meets the requirements of any of the Immigration Rules; whether that be in relation to the Rules currently in force or those that were in force at the time of the decision under appeal in 2007. The question of the likelihood of an entry clearance application meeting with success is not a relevant consideration in the assessment of whether such application should be made. In SB (Bangladesh) v SSHD [2007] EWCA Civ 28 the Court of Appeal that an article 8 claim of a person resisting removal is not made weaker by strong prospects of success in a subsequent application for entry clearance; nor is it made stronger by weak prospects in such an application. It found that it would be proper for the Tribunal to
exclude the prospects of success altogether when assessing the proportionality of removal. Such rationale was confirmed by the Court of Appeal shortly thereafter in HC (Jamaica) v SSHD [2008] EWCA Civ 371, and once again in SZ (Zimbabwe) [2009] EWCA 590.

(2) The appellant accepts that he remained in the United Kingdom for over a year, until January 2007, in breach of the conditions of his leave to enter as a student. He then left the United Kingdom, only to return during the currency of his student leave in February 2007, knowing full well that he was not a student at that time. The appellant’s leave to enter expired on 31 October 2007 and he claimed asylum shortly thereafter, on the 7 November 2007. When doing so he exaggerated his account of the events which occurred in India, both to the Secretary of State and to the Tribunal (see paragraph 112 of the First-tier Tribunal’s determination).

(3) The appellant’s relationship with RD began, and has been maintained, whilst the appellant’s immigration status has been precarious; indeed for the most part whilst he has been the subject of a decision to remove him from the United Kingdom; this we find to be significant. We have taken into account that since 2007 the appellant has been within the immigration appeal process and that he is not be expected to have put his life on hold for this lengthy period; nevertheless he and RD made choices about their relationship knowing full well the nature of the appellant’s immigration position. Although it is the intention of RD and the appellant to adopt a child in the future they, as yet, have no children. Neither do they, at present, live together on a full time and permanent basis.

(4) Mr Eaton submits that the circumstances for gay persons in India must be a relevant factor in the determination of the appellant’s article 8 rights, even if the article 3 threshold is not met; we accept that this is so. As we have identified above, homophobic discrimination and violence does occur in India and we have borne this in mind in coming to our conclusion. We have also borne in mind that India has in place legislation criminalising same-sex sexual activity undertaken in private and that the existence of such legislation would, upon the appellant’s return to India, constitute an arbitrary interference with his privacy, this being irrespective of the rarity of prosecutions brought under it (see for example the decision in Toonen v Australia UNHRC Communication No. 488/1992).

(5) The appellant will, we find, receive financial support from RD whilst he is making his application and, if necessary, he can also approach one of the LGBT support organisations for assistance. RD will support the appellant’s application for entry clearance and there is no reason to think that regular communication cannot be maintained between the appellant and RD for the duration of the application process, however long that maybe (we observe at this juncture that we have been provided with no evidence as to the length of such application process in India). It is not reasonable to expect RD to move
to India to be with the appellant during the period of entry clearance process, or indeed permanently. He can, albeit without the appellant’s physical company, continue his life in the United Kingdom, running his pizza business and furthering his studies if he so chooses.

192. Looking at the relevant circumstances in this appeal as a whole, we conclude, for the reasons identified above, that there is good reason why this appellant should be required to leave the United Kingdom to make an entry clearance application and that it is proportionate to require him to do so.

**Decision**

For the reasons given by Upper Tribunal Judge Gleeson, the First-tier Tribunal’s determination contains an error of law requiring it to be set aside. Upon re-making the decision on appeal, we dismiss it on all grounds.

We have made an anonymity direction. Such direction is to remain in place unless or until this Tribunal, or any other appropriate Court, directs otherwise. No report of these proceedings shall directly, or indirectly, identify the appellant. Failure to comply with this direction could amount to a contempt of court.

Signed:

[Signature]

Upper Tribunal Judge O’Connor

Date: 26 January 2014
## Appendix - Country Background Documents considered

<table>
<thead>
<tr>
<th>Source</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report of Dr Akshay Khanna</td>
<td>18 September 2013</td>
</tr>
<tr>
<td>Gay Star News article, “Campaigners protest against gay witch-hunt in India”</td>
<td>24 August 2013</td>
</tr>
<tr>
<td>US Department of State, 2012 Human Rights Report: India</td>
<td>19 April 2013</td>
</tr>
<tr>
<td><a href="http://www.state.gov/j/drl/rls/hrrpt/2012/sca/204399.htm">http://www.state.gov/j/drl/rls/hrrpt/2012/sca/204399.htm</a></td>
<td></td>
</tr>
<tr>
<td>Pink News article, “India, police raid gay party and arrest 22 men”</td>
<td>13 February 2013</td>
</tr>
<tr>
<td>The Hindu, ‘Delhi High Court legalises gay sex.’</td>
<td>16 January 2013</td>
</tr>
<tr>
<td><a href="http://www.hinduonnet.com/thehindu/holnus/000200907021111.htm">http://www.hinduonnet.com/thehindu/holnus/000200907021111.htm</a></td>
<td></td>
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<tr>
<td>Reuters News article, “Indian society struggling with gay rights activist”</td>
<td>10 May 2012</td>
</tr>
<tr>
<td>Extracts from COIR for India</td>
<td>30 March 2012</td>
</tr>
<tr>
<td>RRT Government of Australia Country Advice</td>
<td>20 January 2012</td>
</tr>
<tr>
<td>Pink News article, “Mumbai police fine 150 gay men after breaking up party”</td>
<td>20 September 2011</td>
</tr>
<tr>
<td>Times of India, “Pink India tiptoes out of the closet”</td>
<td>3 July 2010</td>
</tr>
</tbody>
</table>
Hindustan Times, ‘Gays celebrate one year of Delhi High Court judgment.’

2 July 2010

Bhagwad Jal Park blog, ‘Section 377 – Mess in the SC. Hearing for 29th Oct. 2009’

1 October 2009

International Gay and Lesbian Human Rights Commission (IGLHRC), ‘India: Government Defers Decision on 377 to Supreme Court, 18 September 2009’
http://www.iglhrc.org/content/india-government-defers-decision-377-supreme-court

18 September 2009

Human Rights Watch, ‘India: Court Strikes Down Sodomy Law’
http://www.unhcr.org/refworld/country,COI,HRW,,IND,,4a51a8af1e,0.html

2 July 2009

http://www.refworld.org/docid/47ea2e4e2.html

19 September 2007

Immigration & Refugee Board of Canada: ‘Update to IND32120.E of 25 June 1999 on the situation of homosexuals’
http://www.refworld.org/docid/41501c1e2a.html

13 May 2004

Supreme Court of India: Notes of Proceedings in Suresh Kumar Koushal v. Naz Foundation, February 23 to March 27, 2012

Undated

International Lesbian, Gay, Bisexual, Trans and Intersex Association: News (India)
http://ilga.org/ilga/en/countries/INDIA/Articles

Undated

Naz Foundation India: MSM Programme
http://www.nazindia.org/msm.htm

Undated
TAB 5
Experiences of bullying in schools: A survey among sexual/gender minority youth in Tamil Nadu

1. In India, there is paucity of research on bullying faced by students based on their sexual orientation and gender identity (SOGI). Research evidence on bullying is crucial to make schools safe and inclusive for all students.

2. This research brief presents the findings from a mixed methods study conducted among sexual/gender minority youth to document the various forms and extent of SOGI-related bullying, and responses to bullying by school authorities.

3. Forms of bullying varied according to grade levels – primary, middle/high school or higher secondary. Physical harassment was reported high among middle/high school (60%) and higher secondary (50%) students while sexual harassment was reported high when the participants were primary school students (43%).

4. Only 18% said that they had reported incidents of bullying to school authorities, to which authorities responded as follows: 29% were asked to change their perceived feminine mannerism/behaviour to avoid being bullied and 49% were asked to ignore the incidents. Only 53%¹ of those who had complained reported that authorities took action against the persons who bullied them.

5. About one-third (33.2%) reported that bullying played a key role in discontinuing school. More than three-fifths (63%) reported lowered academic performance while 53% reported having skipped classes.

6. Given the high prevalence and severity of SOGI-related bullying in schools, measures to prevent and mitigate bullying include: implementing anti-bulling policies and establishing monitoring mechanisms, creation of awareness among students and training of teachers on diversity in gender and sexuality, development of confidential and supportive channels for reporting bullying, and providing supportive counselling services for victims of bullying.

¹The percentages will not add to 100% because of multiple responses to this question on how school authorities responded.
INTRODUCTION

Educational institutions need to be safe for all students. Schools that are not safe or inclusive violate the right to education as enshrined in the United Nations Convention on the Rights of the Child; and contravene the Convention against Discrimination in Education. Both in developed and developing countries (e.g., Thailand), students who are perceived to be sexual/gender minorities face disproportionately higher levels of bullying. In India, there is near lack of research on bullying faced by students who are targeted based on their perceived or actual sexual orientation or gender identity (SOGI). Nevertheless, anecdotal evidence show that sexual/gender minority youth in India are bullied in schools.

Violence and bullying in schools act as major barriers to learning and deny a child’s fundamental right to education in a safe environment. Furthermore, bullying leads to several negative consequences for victims, which include psychological consequences such as depression and anxiety, academic consequences in terms of lowered academic performance and school drop-out rates, and social consequences in terms of loneliness and lack of support. These highlight the importance of why policymakers and officials of education and public health departments should provide adequate attention to SOGI-related bullying at schools.

Ensuring all children and young people have access to safe, inclusive, health-promoting learning environments is a strategic priority for UNESCO and it works towards eliminating school violence and bullying, including SOGI-related bullying. In this context, UNESCO New Delhi office supported ‘Sahodaran’, a community-based organisation in Chennai, to conduct a study on bullying, harassment, stigma and discrimination faced by students based on their sexual orientation and gender identity in schools. The objectives of this study were: 1) to broaden awareness and understanding of SOGI-related bullying in educational institutions and document the support mechanisms available; 2) to facilitate advocacy efforts for evidence-informed policies, programmes and resource allocations to prevent and address SOGI-related bullying at schools.

3 Mahidol University, Plan International Thailand, UNESCO Bangkok Office. (2014). Bullying targeting secondary school students who are or are perceived to be transgender or same-sex attracted: Types, prevalence, impact, motivation and preventive measures in 5 provinces of Thailand.
4 Refers to sexual attraction (whether sexually attracted towards persons of opposite sex, same sex or both sexes)
**METHODS**

Findings presented in this policy brief are drawn from a multi-site mixed methods research study commissioned by UNESCO New Delhi office (see ‘Acknowledgments’) and conducted in Tamil Nadu. Informed consent was obtained from all participants and the study received ethics approval from the Institutional Review Board of C-SHaRP.

**Qualitative component (n=89)**

Eight focus groups (n=61) and eight in-depth interviews were conducted among sexual/gender minority youth recruited from 8 study sites\(^6\) in Tamil Nadu. In addition, 20 key informant interviews were conducted among school teachers and headteachers as well as officials of Tamil Nadu School Education Department. Themes were identified, and illustrative quotes were extracted.

**Quantitative survey component (n=371)**

A structured questionnaire was administered to 371 sexual/gender minority youth\(^7\) who were identified through community-based organisations (Sahodaran and Thozhi) in Chennai. It assessed prevalence and forms of SOGI-related bullying in schools, effects of bullying, responses to bullying by victims and school management and strategies to overcome SOGI-related bullying in schools. Data were analysed using a statistical software – SPSS-21.

**KEY FINDINGS**

**Sociodemographic characteristics**

Sexual/gender minority participants were purposefully selected to be younger (mean age of 20 and 22 years, respectively) so that the prevalence of SOGI-related bullying in recent years is documented. In survey (n=371), about half had completed high school or higher secondary, and one-third were college graduates. About one-fifth (22%) engaged in sex work. Three-fourths were living with parents or peers. For more details see Box 1.

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\(^6\) Chennai, Vellore, Salem, Tanjavur, Tirunelveli, Coimbatore, Trichy and Madurai.

\(^7\) Even though the survey was not conducted among students who are currently studying, the method of using recollections of bullying at schools by LGBT youth has been used in other countries as well. Example: Rivers, I. (2004). Recollections of bullying at school and their long-term implications for lesbians, gay men, and bisexuals. Crisis, 25(4), 169-175.

\(^8\) In Tamil Nadu, ‘thirunangai’ is the preferred indigenous term for transgender woman (a person born as a male but who identify as a woman or third gender).

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**Box 1: Sociodemographic characteristics**

**Focus group participants (n=61)**

Participants’ mean age was 20.9 years (SD 1.8). A little over one-fourth (26%) had a college degree while an equal proportion (23%) reported having completed either high school or higher secondary. Nearly two-fifths (39%) reported begging as their main occupation, 26% engaged in sex work, and 15% were unemployed. Half (50%) of the participants were living with parents and 39% were living with their friends.

**Survey participants (n=371)**

Participants’ mean age was 22.4 (SD 1.9). Fifty percent had completed high school or higher secondary and one-third (32%) had completed a bachelor degree or higher. About three-fourths (77%) had studied in government schools and 22% in private schools. About one-third (32.6%) identified as thirunangai\(^8\) or transgender, and the rest as same-sex attracted males (kothi, gay, bisexual or double-decker\(^9\)). Twenty-eight percent reported working in private companies, 22% engaged in sex work and 19.7% reported being in ‘mangti’ (asking money from shops). The median monthly income of the participants was INR 10000 (range: 3000 to 40000). Forty-five percent were living with their parents, 32% with friends and 16% were living alone.

**In-depth interviews (n=8)**

Eight in-depth interviews were conducted among sexual/gender minority youth from 8 sites in Tamil Nadu.

**Stakeholder interviews (n=20)**

Twenty key informant in-depth interviews were conducted among 16 government and private school teachers, 2 school principals and 2 officials of Tamil Nadu School Education Department.
Prevalence and forms of bullying

Almost all survey participants reported having experienced harassment in school because of their gender expression or perceived sexual orientation. Forms of bullying varied according to grade levels – primary, middle/high school or higher secondary (See Diagram 1). More than two-fifths (43%) of participants reported having experienced sexual harassment in primary school when compared with higher secondary (24%) or middle/high school (14%). Similarly, when compared with primary school (27%), physical harassment was relatively high when participants were in middle/high school (60%) or higher secondary (50%). Almost an equal proportion of participants reported having experienced verbal harassment in primary (31%), middle/high school (26%) or higher secondary (26%).

Further details of the various forms and frequency of bullying (verbal/non-verbal, physical, sexual and cyber/social bullying) are summarized in Diagram 2. Low/medium frequency bullying refers to having experienced bullying less than once a month and high frequency bullying refers to at least once a week to once a month.

**FIGURE 1**: Various Forms of Harassment Experienced in Schools by Survey Participants

**FIGURE 2**: Forms and Frequency of Bullying Experienced in Schools by Survey Participants

- **Verbal**:
  - Threatened with weapon: 25% (high), 11% (low)
  - Gave nasty looks: 28% (high), 33% (low)
  - Spread rumours: 35% (high), 47% (low)

- **Physical**:
  - Locked in room: 26% (high), 28% (low)
  - Stole belongings: 30% (high), 42% (low)
  - Tried removing clothes: 28% (high), 38% (low)
  - Hit/kicked: 29% (high), 32% (low)

- **Sexual**:
  - Sent porn images/clips: 17% (high), 15% (low)
  - Unwanted talk about sex: 30% (high), 38% (low)
  - Threatened to have sex: 31% (high), 33% (low)
  - Inappropriate touch: 29% (high), 30% (low)

- **Cyber/social**:
  - Banned from group: 24% (high), 23% (low)
  - Posted things as you: 25% (high), 19% (low)
  - Cyber sharing of personal clips: 18% (high), 16% (low)
  - Cyber rumours: 19% (high), 15% (low)
  - Cyber threat: 16% (high), 7% (low)
“Teasing and harassment of feminine-appearing boys are the norms in schools and colleges. Transgender people are seen only as sexual objects and not as ‘people’ who have feelings”. (FG, Madurai)

“We are subjected to lots of trouble for not following how a person born as a boy should behave. No one understand us. They simply blame us”. (A trans person, FG, Tirunelveli)

“I could not even complete 7th standard. When teacher taught lesson in class, boys sitting behind me used to prick me with compass and needles”. (FG, Tirunelveli).

“I used to feel really very bad when others teased me with derogatory terms such as ‘ussu’ or ‘ombodhu’. I did not feel like going to school. I discontinued going to school and went to work along with my mother”. (FG, Madurai).

Perpetrators of bullying

More than three-fourths (84%) of participants reported being bullied by their co-students; 58% were bullied by their school seniors; 19% by male school teachers; and 11% by their school juniors (See Diagram 3).

A majority of focus group participants who reported having experienced bullying or victimisation were more frequently harassed by male co-students as compared to female co-students or teachers.

**FIGURE 3: Participants’ responses to who bullied them**

“It was very hard to study in schools, because of other boys. They kept teasing us always. They teased us when we talked, they teased about our feminine behaviour...we could not concentrate on our studies”. (FG, Chennai)
Common settings of bullying in schools

Bullying of sexual/gender-minority youth occurred in a variety of settings such as classroom, school toilets, school terrace and school playground. More than two-third (67%) of gender non-confirming youth are bullied in classroom, three-fifths (60%) are bullied in school toilets and one-third in school terrace (35%) or school playground (32%) (See Diagram 4).

“We cannot go to the bathroom during recess. We have to either go to bathroom before everyone or after everyone. Since I used to walk curling my hips a gang of boys [in higher secondary school] forcefully took me to the bathroom and forced me to have sex”. (FG, Tirunelveli)

“I avoided using toilets in my school because of fear or being tortured by other boys. I had a friend who stayed near my school. I used to go to his home and use their toilet. We need separate toilets in school”. (FG, a trans woman, Vellore)

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**FIGURE 4: Bullying Hotspots in Schools**

<table>
<thead>
<tr>
<th>Setting</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Classroom</td>
<td>67%</td>
</tr>
<tr>
<td>School toilets</td>
<td>60%</td>
</tr>
<tr>
<td>School terrace</td>
<td>35%</td>
</tr>
<tr>
<td>School ground</td>
<td>32%</td>
</tr>
<tr>
<td>Behind the school</td>
<td>26%</td>
</tr>
<tr>
<td>Bushes with in school area</td>
<td>15%</td>
</tr>
<tr>
<td>Behind the school stage</td>
<td>15%</td>
</tr>
</tbody>
</table>

**FIGURE 5: Actions Taken by School Authorities after Students Reported Bullying**

- Ridiculed by the authority - 13%
- Scolded by the authority - 16%
- Asked to change one’s mannerism/behaviour - 29%
- Asked victim to ignore bullying - 49%
- Action was taken against bully - 53%

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10 The percentage will not add to 100% because of multiple responses for this item.
11 Same as the previous footnote.
Co-students’ responses to bullying in schools

Both quantitative and qualitative findings revealed that students who witnessed incidents of bullying acted as bystanders and did not want to intervene. More than half (53%) of the survey participants reported that co-students acted as bystanders and watched them being bullied, and only one-fourth (25%) reported that others intervened and helped them.

Many focus group participants acknowledged that only a handful of male co-students were involved in bullying while other students remained as bystanders. If other students tried to intervene they were also stigmatized or cornered by the perpetrators. For example, a focus group participant mentioned:

“If anyone try to support us, they will be cornered. They will stigmatize them by asking whether they are our husbands. So, no one will come forward to support us. Even if someone really wanted to help us, those who bully would tease and harass them”. (FG, Vellore)

Victims’ responses to bullying

Of total sample, 18% reported bullying incidents to school authorities, 27% reported bullying to their friends, and 8% reported to their parents. Among those who reported about the incident to school authorities (n=65/371), 69% said that the school authorities acted on their complaints. The actions taken by authorities included: 1) asked participants to change their feminine mannerisms to avoid being bullied (29%); 2) asked participants to ignore the incident (49%); and 3) took action against the person who bullied them (53%) (See Diagram 5). Parents responded to the complaints by asking their children to change their mannerisms/behaviour (61%) or ignore the incident (44%).

Many participants said that when they were subjected to bullying they either cried (67%) or suffered silently without sharing it with anyone (60%). However, a little over half (51%) resisted perpetrators’ actions. About one-fourth (29%) of participants simply skipped school for several days to avoid further problems (See Diagram 6).

Focus group findings revealed that fear of negative repercussions prevented many gender-variant youth from reporting the instances of bullying to school authorities (teachers/school management) or parents.

Participants reported that lack of awareness about sexuality or gender issues among teachers and school management staff was a major barrier in effectively addressing SOGI-related bullying in

FIGURE 6: Victims’ Responses to Bullying
schools. Some school teachers did not perceive gender-variant students as victims of bullying, but were abusive towards them.

When incidents of bullying were reported to teachers or school management their actions were mostly corrective in nature: teachers either punished the perpetrators for doing so or simply blamed the students being bullied for exhibiting behaviour that put them into trouble.

“All teachers liked me except Maths teacher. He used to beat [with a stick] other students on their hands but when it comes to me he would beat me on my back. I got angry and asked him why he was doing like that. He simply said that he hated seeing creatures like me as I was feminine-looking and cursed the person who gave admission for me”. (FG, Tanjavur)

“Four or five students in my class used to bully and tease me. I made a complaint to my sir [class teacher]. He took it seriously and informed the boys (perpetrators) that they will not get hall tickets if they did not stop bullying me”. (FG, Tirunelveli)

Consequences of bullying

Given the severity of victimisation, nearly three-fourth of participants reported that they had reduced social interactions with co-students (73%); suffered from anxiety and depression (70%); and lost concentration in studies (70%). Similarly, more than three-fifths (63%) of participants reported lowered academic performance while a little over half (53%) reported having skipped classes (See Diagram 7). About one-third (33.2%) reported that bullying played a key role in discontinuing school.

In focus groups too, participants’ narratives indicated that many gender-variant youth who experienced bullying or victimisation in school lost interest and/or performed poorly in studies, skipped classes, and were physically, emotionally or socially distressed.

Participants reported that negative school life experiences forced them to discontinue their education.

For example, a focus group trans participant explained her reason for not going to college:

“They kept teasing me, called me using derogatory term like ‘ombodhu’ [literally means ‘nine’]. They also prevented my friends from talking to me. They threatened others saying that if they spoke to me they would also become like me. I was left alone. I decided not to go to college because I thought teasing will be more in colleges… I was afraid of harassment and loneliness”. (FG, Tanjavur).

Constant worry about when they will be victimised again and feeling bad after victimisation affected concentration in studies and consequently negatively affected academic performance. Gender-variant youth not only encountered problems in schools but also from their families. Fear of bringing shame to their family prevented many gender-variant youth to downplay their gender expression or avoid reporting incidents of bullying to parents.

FIGURE 7: Consequences of Bullying
School authorities’ responses to bullying

As we purposefully selected those teachers and management staff who were willing to be interviewed for this study, they proactively suggested several measures to effectively address SOGI-related bullying in schools. For example, a teacher emphasized the importance of including a section on transgender issues in B.Ed. syllabus:

“I personally feel that many school teachers may not be aware of transgender. We need to include a section about transgender in B.Ed. syllabus so that teachers will be aware and if they come to meet any such students in their career they would be knowledgeable enough to handle them”. (Female private school teacher-1, Chennai).

Another teacher narrated how she acted as a protective agent when she witnessed the incident of bullying:

“I called the students who were making fun [of a gender-variant male student] and told them that they [feminine male students] are also creatures of God. I asked the bullies to treat them well….like how they behave with other friends”. (Female private school teacher-2, Chennai).

Although the authorities at the education department seemed to be interested in bringing supportive policies or programmes, they cited lack of documented evidence on SOGI-related bullying to act on this issue. This was evident from the discussion with an official of School Education Department in Tamil Nadu, who said:

“I haven’t heard about any incidents of bullying in schools. None of the schools have reported about any such activities. I assume that teachers will not be indulging in any such activities. If we happen to get information regarding any such issues, we will take necessary action”.

Suggestions to address bullying

Participants suggested a variety of measures to effectively prevent SOGI-related bullying in schools. More than three-fourths (83%) suggested organizing awareness and capacity building workshops on gender and sexuality for school authorities (90%), students (89%), and parents (88%). Similarly, majority stressed the importance of providing sex education in schools (86%) and favoured punitive measures against bullying in schools (90%).

Participants provided recommendations that can be implemented at several levels. For example, at the policy-level, both focus group participants and school teachers suggested that the school education department should develop strategies to introduce the concept of diversity in gender and sexuality in the training curriculum of teachers as well as organising periodic trainings/workshops on gender/sexuality diversity. Teachers and school management staff opined that such trainings would not only help them to understand gender diversity but also will clarify any myths about sexuality and gender diversity.

“I personally feel that teachers should first understand them [understand about gender-variant youth]. We need to organize sensitization meetings and workshops for teachers. Children learn a lot from their teachers”. (A govt. school teacher, Chennai).

“As a principal of a school, I would take steps to organize workshops for my staff and students about transgender”. (Principal, Private School, Chennai).
To create a safe and inclusive school environment for all students, the following administrative and policy measures need to be taken by the school management, teachers, parents and policymakers. Creation of a safe school environment will enable all students to learn, develop and achieve their full potential.

For Policymakers and Education Department Officials

1. Ensure that school curricula include age-appropriate sexual health information including sexual and gender diversities, and educate students to accept and respect all students regardless of perceived gender identity or sexuality.

2. Ensure that policies and programs on prevention of school-based violence explicitly includes prevention of SOGI-related bullying against students.

3. Initiate periodic school-based research studies at district/state levels to better understand the prevalence and forms of bullying, including SOGI-related bullying. Findings from these studies will help in designing programs that explicitly address SOGI-related bullying in schools and to evaluate the effectiveness of anti-bullying interventions.

4. Initiate a helpline to address any kind of bullying, including SOGI-related bullying, in educational institutions.

5. Include a curriculum on sexuality and gender diversity in pre-service and in-service teacher training courses/programmes to enable them to be more sensitive towards sexual/gender minority youth and to competently address SOGI-related bullying.

For School Management

1. Develop anti-bullying policies that includes language that explicitly condemn all forms of bullying (including cyberbullying) based on a student’s perceived gender expression, gender identity or sexual orientation. The policy can also include what measures will be taken against perpetrators of bullying.

2. Ensure that teachers and school management are aware of SOGI-related bullying and its negative consequences to students (awareness), know how to identify students who are being bullied (identification), and provide explicit guidelines on how they can intervene situations when they witness bullying or when others report bullying (intervention).

3. Conduct gender/sexuality diversity workshops for teachers, school management and senior level students to promote acceptance of students of all genders and sexualities.

4. Ensure adequate monitoring mechanisms are in place, including surveillance of places where bullying is commonly reported to occur (such as student toilets, playgrounds, and hostels).

5. Educate students about anti-bullying policies and to whom (e.g., a designated supportive teacher or school counsellor) one should report if they are victims of bullying or have witnessed bullying. Ensure confidentiality of people who report bullying.

6. Ensure that within the school campus, adequate counselling and health services are available to victims and perpetrators of bullying, and supportive counselling services are available to parents of gender-variant children.

7. Involve parents of school students (e.g., through Parents-Teachers Associations) through workshops or school functions in which they understand about diversity in human sexuality and gender identity, how they can monitor and respond if their child is a bullying victim or perpetrator, and how they can support their gender-variant children.
ACKNOWLEDGMENTS

This research brief is based on a study commissioned by UNESCO New Delhi office and implemented by Sahodaran. The persons involved in developing this issue brief were: Dr. Venkatesan Chakrapani, Mr. Sunil Menon, and Ms. Jaya. We also thank Mr. Murali Shunmugam and Mr. Ruban Nelson of Centre for Sexuality and Health Research and Policy (C-SHaRP), Chennai, who contributed to data analyses. Also, we thank Ms. Sarita Jadav, Mr. Shailendra Sigdel and Ms. Satoko Yano from UNESCO New Delhi office for their technical inputs and support. We also express our gratitude toward the School Education Department, Government of Tamil Nadu, for their collaboration and support.

Informed consent was obtained from all individuals whose photos appear in this publication. Unless otherwise stated, the appearance of individuals in this publication gives no indication of their HIV or key population status.
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TAB 6
“Unnatural Offences”
Obstacles to Justice in India Based on Sexual Orientation and Gender Identity
Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists (ICJ) 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. Established in 1952 and active on the five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.

© “Unnatural Offences”
Obstacles to Justice in India Based on Sexual Orientation and Gender Identity

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I. Introduction and summary

A. F’s Story

In 2009, F, a transgender man and activist, was arrested by the police when he was assisting transgender sex workers who were being harassed. “[The police] took me to the police station and beat me with a stick. They said ‘people like you are always supporting sex workers’. I spent that night in the [police] station. The police took my phone. My lawyers couldn’t get through and the police did not allow me to inform my family about the arrest. I wasn’t given any food or water”, he told the ICJ.¹ The next day, F was charged with committing “public nuisance” under section 290 of the Indian Penal Code [IPC]. Anyone convicted under section 290 may be punished with a maximum fine of INR 200 [approximately US$ 7]. F’s challenge to this in court led to the charges in his case being dismissed later that month.

F then filed a complaint against the police for the ill-treatment he had faced in the police station the night of his arrest. The case was repeatedly listed in court for three years, and F attended court every time it was listed. “In court, people stared at me, even the judge. But I went to the court even though people were laughing. I went because I wanted my human rights”, he told the ICJ. However, the police never appeared in court. Finally the case was dismissed, but he is not sure why.

F’s case demonstrates the experience many queer people in India have with the legal and justice system. Notwithstanding some recent, positive legal developments like the NALSA decision [discussed in detail below] and efforts to draft transgender rights legislation, existing legal provisions - including some contained in laws of general application - are often used to criminalize people solely as a result of ignorance of, prejudice or hatred against their real or imputed sexual orientation and/or gender identity or expression.² In F’s story, for example, section 290 of the IPC, a criminal provision punishing “public nuisance” was used to detain F when he was assisting transgender sex workers. The police, who should enforce the law in a non-arbitrary and non-discriminatory manner and protect the human rights of everyone, including queer persons, operate instead on the basis of stereotypes and prejudice, and often commit human rights violations against them. The reported ill-treatment of F at the hands of the police is just one illustration. And finally, the judicial system, which should ensure that those responsible for human

¹ ICJ Interview, Kochi, July 2016.
² This report uses the concepts of sexual orientation and gender identity (hereafter: SOGI) as described in the Yogyakarta Principles on the Application of International Human Rights law in relation to Sexual Orientation and Gender Identity. Sexual orientation is understood to refer to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. Gender identity is understood to refer to each person’s deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance or function by medical, surgical or other means) and other expressions of gender, including dress, speech and mannerisms.
rights violations are held accountable and act as a check on abuse of power, also failed F. The case dragged on for years before finally being closed, denying him remedy. Many queer persons who approach the formal justice system face similar challenges.

B. International human rights law and Access to Justice

In contemporary India, the enforcement of the law by the police and the country’s justice system fails queer people and is in sharp contrast with India’s obligations under international human rights law. As F’s story demonstrates, far from guaranteeing justice to him, the legal and justice system colluded to violate a range of F’s human rights, including the right to non-discrimination, equality before the law, and equal protection before the law; his right to be free from torture and other ill-treatment; and his right to access a remedy. Human rights are enshrined in several instruments by which India is bound. Application of international human rights law is guided by the fundamental principles of universality, equality and non-discrimination. All human beings, irrespective of their sexual orientation and gender identity, are entitled to enjoy the protection of international human rights law.

Indian authorities have an obligation to respect, to protect and to fulfill the rights to equality before the law, equal protection of the law and freedom from discrimination; the rights to privacy, liberty and security of the person, including the right not to be subjected to arbitrary arrest and detention; the right to life, to freedom from torture and other ill-treatment; and the right to access justice and to an effective remedy, for all persons, including queer people, without discrimination as to their real or imputed sexual orientation and gender identity. These obligations extend to refraining from interference in the enjoyment of rights, preventing abuses by third parties and proactively tackling barriers to the enjoyment of human rights, including, in the present context, discriminatory attitudes and practices.

Furthermore, several of these rights are also guaranteed by the Indian Constitution: article 14 guarantees all persons equality before the law and equal protection of the law; article 19 guarantees all citizens the freedom of speech, expression and association; and article 21 guarantees all persons protection of their life and personal liberty. The fact that the Indian Supreme Court has used this constitutional framework to recognize and uphold the human rights of queer persons should be welcomed - for example, in the

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3 These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; the Convention on the Rights of Persons with Disabilities.


5 2015 OHCHR SOGI Report.
landmark case of *NALSA v UOI*, the Court recognized transgender persons’ right to the self-recognition of their gender identity, and grounded its reasoning on the constitutional provisions concerning the rights to equality, non-discrimination, freedom of expression and dignity. However, the systemic discrimination and violence faced by queer persons in India, and the challenges they face accessing justice and seeking remedies for human rights violations, remain at odds with the above-mentioned constitutional provisions.

In particular, this report studies queer persons’ attempt to access justice in India, and the barriers they face in the process. In the context of access to justice for people living in poverty, the Special Rapporteur on extreme poverty and human rights has noted that to ensure access to justice: “States have an obligation to construct a legal and institutional framework which facilitates access to independent and effective judicial and adjudicatory mechanisms and ensures a fair outcome for those seeking redress, without discrimination of any kind. However, guaranteeing de jure access to judicial and adjudicatory mechanisms is not sufficient to ensure that all individuals have de facto access to justice. States must also take positive measures to ensure laws and policies are substantively non-discriminatory, including measures to eliminate conditions, which cause or help to perpetuate discrimination. In many instances, laws, policies and procedures may indirectly discriminate against, or have a disproportionate impact upon, persons living in poverty. In addition, various extralegal factors also limit or obstruct their de facto access to justice”.

This report employs a similar understanding of access to justice in the context of queer persons in India. As the observations by the Special Rapporteur above indicate, access to justice is both a procedural and substantive concept that includes several relevant rights, such as equality and non-discrimination, the right to recognition as a person before the law, and the right to effective remedies.

This report uses the term “queer” to refer to any individual who identifies with a non-normative sexuality or gender identity. It includes individuals who identify as lesbian, gay, bisexual, transgender, intersex and gender-queer, and also encompasses persons who may not fit into any of these identity

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6 National Legal Services Authority v. Union of India, (2014) 5 SCC 438 (hereinafter: *NALSA v UOI*). This case is discussed in more detail later in the report.

7 *Equality*: The Court held that non-recognition of their gender identity denied transgender persons equal protection of the law. There was a constitutional obligation upon the State to ensure such equal protection proactively. *Non-Discrimination*: Discrimination is prohibited under the Indian Constitution on a number of specified grounds, which includes “sex”. The Court read the term “sex” to include “gender identity”. *Freedom of Speech and Expression*: The Court interpreted the right to freedom of speech and expression as including the right to expression of one’s self-identified gender, which could be expressed through dress, words, action, behavior or any other form. *Dignity*: The Court found that since gender constituted the core of one’s sense of being, as well as an integral part of a person’s identity, recognition of one’s gender identity lies at the heart of one’s fundamental right to dignity.

categories. For the purposes of this report, “queer” should be read to include other people who face human rights violations on the basis of their actual or perceived sexual orientation, gender identity and/or expression and sex characteristics, including those who may identify with terms other than “queer”.

The legal system has great potential to be transformative in ensuring justice. For example, as this report describes in later sections, Indian human rights lawyers and activists have successfully invoked the law in several instances and recent judgments and laws have tried to incrementally secure greater protection of the rights of queer people. At the same time, it is crucial to note that queer persons have a tenuous relationship with the law.

On the one hand, they are vulnerable to harassment and persecution under a range of criminal laws, and are denied equal standing before the law at many levels. Instead of bringing queer persons closer to any understanding of justice, India’s laws, the police, who are charged with enforcing those laws, and the courts often fail them and operate to systematically undermine and violate the human rights of queer people in the country. The reference to “Unnatural Offences” in the title of this report therefore is not restricted to the impact of section 377. Instead, it seeks to make a broader point about how certain identities and behaviors are treated as “unnatural”, both, in the text of the law as well as in how it is implemented, thus resulting in queer persons experiencing violence and discrimination based on their sexual orientation and gender identity in the legal system.

On the other hand, where beneficial laws have come into force, systemic problems in the operation of the justice system - including the biases of government officials, lack of access to lawyers and police violence - erect a range of barriers that prevent queer persons from enjoying their human rights fully on the basis of equality and non-discrimination, and from being able to access an effective a remedy in cases of violations of their rights. Lawyer Sudha Ramalingam told the ICJ that even when she appeared in court to invoke the law to argue for the individual autonomy of queer persons, she faced a sharp reprimand from the judge: "Don’t talk law".

The existence of those barriers, a widespread disenchantment with the legal system, as well as gaps in legal knowledge, all result in queer persons not approaching the justice system, even when legal remedies exist. As Kerala based activist V told the ICJ, “the majority of what we do is outside the formal process of the law – the idea of engaging with a law that favours us is

9 As the editors of India’s first anthology on queer rights note: "The term queer ... speaks ... of communities that name themselves (as gay or lesbian for example), as well as those that do not, recognizing the spaces for same-sex desire and sexuality that cannot be captured in identities alone." See “Because I Have a Voice: Queer Politics in India” (ed. Arvind Narrain and Gautam Bhan, 2006).

10 IPC Section 377. Unnatural offences. 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 to ten years, and shall also be liable to fine. Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section. See Chapter II for a more detailed discussion of section 377.

11 ICJ Interview, Chennai, July 2016.
a very new thing."\textsuperscript{12} Similarly, Kartik Bittu, who identifies as a gender queer transboi, said "My understanding of how trans and working class LGBT persons have dealt with the police is how most vulnerable communities deal with the police which involves negotiating directly with them at the level of money or possible sexual favours in order to avoid being marginalised by the law or lawmakers. There is very little negotiation that revolves around what is in the law and what isn’t". \textsuperscript{13}

C. Discrimination and Violence based on Sexual Orientation and Gender Identity

While the context and experiences of queer people in India today may vary considerably across different socio-economic lines, it is safe to generalize that they face stigma, harassment and violence in their everyday lives, in private and public spaces, motivated in whole or in part by ignorance of, prejudice and hatred against their real or imputed sexual orientation and gender identity. ICJ spoke with many people who described the discrimination and violence they had faced from families, government officials and other actors. As one transgender woman told the ICJ:\textsuperscript{14}

My parents thought I had a sickness and took me to a doctor. They put me on hormone supplements for a long time. My family used to beat me up and cut my hair. There was a lot of harassment. They would stop giving me food, kick me in the chest ... If my family doesn’t support me, then the society wouldn’t either.

This context of widespread human rights abuses is significant to how queer persons experience the justice system. Starting from childhood, for the vast majority of queer people stigma and prejudice across the board increase the risk that they would fall victims to violence and abuse and, therefore, their need for protection. S, a transgender woman, told the ICJ: “When I was in class 8, seven boys raped me in the school premises. I complained to the teachers and they justified it to my mother saying the boys raped me because I am so feminine.”\textsuperscript{15}

The fact that institutions like the family, schools and hospitals often perpetuate discrimination and are frequently the sites of abuse increases the risk that queer people will be subjected to human rights abuses. J, an intersex person who identifies as gender fluid,\textsuperscript{16} told the ICJ about the humiliation and harassment that he suffered in school. “When I was in the 8\textsuperscript{th} standard, I participated in a state level 100 metre race. The teachers asked me lots of questions and were confused about my gender. They said they will need to do a confirmation test. I ran out of the ground and never participated

\textsuperscript{12} ICJ Interview, Thrissur, July 2016.
\textsuperscript{13} ICJ Interview, Delhi, October 2016.
\textsuperscript{14} ICJ Interview, Kolkata, May 2016.
\textsuperscript{15} ICJ Interview, Thrissur, July 2016.
\textsuperscript{16} Term used to describe gender identity that is non-binary and could vary over time as male, female or fluid.
in sports again," 17 A, a transgender man, recounted his experience when he went to a hospital for a routine medical check up as intimidating and discriminatory. “The doctors at government hospitals are very unaware. They require the “patient” to remove his or her clothes to verify the “case”. This happened to me on the first visit. I was told to take off my clothes to prove my masculinity. When I refused to do so, the doctor said that the fact that you can’t take off your clothes proves that you are not a boy. So he did not even start the treatment.” 18

This discrimination often continues into adulthood, and is carried forward in other avenues, ultimately exposing queer persons to an even greater risk of becoming victims of violence and abuse. In order to secure their livelihoods, queer people are exposed to an increased risk of human rights abuses based on sexual orientation and gender identity. The testimony of a group of launda dancers - men and transgender women who perform at weddings in certain Indian states – is an illustration of the risks faced. They told the ICJ of incidents of violence against the young dancers in the villages where they perform: “At every wedding I have been tortured. People rape [me] after the wedding [was] over - once I was running away from a group of men and this half cut sugarcane went into my foot and I have forever been limping since then. Once a launda dancer was picked up by 25 people and taken to a field. All of them raped her and stubbed 25 cigarettes on her body. Then the last one stabbed her with a corn cob.” 19

Even public spaces are often sites of violence and hostility. A, a transgender man, told the ICJ that accessing public toilets was a huge problem for him. “If I go to the Men’s toilet I’m told to go to the Ladies. If I go to the Ladies I’m sent back to the Men’s. So every time I go out I stop drinking water and control my bladder till I am home or at a known space. Once I had entered men’s toilet and then I could hear them talk about me and get agitated. I was scared they might attack me.” 20

In addition, discrimination and marginalization often drive queer people to engage in activities that make them more likely to fall foul of the criminal law. For example, lack of access to education and economic marginalization means that many rely on sex work and begging as a means of livelihood. 21 The police often harass Hijras 22 and transgender sex workers for soliciting or begging on the street. Owing to the intolerance they often face from their families and communities, transgender persons often use public spaces like parks and toilets for sex work, where the risk of being caught and being

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17 ICJ Interview, Kolkata, May 2016.
18 ICJ Interview, Kolkata, May 2016.
19 ICJ Interview, Kolkata, May 2016.
20 ICJ Interview, Kolkata, May 2016.
22 A socio-cultural category of transgender persons assigned gender male at birth.
subjected to violence, inflicted largely by the police, is greater. Simultaneously, as this report describes in more detail in Chapters II, III and IV, the same prejudices and discriminatory attitudes mean that legal and judicial institutions also fail to offer adequate, if any, protection to queer persons.

While queer persons in India face particular challenges with respect to the legal and justice system, other marginalized groups also face significant difficulties in this regard. For example, research from 2016 demonstrated the financial barriers people living in poverty faced while trying to access justice. Similarly, data has shown that religious minorities and persons from indigenous communities form a majority of the pre-trial detainee population. While this report focusses on the experiences of queer persons, the intersections between being queer and other identities based on gender, caste, economic status, religion, age, etc. that might complicate and exacerbate the difficulties an individual might face cannot be ignored.

D. Summary and recommendations

This report is based on a study of how queer people in India experience the country’s laws and engage with the justice system. Chapter II describes how people in India are criminalized based on their real or imputed sexual orientation and gender identity. Beyond focussing on laws that criminalize queer people, the chapter also looks at laws that regulate legal gender recognition. Section 377 of the IPC and some broad and vaguely worded laws, such as those that criminalize sex work and begging, allow law enforcement officials to persecute people, including through spurious criminal charges and prosecutions, based on their real or imputed sexual orientation and gender identity. Meanwhile, even as legal gender recognition has attained constitutional protection through case law, this Chapter outlines the ICJ’s concerns about the implementation of the law. While provisions for the rights of transgender people are being made, a range of difficulties continue to affect their enjoyment.

Chapter III focusses on harassment, violence and abuse against queer people at the hands of the police, the concomitant lack of accountability, as well as the refusal of the police to file, let alone investigate, abuse complaints brought by queer people. It also describes how human rights violations committed by the police against queer communities - and police behaviour more generally - has a profoundly detrimental effect on the ability and willingness of queer persons to resort to legal avenues to obtain justice and redress for the range of human rights abuses they experience.


Chapter IV describes queer persons’ experiences with lawyers and courts. It also outlines the challenges faced by lawyers assisting and representing queer individuals. It discusses the importance of a network of lawyers able and willing to represent queer persons, legal aid, and the power of courts.

Chapter V outlines India’s international legal obligations in this regard, and analyses the degree to which they have been met.

In this report, the ICJ offers recommendations to the Indian authorities with a view to ending discrimination and violence on the basis of sexual orientation and gender identity, and bringing India in line with its obligations under international human rights law. The main recommendations are set out immediately below (a fuller set of recommendations appears in the Conclusion of this report).

The Indian government must ensure that laws, policies and practices fully comply with international human rights law and standards on access to justice, in particular the right to a remedy and reparation, the prohibition of discrimination on the basis of SOGI, the right to equality before the law and equal protection of the law, and take into account the needs of queer people and their experiences, including the specific obstacles they face in seeking and obtaining justice and redress. More specifically, the Government must:

• Ensure that police officers promptly register and investigate any complaint regarding violence or any other criminal act filed by a queer person and/or on their behalf;

• Provide legal and sensitization training relating to sexual orientation and gender identity to lawyers and judges under the State and District Legal Services Authority along with outreach programmes to facilitate queer individuals’ access to the justice system;

• Repeal section 377 of the Indian Penal Code and vaguely worded criminal laws that invite discriminatory application or otherwise provide scope for arrests solely based on prejudice – including those mentioned in Chapter II – or substantially revise them to ensure there is no scope for abuse in enforcing them;

• Withdraw the Transgender Persons (Protection of Rights) Bill 2016 as currently drafted, and engage in meaningful and substantial public consultation with members of the transgender community;

• Ensure that any process introduced for the legal recognition of gender identity is consistent with international human rights law and the NALSA decision; and fully respects the principle of self-identification of gender identity.
This report is based on research conducted in India from January to October 2016. The core structure of the report and much of its findings have been derived from a series of qualitative interviews that took place across a period of 10 months. In all, ICJ interviewed 150 persons. The interviews were conducted with individuals who identified as gay, lesbian, bisexual and transgender, including trans-men and trans-women, along with non-binary individuals. Despite concerted efforts, intersex persons were unfortunately under-represented in the research. Interviews were also conducted with lawyers and activists, some of whom identified as queer themselves.

In-person interviews were conducted across nine cities, reflecting geographical diversity: Delhi in the north; Kolkata, Guwahati and Shillong in the east; Mumbai and Pune in the west; and Bangalore, Kochi and Chennai in the south. The choice of these cities was also based on access to activist networks. Most interviews involved conversations with a single individual or a group of two or three persons. In some instances, the interviews took the form of a focus-group discussion. The interviews were largely conducted in a

25 This report follows the understanding of these terms as contained in the UNHCR Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees, 23 October 2012, HCR/GIP/12/01 (hereafter: the UNHCR SOGI Guidelines).

26 Gay is a term often used to describe a man whose enduring physical, romantic and/or emotional attraction is to other men, although gay can also be used to describe both gay men and women (lesbians).

26 Lesbian is a woman whose enduring physical, romantic and/or emotional attraction is to other women. Lesbians often suffer multiple discrimination due to their gender, social and/or economic status, coupled with their sexual orientation. See: the UNHCR SOGI Guidelines.

27 Bisexual describes an individual who is physically, romantically and/or emotionally attracted to both men and women. The term bisexuality tends to be interpreted and applied inconsistently, often with a too narrow understanding. Bisexuality does not have to involve attraction to both sexes at the same time, nor does it have to involve equal attraction to or number of relationships with both sexes. See: the UNHCR SOGI Guidelines.

28 Transgender describes people whose gender identity and/or gender expression differs from the biological sex they were assigned at birth. Transgender is a gender identity, not a sexual orientation and a transgender individual may be heterosexual, gay, lesbian or bisexual, NB: the term transgender may include, but is not limited to, transsexuals (an older term which originated in the medical and psychological communities), cross-dressers and other gender variant people. See: the UNHCR SOGI Guidelines.

29 Non-binary is a term used to denote gender identities that do not fit within or challenge the conventional binary gender identity notions of male and female.

30 This report uses the understanding of intersex as developed by the UN Office of the High Commissioner of Human Rights. Intersex is an umbrella term used to describe a wide range of natural bodily variations in sex characteristics. Some persons, including those with intersex traits, use other terms. In medical contexts, the term 'disorders of sex development', also abbreviated as DSD, is also frequently used, by medical professionals as well as by parents of intersex persons and some intersex persons themselves. This term is objected to by many intersex persons and organizations as inaccurate since intersex people may not have health issues or pathological disorders and as pathologising, stigmatizing and encouraging medically unnecessary surgeries and treatment on the sex characteristics of intersex children/adults. The word ‘hermaphrodite’ is used by some intersex persons, though rejected by others as offensive and inaccurate. Some persons refer to their specific diagnostic or chromosomal label for their variation and may or may not use the term intersex as well. The terms intersexual and intersexuality are sometimes used, particularly in other languages, though they are rejected by many intersex organizations as feeding the misconception that intersex refers to sexual orientation rather than biological and/or physical characteristics. Intersex persons may have any sexual orientation or gender identity.
mix of English and Hindi, with the help of interpreters when participants spoke in other languages.

The participants were asked a set of questions that followed a previously prepared template; however, the content of the interviews expanded beyond the template whenever relevant. In addition to the interviews, Right to Information (RTI) applications were filed requesting information from various government departments, both on the enforcement of the law against queer individuals and on gauging how legal entitlements have operated. Specifically, RTIs were filed to obtain information relating to: a) cases filed under Section 377 and Section 389 of the Indian Penal Code, b) civil and criminal cases more broadly where the accused, victim or complainant was an LGBTI identifying person, c) implementation of the NALSA judgment which guarantees a range of rights for transgender persons d) statistics on transgender detainees in prison along with information on arrest and detention of transgender sex workers under the Immoral Trafficking Prevention Act. As the report notes in greater detail in Chapter II, the RTI application process has not yielded the expected results for a range of reasons and, therefore, it has proven less reliable. Nevertheless, the applications have provided some useful information to better understand the extent of prosecution under Section 377.

In this report, the ICJ has withheld the names and, in some cases, other identifying details (e.g. location or organizational affiliation), of some of the people who shared their stories with us, to avoid their being identified. Instead, initials have been used.
II. Relevant criminal laws and the laws facilitating legal gender recognition

This chapter focuses on the two significant types of law that impact queer persons in India. The first is a set of laws that are used to criminalize queer persons on the basis of their real or imputed sexual orientation and /or gender identity. Part 1 examines section 377, and a range of vaguely worded laws that effectively criminalize queer lives and identities in India. The second are laws that purportedly facilitate legal gender recognition and provide for welfare measures. Part 2 considers the Indian Supreme Court’s seminal judgment in *NALSA v UOI*, as well as subsequent efforts at drafting legislation to give effect to the human rights of transgender people, including, chiefly, the right to legal recognition of the gender identity of one’s choice. It also examines the difficulties that people seeking to change gender identity in India have faced thus far.

A. Use of Criminal Law against Queer Persons

The use of laws to criminalize, imprison and persecute people on the basis of their real or perceived sexual orientation and gender identity has obvious and serious impacts on people’s enjoyment and exercise of the full range of their human rights. Laws like section 377 of the Indian Penal Code which penalize “carnal intercourse against the order of nature” are inconsistent with the rights to privacy, equality, dignity, freedom of expression, and also impact access to health care.

Furthermore, law enforcement officials throughout India use other laws, such as those relating to beggary and public nuisance, to harass or detain people in connection with their real or purported sexual orientation and / or gender identity. These laws either criminalize livelihoods on which some queer persons depend (e.g. begging or sex work), or are vaguely worded (e.g. public nuisance), making it easier for law enforcement officials to act on their prejudices and use these criminal provisions to harass or otherwise abuse people on the basis of their real or imputed sexual orientation and / or gender identity.

i. Section 377

Of the laws that impact queer individuals, the most widely known is Section 377 of the Indian Penal Code. Section 377 states:

Unnatural offences.

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 to ten years, and shall also be liable to fine.
Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

Section 377 was introduced in India through the IPC in 1860, when India was still a British colony. The intent behind the provision was clearly to criminalize individuals whose real or imputed sexual relations the colonial government found to be “unnatural” and undesirable. The IPC was the template for penal legislation introduced in other British colonies. As a result, several countries inherited some version of section 377 in their penal codes. The United Kingdom has since decriminalized same-sex conduct, however, several ex-colonies continue to grapple with the impact of such laws.

In 2001, the constitutionality of section 377 was challenged before the Delhi High Court on the grounds that it violated the right to health by impeding HIV/AIDS prevention efforts; that it violated the right to equality through the persecution and prosecution of LGBT individuals under the guise of a seemingly neutral law; and that it violated the right to privacy through controlling the intimate personal lives of individuals. In the landmark 2009 case of Naz Foundation v Govt. of NCT of Delhi, the Delhi High Court read down the application of section 377, holding that, “We declare that Section 377 IPC, insofar it criminalizes consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Constitution.”

The Court accepted that sexual conduct was about identity as well as privacy. Relying on a variety of sources, the Court noted “the sense of gender and sexual orientation of the person are so embedded in the individual that the individual carries this aspect of his or her identity wherever he or she goes”. The Court concluded that Section 377 “denies a person’s dignity and criminalises his or her core identity solely on account of his or her sexuality”. This criminalisation of identity denied “a gay person a right to full personhood which is implicit” in the notion of life under Article 21. The Court was concerned with the stigmatising effects of Section 377 even when it was not enforced. Referring to evidence that showed Section 377 was used to brutalise and harass, the Court compared the criminalisation of identity to the Criminal Tribes Act 1871, saying “These communities and tribes were deemed criminal by their identity, and mere belonging to one of those communities rendered the individual criminal.”

However, various non-state groups appealed this ruling before the Supreme Court. While it was on appeal, lawyers used the Naz ruling to try to push for greater recognition of the rights of queer persons in Court, including in the

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33 Naz Foundation v Govt. of NCT of Delhi, 160 Delhi Law Times 277 (hereinafter: Naz Foundation).
case of Dr. Siras’s suspension. A With the Suresh Kumar Koushal decision in December 2013, the Supreme Court reversed the 2009 Delhi High Court ruling, effectively recriminalizing homosexuality. The petitioners have challenged this ruling since, and on 2 February 2016, the Indian Supreme Court referred a “Curative Petition” in this case to a five-judge bench of the same Court. At the time of writing this report, this case is still pending and the new bench has not been constituted.

Section 377 has been used to prosecute and persecute people for their real or purported engagement in consensual same-sex sexual conduct since its introduction in 1860. The section below explains in more detail how section 377 operates in this manner, assessing its use to prosecute, to persecute, and as a barrier to accessing justice.

**Prosecution:** In assessing how section 377 is used to prosecute queer persons, the ICJ examined available court records, academic writing, records of the National Crime Records Bureau (NCRB), and media reports. Additionally, the ICJ filed right to information applications at several police stations to find out how many cases had been filed under section 377, and which ones amongst these related to consensual, adult sexual conduct.

The media has reported on instances of queer persons being prosecuted for consensual sexual encounters. In 2013, 13 men were arrested under section 377 in Hassan. In July 2014, the Bangalore police arrested eight people under section 377. In this case, seven men were blackmailing the eighth

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34 For example, the case of Dr. Shrinivas Ramchandra Siras v. Aligarh Muslim University, challenged the suspension of a professor on allegations of "immoral sexual activity", as well as other actions taken by the university in the course of this suspension. The petitioners used the Naz Foundation judgement to argue that the petitioner is entitled to the fundamental rights to his privacy, dignity, equality and non-discrimination of the basis of sexual orientation. On this issue, the Court held that "The question of the applicability of the judgment of Naz Foundation Vs. Union of India (Supra) does not presently arise in the case as the allegations are not the basis of any criminal offence, charge or conviction". The order is available here: http://www.lawyerscollective.org/files/Siras\%20Order.pdf


36 A curative petition is a judicial remedy developed by the Indian Supreme Court, which may be used in certain specific circumstances. For more information about curative petitions, and the specific curative petition in the section 377 matter, please see: ICJ “Briefing Paper: The Section 377 Curative Petition” available at: http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2016/03/India-QA-art-377-Advocacy-Analysis-brief-2016-ENG.pdf


39 This analysis was restricted to judgments from the high courts and Supreme Court in India, and does not include the lower courts. This was largely due to difficulties in comprehensively accessing judgments from all lower courts in India.

40 For more details on these cases, see Dignity First: One Year of Resistance to Recriminalization of LGBT lives, available at http://altlawforum.org/campaigns/dignity-first-one-year-of-resistance-to-recriminalisation-of-lgbt-lives/


after having sex with him. In October 2014, a man in Bangalore was arrested under section 377 after his wife caught him having an affair with another man on camera.43

Most cases involving section 377 in the high courts and Supreme Court involve the prosecution of child sexual abuse and rape. During their arguments in the Naz Foundation case, the Government had sought to justify “the retention of Section 377 IPC on the statute book broadly on the reason that it has been generally invoked in cases of allegation of child sexual abuse and for complementing lacunae in the rape laws”.44 However, with the enacting of the Protection of Children from Sexual Offences Act in 2012 and the amendment to India’s rape laws in 2013, reliance on section 377 is unnecessary for the prosecution of child sexual abuse and rape.

Given that the appellate courts represent only a fraction of cases registered or prosecuted under section 377, the ICJ also examined the complaints filed under section 377 at police stations. The NCRB, which compiles data on the use of criminal laws in India, only began publishing information on section 377 in 2014. The ICJ filed a right to information application requesting this information in respect of the period between 2005 and 2015. In response, the ICJ was told that this information had not been collected prior to 2014.45 According to the NCRB, 1279 persons in 2014 and 1491 in 2015 were arrested under section 377. However, it is not clear how many of these cases involve real or purported consensual sex and how many involve non-consensual sex.

The ICJ filed RTI applications requesting information about the use of section 377 in 4 States (Punjab, Haryana, Uttar Pradesh and Delhi) at the start of 2015. The RTIs requested information about the number of complaints filed and arrests made under section 377 across the period of 2005-2015, along with the gender of the accused and alleged victims involved. These efforts were complementary to similar requests filed by other groups, including by the Alternative Law Forum in 2014 in Karnataka, and by the Varta Trust in 2015 in Kolkata. However, this exercise presented two main challenges, making it difficult to draw any conclusion on the use of section 377 to prosecute queer persons for their real or imputed consensual sexual conduct.

First - Each State the ICJ approached collected, compiled and released this information differently. Many police stations simply did not respond. Others provided data about numbers of people charged and arrested but refused to provide additional details. The fragmented nature of the response and available data make it difficult to provide a conclusive statement about use of section 377. The ICJ’s experience is consistent with the experience of the other groups conducting a similar exercise.

44 Para 11, Naz Foundation.
45 Response on file with the ICJ.
Second – Section 377 contains no requirement for consent, meaning that there is no requirement to make a note of consent or the lack thereof while framing a complaint. The State of Haryana was the only State where nine districts sent the ICJ copies of First Information Reports providing factual details of the offences in question. While the description of some of the offences clearly indicated rape, there was another element of the complaints that was of note. A number of these complaints were filed by a third party, often the father of the victim, in cases where the victim was well above the age of consent or between the ages of 16 and 18. In the complaint, there would be no analysis of voluntariness or consent. The father would simply state in the FIR that accused “ne galat kaam kiya” or “ne dushkarm kiya” [he did a “wrong” or a “bad” act as opposed to using the term “balaatkaar” which would mean rape]. While there is no way of establishing what actually happened in these cases, they do point to an ambiguity around the question of establishing consent in a 377 case.

Persecution: The use of section 377 to persecute queer persons has been well established. As Arvind Narrain has noted, 377 has a “significant role in perpetuating a certain kind of discourse about queer people which classifies groups as criminal and stigmatizes sexual behaviour … The discourse which constructed queer people as ‘unnatural’ and ‘perverted’ therefore has the effect of legitimizing violence against all queer people.”

It is the perception of criminality under Section 377 that is particularly pervasive, and appears to legitimize discriminatory and violent treatment of queer persons. As a lawyer, Sandhya, told the ICJ in an interview, even when the police do not actually use 377, “it is like a Damocles sword”.7 The Supreme Court in the NALSA decision also confirmed this, when it stated “Section 377, though associated with specific sexual acts, highlighted certain identities, including Hijras and was used as an instrument of harassment and physical abuse against Hijras and transgender persons”.8

S, a transgender woman, told the ICJ that when she went to the police to get permission for a pride parade, “The police asked me why we are doing this and told us that 377 is non-bailable. They gave us permission but they were mocking us during the pride”.9 And to the extent that section 377 is a valid law, it is difficult to conduct trainings with police on the rights of queer persons and how they should not be harassed.

The stereotypes and perceptions fostered by section 377 also have an impact on how other individuals, and non-state institutions, treat queer persons. Several people gave the ICJ examples of section 377 being used to blackmail and extort money from queer persons.10 While this behavior is not sanctioned

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47 ICJ Interview, Kochi, July 2016.
48 Para 18, NALSA v UOI.
49 ICJ Interview, Thrissur, July 2016.
50 This has also been recorded in several media reports and other public documents. See, for example: https://scroll.in/article/700121/arrests-for-unnatural-sex-soar-so-do-cases-of-gay-people-being-blackmailed; http://www.caravanmagazine.in/vantage/how-section-377-became-payday-
by section 377, the provision facilitates it, by perpetuating homophobic attitudes and making it almost impossible for victims of this abuse to access justice. One person told the ICJ how section 377 came up indirectly in his work with respect to queer women.51 In one specific instance a queer woman was refused housing, with the landlord citing the existence of section 377. In another incident, two women wanted to live together, but their families threatened them, saying they would file a case under section 377.

**Access to Justice:** The fact that section 377 exists also operates as a threat that prevents people from accessing rights and protections that they are entitled to. For example, section 377 stops queer individuals from approaching the police when they are the victims of criminal acts. Two notable instances are that of blackmail and intimate partner violence. Queer individuals subjected to intimate partner violence or otherwise assaulted or harassed following same-sex encounters are unable to report it to the police because of fears of effectively exposing themselves to charges under section 377.

Poongkhulali, a lawyer, has worked on cases where married couples want a divorce because one of the partners identifies as queer. “In the matrimonial cases I handle, 377 is very much in the air ... it’s always that threat looming” she told the ICJ. She spoke about marriages where the man was gay but was forced to marry. “No one will ever have enough evidence, but they will use [377] against him to shame him. It allows people to bargain for higher settlements than even what they would have gotten in court. People will take big loans just to end this”. She told the ICJ of a case where a gay man had been married against his wishes. The wife’s family suspected he was gay, and used material from gay dating sites to gather evidence regarding this. “Then they brought all the transcripts as “proof” and asked him to pay up and get out of the marriage”.52

Section 377 also makes it impossible for queer persons to rely on legal provisions that could potentially protect and support them. As per section 389 of the Indian Penal Code:

> Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation, against that person or any other, of having committed, or attempted to commit an offence punishable with death or with imprisonment for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if the offence be punishable under section 377 of this Code, may be punished with imprisonment for life.

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51 ICJ Interview, Kolkata, May 2016.
52 ICJ Interview, Chennai, July 2016.
Section 389 makes it an offence to blackmail people based on allegations that they engage in conduct that is punishable under section 377. Potentially, it provides a clear remedy for instances in which queer persons are blackmailed or otherwise the victims of extortion. However, this provision is rarely if ever used. ICJ filed RTI applications in police stations in Delhi, asking how many complaints had been filed under this provision regarding section 377. No such cases had been filed, as per the response from police stations.

Vinay Chandran, Executive Director of Swabhava Trust (an organization working on the rights of queer persons in Bangalore), told the ICJ that he had referred cases of blackmail to lawyers, but they were afraid to take it forward because they would put the client at risk under section 377. He said he was “in a quandary about it since lawyers don’t seem to be helping”. He told the ICJ about a case where an individual was accosted by a group of men while having sex with another man in a hotel. They barged into the room and beat him up and robbed him. The victim was in shock and did not take any legal action since he did not want any more attention. In Pune, Maharashtra, N, a gay man, also noted that lawyers in many cases discourage victims from filing a complaint under this section due to fear of exposing themselves to charges under section 377. One lawyer in Chennai told the ICJ “One time we came close to filing [a case on extortion], but as a matter of strategy, no one wants to admit they are gay”. This was also echoed in ICJ interviews with organizations working with queer communities, like SAATHIII, who told the ICJ that in cases of blackmail and extortion, while lawyers suggested they approach the police, they advised them to keep the question of sexuality out of the picture.

The fact that section 377 exists means that queer people often fear going to court or reporting crimes, since they face the threat of criminalization themselves. Lawyers are also aware of this. “If you go to court, you are exposing them to 377, to street harassment, legal harassment. There is very little you can do with courts in so far as the identity [i.e. being queer] is taboo and illegal,” one lawyer told the ICJ. Other lawyers have also said that section 377 prevents the development of possibly helpful precedent in courts.

One notable exception to the non-use of Section 389 comes from the account of Vijay Hiremath, a lawyer based in Mumbai. He noted how in a recent case he filed for a client under the section that a charge-sheet was eventually framed by the Magistrate. As he noted, usually the magistrates do not frame charges under the Section, possibly because it is not well understood, and instead opt to frame the case as a robbery matter. In this particular case, the

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53 ICJ Interview, Bangalore, July 2016.
54 ICJ Interview, Pune, September 2016.
55 ICJ Interview, Chennai, July 2016.
56 ICJ Interview, Chennai, July 2016.
57 ICJ Interview, Chennai, July 2016.
58 ICJ Interview, Mumbai, September 2016.
lawyers of the accused opposed the magistrate’s order, which was then upheld by the Sessions court, and now stands pending before the Bombay High Court. Even as the matter is pending before the Court, Vijay noted he was quite hopeful that prosecution would take place under section 389. While the possibility of using section 389 to prosecute persons for blackmail and extortion is a step forward, it cannot be the ultimate solution to protecting queer persons. This is only possible if section 377 is repealed, and the stereotypes and persecution fostered by section 377 are challenged.

The ICJ considers that laws criminalizing real or purported engagement in consensual sexual relations, including extramarital sex and premarital sex - whatever the sexual practice, proclivity and the gender identity or expression and/or sexual orientation of the persons concerned - contravene international human rights law and standards, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Legal provisions criminalizing consensual sexual relations necessarily result in violations of, and generally impair the exercise of, a number of rights. These include the rights to dignity; equality, including equality before the law and equal protection of the law; non-discrimination; liberty and security of person; privacy; opinion and expression; association and peaceful assembly.

Criminalization of some forms of sexual conduct is not inconsistent with human rights law, e.g. non-consensual sexual activity, criminalization of sexual acts in public. Having said that, it is crucial that the relevant criminal provisions be non-discriminatory and be applied in a non-discriminatory fashion, i.e. they would apply irrespective of SOGI. UN human rights Treaty Bodies and independent human rights experts have repeatedly urged States to repeal laws criminalizing homosexuality.59 Further, they have called attention to the ways in which the criminalization of consensual same-sex sexual conduct legitimizes prejudice and exposes people to hate crimes and police abuse, and have recognized that it can lead to torture and other ill-treatment.60 Laws and regulations that directly or indirectly criminalize consensual same-sex sexual orientation or conduct provide State actors with the means to perpetrate human rights violations, and enable non-State actors

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59 E.g., Human Rights Committee, Toonen v Australia (Communication 488/1992, 4 April 1994), UN Doc. CCPR/C/50/D/488/1992. The 2015 OHCHR SOGI Report, UN Doc. A/HRC/29/23, notes: “States have an obligation to protect the rights to privacy, liberty and security of the person, including the right not to be subjected to arbitrary arrest and detention. United Nations mechanisms have called upon States to fulfill these obligations by repealing laws used to punish individuals based on their sexual orientation and gender identity, including laws criminalizing homosexuality and cross-dressing, and have rejected attempts to justify such laws on grounds of the protection of public health or morals. States must refrain from arresting or detaining persons on discriminatory grounds, including sexual orientation and gender identity” and that “States that criminalize consensual homosexual acts are in breach of international human rights law since these laws, by their mere existence, violate the rights to privacy and non-discrimination. Arrests and the detention of individuals on charges relating to sexual orientation and gender identity – including offences not directly related to sexual conduct, such as those pertaining to physical appearance or so-called ‘public scandal’ – are discriminatory and arbitrary”.

60 E.g., see Born Free and Equal, Sexual Orientation and Gender Identity in International Human Rights Law, Office of the High Commissioner for Human Rights, HR/PUB/12/06, 2012, p. 33; and the Report of the UN Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, UN Doc.: A/56/156, 3 July 2001, para. 20 and, generally, paras 18-25.
to persecute individuals on account of their real or imputed sexual orientation and/or gender identity with impunity.\textsuperscript{61}

\textit{ii. Other laws used to criminalize queer persons}

Section 377 is not the only provision used to detain and harass queer persons. ICJ’s interviews with members of the queer community in India and with lawyers, as well a review of media reports and academic literature, indicate that other legal provisions are used to harass, blackmail, extort money from, arbitrarily arrest, detain and prosecute people on the basis of their real or imputed sexual orientation or gender identity. These include laws that do not expressly refer to sexual orientation or gender identity – but whose provisions are drafted in a vague and broad manner (e.g. nuisance laws), allowing the police to rely on them to target queer persons wholly or in part because of their prejudice. These laws often end up being abused and are used to effectively criminalize queer people simply for their presence in a particular “public space”, or because of their engagement in certain activities (e.g. sex work and begging).

A non-exhaustive list of these laws is below:

\textbf{Anti-Beggary laws:} Several Indian laws criminalize begging. Begging is a significant source of livelihood for many transgender persons given that they are often discriminated against and are often unable to secure alternative forms of employment. As a result, transgender persons who earn their income through begging are more vulnerable to abuse and harassment by the police through such anti-beggary laws. For example, the Indian Railways Act punishes begging in a railway carriage or station with imprisonment for up to a year or with a fine of INR 2000 [approximately US$ 30].\textsuperscript{62} Several people told the ICJ of instances where the police had harassed or extorted money from them when they were begging on trains.\textsuperscript{63} Similarly, the Bombay Prevention of Begging Act allows a police officer to “arrest without a warrant any person who is found begging”.\textsuperscript{64} In November 2014, over 150 transgender persons were arrested under the Karnataka Prohibition of Beggary Act, 1975 and sent to a “beggars colony”. Activists stated that most

\textsuperscript{61} As the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has noted: "sanctioned punishment by States reinforces existing prejudices, and legitimizes community violence and police brutality directed at affected individuals." See Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/HRC/14/20, 27 April 2010. The UN Special Rapporteur on extrajudicial executions noted that criminalization increases social stigmatization and made people "more vulnerable to violence and human rights abuses, including death threats and violations of the right to life, which are often committed in a climate of impunity", A/HRC/57/138, para. 37.


\textsuperscript{63} ICJ interviews in Guwahati and Shillong, May 2016.

\textsuperscript{64} This Act also applies to Delhi: http://delhi.gov.in/wps/wcm/connect/f2214e0043383b63b2d1f3cf71a315bd/THE+BOMBAY+PREVENTION+OF.pdf?MOD=AJPERES&MOD=AJPERES&IMOD=-13628690048CACHETID=f2214e0043383b63b2d1f3cf71a315bd
of those arrested were not even begging at the time of their arrest. It is for this reason that transgender rights activists have strongly opposed a provision in the latest draft of the transgender rights bill, which also specifically criminalizes begging [please see later in this section for more information about the draft transgender rights bill].

Nuisance laws: Section 268 of the IPC states: “A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right”. Section 290 sets out the punishment for those found guilty of the offence. As per this section, those found guilty can be fined up to INR 200 [approximately US$ 7]. As the above example shows, “nuisance laws” often feature vague concepts and are phrased quite broadly, and thus are open to abuse. Section 290, cited above, for example, appears to effectively allow arrest simply for causing “annoyance to the public”; as a result, it is often used against queer persons. For example, ICJ interviewed F, whose testimony was recounted in the beginning of this report, who was arrested under this provision. Similar provisions are also found in several State level police acts.

Immoral Trafficking Prevention Act: While Indian laws do not criminalize sex work per se, they do criminalize several aspects of it, including “soliciting” and “living on the earnings of prostitution” through the Immoral Trafficking Prevention Act [“ITPA”]. Many transgender persons rely on sex work as a means of livelihood. There is also a perception that transgender persons are involved in sex work, even when they may not be. The police often use legal provisions designed to regulate sex work against transgender persons, to arrest and detain them. A fact finding report by the People’s Union for Civil Liberties (Karnataka) in 2004 noted the human rights violations faced by transgender sex workers, and stated that the ITPA has “provided the legal basis for arrest and intimidation of the transgender sex worker population”.

Laws regulating the police: Police often rely on provisions in state-level police laws to harass queer persons. These state-level police laws are the legal basis for certain police powers, and also set out specific, state-level criminal offences and their punishments. The ICJ interviewed two transgender


67 For example: Section 4 punishes "Punishment for living on the earnings of prostitution"; Section 7 punishes "Prostitution in or in the vicinity of public place"; and Section 8 punishes "Seducing or soliciting for purpose of prostitution".

women and one gay man who were arrested in April 2016 only because they were inhabiting a public space at a late hour, on the wrongful allegation of causing a “public nuisance” under the Meghalaya Police Act. They were arrested at 10 pm and held in police custody overnight; eventually, they told the ICJ they had to pay a fine of INR 5000 [approximately US$ 74] each to be released. One of the transgender women arrested was 17 years of age.59 Another person was similarly subject to wrongful arrest for ‘riotous behavior’ under the Kerala Police Act.

In some cases, such police acts have expressly given the police broad powers to regulate queer persons. For example, in 2012, the government of the State of Karnataka amended its police act to add section 36A. This provision gave the commissioner of police the power to “regulate eunuchs”, which included “preparation and maintenance of a register of the names and places of residence of all eunuchs residing in the area under his charge and who are reasonably suspected of kidnapping or emasculating boys or of committing unnatural offences or any other offences or abetting the commission of such offences”.70 In January 2016, the Karnataka Sexual Minorities Forum approached the High Court of Karnataka arguing that the provision was unconstitutional.71 In the course of these hearings, the government agreed to amend section 36A, drop the word “eunuch” from the provision, and replace it with “person”. In February 2017, newspapers reported that the word “eunuch” was replaced with “person” through a gazette notification.72

In many instances, such laws violate the right to freedom from arbitrary deprivation of liberty. The Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity clearly say that states must eliminate “vaguely worded criminal law provisions that invite discriminatory application or otherwise provide scope for arrests based on prejudice”.73

Furthermore, the 2015 Report of the Office of the UN High Commissioner for Human Rights has noted that, “[h]uman rights mechanisms continue to emphasize links between criminalization and homophobic and transphobic hate crimes, police abuse, torture, family and community violence and stigmatization, as well as the constraints that criminalization puts on the work of human rights defenders. The Special Rapporteur on freedom of religion or belief has noted that these laws may give a pretext to vigilante groups and

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59 “ICJ Interview, Shillong, May 2016.

70 This provision of the Karnataka Police Act is similar to provisions in the Criminal Tribes Act of 1871, a colonial law like section 377, which amongst other things contained provisions for the regulation of “eunuchs” in part II. The Act declared as criminal “classes of persons” who it assumed were predisposed to the “systematic commission of non-bailable offenses”. The Criminal Tribes Act was heavily criticized and finally repealed in 1949.


other perpetrators of hatred for intimidating people and committing acts of violence”. Particular attention should be paid to the lack of equality before the law and equal protection of the law, as well as access to justice, including to an effective remedy, arising as a consequence of criminalization.

The OHCHR has stated that “States have an obligation to protect the rights to privacy, liberty and security of the person, including the right not to be subjected to arbitrary arrest and detention. United Nations mechanisms have called upon States to fulfil these obligations by repealing laws used to punish individuals based on their sexual orientation and gender identity ... States must refrain from arresting or detaining persons on discriminatory grounds, including sexual orientation and gender identity.”

B. Legal Gender Recognition

The legal recognition of a person’s chosen gender identity is crucial to ensuring their full citizenship and to ensuring access to and enjoyment and exercise of a range of human rights. It is integral to their personality and is recognized as being one of the most basic aspects of self-determination, dignity and freedom. Failure to provide for full legal recognition of one’s chosen gender identity has meant that transgender persons have often been denied the full enjoyment and exercise of several human rights, including the right to vote (article 25, ICCPR), education (article 13, International Covenant on Economic, Social and Cultural Rights, ICESCR), work (article 6, ICESCR), non-discrimination, privacy, freedom of expression, and access to accurate identity documents. The judgment of the Indian Supreme Court in the case of NALSA v UOI of India was seminal in upholding transgender persons’ right to their chosen, self-identified gender identity, as

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74 2015 OHCHR SOGI Report.
75 2015 OHCHR SOGI Report.
76 Article 25: Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions ... (b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors.
77 Article 13 (1): The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
78 Article 6: The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.
79 Article 2 (2), ICESCR: The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
80 Article 17 (1), ICCPR: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
81 Article 19 (2), ICCPR: Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
well as putting in place other essential welfare measures. However, noted in this chapter, gaps in legal knowledge and lack of access to lawyers and legal aid mean that transgender persons have faced problems in accessing these entitlements.

i. National Legal Services Authority v. Union of India

On 15 April 2014, the Indian Supreme Court took an important step towards ensuring legal recognition of gender identity with the delivery of its landmark judgment in the case of NALSA v UOI. The Court upheld transgender persons’ right to their chosen, self-identified gender identity, and declared that Hijras, Eunuchs, apart from binary gender should be treated as the third gender by the government, and that state governments and the Central government must uphold transgender persons’ right to decide their self-identified gender, and grant legal recognition of the same.82

The Court grounded its reasoning on the fundamental rights to equality, non-discrimination, freedom of expression and dignity. The Court held that non-recognition of their gender identity denied transgender persons equal protection of the law. Discrimination is prohibited under the Indian Constitution on a number of specified grounds, which includes “sex”, and the Court read the term “sex” to include “gender identity”; it interpreted the right to freedom of speech and expression as including the right to expression of one’s self-identified gender, which could be expressed through dress, words, action, behavior or any other form; and the Court found that since gender constituted the core of one’s sense of being, as well as an integral part of a person’s identity, recognition of one’s gender identity lies at the heart of one’s fundamental right to dignity.

Specifically, the Court directed the Central and state governments to: (1) establish affirmative action measures (e.g. quotas) with a view to increasing the presence of transgender persons in educational institutions and public appointments; (2) operate separate HIV Sero-surveillance Centres for transgender persons; (3) make it illegal to require sex reassignment surgery and akin medical procedures as necessary to assert one’s gender identity; (4) address the problems transgender persons face, such as “fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma”; (5) provide medical care for transgender persons in hospitals, and separate toilets; (6) frame social welfare schemes for their benefit; (7) implement public awareness schemes so transgender persons feel “that they are also part and parcel of the social life and be not treated as untouchables”, and take measures to “regain their respect and place in the society”.

Several transgender persons told the ICJ about the beneficial impact of the NALSA decision on their day-to-day life. The Supreme Court’s acknowledgment of transgender persons’ rights to be free from discrimination, to equality and to dignity meant that people felt an increased

82 Para 129, NALSA v UOI.
sense of confidence in asserting themselves in public spaces. Anandam, a sex workers collective based in Kolkata, for example, told the ICJ of an incident involving transgender sex workers from the collective. “During a festival, we were at a temple. There were two lines - one for men and one for women. If we stood in the line for men, they would harass us, if we stood in the line for women they also look at us in disgust. So we went to the temple authorities and told them about the judgment”. S, a transgender woman, said “We have used the NALSA judgment when we were negotiating with the Police once when they were arresting us. We asked for female police to arrest us.”

Notwithstanding the NALSA judgment’s groundbreaking acknowledgment of the human rights of transgender people, the decision is silent with respect to ongoing criminalization of people for their engagement in consensual same-sex relations in India under section 377 of the IPC.83

Thus, while the NALSA judgment guarantees transgender persons the full range of their rights, their right to freely engage in consensual sexual relations remains restricted by section 377, notwithstanding India’s obligations under international human rights law to decriminalize consensual sexual relations. As M, a transgender woman, told the ICJ “See, we have got the gender right. But [it’s as if] we’ve got our hands but we won’t be able to do any work. Gender right is there, [but] sexual right is not there. So, are we expected to live a life of an ascetic, lost in meditation?” Since then, a group of transgender persons have also joined the curative petition against section 377 as affected parties.84

ii. Transgender Rights Legislation

There have been some advances toward implementing the NALSA decision, but nearly three years have gone past since the judgment and some of its core promises remain unrealized. Central and State governments have taken steps towards the implementation of the judgment.85

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83 In para 18 of the judgment, in NALSA v UOI, the Supreme Court stated: “A Division Bench of this Court in Suresh Kumar Koushal and another v. Naz Foundation and others [(2014) 1 SCC 1] has already spoken on the constitutionality of Section 377 IPC and, hence, we express no opinion on it since we are in these cases concerned with an altogether different issue pertaining to the constitutional and other legal rights of the transgender community and their gender identity and sexual orientation.”

84 This case is discussed in detailed in Chapter II (i) of this report.

85 Agencies of the Central Government have put in place measures on transgender rights following the NALSA decision. For example, the Ministry of Social Justice and Empowerment constituted an Inter-ministry Coordination Committee, which was primarily responsible for coordinating actions on the recommendation of the Expert Committee on Transgenders. The Ministry of Information and Broadcasting advised their media units to publicize transgender issues while disseminating their support programmes. The Ministry of Labour and Employment directed all states in the country to provide vocational training to transgender individuals under a Skill Development Initiative Scheme. State governments have also taken some steps. For example, Chhattisgarh announced a two per cent housing quota for transgender persons. Chhattisgarh and West Bengal have also announced plans to set up a Transgender Welfare Board. Kerala released its ‘State Policy for Transgenders in Kerala’ in 2015. The policy reaffirms the right to self-identification, and seeks to ensure equal access to social and educational policies, to legal institutions, and freedom from violence to transgender persons. It also envisages the setting up of a Transgender Justice Board. The state of Maharashtra also announced a Transgender Welfare Board to, among other things, provide access to education, employment, health and legal aid for the transgender community.
However, the passage of comprehensive transgender rights legislation that respects, protects and fulfills the full range of transgender persons’ human rights, including the right to self-identified gender identity, is key to achieving the full implementation of the directions and promises in the NALSA judgment.

In April 2015, the Rajya Sabha, the Upper House of Parliament, unanimously passed a private members Bill introduced by MP Tiruchi Siva. The “Rights of Transgender Persons Bill” articulated a range of rights for the community, based on the NALSA judgment. Later in 2015, the Ministry of Social Justice and Empowerment made available another draft of a union (i.e. central government) Bill on the same subject on its website, with a number of crucial amendments. The ensuing public consultation on the draft resulted in wide criticism of both its content and the inadequate time provided for the actual consultation.

Subsequently, in 2 August 2016 the Transgender Persons (Protection of Rights) Bill 2016 was introduced in the Lok Sabha (Lower House of Parliament); since then Bill has been referred to a Parliamentary Standing Committee. This draft of the Bill gives rise to several concerns and risks undermining the promises of the NALSA judgment; if enacted and enforced in its current form, the Bill would also contravene India’s human rights obligations, including in respect of its limited definition of who a transgender person is, its failure to make adequate provisions on employment, education and anti-discrimination measures; and with respect to the penalties for relevant offences.

The manner in which the Bill is drafted assumes that transgender persons can only identify as “transgender” and not as “male” or “female”. For many transgender people the decision to change official name and gender, and what to change it to (that is, to the category of “transgender” or “other”, or to either “male” or “female”), is a political decision. Some transgender

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86 The Bill recognized and protected the rights of transgender persons to equality, to life, to free speech, to integrity, to family life??, along with the right to be free from torture and other abuse. It provided for the right to equality of transgender children, and established measures regarding transgender persons’ access to education, employment, social security and health. The Bill established National and State Commissions for Transgender Persons, and an exclusive transgender rights court within each district to adjudicate suits filed on behalf of transgender persons.

87 It put in place a structure for legal gender identity recognition. It deleted, both, the provisions establishing National and State Commissions for Transgender Persons and those designating exclusive transgender courts.

88 Section 2 (i) of the Bill defines a transgender person as someone who is: “(A) neither wholly female nor wholly male; or (B) a combination of female or male; or (C) neither female nor male; and whose sense of gender does not match with the gender assigned to that person at the time of birth, and includes trans-men and trans-women, persons with intersex variations and gender-queers”. Using language like “wholly male” or “wholly female” to define a transgender person inaccurately assumes that gender identity is the same as biological sex. The terms “wholly male” and “wholly female” also reinforce harmful stereotypes and are at odds with transgender persons’ dignity and integrity. For example, they further the misconception that a “wholly male” or “wholly female” identity exists, and that such an identity does not encompass transgender persons. The definition in the Bill also wrongly conflates the definition of an intersex person with that of a transgender person.

persons told the ICJ that they chose the “male” or “female” category because doing so meant that it was more convenient or easier for them to negotiate public spaces. For example, one person described how having documentation saying they were “transgender” was a problem at airports, for example, because it was unclear which line they needed to stand in, how they would be screened at security, etc. For others, however, identifying as “transgender” was a very important political statement.

Furthermore, the Bill puts in place a process for legal gender recognition that undermines one of the core promises of the NALSA decision: the right to self-identified gender identity. This process puts the decision for gender change before two different sets of authorities, each of which is empowered to issue a “Certificate of Identity”. The identity certificate then serves as official proof of the individual’s gender identity, entitling people to change their details in other official identity documents, as well as serving as a tool through which to access rights and entitlements that might accrue to them as transgender individuals. The recognition process set out in the Bill does not explicitly prescribe the requirements for recognition of gender change. The ensuing vagueness increases the discretion of the bureaucratic authorities responsible for issuing the certificate of identity. Furthermore, the draft recognition process does not clarify on what grounds the Screening Committee should issue its recommendation; it does not clarify the grounds on which the Magistrate’s decision is to be made; it does not give a timeframe within which the Magistrate must make this decision; and it does not specify how the applicant can challenge this decision.

While there is a need for strong and progressive legislation that respects, protects and fulfills the full range of human rights of transgender persons, the Bill, as presently formulated, can do more harm than good if it is adopted without certain necessary amendments.

iii. Problems changing Gender Identity

The legal recognition of a person’s chosen gender identity is crucial to ensuring their full citizenship and ensuring access to a range of human rights. It is integral to their personality and is recognized as being one of the most basic aspects of self-determination, dignity and freedom of expression. Failure to ensure legal recognition of a person’s chosen gender identity has meant that transgender persons have often been denied the full enjoyment and exercise of several human rights, including the right to vote, to education, to employment and access accurate identity documents.

Following the decision of the Supreme Court in the NALSA case, and in the absence of clear legislative guidance on this issue, transgender persons in India continue to have to navigate a myriad of unclear administrative barriers to achieve basic legal recognition of their gender. There is no national uniform

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90 Under the Bill, a transgender person may make an application to the District Magistrate for a certificate of identity as a transgender person. On receiving this application, the District Magistrate will refer the application to a District Screening Committee. The Committee makes its recommendations on the application following which the Magistrate will issue the certificate of identity to the applicant.
system in place to issue a new identity card or make changes in existing identity cards. Instead, the department in charge of each identity document put in place its own process for this. There are several options for identity documents in India: passports, adhar cards, ration cards, pan cards, school certificates, driving licenses, and voter identity cards. There is technically no requirement for all identity cards to carry the same name and gender. In fact, one transgender woman showed the ICJ the several identity documents she possessed, showing different names and gender identities, depending on what changes she had been able to make. People can decide to make changes depending on which document they use most. However, transgender persons told the ICJ that they would prefer to have consistency across all documents, which they considered desirable as it would reduce administrative confusion and make the resort to using each relevant identity document easier for the person in question.

The process to issue new IDs or make changes to existing IDs, however, differs depending on the document in question. There are substantive differences across documents. For some documents – like the voter ID – people must register as “other” if they do not want to identify as “male” or “female”. For other documents – like the passport and adhar card – the option given is “transgender”, not “other”. These processes often differ across states as well. In most cases, the process for changing the name and gender on a document involves making an affidavit stating the individual’s preferred name and gender identity; publishing the fact that individuals are changing their name and gender identity, and the preferred name and gender in a local paper; and notifying this in the gazette.

It has been almost three years since the NALSA decision. Reports suggest that several people have already acquired identity cards that reflect their preferred name and gender. This is also corroborated by ICJ interviews with organizations working on these issues, such as Lawyers Collective and SAATHII. However, many people also told the ICJ they have either decided not to change their documents or have found it difficult to for a variety of reasons. Any future legislation on this issue must acknowledge and address these issues to ensure that all persons are able to fully exercise their right to legal recognition of their chosen, self identified gender identity.

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91 Adhar is a 12-digit unique identity number issued by the Unique Identification Authority of India (UIDAI), a governmental agency, which is becoming increasingly necessary to access a range of government welfare schemes.

92 A ration card is a government-issued document, which entitles people to food subsidies and other benefits.

93 A PAN, or Personal Account Number, is an identification code required by everyone paying tax in India. It is also necessary for a range of other financial transactions.

94 ICJ Interview, Thrissur, July 2016.

The lack of clarity around how to officially change name and gender has inhibited people from accessing the process. ICJ was told that in some states, people were told that every gazette notification of a name and gender identity change had to be approved by the state cabinet, which is unnecessarily cumbersome. In another state, people were asked for a residential certificate for any documentation. Residential certificates are usually issued by the village headman, a customary administrative head, and attest to the fact that an individual resides in a certain location. The ICJ was told that village headmen often would refuse to grant residential certificates to transgender individuals, who on many occasions did not have an alternative proof of residence. Furthermore, the requirements differ across documents. For some documents – like passports, aadhar cards, and voter IDs – the process to change gender identity is set out. Others do not – like school certificates - and people found it harder to obtain the desired changes in those.

This lack of clarity has also made it easier for certain authorities to supplement the process with additional, problematic requirements. In one city, the ICJ was told that the authorities were asking for a “gender certificate”, which was being issued for a fee by a private hospital, before allowing for a gender change on documents. In addition to not being officially mandated in any rule, this requirement is inconsistent with the principle of self-recognition. In other states, the ICJ was told that officials were still asking for medical certificates and evidence of sex reassignment surgery, despite the decision in NALSA.

Government officials and lawyers are also not informed about the fact that people are now entitled to their self-identified gender identity, and are therefore unable or unwilling to facilitate changes on documents. A, a transgender man, told the ICJ of his experience trying to change his name and gender identity on documents after making an affidavit: “An officer there laughed at me and asked me if it’s possible for someone to change their gender. I told them that I was called [previous name] earlier and I have changed it to A now and that these transitions are now possible. I told them I had documents to show them. This happened at the District Magistrate’s office. I couldn’t meet the District Magistrate but officers outside told me to leave since they had no information regarding this and they made fun of me. I was trying to talk to them in hushed tones but they spoke loudly and everybody got to know of my issue. I showed them my affidavit and they told me to come back after a month. Like that, an entire year went by and nobody helped me out.” In some cases where people have been unable to get their

96 ICJ Interviews, 2016.
97 ICJ Interview, Guwahati, May 2016.
98 ICJ Interview, Bangalore, July 2016.
99 ICJ Interview, Chennai, July 2016.
100 ICJ Interview, Kolkata, May 2016.
name and / or gender changed in official documents, they have approached courts for relief.  

Officials’ attitudes are also not encouraging and do not help facilitate the process. T, a transgender woman, told the ICJ of her experience getting her voter ID issued as a transgender person: “I went to the magistrate. The magistrate looked me up and down. I got a little scared. But then he processed it. Lots of people there were staring at me. They were wondering where I had come from”.  

In another case, a notary making the affidavit questioned the person as to why he wanted to have his name and gender changed. J, an intersex person, told the ICJ: “Government officials are not aware and ask a lot of uncomfortable questions … anyway, I don’t think I am trans. But there is no provision as intersex, that’s why I’m opting for transgender”.  

Some people are unsure of what benefits would accrue to them as a result of changing their name and gender identity on their documents. They see it as an additional bureaucratic process, which may not be of any concrete assistance. This is particularly true in states where the NALSA judgment did not lead to any concrete welfare schemes for the benefit of transgender persons. As one transgender person told the ICJ, “Some of our friends have started the process [to change their documents]. We haven’t done it yet, as we are not sure of what are the rights and provisions after getting my gender change. Once I see TG people getting education and jobs as third gender, only then we will change our gender there are no government jobs for TG persons, any faculties, benefits or welfare schemes. If we see any changes happening then we will pay money and get it changed.”  

Several people expressed concern about whether officially changing their name and gender identity would have a negative impact on their existing legal entitlements. For example, would people be able to access property that was registered in their birth name and gender? Would they be able to easily access property they would inherit in the future, which would be left to them in their birth name and gender?  

People who had accessed entitlements based on one gender were worried about losing them if they identified as “transgender”, “other” or a different gender. Some transgender men had a

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101 See for example, S. Swapna (Transgender) v. The State Of Tamil Nadu, in the Madras High Court, where the Court ordered the concerned authority to make the necessary changes, saying "When a transgender undergoes a sex reassignment surgery and makes an application thereafter for change of name and sex in the relevant records on the basis of various documents including the certificate issued by the Medical Officer, the concerned authorities are expected to verify the records and make consequential changes in the concerned records. The petitioner cannot be dragged from pillar to post on the ground that there are no rules permitting such changes in educational records. The petitioner has produced sufficient documents to prove her identity", available here: https://indiankanoon.org/doc/125208179/. The Delhi High Court is also currently hearing a similar case, more details are available here: http://www.dnaindia.com/india/report-states-uts-have-to-certify-person-as-transgender-delhi-hc-told-2259360  

102 ICJ Interview, Guwahati, May 2016.  

103 ICJ Interview, Thrissur, July 2016.  

104 ICJ Interview, Kolkata, May 2016.  

105 ICJ Interview, Kolkata, May 2016.  

106 ICJ Interview, Kolkata, May 2016.
job as a result of being considered as falling within the “women quota” or had received a bank loan at special rates given to women. Furthermore, accessing their “Provident Fund” [a provision for post-retirement savings] was a problem.\textsuperscript{107} Some employers refused to allow employees access to their savings if they changed their name and gender. People would have to first withdraw their savings and then initiate the process. And in some instances, it is not possible to withdraw one’s retirement savings unless the concerned employee is actually leaving the organization, which meant that people had to quit their job to ensure they could access their savings after they changed their name and gender.

One person also told ICJ that people who had changed their name and gender on their official documents faced several difficulties in terms of employment, and getting hired.\textsuperscript{108} Other people, who already received certain affirmative action benefits based on their caste or other status, were worried about how these entitlements would intersect with what they might be entitled to as transgender persons once they changed their gender.\textsuperscript{109} Other questions included: what tax bracket would people fall under after the gender change? In instances where personal laws provide different entitlements based on gender (e.g. under Muslim law in India, gender impacts the fraction of property share one is entitled to if parents die intestate), how would people’s rights be understood if they identified as transgender?

\textsuperscript{107} ICJ Interview, Bangalore, July 2016.
\textsuperscript{108} ICJ Interview, Delhi, October 2016.
\textsuperscript{109} ICJ Interview, Bangalore, July 2016.
III. Police Violence and Harassment

For many people, the police represent the first point of contact with the criminal justice system. 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. In light of this, the ICJ is concerned that the police’s negative attitude towards queer people in India puts them at an increased risk of violence from non-State actors as well.\(^\text{110}\)

The purpose of this chapter is to describe how real or perceived sexual orientation or gender identity affect interactions with the police; what particular experiences people interviewed for this report have had; and how such experiences have in turn had an impact on the willingness and ability of queer communities in India to seek justice and redress through formal institutions.

Other marginalized groups in India - including religious minorities and indigenous communities – are also adversely impacted by negative stereotypes and biased attitudes on the part of law enforcement officials. Class and caste perceptions play a large role on the nature of the experience one has with law enforcement. By analogy, women’ rights groups have advocated for police procedures to be more responsive to the needs and realities of women who interact with the justice system. Often, the intersections of these multiple identities can mean that certain persons have particularly bad and extreme experiences with the police.

Not all queer persons would necessarily have the same experience with the police. For example, a person who identifies as transgender in India might have a different experience with the police than someone who identifies as gay, or bisexual, or lesbian would. Police behavior also changes, for example, depending on the region; the perceived class and caste of the queer person involved; and the language used. This section attempts to describe some of these experiences, but it is not exhaustive.

The information reflected in this section is largely anecdotal, and is based on ICJ’s interviews with people, media monitoring and a thorough literature review. A lot of the information relevant for this study is either not documented or is not systematically collected by local, state or the Union governments. For example: when police officers threaten queer persons using certain provisions of the law, their complaints, if any, are rarely officially recorded and indeed often no actual complaint is filed. However, one way to

\(^{110}\) For example, see UNDP, HIV/Transgender Women in India: HIV, Human Rights, and Social Exclusion, Issue Brief, 2010, “Even from police, they face physical and verbal abuse, forced sex, extortion of money and materials; and arrests on false allegations. Absence of protection from police means ruffians find Hijras/TG people as easy targets for extorting money and as sexual objects”, available at: http://www.undp.org/content/dam/india/docs/hijras_transgender_in_india_hiv_human_rights_and_social_exclusion.pdf
document what is happening is by recording the testimonies of the affected individuals. In the context of transgender persons specifically, data on how many transgender persons are detained and under which provisions is not recorded by the National Crimes Records Bureau. As the Expert Committee formed by the Ministry of Social Justice and Empowerment stated, “Cases of atrocities by Police against Transgenders have been highlighted in media and brought to the notice of Courts, although no separate data is maintained by National Crime Record Bureau (NCRB)”.

A. Police Abuse

For harassment [of queer persons] you don’t really need a law. You just need the threat of the uniform.

Kaushik Gupta, lawyer based in Kolkata

Reports and studies have used qualitative data to document the extent of police abuse and violence against queer persons for several years now. For example, a People's Union for Civil Liberties (PUCL), Karnataka report from 2001 recorded instances of police extorting money from, abusing, and illegally detaining persons identifying as gay, bisexual and transgender in Bangalore. A 2003 report by the PUCL also documented similar allegations of police abuse and violence against transgender sex workers. In turn, the Supreme Court acknowledged the existence of a pattern of human rights violations against transgender persons at the hands of the police in its decision in the case of NALSA v UOI, and identified how the lack of legal gender recognition increased the risk that transgender people would become victims of abuses perpetrated by the police as well as by private individuals.

In this context, NALSA noted that

Non-recognition of the identity of Hijras/transgender persons denies them equal protection of law, thereby leaving them extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail, also by the police … Some of the common and reported problem that transgender most commonly suffer are: harassment by the police in public places, harassment at home, police entrapment, rape, discriminations, abuse in public places.

In 2015, the State of Kerala released a document entitled “State Policy for Transgenders in Kerala”. It included findings from surveys the government

112 ICJ Interview, Kolkata, May 2016.
had conducted, stating that “52% of the TGs [transgender people] are facing harassment from the police. 70.3% are not confident to face the police” and that “96% do not raise complaints against violence because of their gender identity”. The policy proposed that, “Every police station should amend forms to record and compile statistics of crime against TGs”.

Reports in the media have also documented the reality of police violence and abuse against queer people in India.

Despite these acknowledgements, incidents of police violence and abuse against queer persons continue. Several transgender sex workers shared harrowing stories of police violence and abuse with ICJ, some lasting for many years. For example, one transgender woman who engaged in sex work told the ICJ about an incident where she reported to the police that she was being chased by a gang of seven men and feared being assaulted by them. A police officer offered to provide protection to her from her attackers if she agreed to have sex with him. “Better to be with one man than 7”, she said while describing the incident. “We do this whenever necessary. We keep the policemen pleased so that they look out for us in case we get attacked or if we our out at night for sex work.” In June 2016, Kochi the police brutally beat two transgender women who were waiting at a bus station. Both of them had to be hospitalized as a result of their injuries. Some people have alleged that the police beat them assuming they were sex workers.

S, a transgender woman who works with a sex worker group, told the ICJ: “I was raising questions about why sex workers are arrested but not the client. I was beaten up by the police and brought to the police station. They told me to be more like a man. They told me to call my father and then they told him false things. If they hate anyone, they bring them to the police station. After that my father cried and asked me to leave the house.”

T, another transgender woman, told the ICJ, “Several years ago, my brother was involved in a murder case. The police came to our house, to look for him. In the process they arrested me. They came and picked me out of my house in the middle of the night. The constables said ‘this is a hijra, this is his brother. Lets take him’. They kept me in lock up [police custody] for two days. They never gave me any food or water. For two nights they assaulted me”. T was raped and tortured at the police station. “I can never forget that day. I don’t wish them any ill will – but if my brother was wrong, why did they arrest me, torture me, beat me, have sex with me?”

For some people, the existence of laws like section 377 means that their ability to negotiate with the police and assert their rights and/or to file

117 Page 9 of policy, on file with the ICJ. Department of Social Justice, Government of Kerala “State Policy for Transgenders in Kerala 2015”
118 ICJ Interview, Delhi, April 2016.
120 ICJ Interview, Thrissur, July 2016.
121 ICJ Interview, Shillong, May 2016.
complaints, for example in cases of police harassment, is nearly non-existent. Y, a gay man, told the ICJ "I was caught making out in the car with my boyfriend and the police asked us for money and harassed us for some time. I didn’t know what to do so I had to pay them".  

Reluctance to approach the police also stems from the fact that many queer persons have either not revealed their gender identity or sexual orientation to their families, and/or do not want to have their families become involved. Lawyers have told the ICJ that queer people are reluctant to approach the legal system to seek justice and redress for the abuses they suffer because they know that filing a complaint would lead to unwanted questions being asked about them. For people whose families are not aware of their sexual orientation and gender identity, seeking justice and redress therefore presents additional risks.

B. Refusals to file complaints by the Police

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 private individuals. The police’s refusal to file such complaints has a seriously detrimental impact on queer persons’ access to justice and redress.

i. Police Stereotypes and Prejudices

The police are often reluctant to file queer people’s complaints because of prejudices, preconceptions and stereotypes. C, a transgender man, told the ICJ about an experience he had while on a public bus. “People on the bus started to ask me whether I was a boy or girl, and threatened to take my clothes off. I had to get off,” he said. C went to the police station to file a complaint and to seek protection. However, the police refused to register a complaint. “They asked me questions like ‘did you know the people on the bus’, ‘where are your parents’, and ‘why are you dressed like this?’” Finally, C had to call a lawyer he knew to get the complaint registered, and even then, he was not given a copy of the complaint. “I have no idea what happened to that case,” he said. The ICJ was also informed about a case in 2013, when four men raped a transgender woman one evening. When she tried to file a complaint at the police station, the police asked her questions like “Have you really been raped? How can you be raped?”

In cases involving lesbian couples wishing to live together, families often attempt to end the relationship by holding their relative captive to prevent her from leaving with her partner. In ordinary cases, such captivity would constitute criminal behaviour, potentially involving the commission of serious criminal offences, since it involves the unlawful confinement of someone.

122 ICJ Interview, Pune, September 2016.
123 ICJ Interview, Bangalore, July 2016.
124 ICJ Interview, Chennai, July 2016.
against their will. However, when attempts are made to file cases with the police against family members responsible for holding relatives against their will and to demand that they be freed, the police have often refused to take any action. Sunil, a gender-queer activist, described an experience with one such case where the mother and husband of a woman were forcibly holding her captive at home to prevent her from leaving with her partner. Sunil told the ICJ: “We went to the police station to file a complaint, first stating that the mother and husband had kidnapped her. They refused to file that case so we changed tracks and tried to file it as a missing persons complaint, which was also refused ... We willfully kept the partner out of the scene, because didn’t want the “lesbian” allegations to overwhelm the case”. Writing elsewhere about this case, Sunil and Sumathy, another gender-queer activist, described what happened in this case, saying “the police refused to take the complaint stating that a mother and husband cannot abduct their own girl”.

In one State, a queer group approached the police for permissions to hold a Pride event. "When we went for pride permission to the police station, the response of one of the officers was an expression of disgust. He was just mocking us. Then we realized sensitization of police is a really important thing we need to do”. In another, an activist told the ICJ "While organizing the pride parade, we went for police permission. The police asked me why we are doing this and told us that 377 is non-bailable. They gave us permission but they were mocking us during the pride".

Furthermore, approaching the police to file a complaint can also put the complainants at some personal risk, including of arrest and criminal charges, because of police stereotypes regarding queer persons. For example, in July 2016, a group of 11 transgender persons visited a police station in Kochi to file a complaint against a group of people who had assaulted them. Instead of recording this complaint, the police arrested them, charging them with offences under sections 394 and 395 of the Indian Penal Code. Their

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125 E.g., Section 340 of the IPC states: Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said “wrongfully to confine” that person. And Section 343 of the IPC states: Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

126 ICJ Interview, Bangalore, July 2016.

127 Sunil Mohan and Sumathi Murthy "Towards Gender Inclusivity: a study on contemporary concerns around Gender" at page 42.

128 ICJ Interview, Guwahati, May 2016.

129 ICJ Interview, Kerala, July 2016.

130 394. Voluntarily causing hurt in committing robbery.—If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

131 395. Punishment for dacoity.—Whoever commits dacoity shall be punished with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. Dacoity is defined in section 391 as follows: When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”.

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lawyer told the ICJ the charges were unfounded. After 14 days in detention, they were released on bail.

Very often in cases of petty harassment by law enforcement, people are not told why they have been detained or under what provision. ICJ spoke with H, a transgender woman, who has encountered the police often while begging on a train. Once she was arrested on the train with some friends, taken to the police station, and produced before the magistrate. She was never told under what provision she was arrested or why she had been taken to court. "The magistrate asked us if we did something wrong, if we did some harassment of public. We said no, but we don’t know why this case was brought. Then the magistrate just told us, don’t do this again". She has been arrested on other occasions as well, and has sometimes paid a fine. But she has no paperwork explaining why she was arrested or what the fine was for. "Sometimes people get off running trains for fear of the police", she said. Others with whom the ICJ spoke had similar experiences with police harassment and no proof or paperwork.

The fact that queer people often fear being arbitrarily arrested and detained, charged and prosecuted or otherwise harassed, abused and persecuted by the police has negative ramifications on the ability of the police themselves to effectively investigate crimes, since the very people who probably have the most valuable information about the said crimes are unlikely to cooperate in the investigation. Kaushik, a lawyer who handles several cases involving queer people, described a case where a transgender person was murdered, but no one from the transgender community was willing to assist the police in their investigation because they were afraid of being implicated in the case.

In some instances, people had more success getting the police to file complaints when they approached the police as a collective, instead of as individuals alone. For example, Anandam told the ICJ about a case where a transgender woman was robbed of her jewelry. The police initially refused to register a First Information Report for robbery after she complained. She then contacted Anandam following which her complaint was eventually registered but only after several members of the group spoke to the police. While ultimately the fact that the complaint was registered is a positive sign, this case illustrates how difficult access to justice and redress may be for those queer persons with no links to civil society organizations.

ii. Accountability for Police Abuse

Demands for justice and accountability for police abuses have led to direct forms of reprisal by the police against those denouncing their abuses. On 9 November 2016, Tara, a 28-year-old transgender woman, was found severely burned outside a police station in Chennai, in the Indian State of Tamil Nadu.

132 ICJ Interview, Guwahati, May 2016.
133 ICJ Interview, Kolkata, May 2016.
134 ICJ Interview, Kolkata, May 2016.
She succumbed to her injuries and died in hospital very soon after. Transgender groups in the city demonstrated outside the police station, demanding accountability for her death, and asserting that police harassment and abuse had driven her to kill herself. In response, the police filed charges, including for “rioting”, against the protestors. The investigation and case are still on-going.

M’s Case

M’s experience with the police is an example of how pressure and mobilization can sometimes lead to police accountability. In October 2015, M – a transgender woman - was traveling on a metro train in Kolkata, a town in the Indian State of West Bengal, with four other friends, two of whom were transgender persons as well. Four men harassed them on the train, including by calling them names and demanding sex. M asked them to stop. On exiting the train, M was attacked by the same men. “They pounced on me because I had been vocal on the metro. They slapped me, and dumped me on the ground”, M told the ICJ. M managed to escape, and approached a police officer near by with her friends. The police officer told her that the police station with jurisdiction over the offence was Bhawanipore [a near by area, in Kolkata], and asked her to got here to lodge a complaint. They went to Bhawanipore police station, and told the officer on duty their story. However, at this police station the police officers also refused to lodge a complaint and asked them to go to the police station in Tollygunge [another area near by, in Kolkata]. They reached Tollygunge police station at 2:00 am. The police officer called M and her friends “beggars” and “snatchers”. “He talked in a way that made it seem as though the transgender community was responsible for all the crimes in Kolkata”. He was initially reluctant to register an FIR, but after a lot of insistence from M, finally did. However, no arrests were made that night. Six months later, M was asked to provide a description of her attackers to the police. To date, there has been no progress with the investigation.

M narrated her experience to friends and other activists, which led to mobilization and protests against the attitudes of the police. They were recently informed that the officers on duty that night have been disciplined, and one of them has been demoted.

Jayalakshmi v Tamil Nadu is an example of a case where a demand for police accountability was successful. Pandian, a transgender person, was repeatedly raped and tortured by the police during the course of an investigation. One day, Pandian attempted suicide by trying to immolate themself. They were treated for burn injuries at a nearby hospital but succumbed to them later. Pandian’s family filed a writ petition at the High Court for compensation from the police for the wrongful death of Pandian,

136 ICJ Interview, Kolkata, May 2016.
137 https://indiankanoon.org/doc/1373799/
and also asking the police to initiate disciplinary action against the perpetrators. The Court found that Pandian had tried to kill himself because "the Sub-Inspector of Police ... has tortured him by inserting the lathi [a wooden stick] inside his anus and few other police personnel including respondents 3 to 8 have forced him to have oral sex and this was going on for the past two weeks".

While the Court eventually found that the case of police harassment was made out, ordering that Pandian’s family be paid compensation, and that disciplinary action be taken against the police officers responsible, the actions of the police as found by the Court in the above-mentioned judgment amount to egregious human rights violations, disclosing evidence of serious crimes such as torture and rape, which have gone unpunished under ordinary criminal procedure.

Like in many other cases in India, even when complaints are filed, it is not clear whether any follow up or investigation is ever carried out.

Queer groups that approach the police for assistance when faced with intimidation from non-state actors are also often not supported by the police. When the first pride in Assam was organized a few years ago, a sexual health organization (which was working with groups at high risk of HIV, including transgender sex workers and gay men) hosted a meeting for the organizers. On hearing about this meeting, a right-wing student group ransacked the office and held protests outside it. The organization filed a complaint with the police regarding this, but nothing was done.\textsuperscript{138}

Very often, queer persons’ social and economic marginalization makes it harder for them to follow through on a case they have filed, which can take years in the Indian legal system. C told the ICJ of a case in Bangalore, Karnataka where a transgender sex worker was assaulted, and he accompanied her to the police station to lodge a complaint. The police asked her questions like “what are you”, “why are you out so late” and “why do you do sex work”. “They also pressured her into not pursuing the case,” C said. “She was worried about her safety, so she just took some money from her attacker to pay medical bills. She didn’t want to keep it going. She was scared and said she didn’t want to run from police station to court. It takes very long, how long can we wait? People feel it is not worth the pain”.\textsuperscript{139}

Part of the mistrust that some queer persons displayed towards the police has to do with the discriminatory attitude and behaviour of law enforcement officials in dealing with cases involving queer persons. There have been several instances of adult lesbian couples running away from home and their families to start a life together. In such cases, their families usually file “missing persons” complaints with the police, or even accuse one of the

\textsuperscript{138} ICJ Interview, Guwahati, May 2016.

\textsuperscript{139} ICJ Interview, Bangalore, July 2016.
partners of “kidnapping” or “abduction” their missing relative. The police have a duty to inquiry into the veracity of these claims. In cases where the women have been found, the attitudes and biases of the police have often meant that police officers have insisted that each woman should return to her “home” and her family, even when they individuals in question were adults and clearly stated that they would not wish to live separately from one another. Sunil noted, “In the case of a missing persons case that is filed, if it is an adult person, the police’s responsibility is to find that person. If the person says they don’t want to come back, the case is closed. Or should be. But if it is a lesbian woman, the police will insist that the person has to go back to the family”. In a similar case in a different state, despite the woman repeatedly telling the police that she was an adult and wanted to live away from her parents, the police kept sending her back to her parents.

In another case, a prominent sexual health organization was assisting a lesbian couple who wanted to move to a different city to live together. At one point, because the family of one of the two women involved was holding her captive, the organization concerned brought a case seeking her release. The police searched the office of the organization. “They accused us of running a ‘lesbian mafia’”, one staff member told the ICJ. Similarly, when two women ran away from home, the father of one of the women filed a case of theft against his daughter. The police followed the two girls from Mumbai to Delhi, and brought them back home, even though they knew that the theft claim was spurious.

C. Other Experiences with the Police

People have also said that police are not adequately sensitized to interact with queer persons, and are lacking in basic diversity training and failing to adopt and implement protocols and procedures that respect and take account of their human rights. For example, a lawyer defending a trans-woman accused of raping her female partner told the ICJ that the police disregarded her client’s self-identified gender. Despite her lawyer’s protests, for example, she was placed in the male section of the prison.

In another case, Ketki Ranade, a queer feminist activist told the ICJ of her experience with the police in a case where a lesbian couple had tried to commit suicide together. One of the women died and the other survived. The police had been called to the scene. “We went to inquire about this case and tried to speak to the girl who survived saying that she might be in need of mental health support,” Ketki Ranade said. “The police said that it would be great if we could use counseling to correct her. They said they would be

140 IPC Section 362. Abduction: Whoever by force compels, or by any deceitful means induces, any person to go from any place, is said to abduct that person.
141 ICJ Interview, Thrissur, July 2016.
142 ICJ Interview, Mumbai, September 2016.
143 ICJ Interview, Kolkata, May 2016.
This comment from the police to “correct” and “cure” her is particularly concerning in this instance, since the woman who survived was obviously distressed and in need of care and support.

An inability to communicate in English is often a limitation for individuals in successfully approaching the police throughout the country. As much is true for queer persons who do not speak English, and are therefore often twice discriminated against in their interactions with the police. M a transgender woman who had gone to the police to file a complaint and who was accompanied by some friends of hers who were also transgender women noted how the police treated her very badly at first and refused to register her complaint, apparently because she and her friends spoke in Bengali and not in English. It was only when M began addressing the policemen in English that their behaviour changed and the complaint was eventually filed.

Members of Anandam recounted a similar experience where, in approaching the police to report an incidence of violence against a transgender person, the Bengali-speaking group was told off by the police and in turn blamed for the incident. This attitude changed completely when a friend accompanying them spoke up in English. The police then began to address the group with respect and registered the case. Organizations that provide legal training to queer communities, like SAATHII, also told the ICJ that basic knowledge of the law was key: knowing the law gave people confidence to push back when they were being harassed by the police.\textsuperscript{145}

\textsuperscript{144} ICJ Interview, Mumbai, September 2016.
\textsuperscript{145} ICJ Interview, Chennai, July 2016.
IV. Experiences with Lawyers and Courts

Thus far, this report has looked at the substantive laws that impact queer persons in India, and queer persons’ experiences with the police. This chapter examines what experiences queer persons have had when they have tried to access courts and lawyers. The first part of this section will look at issues that emerge around legal representation and interactions with lawyers. The next section looks at challenges that arise within the courtroom, as well as their potential to be transformative in ensuring justice. It ends with looking at a few emerging questions, including the difficulty of establishing precedent.

A. Existence of Queer Friendly Lawyers

The availability of queer friendly lawyers providing high quality legal assistance, advice and representation to queer individuals is critical in obtaining access to justice and effective remedies for the human rights abuses they suffer. ICJ interviews demonstrate that cities that have robust legal networks, or even well known individual lawyers, witness a higher degree of engagement with the justice system. On the other hand, where those networks have not emerged, the consequence is an inability to access justice and legal remedies.

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.

The existence of Lawyers Collective (LC) - a network of public interest lawyers formed in 1981 whose work spreads across multiple cities in India - is an example of the importance of queer-friendly lawyers. LC has spearheaded major litigation on the rights of queer persons in India. For example, they filed the Naz Foundation petition in 2001, and continue to represent the petitioners, Naz Foundation in the curative petition before the Supreme Court. They were amongst the primary lawyers in the NALSA case (see Chapter II for more details about these cases).

Beyond these two major constitutional litigations, the organization has also argued several habeas corpus petitions involving queer persons (see the box below for more details on these petitions) and been part of litigation and advocacy efforts on legal gender recognition, with a number of cases in this report having been initiated by them or featuring their inputs. The organization also provides legal advice and representation to queer persons in India on issues around discrimination; violence and safety; access to health; and when queer persons are arrested or detained by police. LC's current work spreads across litigation, advocacy and trainings on queer rights issues. The fact that the organization is either present in or has strong links with lawyers
in several Indian cities has allowed their expertise on these issues to be used broadly.  

Taking Bangalore as another example of the value of robust queer friendly lawyering networks: The Alternative Law Forum (ALF) in Bangalore is a collective of human rights lawyers that has been actively working on issues of queer rights for the past 15 years. The Centre for Law and Policy Research (CLPR), a relatively new organization, has also entered the fray, providing legal support particularly for transgender individuals. This is in addition to a number of other queer friendly lawyers and activist groups that have engaged with the lawyers in these organizations over the years.

In the case of ALF, it has allowed the organization to become a facilitating centre for transgender individuals aiming to obtain legal recognition of their gender identity, as well as providing a crucial support system when it comes to legal support for intervention in emergency cases. When it comes to gender recognition, ALF lawyers have created a standard form affidavit to facilitate the administrative requirements for transgender clients, along with assisting them in approaching different authorities. Other groups in the city, in turn, have started approach ALF as a focal point for such work. Together with the People’s Union for Civil Liberties, ALF was also behind a fact-finding report on a range of human rights violations perpetrated against the transgender community, which was relied upon by the Delhi High Court in the constitutional challenge to Section 377. ALF has been a member of the litigation team to this challenge, which CLPR joined in 2016 at the curative stage.

In the context of this litigation (i.e. the ongoing case focusing on the constitutionality of Section 377), CLPR represents a group of transgender petitioners who argue that the continued existence of section 377 violates their constitutional rights. CLPR also represented transgender individuals in the constitutional challenge to section 36-A of the Karnataka Police Act in 2015 (for more information about this case, see Chapter II of this report). Both constitutional challenges are linked to CLPR’s work with queer communities in Bangalore, Karnataka.

Of the cities where the ICJ conducted interviews, Guwahati in Assam stood out in terms of a lack of available lawyers. Interviews with activists working at Xukia, a queer collective in the city, noted how they did not know of a single queer friendly lawyer in their immediate networks. This was echoed by another activist who recounted an incident, where a queer friend of his, was unable to find legal representation after he was blackmailed. The activist in question told the ICJ that he did know of a few lawyers generally, but nobody

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146 For more information, see: http://www.lawyerscollective.org/vulnerable-communities/lgbt/lgbt.html

147 For more information, see: http://altlawforum.org/

148 For more information, see: http://clpr.org.in/

who practised human rights law. Pune in Maharashtra emerged as another city where relevant lawyer networks do not exist or are difficult to locate. As one activist noted, the distance from Mumbai, the nearest city where legal support is available, hinders dealing with matters of urgency. In both cities, the unavailability of queer friendly lawyers means that resort to legal avenues of redress tends to be delayed or is simply not an option.

The importance of creating larger networks of queer friendly lawyers – as well as the challenges inherent in such an undertaking – are illustrated by the experience of Kaushik Gupta, an advocate at the Calcutta High Court who organizes trainings where the State Legal Services Authority lawyers train the District Legal Services Authority Lawyers. He noted how he had led a training session in 2016 in West Bengal for about 125 lawyers, where not a single lawyer was aware of the NALSA judgment. During a workshop he organized in Delhi, one of the lawyers from the state of Haryana refused to refer to the NALSA judgment as an example in his presentation, stating – “no, how can we do that, they are illegal, they can’t marry, we can’t do this, it is wrong”. During the questions and answers session, Kaushik relayed a question that a transgender client of his had put to him, where she had asked about how she could be protected from harassment since people abused her for dressing like a woman, even at police stations. A lawyer from Chennai answered: “the only advice that can be given is: stop dressing like that”.

Sometimes, even knowing that their lawyers are biased against them, queer individuals find themselves without a choice when it comes to legal representation. In one instance in Coimbatore, Tamil Nadu in 2007, for example, two lesbian women were accused of murdering another lesbian woman. Queer activists supporting the two women enlisted the help of a senior lawyer from Bijapur, Karnataka. Initially, however, he maintained that he did not know anything about “homosexuals” and “could not handle this case”. On being presented a range of information about homosexuality and the facts of the case he agreed to act as the women’s defense counsel, while noting: “You people are freaks. But freaks have human rights, so I’m going to fight this case”.

Several people also told the ICJ that they believed that a lack of willing and experienced lawyers who were sensitive to issues of gender, sexuality, and queer rights in India hindered the possibility of obtaining justice in courts. Pawan Dhall, a gender and sexuality activist and writer associated with Varta Trust in Kolkata gave the ICJ an illustrative example. In 2005, a group working on the rights of queer persons in the State of West Bengal participated in a book fair and distributed books on HIV, sexual health and sexuality. A few days into the fair, the organizers forced the group out of the fair, saying they were distributing “adult material”. The group challenged their removal from the fair in court. Pawan told the ICJ that they only knew one lawyer at the time, who did not understand the links between issues of stigma around homosexuality and HIV vulnerability. Eventually, the court ruled against the group, saying they only had permission to distribute books on "HIV/Health" whereas the books they were distributing were largely about
“homosexuality”. This outcome might have been different if the lawyer understood the links between sexuality, stigma, and HIV, and was able to explain this to the court.

The existence of networks of experienced legal professionals who make themselves available to advise and represent queer individuals to assist them in accessing justice and redress for the human rights violations to which they are subjected is however only the first step. The next sets of challenges arise when queer-friendly lawyers themselves attempt to navigate a legal system that is biased against them and ignorant about the fact that the rights of queer people are human rights.

**B. Challenges Faced in Courts**

Lawyers and queer persons face a new set of challenges once they are in court. Here, several persons told the ICJ about harassment in the form of remarks made by judges and public prosecutors, which undermines the foundations of the justice system. A number of instances show how transgender persons are particularly at risk of discrimination in these spaces, which, in turn, seriously undermines their chances of obtaining justice and redress.

F, a transgender man in Thrissur, Kerala, spoke about how when he used to appear in the Court of a judicial magistrate for a case he had filed, everybody including the judge would stare and laugh at him. This experience was echoed by S, a transgender woman in Kochi in the same state, when she was summoned as witness in a case involving a motor vehicle accident. W, a lawyer based in Bangalore who represents transgender persons in a number of cases, noted that while she did not think the Courts in the city were actively discriminatory, during one court hearing when she had her transgender clients come to court, the judge told her to inform her clients that “they create a lot of nuisance”. Rajesh, an activist based in Bangalore, told the ICJ about a case involving two lesbian women who wanted to live together in Kerala against the wishes of their families. In Court, the public prosecutor often argued “there are no lesbians in the state of Kerala”, and the presiding judge did not correct or challenge this. Facing these attitudes in Court dissuades queer persons from accessing courts.

Several lawyers also told the ICJ that they face a number of basic, procedural issues in cases involving the rights of queer persons that they may not otherwise encounter. While some of these may appear to be minor, they point to the additional difficulties that queer persons, who have already likely experienced grave human rights violations, and their lawyers face when they try to enforce their right to remedy. For example, Kaushik discussed his experience in 2002 representing a transgender woman who had been charged

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150 Their parents had filed a *writ of habeas corpus* [the use of *habeas corpus* petitions in cases involving the human rights of queer persons is explained in more detail below], asking for the women to be “found” and brought home. The two women argued that they wanted to live together.
with defamation.\textsuperscript{151} He faced very basic procedural problems such as how to draft submissions in the case, which require individuals to be addressed as “son of/ daughter of” or husband of/ wife of” another person. He was not certain how to refer to a transgender woman in this situation, especially when her identity documents did not reflect her name or gender identity of choice. He improvised referring to the client as “X, wife of Y, earlier son of Z”. While accurate, this drafting was unconventional and prompted a judge to enquire angrily whether Kaushik even knew how to draft, while another judge refused to touch the brief.

\textbf{C. The Court as an Empowering Space}

Beyond these accounts, Courts can and do stand as crucial forums where acknowledgement of the human rights violations faced by queer persons, and the crafting of positive legal remedies, create a positive impact that reverberates far beyond the immediate case. When Courts deliver justice in cases raising the human rights of queer people, they often create the space for a more inclusive interpretation of the law. This report has already discussed the decision in the \textit{NALSA} case in detail in Chapter II, which expanded the range of prohibited discrimination under the Indian Constitution. In this case, the Court expanded the prohibition against discrimination based on sex in Article 15 to include discrimination based on gender identity as well.

The reasoning in the \textit{NALSA} decision was accompanied by equally welcome language: the judgment began with a sentence acknowledging the trauma that members of the transgender community undergo. The Court said that:

\begin{quote}
Seldom, our society realizes or cares to realize the trauma, agony and pain which the members of Transgender community undergo, nor appreciates the innate feelings of the members of the Transgender community, especially of those whose mind and body disown their biological sex. Our society often ridicules and abuses the Transgender community and in public places like railway stations, bus stands, schools, workplaces, malls, theatres, hospitals, they are sidelined and treated as untouchables, forgetting the fact that the moral failure lies in the society’s unwillingness to contain or embrace different gender identities and expressions, a mindset which we have to change.\textsuperscript{152}
\end{quote}

This acknowledgement and sensitivity is also evident in other appellate court judgments dealing with transgender and intersex rights following \textit{NALSA}. The week after the \textit{NALSA} judgment was handed down, the Madras High Court passed an order setting aside the dismissal of a female-identified individual with an intersex variation from the police services in Karur district in Tamil Nadu. Here the judgment began by an implicit acknowledgment of righting past wrongs, with the judge cautioning that nothing in his order should have,

\begin{footnotesize}
\textsuperscript{151} Defamation exists as both a civil and criminal offence under the Indian legal system. Section 500 stipulates imprisonment of up to 2 years for someone held guilty of criminal defamation.

\textsuperscript{152} Para 1, \textit{NALSA v UOI}.
\end{footnotesize}
even remotely, “a semblance of tendency to hurt the feelings and sentiments of the transsexuals”. In September of 2015, the Delhi High Court passed an order safeguarding the autonomy of a female to male transperson who was held captive against his will by his parents. Again, the judge displayed a remarkable understanding of transgender oppression starting the judgment with an acknowledgment of the strength of the petitioner in deciding to approach the court: “Shivani is a braveheart”. Later in the judgment there is a further acknowledgment of the struggles faced by transgender persons: “they have for too long had to endure public ridicule and humiliation; have been socially marginalized and excluded from society, their basic human rights have been severely denuded”. In Pinki Pramanik vs State Of West Bengal, the Calcutta High court quashed charges of rape, and other criminal offences, against an intersex person, accepting the petitioner’s argument that these charges were “vexatious and male fide”.

### Use of habeas corpus petitions

Several people told the ICJ of the use of habeas corpus petitions in cases involving the human rights of queer persons. Traditionally, habeas corpus petitions are a writ remedy in several common law systems, which allows people to challenge an unlawful arrest or detention in a court, so the court can decide without delay on the lawfulness of the detention and order release if the detention is not lawful. In India, habeas corpus petitions are also used in some instances to locate persons who are considered “missing” or who have been held captive by non-state actors. In such cases, families or concerned persons file a habeas corpus petition, asking for the person in question to be produced in Court. The Court asks the police to produce the person, and the police then begin to look for this person, and bring them to Court.

Habeas corpus petitions are used in cases involving the human rights of queer persons in two main ways: first, when two queer persons decide to live together against the wishes of their families, families use habeas corpus petitions to ask police to bring the queer person back to the family. Second, people may hold their family members against their will, to prevent them from joining their partner. In such cases, the partner or organization working on the rights of queer persons may file a habeas corpus petition stating that someone has been unlawfully detained, asking the Court and police to intervene. Habeas corpus petitions provide insight into how issues involving

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The lawyers for the petitioner (an intersex person who identifies as female) in this case also pointed out other procedural violations that had occurred in the course of police investigations, including that the petitioner was held in the male prisoners cell of the correctional center, despite her self-identified gender identity.

queer persons are dealt with in Courts, and how women in particular, find it harder to have their autonomy respected.

Sudha Ramalingam, a lawyer in Chennai, told the ICJ of one such case. P, an adult lesbian woman, was detained at home by her family to prevent her from leaving the city with her partner. The partner approached Sudha Ramalingam, asking her to file a *habeas corpus* petition for P to be produced in court. When P was produced in Court, the judge asked her if she preferred to stay at home with her parents or to leave with her partner. P said clearly that she wanted to leave and live with her partner. The judge called P "*a person with different values*" in open court. Instead of respecting her autonomy, the judge sent her to a government-run "shelter" home for women, to think about her decision and adjourned the case. Sudha told the ICJ that P was worried that she would have to live in the government-run "shelter" home for a long period of time. Therefore, the next time her case was heard in Court, P agreed to remain with her family. It is telling that the court did not ask P to think further about her decision to remain with her family, ask why she changed her mind, or make any effort to assess whether this decision was voluntary and non-coerced. Instead, the Court supported a decision they felt was more appropriate and conventional, notwithstanding what the woman wanted. Sudha Ramalingam has been involved in several such cases. She told the ICJ that in these cases, “there is no constitution, no law, only morality”.

On the other hand, the ICJ interviewed a couple in Kerala - a woman and a transgender man - who wanted to leave the city to live together in Bangalore. The woman was held captive by her family to prevent her from leaving. Her partner, the transgender man, filed a *habeas corpus* petition asking for the woman to be produced before the Court. Like in the case of P, when the woman was produced before Court, she said clearly that she wanted to leave and live with her partner. However, her wishes were ignored, and she was placed in a government-run “shelter” home for women. Her case dragged on for a long time, and she repeatedly stated she wanted to live with her partner, till the Court agreed. The ICJ was also told of a similar case in Delhi.

As the examples above indicate, in some cases, *habeas corpus* petitions have served as valuable legal tools to access courts when the liberty and autonomy of queer persons is denied. In other cases, these petitions have facilitated harassment and denied queer persons’ autonomy. In both instances, proceedings in *habeas corpus* petitions are illustrative of the additional challenges queer persons face within the legal system to have their autonomy respected, and the wide discretion that courts have to interfere with the personal decisions queer persons take regarding who they want to live with, where they want to live, etc. *Habeas corpus* petitions of this nature are not confined to cases involving queer persons. They have also been used, for example, when a woman wanted to marry a man from a different caste and her family disapproved. However, since the scope of this report is limited, the other nuances of its use are not discussed here.
D. Emerging Issues and Difficulties Establishing Precedent

There are very few cases in the appellate courts in India about the issues faced by queer persons. A point that a number of lawyers made was the difficulty of establishing precedent through taking cases to the court. This is because in a number of instances, lawyers themselves counsel clients against initiating the court process because of the risk of criminalization and broader stigma, and the fear that discriminatory attitudes around the client’s sexual orientation or gender identity, including judicial bias, will impact the possibility of getting justice in court. For example, one lawyer told the ICJ that she didn’t file cases when queer clients were involved to the extent possible, and advised them to resolve the issue outside the court process. Where cases are filed, lawyers often prefer to keep the sexuality of their clients out of the court record. Instead, arguments are based simply on the right to autonomy. Where necessary, sexual partners are referred to as “best friends”. While the tactic of not talking about sexuality in Court or resolving matters outside the Court may help individuals, it also means that cases do not become valuable guiding precedent.

Furthermore, there are few legal remedies in the law for the violence and discrimination faced by queer persons. This also makes it difficult to approach the court with cases. For example, Kaushik, a lawyer from Kolkata, noted an instance where a person in a same sex relationship was blackmailed by an ex partner who threatened to ‘out’ the person. His conflict about what advice to give is revealing: he felt that if the client went to the police to complain in any manner, it would essentially amount to an extra judicial confession about the person being gay. Another lawyer told the ICJ that activating the legal process means exposing clients to the risk of legal harassment, whether under Section 377 or broader legal provisions. There is little, she noted, that could be done with courts when the identity in question was taboo.

Some lawyers have tried to use existing legal provisions in innovative ways to protect queer persons. However, this also has risks. Amritananda Chakravorty, Senior Legal Officer, Lawyers Collective discussed how the Lawyers Collective has been trying include transgender women under women-specific laws such as sexual harassment and domestic violence. Currently, it is unclear if these laws protect transgender women. She told the ICJ about other complexities in doing so, as it leaves transgender men in a situation where it would go against their gender identity to seek protection under the domestic violence act, because in order to do so, they would have to claim that they are “women”. “The discussion hasn’t even started properly and the women’s groups need to be on board. We also have not comprehended all the implications in such situations and can only imagine the complexities,” she said.
V. International Legal Standards

Protections for the rights of queer persons are enshrined in several human rights instruments that the Indian government has ratified, including: (1) the International Covenant on Civil and Political Rights (ICCPR);\(^{157}\) (2) the International Covenant on Economic, Social and Cultural Rights (ICESCR);\(^{158}\) (3) the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);\(^{159}\) (4) the Convention on the Rights of the Child (CRC),\(^{160}\) and (6) the Convention on the Rights of Persons with Disabilities (CRPD).\(^{161}\)

India must implement its treaty obligations in good faith and may not invoke provisions of its domestic law to justify non-compliance with its treaty obligations. This includes respecting, protecting and fulfilling the full range of human rights of queer persons. Furthermore, State agents must refrain from violating these rights either by act or omission. They must also protect queer persons from actions of third parties, including private actors, which may impair their human rights.

A. Non-Discrimination

The human rights treaties India is signatory to require States parties to protect the guarantee the rights to equality before the law, equal protection of the law and freedom from discrimination. For example, article 2 of the ICESCR requires states to ensure

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\text{the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.}^{162}\]

The Committee on Economic, Social and Cultural Rights - the body mandated by the ICESCR to monitor States Parties’ implementation of the treaty – has stated that “other status” in article 2 (2) includes sexual orientation, and reaffirmed that “gender identity is recognized as among the prohibited grounds of discrimination”, as “persons who are transgender, transsexual or

\(^{157}\) International Covenant on Civil and Political Rights (ICCPR), 999 UNTS 171, entered into force 23 March 1976, India acceded on 10 April 1979.


\(^{162}\) Other instruments also contain similar provisions. For example, Article 2 of the ICCPR: "respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"; Article 2 (1) of the CRC: "States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status".
intersex often face serious human rights violations”. Similarly, in Toonen v Australia, the UN Human Rights Committee stated that “sex” in articles 2 and 26 of the ICCPR should be read as including “sexual orientation”.

Discrimination based on sexual orientation or gender identity is usually compounded by discrimination on other grounds including gender, race, age, religion, disability, health and economic status. Individuals who experience such multiple and intersecting forms of discrimination often face particularly severe challenges. In designing measures to address discrimination based on sexual orientation and gender identity, States must take into account the impact of this intersectionality.

The obligation to prevent discrimination includes the duty to “prohibit and prevent discrimination in private and public spheres, and to diminish conditions and attitudes that cause or perpetuate such discrimination”. States must adopt measures to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds. Under international law, such actions must include “programmes of education and training, with a view to achieving the elimination of prejudicial or discriminatory attitudes or behaviours which are related to the idea of the inferiority or the superiority of any sexual orientation or gender identity or gender expression”. In 2015, the UN High Commissioner for Human Rights recommended that States enact comprehensive anti-discrimination legislation that includes sexual orientation and gender identity as protected grounds.

B. Criminalization of Sexual Orientation and Gender Identity

Several UN Treaty Bodies and a number of Special Procedures of the UN Human Rights Council have recognized that the criminalization of same-sex conduct violates the rights to privacy, liberty and security of the person, including the right not to be subjected to arbitrary arrest and detention. UN human rights Treaty Bodies and independent human rights experts have repeatedly urged States to repeal laws criminalizing homosexuality.

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165 Principle 2 (e), Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity.
168 2 (f), Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity.
170 E.g., Human Rights Committee, Toonen v Australia (Communication 488/1992, 4 April 1994), UN Doc. CCPR/C/50/D/488/1992. The 2015 OHCHR SOGI Report, UN Doc. A/HRC/29/23, notes: “States have an obligation to protect the rights to privacy, liberty and security of the person, including the right not to be subjected to arbitrary arrest and detention. United Nations mechanisms have called
Further, they have called attention to the ways in which the criminalization of consensual same-sex sexual conduct legitimizes prejudice and exposes people to hate crimes and police abuse, and have recognized that it can lead to torture and other ill-treatment.\textsuperscript{171} Laws and regulations that directly or indirectly criminalize consensual same-sex sexual orientation or conduct provide State actors with the means to perpetrate human rights violations, and enable non-State actors to persecute individuals on account of their real or imputed sexual orientation and/or gender identity with impunity.\textsuperscript{172}

The UN Working Group on Arbitrary Detention has concluded that detaining someone under laws criminalizing consensual same-sex sexual activity in private breaches international law.\textsuperscript{173} This would also be true of vague and less well defined offences - such as those discussed in Chapter II of this report - when they are used to target people solely because of their real or purported sexual orientation or gender identity, expression or intersex status.

Principle 7 of the Yogyakarta Principles, which addresses the right to freedom from arbitrary deprivation of liberty, requires states to take all necessary legislative, administrative and other measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for arrest or detention. This includes the repeal of vaguely worded criminal law provisions that invite discriminatory application or otherwise provide scope for arrests based on prejudice.

Furthermore, the criminalization of sexual orientation and gender identity also creates an environment and supports prejudices and stereotypes that facilitate other human rights abuses, violence, and discrimination. As the Special Rapporteur on torture and other ill-treatment noted:

A clear link exists between the criminalization of lesbian, gay, bisexual and transgender persons and homophobic and

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\textsuperscript{171} E.g., see Born Free and Equal, Sexual Orientation and Gender Identity in International Human Rights Law, Office of the High Commissioner for Human Rights, HR/PUB/12/06, 2012, p. 33; and the Report of the UN Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment, UN Doc.: A/56/156, 3 July 2001, para. 20 and, generally, paras 18-25.

\textsuperscript{172} As the UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has noted: “sanctioned punishment by States reinforces existing prejudices, and legitimizes community violence and police brutality directed at affected individuals.” See Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, A/HRC/14/20, 27 April 2010. The UN Special Rapporteur on extrajudicial executions noted that criminalization increases social stigmatization and made people “more vulnerable to violence and human rights abuses, including death threats and violations of the right to life, which are often committed in a climate of impunity”, A/HRC/57/138, para. 37.

transphobic hate crimes, police abuse, community and family violence and stigmatization … The criminalization of same-sex relationships and pervasive discrimination against lesbian, gay, bisexual, transgender and intersex persons lead to the denial of health care, information and related services, including the denial of HIV care.\(^\text{174}\)

In 1994, the UN Human Rights Committee held that Tasmania’s sodomy laws violated the rights to privacy and non-discrimination in the ICCPR.\(^\text{175}\) Since then, the Human Rights Committee and other UN Treaty Bodies have repeatedly urged States to decriminalize consensual same-sex sexual conduct.\(^\text{176}\)

States must repeal any law used to punish individuals based on their sexual orientation and gender identity. In its second UPR review, Argentina asked the Indian government to “Study the possibility of eliminating any criminalization of same sex relations”.\(^\text{177}\) India accepted this recommendation, but laws penalizing queer persons for their sexual orientation and gender identity remain on the books.

### C. Protection from Violence and Abuse

International human rights treaties by which India is bound guarantee the right to life, to freedom from torture and other ill-treatment, and to liberty and security of the person. Everyone, regardless of sexual orientation or gender identity, has the right to protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual or group.\(^\text{178}\)

The Office of the High Commissioner of Human Rights has noted that “Hate-motivated violence against LGBT people is typically perpetrated by non-State actors … failure by State authorities to investigate and punish this kind of violence is a breach of States’ obligation to protect everyone’s right to life, liberty and security of person”.\(^\text{179}\) Therefore, police violate these basic rights when they refuse to register complaints or conduct investigations regarding complaints of violence and abuse against queer persons in India.

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\(^\text{178}\) Principle 5, Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity.

Twelve UN agencies recently released a joint statement asking states to “protect LGBTI persons from violence, torture and ill-treatment”, including by “investigating, prosecuting and providing remedy for acts of violence, torture and ill-treatment against LGBTI adults, adolescents and children, and those who defend their human rights” and “Strengthening efforts to prevent, monitor and report such violence”.

The Indian authorities must put in place measures that prevent violence against queer persons in India, both by state and non-state actors. Where such violence has occurred, incidents must be promptly investigated and prosecuted.

Principle 7 of the Yogyakarta Principles requires states to undertake training and awareness-raising programs to educate police and other law enforcement personnel regarding the arbitrariness of arrest and detention based on a person’s sexual orientation or gender identity. In India’s UPR in 2012, the government of Canada recommended that the Indian government “Take measures to address violence and discrimination directed towards persons based on their sexual orientation, especially related to employment”. India did not accept this recommendation.

D. Legal Gender Recognition

Each person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom. States must “take all necessary legislative, administrative and other measures to fully respect and legally recognize each person’s self-defined gender identity” and “take all necessary legislative, administrative and other measures to ensure that procedures exist whereby all state-issued identity papers which indicate a person’s gender/sex — including birth certificates, passports, electoral records and other documents — reflect the person’s profound self-defined gender identity”. States must facilitate this process, removing financial and other barriers people might face, including requirements for medical intervention or surgery before gender can be officially changed. Procedures are efficient, fair and non-discriminatory, and respect the dignity and privacy of the person concerned.

In their statement on this issue, the 12 UN agencies also noted that “Ensuring legal recognition of the gender identity of transgender people without abusive

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requirements” was part of the obligation to prevent discrimination and ensure equality.183

E. Access to Justice

The CEDAW Committee has noted that the right to access justice is multidimensional. It encompasses justiciability, availability, accessibility, good quality and accountability of justice systems, and provision of remedies for victims.184 Access to an effective remedy is an important aspect of access to justice. The right of victims to a remedy for human rights violations is guaranteed in human rights treaties185 and is reflected in other international standards.186 Often, queer persons are unable to access effective remedies or justice.

In 2016, the Report of the Special Rapporteur on torture considered the prohibition against torture and other ill-treatment in light of the unique experiences of women, girls, and lesbian, gay, bisexual, transgender and intersex persons. The report noted that victims of violence “face significant hurdles in accessing justice and reparations, including absence of or shortcomings in domestic legal frameworks to hold perpetrators accountable, and practical obstacles such as the significant expense involved in accessing court”, and suggested that “All victims must be granted access to effective judicial and administrative remedies. This entails the dismantling of discriminatory barriers and the provision of support to victims at all stages of the legal process”.187 The UN Human Rights Committee has recommended that states must ensure “LGBT persons have access to justice, and that all


185 Article 2.3 of the ICCPR; Article 13 of the CAT; Article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination; Article 12, 17.2(f) and 20, International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006 (International Convention for the Protection of All Persons from Enforced Disappearance)


allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated.\textsuperscript{188}

In its General Recommendation on Access to Justice in 2015, the CEDAW Committee noted: "discrimination against women is compounded by intersecting factors", one of which was “being lesbian, bisexual, transgender women or intersex persons. These intersecting factors make it more difficult for women from those groups to gain access to justice”.\textsuperscript{189}

In India’s UPR in 2012, the government of the USA recommended that the Indian government “Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens”.\textsuperscript{190} India did not accept this recommendation.
VI. Conclusions and Recommendations

The legal system has great potential to be transformative in ensuring justice for queer persons in India. As this report has noted, courts have been crucial fora in the fight for the rights of queer persons in India, and recent decisions by Indian courts offer hope. The decision in the NALSA case, for example, was an important affirmation of the basic fundamental rights of transgender persons and should be the foundation of future transgender rights legislation. The Supreme Court is also currently considering the Suresh Koushal curative petition, challenging the constitutionality of section 377.

However, in recent years, India’s legislature and executive have lost several opportunities to reaffirm and strengthen rights protections for queer persons, both, in India and globally. Two efforts to repeal section 377 in Parliament were unsuccessful. As this report has described in detail in chapter III, present drafts of transgender rights legislation risk undermining the decision in the NALSA case. Globally, India abstained on resolutions to set up an Independent Expert on Sexual Orientation and Gender Identity at the UN Human Rights Council.¹⁹¹

In describing the challenges that queer persons in India face while accessing justice, this report makes a number of arguments: First - laws which must guarantee and facilitate the full range of queer persons’ human rights, instead, operate to hinder or inhibit queer persons from accessing justice and seeking redress. Second - The attitude and behavior of police is one of the biggest barriers to queer persons’ access to the justice system in India. Not only do police officers commit acts of violence and discrimination against queer people, but they also refuse to file complaints by queer persons as a result of their bias or stereotypes. Third – the lack of queer friendly lawyer networks, combined with the range of challenges lawyers face and the biases of officials in the formal system, add to difficulties queer persons face while trying to access the justice system. The manner in which the legal and justice system operate in India is inconsistent with the obligations that the Indian state has under international human rights law to prevent violence and discrimination based on sexual orientation or gender identity.

The ICJ recommends that the Indian government should:

- Ensure that laws, policies and practices fully comply with international human rights law and standards on access to justice, in particular the right to a remedy and reparation, the prohibition of discrimination on the basis of SOGI, the right to equality before the law and equal

¹⁹¹ In 2016, at the 32nd session of the UN Human Rights Council, members of the Council voted on the establishment of an Independent Expert on sexual orientation and gender identity. An Independent Expert would focus urgent, systematic and comprehensive attention to the range of human rights violations committed on grounds of sexual orientation and gender identity, and encourage timely and necessary attention and dialogue on this by countries, UN entities, and other stakeholders. India abstained during this vote. However, the resolution passed, and the position of the Independent Expert was established.
protection of the law, and take into account the needs of queer people and their experiences, including the specific obstacles they face in seeking and obtaining justice and redress;

• Repeal section 377 of the Indian Penal Code;

• Adequately define and fully criminalize all acts of rape and sexual assault in line with international standards, including by ensuring that the legislation caters for all circumstances where the victims’ prior, free and informed consent was absent as a result of coercion through “fear of violence, duress, detention, psychological oppression or abuse of power”, or “by taking advantage of a coercive environment”;

• Study and monitor the criminal justice system to understand which legal provisions are used most often by police to harass and detain queer persons;

• Repeal vaguely worded criminal laws that invite discriminatory application or otherwise provide scope for arrests based on prejudice – including those mentioned in this section – or substantially revise them to ensure there is no scope for their abuse;

• Withdraw the Transgender Persons (Protection of Rights) Bill 2016 as currently drafted, and engage in meaningful and substantial public consultation with members of the transgender community;

• Meaningfully consult with people who have already tried to or changed their name and gender on official documents, on what barriers they faced, with a view of designing a system that addresses these issues;

• Ensure that any process introduced for the legal recognition of gender identity is consistent with international human rights law and the NALSA decision; and fully respects the principle of self identification of gender identity;

• Raise awareness among all government officials – especially those responsible for the issuance of identity cards – of the rights granted by the NALSA judgment, and of any new process in place to change name and gender on identity cards;

• Ensure that all police officers are trained to respect the rights to equality and non-discrimination of all persons, including on grounds of sexual orientation and gender identity, in the performance of their functions;
• Ensure that police officers refrain from detaining and harassing persons on the basis of their real or perceived sexual orientation or gender identity and that officers who abuse or harass queer persons are investigated and subject to disciplinary action or to prosecution, as is relevant;

• Ensure that police officers promptly register and investigate any complaint regarding violence or any other criminal act filed by a queer person and/or on their behalf, and initiate prosecutions where necessary in accordance with established rules of criminal law;

• Ensure that all human rights abuses against queer persons are investigated, the perpetrators are brought to justice, and that the persons experiencing the abuse are able to access prompt and adequate reparation and compensation, in line with international human rights law.

• Put in place standard operating procedures that ensure that police treat people of diverse sexual orientations and gender identities with the fullest respect for their dignity, privacy, and self expression, including during arrest and detention;

• Provide legal and sensitization training relating to sexual orientation and gender identity to lawyers and judges under the State and District Legal Services Authority, along with outreach programmes to facilitate queer individuals’ access to the justice system;

• Set up legal aid clinics and outreach programmes to ensure queer individuals are able to access legal support.
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February 2017 (for an updated list, please visit www.icj.org/commission)

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TAB 7
Human Rights Council
Twenty-sixth session
Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo

Addendum

Mission to India*

Summary

The present report contains the findings of the Special Rapporteur on violence against women, its causes and consequences, on her visit to India from 22 April to 1 May 2013. In the report, the Special Rapporteur examines violence against women in the country, including root causes and consequences, and the implications of such violence on the effective exercise of human rights by women. She also discusses the State’s responses and provides recommendations.

* The summary is being issued in all official languages. The report itself, contained in the annex to the summary, is being issued in the language of submission only.

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Annex

Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to India (22 April–1 May 2013)

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I. Introduction

1. At the invitation of the Government of India, the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, conducted an official visit to that country from 22 April to 1 May 2013.

2. The Special Rapporteur would like to thank the Government for its invitation. She appreciates the opportunity provided to assess the situation directly. In New Delhi, consultations were held with officials of the Ministry of Women and Child Development, the Ministry of Home Affairs, the Ministry of Health and Family Welfare, the Ministry of Labour and Employment, the Ministry of External Affairs and the Delhi Police. The Special Rapporteur also met with the chief secretaries and State officials in Rajasthan, Gujarat and Manipur. She also held meetings with officials from the National Mission for the Empowerment of Women, the National Commission for Women and the National Human Rights Commission. The Special Rapporteur regrets that, despite her specific requests prior to and during the mission, no visits to State-run shelters, prisons or detention centres were programmed. She also regrets that no meeting was arranged with the Committee on Amendments to Criminal Law (Verma Committee).

3. The Special Rapporteur consulted extensively with civil society and victims in various locations within the country.

4. The Special Rapporteur is grateful to the United Nations country team for its support prior to and during her visit. She is grateful to all interlocutors, including survivors of violence who shared their experiences with her. She looks forward to a fruitful dialogue with the Government and other stakeholders on the implementation of her recommendations.

5. The Special Rapporteur’s mission was underpinned by knowledge of the ongoing struggle in India for women’s rights and its present complexities. The establishment of self-governance during the colonial period was influenced by the leadership of Mahatma Gandhi, whose discourse included the need to address recurrent issues affecting women in India, such as caste-based discrimination, harmful customary and religious practices and sexual violence. The historical struggle against patriarchy was also shaped by the role of the women’s rights movements in exposing the root causes of inequality, discrimination and violence against women.

6. While due recognition of the complexities inherent to the country’s size and diversity need to be taken into account, it is imperative that those are not used to explain, defend or justify violence against women or the failure to address it.

II. Manifestations of violence against women and girls, its causes and consequences

7. Violence against women in India is systematic and occurs in the public and private spheres. It is underpinned by the persistence of patriarchal social norms and inter- and intra-gender hierarchies. Women are discriminated against and subordinated not only on the basis of sex, but on other grounds, such as caste, class, ability, sexual orientation, tradition and other realities. That exposes many to a continuum of violence throughout the life cycle, commonly referred to as existing “from the womb to the tomb”. The manifestations of violence against women are a reflection of the structural and institutional inequality that is a reality for most women in India.
A. Violence against women in the family

8. According to numerous interlocutors, the physical, sexual and psychological abuse of women in the private sphere is widely tolerated by the State and the community. The perpetrators include husbands, in-laws and other family members. Many victims live in family settings that are rooted in deeply entrenched patriarchal and customary practices that are sometimes harmful to women. The widespread socioeconomic dependency of women subordinates them to their husbands and other family members. The fear of social exclusion and marginalization, and the lack of effective responses to violence, keeps them in a context of continuous violence and intimidation.

9. Violence and killings linked to dowry payments are alarming across the country. Data from the National Crime Records Bureau reflect an increasing trend of crimes reported under the Dowry Prohibition Act since 2008, and a significant increase in such crimes since 2010.1 Marriage is often used by the husband and/or his family to obtain property or other assets from the wife and/or her family, either directly or indirectly. While its practice has evolved through time, the payment of dowry today is based on the idea that women are a burden. It is also commonly considered to be crucial to ensure the safety of the bride, especially within poor communities. Despite the payment of dowry, many women and girls find themselves forced into a life of servitude and experience repeated acts of harassment, intimidation, sexual abuse and violence by their husbands and other family members as part of demands for more dowry.

10. “Honour crimes” are usually perpetrated by family members, often with the complicity of community leaders. Reasons range from a woman’s refusal to be forced into marriage and retaliation for marrying the man of her choice, to refusal to follow prescribed and expected dress codes. Women and girls suffer a wide range of physical and psychological abuse and the denial of basic freedom of movement and expression, and are sometimes killed in the name of “honour”.

11. Customary practices in the family and community point to a pattern of daughter aversion and son preference. Research has documented a trend of declining girl-child sex ratio from 962 per 1,000 males in 1981, to 945 in 1991, to 927 in 2001, to 914 in 2011.2 Patriarchal norms and socioeconomic factors have reportedly fuelled the decline. The desire for sons has led to a “policing” of pregnancies by spouses and families through prenatal monitoring systems. The results can lead to sex-selective abortions, which are often forced on women in violation of their sexual and reproductive rights. Despite specific legislation to address this problem,3 including stringent measures in case of contravention, there is a continuing prevalence of sex-selection practices in some states. Furthermore, some of those measures are perceived as the State policing pregnancies broadly and violating women’s sexual and reproductive choices.

B. Violence against women in the community

12. Sexual violence, including rape and sexual harassment, is widespread across the country and perpetrated in public and private spaces. According to the National Crime

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Records Bureau, in 2012, 2.84 cases of rape were reported every hour. Many interlocutors stated that there was a general sense of insecurity for women in public spaces, especially in urban settings. Women are easy targets of attacks, including sexual violence, whether while using public transportation or sanitation facilities or on the way to collect wood and water. Many victims of sexual violence carry a deep sense of shame, which is further exacerbated by the stigma and exclusion they experience, especially from family members and the community, and which may result in suicide.

13. With regard to early and/or forced marriages, the implementation of the Prohibition of Child Marriage Act, 2006 has resulted in some reduction in the overall percentage of early marriages. However, the high prevalence of such marriages continues to endanger the lives of girls, whether in respect of domestic violence, marital rape or early pregnancies. It also deprives them of numerous human rights, including the right to education and the enjoyment of their childhood.

14. The Special Rapporteur was informed about the high incidence of acid attacks on women in the country, despite the development of new legislative measures. Victims of acid attacks are predominantly women who challenge patriarchal norms, including by opposing a marriage or partner proposal. The disfiguring of the victim’s face and body forces the survivors to live in stigma, shame and exclusion. It also creates a climate of fear for other women as regards the consequences of failing to abide by and respect traditional practices and roles.

15. Violence against various groups is also of concern. Dalit and Adivasi women and women from other scheduled castes and tribes and other “backward classes” are frequent victims of multiple and intersecting forms of discrimination, as well as violence. Caste-based discrimination, which also includes intra-caste hierarchies, continues to be pervasive and widespread. The intergenerational nature of caste-based discrimination condemns women to a life of exclusion, marginalization and disadvantage in every sphere of life. Many of those women are denied an education and economic opportunities, and perform dangerous and unprotected work, including bonded labour (debt bondage) and manual scavenging, which are both widely regarded as forms of forced labour and modern forms of slavery. Women represent the vast majority of manual scavengers in the country, and are commonly from scheduled castes and minority groups. While legislation has been adopted to eradicate bonded labour and manual scavenging, reports and interlocutors indicate that there is a consistent failure in the implementation of such laws and a tendency to minimize the significance of the problem.

16. Numerous testimonies shared on recurrent episodes of communal violence against religious minorities, including Muslims and Christians, reflect a deep sense of insecurity and trauma of women living in those communities. Experiences included women being

4 India, Crime in India, snapshots, p. 6.
6 Criminal Law (Amendment) Act, 2013, amendment of section 100 of the Penal Code.
stripped, burned, attacked with objects inserted into their vaginas and sexually assaulted in myriad ways because of their religious identity. It was reported that perpetrators of those crimes usually held positions of authority and often went unpunished. Further, those minorities are allegedly excluded from access to education, employment and adequate housing on equal terms with other citizens, despite the existence of affirmative action schemes and measures by the Ministry of Minority Affairs and the National Commission for Minorities aimed at empowering minority women through the provision of knowledge, tools and training.

17. Women employed as domestic workers are often irregular migrants and unregistered women who operate in a poorly regulated labour market and who are usually considered as belonging to the bottom of a social class. They become easy targets for abusive employers, who force them to work long hours in return for low salaries and often deduct amounts for leave days taken. Many are prevented from using the employer’s sanitary facilities and are forced to defecate and bathe in public, and are subjected to various forms of harassment and violence. Many women are primary breadwinners, either as a result of widowhood or unemployed spouses, and their low pay makes it difficult to assume financial responsibility, including for their children’s health and education needs. Alcohol abuse by husbands was also reported to be a contributing factor to the violence many of those women experienced.

18. Women with disabilities face multiple challenges, including, for example, the lack of adequate access to public spaces, utilities and buildings, and often experience harassment in public. The Special Rapporteur was informed of a troubling practice whereby a payment incentive was offered, either as a State scheme or a dowry from the family, in exchange for marriage to a woman with disabilities. She was also informed of violence perpetrated against women with disabilities in State-sponsored shelters.

19. Women in same-sex relationships and transgender women also confront violence and exclusion. Section 377 of the Penal Code criminalizes sexual activities “against the order of nature”. This particularly affects the protection rights of lesbian and transgender women and has been used by parents as an excuse to prevent homosexuality in their families. The mere perception of different sexual orientation is sufficient to put people at risk of violence and is a contributory factor to the inability of the lesbian, gay, bisexual, transgender and intersex community to report cases of violence.10

20. Sex workers are exposed to a range of abuse, including physical attacks, and harassment by clients, family members, the community and State authorities. Many sex workers are forcibly detained and rehabilitated, and they also face a consistent lack of legal protection. Many face challenges in gaining access to essential health services, including for treatment for HIV/AIDS and sexually transmitted diseases. A recent order of the Supreme Court of India took the position that a sex worker engaged in such work to survive and was “not leading a life of dignity”.11 In her discussions with interlocutors, the Special Rapporteur noted a tendency to conflate sex work with trafficking in persons, and when sex workers are identified as victims of trafficking, the assistance that is provided to them is not targeted to their specific needs.

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10 In a recent decision, *Suresh Kumar Koushal and another v. Naz Foundation (India) Trust*, 2013, the Supreme Court, while setting aside the decision of the Delhi High Court on section 377 of the Indian Penal Code, ruled that the Parliament had to legislate on the issue and upheld section 377, as it still remained in the statutes of the country.

21. Widows also face particular vulnerabilities, as they are often denied and dispossessed of property by their in-laws following the death of a spouse. In addition, social exclusion and poverty lead some widows to engage in sex work and prostitution, and their children to perform hazardous labour or beg on the streets.

22. The Special Rapporteur was also informed of brutal acts of violence against women, including executions, commonly referred to as “witch-hunting”. The stigma that is attached to women who are labelled a “witch”, and the rejection they experience within their communities, leads to various violations and is an obstacle to gaining access to justice. Such labelling affects family members across generations. There is reportedly little or no official investigation into such violations.

C. Violence against women condoned or perpetrated by the State

23. Women living in militarized regions, such as Jammu and Kashmir and the north-eastern states, live in a constant state of siege and surveillance, whether in their homes or in public. Information received through both written and oral testimonies highlighted the use of mass rape, allegedly by members of the State security forces, as well as acts of enforced disappearance, killings and acts of torture and ill-treatment, which were used to intimidate and to counteract political opposition and insurgency. Testimonies also highlight the impact of that situation on women’s health, including psychological disorders such as post-traumatic stress disorder, fear psychosis and severe anxiety, with such conditions having a negative impact on women’s physical well-being. Additionally, the freedoms of movement, association and peaceful assembly are frequently restricted. The specific legal framework that governs those areas, namely, the Armed Forces (Special Powers) Act and its variations, allows for the overriding of due process rights and nurtures a climate of impunity and a culture of both fear and resistance by citizens.

24. Violence against women in custodial settings remains a concern. In 2012 there were 20 women’s prisons and 21 centres for the rehabilitation of juvenile offenders. Furthermore there are rehabilitation centres for sex workers. Women account for 4.4 per cent of all inmates in the country. Women prisoners are scattered across the country, often in violation of international standards aimed at ensuring that those wishing to maintain family relationships during custody can do so. Concerns were raised about a lack of adequate protective measures to ensure the safety of inmates, including from gender-related killings. In 2012, 55 deaths of female inmates were registered, of which eight were suicides. There was also a reported lack of access to essential services, including medical care, for inmates due to limited resources.

25. Women were also found to suffer violence in the context of forced evictions. The State’s efforts to foster economic growth and implement development projects are allegedly often conducted without adequate consultations with affected communities, with the sole objective being one of economic growth at any cost. The consequences for women include being forced to live in insecure environments, displacement, the degradation of their environment, the loss of land and livelihoods and forcible evictions. Many victims are left without adequate relocation alternatives, forcing them to live in slums or on the streets. The Government’s twelfth Five-Year Plan, 2012-2017 includes elements to improve housing

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13 Ibid.
14 See article 79 of the Standard Minimum Rules for the Treatment of Prisoners.
16 Ibid., pp. 140 and 152.
conditions through a new slum rehabilitation programme and schemes to assist States to improve livelihood opportunities in urban areas.17

26. The Special Rapporteur noted concerns with regard to profit-oriented microfinance institutions involving microfinance products for women, and the failure of the State to protect and prevent abuses. Vulnerable women reportedly receive multiple loans and are sold financial products with little or no information, and the unequal bargaining power between such institutions and clients is not addressed by regulation. Such practices result in over-indebtedness and the inability to pay back, which leads to harassment and threats and women being excluded from their families and communities. Some have reportedly committed suicide as a result of such abuse. It is unclear if the larger problem is a lack of, or inadequate, regulation of microfinance institutions.

D. Violence against women in the transnational sphere

27. Many women refugees and asylum seekers are unskilled workers who often perform hazardous labour in urban and informal settings. While access to education and health care is provided for free by the Government, access to livelihoods is still a challenge, particularly in urban or semi-urban areas. Many of those women earn low wages and are forced to live in small and overcrowded apartments, with a lack of access to basic sanitation in less developed urban settings. Such factors contribute to poor health conditions and other vulnerabilities. Language barriers often impede their ability to gain access to health care, education and the justice system. Despite improvements in criminal law and police procedures, women refugees and asylum seekers continue to voice safety concerns, as they are frequent targets of attacks and harassment by employers, landlords and community members in public and private spheres.

28. The trafficking of women and girls from, and to, India was reported as widespread. Disadvantaged women from minority groups, scheduled castes and tribes and the “backward castes” are usually the main victims. Young unskilled women are allegedly given false work promises, resulting in forced domestic servitude in foreign countries. Women who are trafficked and forced into prostitution are left unable to defend their rights, and lack access to rehabilitation and compensation for such crimes. This lack of protection and prioritization of the problem by the State has intensified the violence perpetrated against them by criminals or those involved in trafficking practices. The complicity of State officials in human trafficking was also reported as a concern. The Immoral Traffic (Prevention) Act, 1956 and its amendments18 are reportedly more directed at safeguarding public moral than combating trafficking in line with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

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18 See also the new sections 370 and 370A of the Penal Code (2013). Trafficking is introduced under section 370, which establishes stringent prison terms of 7 to 10 years for anyone who “for the purpose of exploitation (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person or persons”.
III. Implications of inequality, discrimination and violence on women’s enjoyment of their human rights

29. The protection of human rights has advanced significantly since India achieved independence. The adoption of the first democratic Constitution in 1949 marked progress towards developing a normative framework conducive to the protection of women’s human rights. For the first time, the Constitution recognized freedoms and rights of women, strengthened the principle of equality between men and women and afforded legal protection to all, without discrimination on the basis of sex, among other criteria. It also allowed for affirmative action measures for women.

30. India has ratified numerous international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

31. At the national level, laws and policies have been put in place to prevent and respond to violence against women. These include the Penal Code, the Criminal Law (Amendment) Act 2013, the Sexual Harassment of Women at Workplace (Prevention, Prevention and Redressal) Act, 2013, the Protection of Women from Domestic Violence Act, 2005, the Indecent Representation of Women (Prohibition) Act, 1986, the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Dowry Prohibition Act, 1961, the Commission of Sati (Prevention) Act, 1961, the Immoral Traffic (Prevention) Act, 1956 and the Bonded Labour System (Prohibition) Act of 1976, among others. Despite those positive developments, effective implementation of those laws and the allocation of financial resources to support their execution adequately is reportedly lacking in many instances.

A. Civil and political rights

32. In terms of women’s participation in political and public affairs, significant challenges remain at both the national and local levels. According to the Inter-Parliamentary Union, India ranks 111th of 188 States in terms of women’s participation in parliaments.\(^\text{19}\) The Special Rapporteur was informed that a bill aimed at reserving one third of all seats for women in the lower house of the Parliament (the Lok Sabha) and the State legislative assemblies was still outstanding.\(^\text{20}\) In terms of the judiciary, the proportion of female judges is very low.\(^\text{21}\) At the local level, citizens may participate in community-level self-government institutions, named Gram Panchayats (village councils). The Special Rapporteur regrets that she was not able to engage directly with that sector of Government, despite her requests.

33. Measures have been put in place to ensure greater representation of women in positions of authority in village councils, including women belonging to marginalized groups. The Government has also piloted a programme for women Gram Panchayat representatives, who would serve as counsellors for women victims at the community level. Their main function is to facilitate information-sharing on issues relating to women, and

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\(^{20}\) The Constitution (108th Amendment) Bill, 2008, known as the Women’s Reservation Bill.

\(^{21}\) For a list of Supreme Court and High Court judges, see http://doj.gov.in/?q=node/86.
forge interdepartmental links within states. However, there have been numerous allegations of abuse of authority by and patriarchal attitudes of women elected to Gram Panchayats (whether by choice or through coercive influences), and of abuse by community leaders, including members of the illegal informal courts of the Khap Panchayats.

34. The lack of registration and the difficulty in obtaining an identity card were noted as impeding women’s participation in public life, including their access to essential services. No information was available to ascertain the measures in place to address that problem.

35. Fair trial rights, equality before the law and equal protection of the law were affected by numerous challenges, beginning with the reporting of cases of violence against women to the police. Many interlocutors said that victims were often discouraged from reporting to the police and that many women did not file a complaint owing to fear of reprisals or lack of guarantees of adequate shelter and access to livelihoods. Informal dispute settlement alternatives are often sought, allegedly by police, family members or community leaders. Many interlocutors described the complete or partial absence of legal, housing, security and financial assistance measures for victims. To be able to officially report complaints and continue throughout the often lengthy judicial process in safety and with an adequate standard of living is not an option for many women.

36. The Special Rapporteur received information indicating that human rights defenders, including women’s organizations, face numerous challenges, including harassment, intimidation and reprisals. Those concerns echo the findings contained in the 2011 report of the Special Rapporteur on the situation of human rights defenders (A/HRC/19/55/Add.1), the 2012 report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/23/47/Add.1 and Corr.1) and concerns voiced during the universal periodic review of India in 2012.

B. Economic rights and the right to development

37. India recently underwent a significant wave of reforms to liberalize its economy, which has resulted in unprecedented growth and prosperity. Economic growth reportedly constitutes an overriding priority in the run-up to the May 2014 general elections. The country’s twelfth Five-Year Plan, 2012–2017 is focused on economic sustainability and is aimed at making such growth irreversible. Unfortunately, the economic development focus for women remains one of subsistence and does not necessarily take into account, or address sufficiently, the gendered and class nature of systemic and structural inequality and discrimination. Gender budgeting, as a tool to establish gender differential impacts and to ensure that gender commitments are translated into budgetary commitments, was highlighted by the Ministry of Women and Child Development. However, its implementation across the country is not consistent.

38. Whereas the participation of all citizens in the economy is considerable, women’s labour force participation is significantly lower, at 25.7 per cent, as compared to men, at 77.4 per cent. Moreover, job opportunities for women are in decline. Women are also

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24 India, Ministry of Labour and Employment, “Report on the Second Annual Employment and Unemployment Survey (2011–12)”, press note, third page. According to the Ministry, the annual unemployment rate stands at 3.8 per cent (ibid.). An International Labour Organization source indicates that the participation of women in the workforce fell from 37.3 per cent in 2004/05 to 29.0 per cent in 2009/10; only 44 per cent of the decline can be explained by the increased enrolment of
found in precarious jobs requiring low skills and offering low and unequal wages. According to official statistics, the general trend of daily earnings for women in recent decades has been comparatively lower than those of men in virtually all sectors, including manufacturing, mining and service sectors.26

39. Labour legislation in India provides for safeguards to ensure respect for the rights of women at work, and schemes are in place to help women improve their skills in specific occupations, thus moving beyond subsistence labour skills. For example, there are training institutes to help women gain access to the labour market, including industrial training institutes, with 14,059 centres across the country. Public/private schemes have been designed by companies and public institutions to provide training for women in key industrial areas, but there is no commitment to future employment in those companies.

40. Legal measures have been instituted to address sexual harassment in the workplace. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 defines sexual harassment comprehensively and is largely in line with the 1997 Vishaka judgement.27 It provides for complaints committees in all workplaces employing at least 10 persons. Moreover, while penalties are prescribed in the event of a false or malicious complaint, the Act seeks to prevent the revictimization of victims who are unable to provide adequate proof or substantiate a complaint.

41. In terms of safety and health at work, in 2009 the Government instituted the National Policy on Safety, Health, and Environment at the Workplace, including an action programme for implementation, which is to be reviewed every five years. The policy is guided by constitutional principles relating to work, which include maternal protection, health and strength at work, prohibition of child labour, and participation in decision-making.28

42. Microcredits are used widely in the country, particularly by poor and vulnerable women. Most loans are provided by microfinance institutions, including non-banking financial (or “Section 25”) companies. Despite concerns about a lack of adequate regulation and abusive practices, the adoption of legislation at the Union level, such as the Micro Finance Institutions (Development and Regulation) Bill, 2011 is still pending. Some States have adopted legislative frameworks, but the overall view is that those institutions operate in a largely unregulated market.

43. In terms of the prohibition of slavery and slavery-like practices, such as bonded labour, the Bonded Labour System (Prohibition) Act, 1976 was enacted as a deterrent.
C. Social and cultural rights

44. Pervasive gender stereotyping, whether in the media, in the community or in discourses by public officials, was highlighted as an impediment to women’s development. The pervasive culture of denigrating and marginalizing women’s perspectives, concerns and also their identity was an issue that was raised by several interlocutors. Concerns were also raised about the resulting impact on the social standing of women. According to official data, between 2011 and 2012 the number of cases involving insult to the modesty of women increased by 7 per cent.29 In 1986, the Indecent Representation of Women (Prohibition) Act was enacted to prohibit indecent representation in advertisements, publications, writings and paintings or in any other manner. New amendments have been proposed to include new forms of communication, to strengthen penalties and to provide for preventive measures. No official information was shared as to accountability measures to address the continuing occurrence of such stereotyping by either State or non-State actors.

45. Effective implementation of legislation is dependent on the cultural and social norms that exist in a society. Women’s role in participating and shaping such norms is essential, but is dependent on whether gender equality is the dominant culture and whether the status of women allows for their effective participation. As indicated above, women’s participation in shaping the culture of equality is restricted by the dominant patriarchal culture that is deeply entrenched and pervasive.

46. Many interlocutors also pointed to the denial of the rights to social goods such as education, health and social benefits as a barrier to the fulfilment of the rights necessary for a life of dignity.

IV. Challenges in fulfilling the State’s obligation to act with due diligence to eliminate violence against women

47. States are required to exercise due diligence to prevent and respond to all acts of violence against women. A comprehensive system of prevention and protection, with real prospects of mitigating harm, altering outcomes and ensuring accountability, must be the norm.

48. A framework of analysis to assess the obligation of India to prevent, protect, investigate, prosecute and punish, and provide for effective redress measures for acts of violence against women, in accordance with international and national law, is provided below.

A. Prevention

49. Violence against women became a priority political issue following the brutal gang rape, on 16 December 2012, and tragic death of a young student in New Delhi. The outrage and condemnation that followed in India, and beyond, was accompanied by widespread social mobilization of citizens demanding justice, accountability and more protection for women and girls. As a consequence, the Verma Committee was established by the Government to review existing normative gaps. The committee’s January 2013 report included observations and recommendations on addressing sexual violence in the country, with respect to, inter alia, reforms to the police, judiciary, political institutions and

29 India, Crime in India (footnote 1 above), p. 84.
education; improvement of security in public spaces; and protection in the family. The recommendations led to the adoption of new legislation, notably the new Criminal Law (Amendment) Act, which recognizes acid attacks as a new criminal offence; provides for penalties for sexual harassment, assault against or use of criminal force on a woman with the intent to disrobe, voyeurism and stalking; introduces the crime of trafficking; and criminalizes rape and gang rape. The Act improved the legislative framework significantly, introducing new criminal offences and stronger sanctions.

50. However, the laws that were adopted did not fully reflect the recommendations of the Verma Committee. The opportunity to adopt a holistic approach to violence against women, including addressing the root causes and consequences of such violence, was lost. In fact, the Criminal Law (Amendment) Act failed to: criminalize existing beliefs and practices linked to chastity; protect women with disabilities, unmarried women, lesbian, gay, bisexual and transgender persons, religious minorities, and girls below 18 years of age from sexual violence; or recognize marital rape as a criminal offence. Moreover, gang rapes and mass crimes involving brutal acts of sexual violence are not considered as multiple crimes against women, but as a single punishable crime under this law. Many concerns were raised about the deterrent effect of the application of the death penalty, as provided for in the Act. This is a statutory option for the courts in cases of gang rape where a perpetrator is a repeat offender, or if sexual violence results in the death of the victim, or puts the victim in a permanent vegetative state. It is of concern that conviction in such cases may entail higher evidential burdens for the victim, since the death penalty is a consideration in sentencing. The current legislative framework is therefore still in need of reform.

51. Serious concerns were expressed with regard to the insensitive and taunting attitude of some members of Parliament with regard to the Criminal Law (Amendment) Act. The Special Rapporteur regrets that some political leaders are not fully committed to the process of legal and social change as regards women’s human rights.

52. The Protection of Women from Domestic Violence Act, 2005 seeks to protect, and prevent harm to, women who are or have been abused by a male spouse or a family member. The law broadly defines domestic violence and upholds the right of victims to live in the household, irrespective of title rights, and has a number of provisions for the issuing of protection orders. Other aspects include procedures for obtaining relief, such as financial assistance, and a detailing of the role and powers of service providers.

53. The National Mission for Empowerment of Women has a National Mission Authority at the apex level under the Chairmanship of the Prime Minister. It is mandated to ensure policy convergence among ministries and state governments and to strengthen the overall processes that promote the all-round development of women. The Mission facilitates the convergence of gender-sensitive schemes for women; carries out research, awareness-raising, education and capacity-building activities; and works to strengthen the institutional framework. However, challenges were noted in terms of collaboration with some states, notably those in which the ruling political party was different to that of the central Government. Moreover, some interlocutors noted that the budget allocation for women’s issues was much lower than that for children’s issues in the Ministry of Women and Child Development. The Mission confirmed the lack of gender programmes in that ministry, and also the need to designate gender convergence officers in every ministry to address the gaps.

54. As regards early marriages, good practices were reported in Rajasthan, whereby specialized local officers were assigned to conduct prevention activities. Despite some positive developments, there are significant gaps in the legislation, particularly in the Penal
Code, whereby child marriages are allowed through the practice of declaring them voidable, not void, despite the protection provided in the Prohibition of Child Marriage Act, 2006.³⁰

55. The prevalence of dowry-related practices throughout the country was raised as a serious concern. The Dowry Prohibition Act prohibits the giving of, taking of and demand for dowry, and establishes dowry prohibition officers to ensure the implementation of the law. Data from the National Crime Records Bureau reflects an increasing trend of reported dowry-related deaths since 2008.³¹ Concerns about the lack of effective implementation of the law were noted.

56. In order to better address “honour crimes”, the Law Commission of India issued a report entitled “Prevention of interference with freedom of matrimonial alliance (in the name of honour and tradition): a suggested legal framework”, in August 2012. While the report is only recommendatory in nature, the Special Rapporteur was informed that such recommendations are given due consideration by the Government.

57. National human rights institutions are crucial to promoting and monitoring the effective implementation of legislation and the State’s obligations under both national and international law. India has the National Human Rights Commission and 23 state human rights commissions dealing with human rights. The National Human Rights Commission has a broad human rights mandate, which includes women’s rights. The National Commission for Women has the specific mandate to review constitutional and legal safeguards for women, recommend remedial legislative measures, facilitate redress of grievances, including on violence against women, and advise the Government on all policy matters affecting women.

58. The Special Rapporteur received reports indicating that the legal basis of the National Commission for Women is not in accordance with international standards; that the institution lacks foundational, functional, operational, political and financial independence; and that the Commission is generally unable to adapt to the evolving and transformative demands of the human rights of women. According to section 3 of the National Commission for Women Act, 1990, the Commission’s composition is determined by the central Government. A number of allegations highlighted the Commission’s inability to deal with complaints effectively and undertake independent investigations into violations of women’s rights. Reports also reflect the Commission’s failure to address the causes and consequences of violence against women, including, for example, by finding that no particular religious group was targeted during the 2002 Gujarat massacre;³² by consistently

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³⁰ In 2012, the Delhi High Court held that: “Consent below the age of 16 years is immaterial, except when the rape is committed by a male who is married to the girl. Section 376 [Indian Penal Code] does not treat the rape committed by a husband on his wife above the age of 15 years as an offence”. Moreover, the Court also held that the marriage was not void but voidable: “if the girl is more than 16 years, and the girl makes a statement that she went with her consent and the statement and consent is without any force, coercion or undue influence, the statement could be accepted”. According to section 3 of the Prohibition of Child Marriage Act, such marriages are “voidable at the option of the contracting party who was a child at the time of the marriage”. See the Court’s judgement of 27 July 2012 on the Hindu Marriage Act, 1955, paras. 47 and 51. Available from www.delhicourts.nic.in/July12/Court%20on%20its%20own%20Motion%20Vs.State.pdf.
³¹ India, Crime in India, p. 81.
justifying sexual assault on women as a result of “provocative dressing”;\textsuperscript{33} by its inability, over many years, to promote much needed law reform; and by denying reports of sexual violence by security forces, including in regions governed by the Armed Forces (Special Powers) Acts.

**B. Protection**

59. The lack of implementation of the Protection of Women from Domestic Violence Act was a concern often raised. Under the Act, women victims require the assistance of a protection officer to lodge a complaint and to file a domestic incident report. The recruitment and deployment of protection officers in the country is limited; they often work part-time and lack the resources to assist victims to file complaints. For instance, in the State of Rajasthan, with a population including approximately 27 million women,\textsuperscript{34} there are only 607 designated protection officers and 118 organizations registered as service providers.\textsuperscript{35} The inadequacy of resources to provide a mandatory service is a reflection of a failure to act with due diligence. The Special Rapporteur was informed that the central Government is considering providing financial assistance to states to fund full-time protection officers. In addition, concerns were raised with regard to the lack of protection for people in same-sex relationships, due to the language in the law as regards jurisdiction.

60. Although telephone hotlines are available, the police are usually the first point of contact for many women, according to reports received. Victims of violence, who require from the State special security, shelter, public housing, health care and socioeconomic protection, often face significant challenges. Many services are channelled through providers that lack sufficient resources. Numerous allegations were made of de facto caste-based discrimination, perpetrated by police officers, public representatives and community members, with regard to access to services.

61. Another concern highlighted was that the criminal justice system does not operate fully on the basis of the rule of law in accordance with international standards. The Special Rapporteur was informed of cases in which courts have criminalized women victims of violence, including victims of sexual and communal violence. Also repeatedly raised was the concern that legal aid, a right guaranteed in article 39A of the Constitution, was not equally granted to women in practice, and in particular to poor and marginalized women.

**C. Investigation, prosecution and punishment**

62. Concerns were voiced with regard to the investigation of cases and the prosecution and punishment for crimes committed against women. The proportion of women in the police and in the judiciary is seriously low, which contributes to a lack of attention to women’s issues.


\textsuperscript{34} 2001 census.

\textsuperscript{35} Interview with representatives of the government of Rajasthan.
63. Deeply entrenched patriarchal attitudes of police officers, prosecutors, judicial officers and other relevant civil servants, with regard to the handling of cases, further contribute to victims not reporting, withdrawing complaints and not testifying. Also, the attitudes and prejudices of many village leaders in Khap Panchayats, who act as informal judicial officers, often lead to a pre-arranged settlement between the families, thus failing to provide effective redress for victims. Few police stations have specialized women’s mechanisms to address the concerns of women, including violence cases, and to provide the assistance and protection that is required during the investigation phase. Impunity for abuses committed by police officers and the need for civilian oversight was highlighted.

64. Concerns were also raised about evidence gathering, including the practice of degrading medical and forensic examinations, such as the “two-finger test” for victims of sexual violence. The test is often carried out without the victim’s consent, and despite the practice being officially discontinued by the Director General of Health Services in 2011, and a Supreme Court decision of 2013 branding it as a violation of the victims’ right to privacy.

65. The Special Rapporteur heard complaints about the failure by the justice system in some states to ensure that women victims and witnesses of acts of violence benefit from adequate safety measures and judicial safeguards. Numerous allegations were received of women being subjected to acts of coercion and duress in a deliberate attempt to prevent the investigation of cases and punishment of perpetrators. Other accounts highlight the denial of the right of women to a fair trial, owing to a failure to receive legal assistance to pursue their cases.

66. The overall conviction rate in India for crimes listed in the Penal Code was 38.5 per cent in 2012, the lowest in 10 years, largely owing to delays in the finalization of cases. According to the National Crimes Records Bureau, the average conviction rate for crimes against women is 21.3 per cent for cases of kidnapping and abduction of women and girls, assault on women, insult to the modesty of women, cruelty by family members and trafficking of girls. Moreover, the annual analysis provided by the Bureau indicates that in 2012, reports of crimes against women had increased by 6.8 per cent over 2011 and by 24.7 per cent over 2008. The proportion of registered cases of crimes committed against women vis-à-vis crimes in total increased from 8.9 per cent in 2008 to 10.2 per cent in 2012. The low conviction rate and the higher number of cases registered will not act as a deterrent for future crimes against women, nor will it engender trust in the judicial system.

67. Impunity for crimes relating to communal violence is the norm. The recommendations of the Committee on the Elimination of Discrimination against Women relating to the Gujarat massacre (CEDAW/C/IND/CO/SP.1) have not been fully addressed as yet. Moreover, the draft Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill has been pending in Parliament for over eight years; despite the necessity for such a law.

68. In terms of the Armed Forces (Special Powers) Act and the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, which provide a wide range of powers to the army, the Special Rapporteur was informed that their powers are broader than those

36 India, Crime in India, p. 77. By the end of 2012, 84.6 per cent of criminal cases under the Penal Code remained pending for trial in various courts of the country (ibid., p. 73).
38 Ibid., p. 81. By number of crimes registered as cases of violence against women, the tendency also increased significantly, from 143,795 in 2001 to 244,270 in 2012 (ibid., Additional Tables, “Cases registered under crimes against women in India during 2001–2012”).
39 Ibid., p. 81.
permissible under states of emergency. Under the Acts, special powers are granted to the security forces in the “disturbed” regions of Jammu and Kashmir and the north-eastern States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura. Due to the enforcement of those laws, numerous allegations of human rights abuses were shared. These include violations of the right to life; sexual violence; arbitrary detention; torture and ill-treatment; violations of freedom of movement, expression, peaceful assembly and association; and violations of due process and equal protection before the law. The Special Rapporteur was not informed of any measures to ensure accountability and redress for victims. On the contrary, reports have been received alleging a total disregard of the non-derogable nature of some rights, provided for in article 4 of the International Covenant on Civil and Political Rights, and also an overall failure to justify restrictions of fundamental freedoms in a manner that is in compliance with the Covenant, a requirement reiterated by the Human Rights Committee on numerous occasions. Moreover, the Army Act, 1950 limits the scope for civil courts to consider allegations of violence against women perpetrated by army officials, including killings and sexual violence. According to that legislation, only victims not subjected to military, naval or air force law can access civil courts, which effectively excludes persons living in the territories under the Armed Forces (Special Powers) Acts.

D. Provision of effective redress, including reparations

69. As noted above, the Special Rapporteur was not provided with data on any measures to ensure redress for women victims of violence in the areas under the Armed Forces (Special Powers) Act and its variations. The norm of impunity that governs those territories is of great concern, as victims and their families are prevented from exercising their right to know the truth about violations, have no access to effective remedies and are not given guarantees of non-recurrence.

70. With regard to systemic failures, the low rate of prosecution and conviction for acts of violence against women contributes to the lack of effective redress provided to victims. Redress begins with the filing of domestic incident reports and a First Information Report. As noted above, this is deficient in many respects. Compensation payment is dependent on the filing of a case, which is dependent on the availability of protection officers and the provision of some form of legal identification. Women belonging to marginalized groups, including irregular migrants, domestic workers, scheduled castes and tribes and so-called backward castes are often unregistered citizens, or lack identification cards. Such factors contribute to a culture of normalization of violence against women.

71. Women experience obstacles in gaining access to mechanisms of redress, including legal aid, counselling services and shelters. They are also revictimized and exposed to further risk of violence through the denial of redress in the context of informal trials or negotiations between families and community leaders. The payment of financial compensation by the perpetrator or his family for acts of violence against women, in lieu of legal remedies, was a recurrent concern vis-à-vis the formal and informal justice systems.

E. Remedies for specific groups at risk

72. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 lists the entitlements for persons with disabilities and the obligations of the central and state Governments and local bodies. The Act contains no provisions to address the specific needs of women with disabilities who are victims of violence. Responses to violence against women with disabilities often fail to adapt to the type of impairment, whether psychological, physical, sensory or intellectual. Moreover, reports highlight a consistent lack of disaggregated data collection on disabilities, which renders the violence committed against women with disabilities invisible. In 2006, the Government issued a National Policy for Persons with Disabilities which, according to information received, needed to be harmonized with the Convention on the Rights of Persons with Disabilities. Following the ratification by India of the Convention, a new bill amending the 1995 Act was proposed, with specific provisions to protect women from violence.

73. In 2012, the Government expanded protection to refugee women, by allowing all refugees recognized by the United Nations High Commissioner for Refugees to apply for long-stay visas and work permits. This allowed refugees and asylum seekers access to health and education services on equal terms with Indian citizens. However, adequate measures are still required to ensure access to these services by women, including those who have been forcibly displaced within the country. Reports indicate that many victims do not have access to the necessary services provided by the women’s protection clinics of the Office of the United Nations High Commissioner for Refugees, as those are either not present in the area where they live or lack sufficient resources. Specific programmes are needed to address the lack of livelihood opportunities for refugees and asylum seekers, as they are often excluded from gaining access to services and participating in decision-making.

74. The Special Rapporteur was informed that the draft Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill envisages offering protection to religious and linguistic minorities and to scheduled castes and tribes, while providing standards for addressing communal violence. The Bill reaffirms the importance of non-discrimination when public officials discharge their responsibilities, in particular with regard to addressing violence against religious and linguistic minorities and scheduled castes and tribes. However, as noted by the Committee on the Elimination of Discrimination against Women, the Bill should include, inter alia, “a comprehensive system of reparations for victims of such crimes; and gender-sensitive victim-centred procedural and evidentiary rules” (CEDAW/C/IND/CO/3, para. 25).

V. Conclusions and recommendations

75. The Government of India has recognized the need to address violence against women as a human rights violation, and also as an issue that detracts from the country’s path to prosperity and inclusive development. It has taken legislative measures in that regard, including measures to address rape and sexual violence. However, significant gaps remain in the legislative framework as regards the failure to

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recognize all forms of violence against women and to adopt a holistic approach that addresses the root and structural causes of violence against women. Moreover, there is a lack of effective remedies to address the main manifestations of violence against women, owing either to the absence of specific programmes or to a lack of implementation. The inability to ensure accountability and redress for victims has led to an increase of violence against women and the continued discriminatory treatment of victims.

76. The persistence of harmful practices, pervasive gender stereotypes and deeply entrenched patriarchal social and cultural norms is of serious concern. Based on the idea of superiority of men over women, those manifestations exacerbate women’s position of dependence and subordination and significantly obstruct effective implementation of relevant legislative and policy measures. Without a comprehensive effort to address them, in schools or university, at work, in the family, in the community and in printed and electronic media, the elimination of violence against women remains a challenge. It is essential that the authorities do not underestimate the negative effects of this challenge in their efforts to eliminate all forms of violence against women.

77. The Special Rapporteur would like to address the recommendations listed below to the Government.

Law and policy reforms

78. The Special Rapporteur recommends that the Government:

(a) Ratify all outstanding international human rights instruments;

(b) Withdraw the declarations and reservation to the Convention on the Elimination of All Forms of Discrimination against Women, in particular regarding articles 5 (a); 16, paragraphs 1 and 2; and 29, paragraph 1;

(c) Amend the Criminal Law (Amendment) Act, 2013 and in particular review the provisions that provide for the death penalty in section 376A; include a definition of marital rape as a criminal offence; expand the scope of protection of the law and include other categories of women, including unmarried women, lesbian, transgender and intersex women, religious minorities and underage citizens; and define gang rape as multiple crimes requiring appropriate punishment (section 376D);

(d) Repeal section 377 of the Penal Code, which criminalizes consensual same-sex behaviour;

(e) Review the Immoral Traffic (Prevention) Act, 1956 that de facto criminalizes sex work and ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers;

(f) Repeal, as a matter of urgency, the Armed Forces (Special Powers) Act and the Armed Forces (Jammu and Kashmir) Special Powers Act and ensure that criminal prosecution of members of the Armed Forces is free from legal barriers;43

(g) Adopt the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 and ensure that the Bill incorporates the recommendations of the Committee on the Elimination of Discrimination against Women in that regard (CEDAW/C/IND/CO/3, para. 25);

43 See also A/HRC/23/47/Add.1, para. 101.
(h) Adopt the Indecent Representation of Women (Prohibition) Bill, 2012, to ensure that gender stereotypes are also banned in electronic media;

(i) Ensure women’s participation in elected parliamentary bodies, through the adoption of legislation, including the Women’s Reservation Bill;

(j) Ensure a rights-based approach in the Rights of Persons with Disabilities Bill, 2012, in line with international standards;

(k) Strengthen the implementation of the Protection of Women from Domestic Violence Act, 2005, by:

(i) Allocating sufficient resources to ensure that an adequate proportion of protection officers are employed;

(ii) Ensuring that protection officers are properly equipped to conduct their activities, in terms of administrative and logistical resources, and that funds are made available for their full-time employment;

(iii) Ensuring that the systems and procedures established under the Act are adequately adapted to deal with violence against women with disabilities;

(l) Ensure that police stations are equipped with sufficient and trained human and financial resources to handle all cases of violence against women and establish specific gender mechanisms, where possible;

(m) Take effective measures to ensure that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is adequately implemented, in particular with regard to the establishment and functioning of the complaints system;

(n) Harmonize the framework of the National Commission for Women Act, 1990, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), to ensure independence, transparency and accountability. In particular:

(i) Amend the Act to ensure a system for the nomination and selection of the Commission’s members and chairperson that is transparent, democratic and non-partisan; apply an eligibility criteria for membership with clear requirements regarding expertise and professional experience on women’s issues; prohibit members of Parliament or state legislatures or persons connected with political parties from being appointed; apply the same selection principles as regards staff; and allow the Commission more autonomy in appointing its own personnel;

(ii) Further ensure that the Commission is empowered to undertake independent investigation into alleged violations of women’s rights;

(iii) Undertake a comprehensive qualitative review of the performance of the Commission, in particular with regard to its achievements in addressing violence against women and systemic, gender-related social, economic and legal issues pertaining to women, including accountability for crimes against women;

(o) Take appropriate measures to address the situation of irregular and domestic migrant women, including women refugees and asylum seekers; strengthen temporary special measures, including by ensuring that they are included in governmental and National Commission for Women programmes and projects, to enable them to better access services and improve their participation and representation in public life; strengthen and expand the services of the women protection clinics across the country;
(p) Make available increased resources to support income-generating activities for women, including marginalized women and women with disabilities. In that context, adopt the Micro Finance Institutions (Development and Regulation) Bill, 2011 to ensure that microfinance institutions operate within a single regulatory framework to eradicate poverty and extreme poverty in accordance with international standards, including through transparent pricing, the provision of adequate financial products and the prohibition of multiple lending, which results in over-indebtedness;

(q) Take measures to ensure that displaced populations and evicted families have adequate access to livelihoods, including access to health and education;

(r) Establish an independent national inquiry mechanism to review the current situation and challenges with regard to the fulfilment of women’s human rights;

(s) Ensure that programmes and projects designed for women are periodically and qualitatively reviewed;

(t) Consider adopting a State policy to address the structural causes of all levels of poverty of women;

(u) Intensify efforts to ensure that training initiatives for women are designed to improve access to all occupational groups and industries.

Accountability

79. The Special Rapporteur recommends that the Government:

(a) Take effective measures to ensure access to justice and effective redress for all victims of violence against women. In particular, it should:

(i) Ensure that the full ban on Khap Panchayats by the Supreme Court is implemented throughout the country;

(ii) Ensure that cases of violence against women are addressed by the judiciary and not by informal justice mechanisms;

(iii) Monitor the implementation of judicial decisions on cases relating to violence against women, and ensure that victims have prompt access to effective remedies;

(iv) Ensure that all allegations of violence against women are adequately investigated by the police, and that perpetrators are punished;

(v) Ensure that women and family members wishing to lodge complaints are free from any act of intimidation, threat or harassment, and that protection is provided free of cost for the victim, if necessary;

(vi) Ensure legal, housing, security and financial assistance measures for victims of violence that enable them to pursue accountability for crimes and also to rebuild their lives.

Societal transformation, including awareness-raising, addressing gender stereotypes and women’s empowerment

80. The Special Rapporteur recommends that the Government:

(a) Design and launch a comprehensive training and awareness-raising programme for police officers charged with the responsibility of filing complaints of violence against women, including First Information Reports and domestic incident reports;
(b) Design and launch targeted awareness-raising campaigns at the community level on harmful customary practices, including, inter alia, dowry-related practices, acid attacks, so-called honour crimes and witch-hunting;

(c) Carry out measures to train and sensitize media on issues relating to women’s rights and violence against women in particular, so as to contribute to changing cultural and social beliefs based on patriarchal norms that perpetuate harmful stereotypes and myths about women;

(d) Develop and implement, in cooperation with international partners and civil society, capacity-building and training activities for service providers, including public officials, members of Parliament and the judiciary, health-care professionals and others, on issues relating to violence against women.

Statistics and data collection

81. The Special Rapporteur recommends that the Government:

(a) Strengthen the current system hosted by the National Crime Records Bureau of the Ministry of Home Affairs for the collection and analysis of data relating to crimes against women, by disaggregating data by sex, age, caste, disability, religion, language and other relevant characteristics;

(b) Establish intergovernmental linkages among the ministries responsible for gender-related work to ensure consistent and standardized collection of data by each respective ministry;

(c) Periodically conduct a thorough analysis of data, to understand the different trends and evolutions of manifestations of violence against women;

(d) In cooperation with civil society organizations, develop monitoring and evaluation tools to assess progress in eradicating violence against women and integrate such tools in the design of relevant schemes and programmes.
Tab 8
Section 377 is History but Young LGBT Indians Need Concrete Policies to Protect them from Bullying

Published in Scroll.In

Kyle Knight
Researcher, Lesbian, Gay, Bisexual, and Transgender Rights Program

knightktm
The picture is bleak for lesbian, gay, bisexual, and transgender youth in India. Many face harassment and bullying, and to avoid humiliation and violence they often skip classes or drop out of school altogether. Most teachers are not trained or empowered to respond to anti-LGBT bullying, so in many cases they don’t. In some cases, they even participate in the harassment.

Court judgments in recent years have laid the groundwork for better protections from discrimination based on sexual orientation and gender identity, and the Indian government’s stance on LGBT rights has evolved considerably. But much more is needed to protect people on the basis of sexual and gender identity in India.

Two reports published this month shed much-needed light on the experiences of sexual and gender minority youth in India’s schools. UNESCO, the United Nations education agency, and the International Commission of Jurists, a nongovernmental organisation, have each published harrowing in-depth reports on the plight of LGBT Indians.

UNESCO’s research focused on youth and school environments, while ICJ’s was broader, and included an examination of housing, access to public spaces, and employment – with education analysed as a precursor. “Educational and training opportunities are often denied to LGBTQ persons due to harassment, bullying, and violence,” ICJ found, citing gender-specific school uniforms, lack of access to toilets, and difficulties in obtaining accurate identity documents as barriers for LGBT students. “Accounts of bullying in schools were common.” The report details cases of teachers beating and berating male students for acting “too effeminately,” and forcing transgender students to sit separately from their peers.

UNESCO surveyed 371 sexual and gender minority youth, and gathered in-depth information from more than 60 through focus groups in Tamil Nadu state. Eighty-four percent of participants reported being bullied, most by other students, but in one-fifth of those cases by a male teacher. Only 18% of those who were bullied said they reported the incident to school authorities.

Inadequate Responses

For those courageous enough to do so, school officials told nearly a third to change their gendered mannerisms to avoid future bullying, and half told them to ignore the incident altogether. The majority of respondents reported that they felt such incidents – and the poor responses from authorities – harmed their academic performance. Over a third of the students surveyed said that such bullying had contributed to a decision to drop out of school.

LGBT activists in India triumphed last year when the Supreme Court unanimously struck down section 377 of India’s penal code, which criminalised same-sex relations. Justice Indu Malhotra pointedly stated that “an apology [is owed] to members of the LGBT community... for the ostracisation and persecution they faced because of society’s ignorance”.

In 2014, the Supreme Court issued a sweeping judgment in NALSA v. India, which held that transgender people should be legally recognised according to their gender identity, enjoy all fundamental rights, and receive special benefits in education and employment.
But while legal changes are an important step, much more is needed for LGBT people in India to be able to live without discrimination and with dignity. Young people who are bullied in school are less likely to succeed and more likely to find themselves vulnerable to discrimination and violence as adults.

Human Rights Watch research in diverse settings across the world whether in South Africa, Kenya, Jamaica, or the US shows that vulnerability as adults correlates with negative experiences as children whether at home or in school. Shifting India to being a nation that protects sexual and gender diversity will require action by multiple ministries and agencies at both the national and state levels. This includes amending education laws to include a spectrum of gender – not just “male and female” students – and updating curricula to make them inclusive of diverse gender and sexuality communities so all students are receiving accurate information.

**Useful Examples**

Across Asia, there have been some promising advances to protect LGBT youth in recent years. For example, a 2013 law in the Philippines instructs schools to address bullying, and refers to sexual orientation and gender identity. In 2017, the government of Japan changed its national bullying prevention policy to specifically protect LGBT students. This came on the heels of an Education Ministry directive that instructed schools to allow students to use restrooms and wear uniforms according to their gender identity – a policy that schools have started to implement.

Enumerating sexual orientation and gender identity in non-discrimination and anti-bullying policies is an important step toward acknowledging diversity, protecting vulnerable students. Training school staff empowers them to respond when they encounter abuse. Younger generations of Indians will grow up knowing of criminalisation as a thing of the past, and that will be a boon to their basic rights.

But as these two new reports show, there is much more the government should do to ensure they grow up in safety.
Section 377 is History but Young LGBT Indians Need Concrete Policies to Protect them from Bullying | Human Rights Watch


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Таб 9
Bullied by peers, India's LGBT+ children drop out of schools

Anuradha Nagaraj

CHENNAI, India (Thomson Reuters Foundation) - The school bullies started by teasing six-year-old Shemba for walking in a feminine way, and graduated to stone-throwing when the transgender girl - initially raised as a boy - started wearing girls' uniform, aged 10.
So Shemba dropped out of school altogether and abandoned her dream of becoming a lawyer, with begging or sex work now a more likely future.

“They left me with no choice,” Shemba, 15, told the Thomson Reuters Foundation, sitting cross-legged in her two-room home in India’s southern city of Chennai.

“I think what I was doing, or my mannerisms, were normal. But my classmates didn’t. First I did not understand what made me stand out. Later I realized, and when they started throwing stones at me, I decided to stop going to school.”

Shemba, who goes by just one name, is not alone.

In a survey of almost 400 LGBT+ youth in Tamil Nadu by the United Nations’ cultural agency, UNESCO, more than half skipped classes to avoid bullying, while a third dropped out of school altogether.

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

“The extent of the problem came as a surprise, even though we knew that bullying happened,” said Jaya Gunaseelan, a trans woman and member of LGBT+ rights charity Sahodaran, which supported UNESCO with the research.

“Even I was bullied in school, but the testimonies of some of the respondents shocked me. They described gangs of bullies, physical abuse and everyday name calling. Some were even
hiding visible marks of violence, scared of being shamed.”

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

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

Despite a landmark 2018 court ruling that decriminalised gay sex, India’s LGBT+ community are often rejected by their families and denied jobs and driven into sex work or begging.

“Bullying in schools will take longer to resolve than changing a law,” said Venkatesan Chakrapani, chairman of the Centre for Sexuality and Health Research and Policy.

“Legal change also doesn’t mean things will change on ground overnight.”
Another transgender student, Pragya said she dropped out of school aged 15, three months before her final exam, and now does odd jobs or begs for a living.

“I was a good student and the school tried to convince me to finish my schooling,” the 21-year-old said.

“But boys were slapping my buttocks, poking me, feeling me up almost every day. It was depressing and I gave up.”

FUTURE

Children often learn how to bully from adults, who target any student who does not look typically male or female, said Gunaseelan, whose charity works with the state education department to sensitize school staff.

“Rigid definitions of masculinity and femininity are reinforced in school settings by teachers, parents, the watchman and other adults,” she said.

“Children pick it up and turn bullies.”
Shemba did not receive any support from school authorities, who UNESCO found often advise victims simply to ignore bullies or to change their mannerisms to avoid being targeted.

“I knew that complaining would not put an end to it as a few teachers had also pulled me up for the way I walked or for behaving like a girl,” she said.

“At home, I would sometimes tell my mother, but she didn’t know what to do either.”

Unsure how to help her daughter and facing stigma from neighbors, Shemba’s mother arranged for her to move in with Chennila, a transgender woman living nearby, who is trying to get Shemba enrolled in a distant learning programme.

“I beg for a living and that is because I couldn’t put up with the bullying in college,” Chennila said.

“I was a decent student and survived school because I had a best friend who looked out for me. But in college, I was made to strip, physically assaulted and had to quit. But Shemba needs to study or she will also have to beg.”

Shemba stays home all day, uncertain and unsure of what the future will be like.

“I cannot become a lawyer now,” she said softly.

“But maybe a beautician after doing a short course. I don’t know what is possible, but I hope something is.”

Reporting by Anuradha Nagaraj @AnuraNagaraj; Editing by Katy Migiro. Please credit the Thomson Reuters Foundation, the charitable arm of Thomson Reuters, that covers humanitarian news, women’s and LGBT+ rights, human trafficking, property rights and climate change. Visit http://news.trust.org

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Tab 10
Not my fault I was born gay: 19-year-old commits suicide over homophobia

“Everyone knows I am a boy. But the way I walk, think and talk is like a girl. People in India do not like that,” Avinshu posted on Facebook before killing himself.
A 19-year-old boy committed suicide in Chennai after he was ridiculed for being homosexual. Avinshu Patel, who hailed from Mumbai, put up a social media post about the harassment he had suffered around him.

Everyone knows I am a boy. But the way I walk, think and talk is like a girl. People in India do not like that, read the Facebook post. Please do not blame my family. Help them. We are poor. I love my mom, dad and sister. I thank them for supporting me. It is not my fault that I was born gay, his Facebook post said.

Avinshu, known as Avi by his friends, uploaded the post on July 2, around 10 pm and switched his phone off. Next day, his body was found on the beach near his resident by the locals.
Avinshu worked at a salon in Chennai. His family have been informed and they have arrived to take his body back.

The Neelankarai police have registered a case of drowning and are probing his death.

According to reports, Avinshu had gone to the mall earlier in the day and sounded happy when he spoke to a friend on phone. However, two hours later he called the same friend and told him he is going to end his life.

He sent me a text around 2.30 afternoon saying he was at a mall with a friend. They had gone out for lunch. Just two hours later he called me and told me he wanted to end his life. He was crying, Avinshu's friend Ishaan Mastry told New Indian Express.

Avinshu's friend told the news website said that he told him he had taken poison. "But did not explain the reason for the drastic decision. He just hung up. I tried calling him back, several times, but there was no answer. At around 10 in the night, he put up that Facebook post, after which his phone was switched off."

Ishaan Mastry contacted the staff at his salon, who also tried to get in touch with him, but in vain. Next day when the staff called his mobile phone it was answered by a cop, who informed that he was dead.

Following this, the spa helped his family travel to Chennai to take his body back to Mumbai.

He had been working with the spa for three months. Since he was talented he was given advanced training to become a nail artist. He was not facing any problems at the workplace, police said.

**LGBT youth at higher risk for suicide attempts**
Studies show that sexual minority youth were more than three times as likely to attempt suicide as heterosexual peers.

Researchers report in JAMA Paediatrics pooled data of 35 studies and found that transgender youth were at highest risk, nearly six times as likely to attempt suicide as heterosexual peers.

LGBT activists say that despite the Supreme Court decriminalising homosexuality in 2018, members of the community still face discrimination. Speaking to the New Indian Express, C Moulee, founder of Queer Chennai Chronicles, said, Every queer person faces harassment. Section 377 may have been struck down, but it remains a judgment. It has not changed people's mentality or out everyday lives.

Not many organisations have anti-discrimination policies to provide LGBT+ individuals safe spaces, C Moulee said.

**Helpline numbers**

If you are feeling suicidal, or are facing bullying, or require help, you can contact any of the following helpline numbers

1) **Sneha suicide prevention centre** 044-24640050

2) **Queerythm** can be reached on 9745545559 in English, Malayalam, and Tamil

3) Members of LGBTQIA can find help at **iCall** by dialling 022-25521111

4) **Sahay** is 24X7 LGBT helpline can be reached at toll free number 1800-2000-113

5) **Sahodari** is a helpline for transgender community, dial 76397 41916 to reach them

6) **Sahodaran** works with LGBTQIA+ people in Tamil Nadu - 98418 65423 or 044 23470486

7) **Orinam**, an all-volunteer LGBTIQA+ collective based in Chennai, can be reached at 98415 57983

8) **PCVC** provides crisis intervention services and long term rehabilitative services for survivors of family and interpersonal violence. Contact: 044 4311 1143
9) In Delhi, LGBTQ community can contact **Delhi Commission for Women** as they have set up a special cell within the rights body.

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TAB 11
Odisha girl thrashed, tied to tree for being in same-sex relationship | Bhubaneswar News - Times of India

Ashis Senapati | TNN | Updated: May 25, 2019, 23:28 IST

KENDRAPADA: A 19-year-old girl was beaten up and tied to a tree by residents of her village for being in a lesbian relationship, in Jagatsinghpur district on Friday. Sarmila Malla, daughter of Rabindra Malla and a resident of Chandol, has been seeing a girl of the same village for the past six months. While there was anger among the villagers over what they termed her 'immoral' activities, matters came to a head on Friday when Sarmila was found sharing a bed with her partner on Thursday night.

"We beat up and tied Sarmila to a tree in our village as she is a lesbian. She is immoral and has besmirched the name of our village," said Ganesh Parida, a resident of Chandol.

On Saturday, the traumatised girl recounted the events of the previous day. "I was dragged out of my house by my neighbours. They beat me up and tied me to a tree. They abused and kicked me when my parents tried to rescue me," Sarmila said. "We are madly in love with each other," she added.

Not all were party to the crime. Some, like Chandol resident Ranjan Parida, could only watch helplessly as the teenager was punished. "Though she was..."
Odisha girl thrashed, tied to tree for being in same-sex relationship | Bhubaneswar News - Times of India

not badly injured, I was appalled at what I saw," he said. Some villagers informed police who reached Chandol and untied the girl.
"We have registered a case against some villagers. The attackers can face up to seven years in prison. During interrogation, we found that both the girls are in a relationship, which was being opposed by the villagers," SDPO, Prakash Chandra Pal, said.
The incident comes days after sprint queen Dutee Chand (23) of Gopalpur village in Jajpur district declared that she was in a same-sex relationship and wanted to settle down with her partner.
TAB 12
South Asian honour culture hounds India and Pakistan’s LGBTQ community

Eight years after the first Indian lesbian couple got legally married in the face of death threats, LGBTQ youth continue to flee homes to escape secret honour-killing plans.

South Asia’s honour culture is the prime culprit behind such hounding of India’s lesbian, gay, bisexual, transgender or queer (LGBTQ) community, according to new research published in the peer-reviewed, academic Journal of Interpersonal Violence. More than citizens of most other countries, Indians were likely to think that being a member of this group brought dishonour to their families. Many even approve of anti-gay abuse.

This is despite the Indian penal code’s section 377, which criminalised gay sex, being knocked down by the supreme court last year.

The study’s sample consisted of over 900 college students across India, Pakistan, Malaysia, Iran, and the UK. Participants read a brief vignette depicting a man whose relatives verbally abuse and intimidate him with life-threatening violence after suspecting that he is gay and knowing that he has joined an online dating website to meet men. They then rated this anecdote on a scale of 1-7, ranging from “strongly disagree” to “strongly agree.”

Pakistan was the only nation whose participants believed more strongly than Indians that the victim had damaged family honour.
“(T)here is a heavy sense of duty for all individuals to maintain family honour and to conform to culturally defined and collectively prescribed honor values, despite personal beliefs,” the study’s authors noted. Members within the culture are expected to ensure that norms are being observed and respected, they added.

Even in Britain, where respondents were split into white and Asian populations, there were discrepancies. “British Asian participants were more likely to endorse anti-gay values than British white respondents,” a May 22 press release by the University of Central Lancashire noted. Previous evidence had shown that many British Asians hide their sexual orientation and that forced marriages were shockingly common in their community.

This goes to show where someone resides is not the only factor influencing attitudes towards homophobic honour abuse. Gender, religious denomination, education level, marital status, and age also play a role. For instance, males endorsed this abuse more than women. As did older, religious, less educated, and married individuals compared with younger, nonreligious, more educated, and unmarried people.
TAB 13
Antigay “Honor” Abuse: A Multinational Attitudinal Study of Collectivist-Versus Individualist-Orientated Populations in Asia and England

Michelle Lowe, PhD,1 Roxanne Khan, PhD,2 Vanlal Thanzami, PhD,3 Mahsa Barzy, MRes,4 and Rozina Karmaliani, PhD5

Abstract
Cultural collectivism, a core feature of honor cultures, is associated with the acceptance of aggression if it is used in the name of so-called “honor.” Currently overlooked in the research literature, this study explored perceptions of antigay “honor” abuse in collectivist-orientated honor cultures, where homosexuality, in particular, is considered to be dishonorable. To conduct exploratory and comparative analysis, this study recruited 922 students in four Asian countries (India, Iran, Malaysia, and Pakistan), as well as Asian British and White British students in England. All participants read a brief vignette depicting a man whose relatives verbally abuse him and threaten him with life-threatening violence, after suspecting that he is gay and has

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joined an online dating website to meet men. Participants then completed a short questionnaire that assessed the extent to which they thought the man’s actions had damaged his family’s honor and their approval of the antigay “honor” abuse depicted in the scenario. Broadly in line with predictions, data analyses revealed attitudes more supportive of antigay “honor” abuse in all five collectivist-orientated populations than the sample of individualistic-orientated counterparts in England. Notably, however, a series of one-way analyses of variance (ANOVAs) demonstrated that these results varied depending on country of residence, gender, religious denomination, educational status, and age. The findings show that individual and demographic differences influence perceptions toward homophobic “honor” abuse in collectivist cultures. These differences are useful indices of the psychosocial factors that underpin hostile attitudes toward gay males in cultures where homosexuality is denounced.

**Keywords**
family violence, honor-based violence, honor killings, LGBT, religion, victims

To understand how homosexuality is perceived in collectivist honor cultures is to accept some uneasy truths. At one extreme, for instance, European news agencies have reported on the alleged rounding up, torture, and detainment of homosexual men in Chechnya, victimized by the authorities for being gay in addition to being threatened with “honor” killings by their families (Knight, 2017). Myriad forms of antigay “honor” abuse are also reported in other countries where lesbian, gay, bisexual, and transgender (LGBT) sexualities are denounced, including Asian nations such as India, Iran, Malaysia, and Pakistan where same-sex sexual activity is a criminal offense carrying a maximum penalty of life imprisonment (Carroll & Mendos, 2017). Recent studies have reported a range of factors associated with public support for “honor”-based violence and killings in collectivist-orientated Middle Eastern, North African, and South Asian (MENASA) nations (e.g., Eisner & Ghuneim, 2013; Gengler, Alkazemi, & Alsharekh, 2018; Khan, 2018; Lowe, Khan, Thanzami, Barzy, & Karmaliani, 2018). As girls and women are the main targets for this abuse, it is unsurprising that this emerging literature has focused on attitudes toward female victims. Yet, efforts to quantifiably examine homonegative “honor”-based victimization have lagged behind. This study, therefore, explores factors that underpin people’s attitudes toward antigay “honor” abuse in four collectivist populations in Asia. To explore nuanced variations within and across populations, the extent to which similar attitudes are found in a comparable British Asian diasporic population and an individualistic-orientated British White sample,
both in England, are also examined. To date, a multinational analysis of public attitudes toward antigay “honor” abuse in these populations has not been explored in a single study, indicating a need for this investigation.

The Role of Honor in Collectivist- Versus Individualist-Orientated Cultures

As social constructs, honor, collectivism, and individualism are pervasive and powerful (Mosquera, 1999, 2013). These interlinking constructs can be defined as a cultural syndrome, that is, an ideology made up of shared attitudes, beliefs, norms, values, and roles, organized around a theme (Triandis, 1993, 1996). These syndromes underpin the way people in a shared culture understand and perceive their world, as well as their interactions with others around them. Explained as a cultural syndrome, it is easier to understand how honor may be conceptualized differently in collectivist and individualistic cultures (Oyserman, 2017; Triandis, 1993, 1996).

While individualist cultures are characterized as being “loose,” with permissive attitudes toward behaviors deviating from the social norm, collectivist cultures are described as “tight” for being formal and disciplined with a general intolerance for deviation from strict social norms (Triandis, 2004). Collectivist-orientated nations that score high on psychometric measures for cultural tightness include India, Malaysia, and Pakistan (Gelfand et al., 2011). Collectivist ideologies are associated with a wide range of emotions, behaviors, and cultural practices that emphasize interconnectedness between individuals, in particular, immediate and extended family, and what the loss of honor represents for this connection (Gelfand et al., 2011; Mosquera, 2016; Triandis, 2004). As a loss of honor might weaken the tight interconnectedness, it seen as a valuable asset, the loss of which would be detrimental, not only for the individual involved but also for the interconnected family structure and all others closely connected to the individual (Vandello, 2016). Therefore, in collectivist cultures, there is a heavy sense of duty for all individuals to maintain family honor and to conform to culturally defined and collectively prescribed honor values, despite personal beliefs. At the same time, there is expectation for members within that culture to monitor their own family and wider community to ensure that honor norms are being observed and respected (Doğan, 2016; Vandello & Cohen, 2003).

As the loss of honor, or the failure to restore honor, brings shame to the individual as well as the family, people from honor cultures are much more likely to experience negative emotions to threats to honor (IJzerman, van Dijk, & Gallucci, 2007; Mosquera, Fischer, Manstead, & Zaalberg, 2008; Mosquera, Manstead, & Fischer, 2002). It is unsurprising then that
individuals from collectivist honor cultures would be more likely to respond with aggression against threats to honor (Brown, Osterman, & Barnes, 2009; Cohen, Nisbett, Bowdle, & Schwarz, 1996; Mosquera, Tan, & Saleem, 2014; Nisbett & Cohen, 1996; Vandello & Cohen, 2003). While prior research has found that honor cultures approve the use of violence when used to defend one’s honor and for self-protection (Cohen et al., 1996; Dietrich & Schuett, 2013; Nisbett & Cohen, 1996; Vandello & Cohen, 2003), these studies have typically explored populations in North America, Latin America, and Mediterranean countries. Other collectivist honor cultures in populations from Middle Eastern and Asian subcontinent and diasporic communities have only recently begun to be explored (e.g., Eisner & Ghuneim, 2013; Gengler et al., 2018; Khan, 2018; Lowe et al., 2018). This is surprising because even without reliable figures, it is noted that a majority of all “honor” killings worldwide are reported to occur in these regions (Nasrullah, Haqqi, & Cummings, 2009).

“Honor” Violence to Protect Gender Roles

Another defining feature of collectivist honor cultures is that they are patriarchal; thus, rigid gendered norms are used to guide social behavior, in terms of what is appropriate behavior for males and females. Males, for example, are expected to demonstrate toughness, strength, and sexual potency, whereas females are expected to act with modesty, respectability, and sexual propriety (Mosquera, 2016; Vandello, 2016). Therefore, traditional male gender role beliefs involving the endorsement of traditionally masculine values (e.g., avoidance of femininity, toughness, and gaining status and respect from others; Thompson & Pleck, 1986) are likely to underpin aggression toward anyone who does not conform to these beliefs. Thus, in collectivist-orientated cultures, any violation in these gendered roles will be viewed as highly undesirable, and failure to act accordingly is likely to be seen as a threat or damage to family honor. Supporting evidence comes from studies that report a high level of endorsement for “honor”-based violence, even killing, females in collectivist cultures who have violated these codes, for example, for behaving in a way that is deemed to be sexualized (Eisner & Ghuneim, 2013; Gengler et al., 2018; Lowe et al., 2018; Shaikh, Kamal, & Naqvi, 2015; Shaikh, Shaikh, Kamal, & Masood, 2010).

Antigay “Honor” Abuse and Violence

As homosexuality, from a traditional gender role view, is seen to violate the gender norm, it is unsurprising that the traditional, socially constructed gender
role beliefs are found to explain antigay attitudes (Costa & Davies, 2012; Kite & Whitley, 1996; Steffens et al., 2015; Vincent et al., 2011). Gender role enforcement theory has been used to explain aggression toward people who do not adhere to gender-appropriate roles (e.g., Parrott, 2009). For example, as homosexual individuals are perceived as not adhering to the code of honor outlined by the gendered honor code, it would be deemed acceptable to act with hostility or use aggression against them for this reason. It is clear, therefore, that a deep-seated acceptance of traditional masculine and feminine gender roles strongly influences a disapproval of any deviations from this gendered honor code. Moreover, in collectivist-orientated cultures and honor cultures globally, rigid gender scripts exist that are endorsed by both males and females (Eisner & Ghuneim, 2013; Gengler et al., 2018; Khan, 2018; Lowe et al., 2018; Shaikh et al., 2015; Shaikh et al., 2010), thereby justifying “honor”-based abuse in support of gendered honor codes.

**Attitudes Toward Homosexuality**

As this is a vastly underresearched area, variances that might explain demographic differences in homonegative attitudes have to be drawn from studies conducted in Western nations. This literature is important as it suggests that antigay attitudes vary in relation to individual, social, and demographic characteristics, such as gender, age, educational level, and relationship status. For example, Davies (2004) found that British men were more likely to express negative responses than were British women when responding to a scale measuring negative affect toward gay men. This finding was explained in terms of traditional, societal gender belief systems that socialize men to be antigay (see Kite & Whitley, 1996, for detailed discussion and meta-analysis). Studies conducted in the United States also show that older individuals with lower education attainment tend to be more homonegative than younger people or those with higher education qualifications (e.g., Herek & Gonzalez-Rivera, 2006), and that married individuals are more negative toward homosexuality than those who are unmarried (e.g., Herek & Capitanio, 1995).

Another explanation may be identification with monotheistic religions, such as Christianity, Islam, and Judaism, which propagate a traditional view in their religious teachings that homosexuality is sinful (Whitley, 2009). Studies have shown that Muslims endorse more antigay beliefs than do Christians in Germany (Reese, Steffens, & Jonas, 2014) and Turkey (Sakalli, 2002), and more antigay beliefs than do Turkish atheists (Anderson & Koc, 2015). A large, multilevel analysis of 79 nations used data from the World Values Survey to analyze the effects of demographics and religiosity on attitudes toward homosexuality (Jackle & Wenzelburger, 2015). Across nations, results
confirmed previous research findings on individual and social demographics, such that men, older people, those less educated, and married people were more homonegative than women, younger people, better educated, and those unmarried, respectively. Regarding differences across religions, it was found that religious people were generally more homonegative than the nonreligious, with attitudes held by Muslims and Buddhists, on the extreme negative and positive ends of the scale, respectively (Jackle & Wenzelburger, 2015).

This research indicates a need to explore individual demographic differences in attitudes toward antigay “honor” abuse, in the context of cultural collectivism, and specifically, the extent to which homosexuality is perceived to damage family honor and the approval of antigay “honor” abuse in response to this. It is important that work in this area is conducted, given the likelihood of nonheterosexual people being abused, and their victimization being legitimized in the name of so-called “honor.”

**Aim of This Study**

Accounting for gaps in the literature, this study examined the extent to which collectivist culture orientation is associated with perceptions of antigay “honor” abuse, by exploring and comparing the judgments of participants from collectivist and individualist cultures. As “honor” abuse has been reported in collectivist-orientated South Asian and Middle Eastern populations, both domestically and internationally, including diasporic communities in England (e.g., Eisner & Ghuneim, 2013; Khan, 2018), participants were recruited in four collectivist-orientated nations in Asia1 (i.e., India, Iran, Malaysia, and Pakistan), in addition to British Asian nationals in England. Comparisons were made with a sample of individualistic-orientated British White participants in England. All participants read a hypothetical scenario depicting a man whose relatives verbally abuse and threaten him with extreme violence when they suspect that he might be gay. The extent to which participants believed the man damaged his family’s honor in this situation, and their approval of antigay “honor” abuse against him was examined.

Guided by past research (e.g., Davies, 2004; Khan, 2018; Kite & Whitley, 1996), gender differences in participants’ attitudes were examined to test the prediction that males would be more endorsing of antigay “honor” abuse than would females. In line with previous studies (e.g., Jackle & Wenzelburger, 2015), other demographic factors found to influence generic attitudes toward homosexuality were also examined here; it was thus predicted that older, religious, less educated, and married individuals would endorse antigay “honor” abuse more so than younger, nonreligious, more educated, and unmarried people. Finally, as no previous studies have investigated attitudes toward antigay
“honor” abuse in the nations examined here, no predictions were made as to whether some countries would be more endorsing of antigay “honor” abuse than others. However, it was predicted that participants from all four Asian nations and British Asians, due to their collectivist cultural orientation, would be more endorsing of the damage to honor and more accepting of antigay “honor” abuse than would individualistic-orientated British White participants.

Method

Participants

Participants were 922 (410 male, 511 female, one missing gender data) students of Asian or British ethnic origin across five countries of residence: Britain (n = 343), India (n = 140), Iran (n = 122), Malaysia (n = 161), and Pakistan (n = 137). The British data were collected from one university in the northwest of England, and comprised 255 White British, and 88 Asian British individuals. Indian data were collected from two universities in Aizawl, the state capital of Mizoram, situated in the northeastern region of India. Iranian data were collected from a university in the capital city, Tehran. Malaysian data were collected from a university in the suburbs of Kuala Lumpur, and Pakistani data from a university in Karachi, the capital of the Pakistani province of Sindh.

Ages ranged from 16 to 61 years (M = 23.01, SD = 5.76). Five participants did not state their age. In total, 600 participants acknowledged a religious denomination; 318 noted they were nonreligious. The remainder did not answer this question. Of those with a religious denomination, 276 (30%) were Muslim, 244 (27%) were Christian, 63 (7%) were Buddhist, 42 (5%) were Hindu, and two (<1%) participants noted they were Sikh. The majority of participants had been educated past 16 years, with 406 (44%) having university-level education, 470 (51%) further (post-16) education, and the remainder, 42 (5%), having been educated to school level (16 years or younger). Four participants did not state their educational level. The majority of participants were either single (59%) or dating (18%), with the remainder being married (10%), cohabiting (5%), divorced (1%), or widowed (0.5%). The remainder did not reveal their relationship status.

Materials

A questionnaire booklet was designed for the purpose of this study. Participants were asked to provide demographic details including gender, age, religious denomination (if any), educational level, and relationship status, and to
complete a set of measures to examine attitudes toward antigay “honor”-based abuse. The scenario and measures were adapted from a study on perceptions of damage to honor in Latino populations (see Dietrich & Schuett, 2013). Similar items to those used in the current study have been used previously to explore attitudes toward “honor” abuse in the four Asian nations in this study (see Lowe et al., 2018). The scenario text utilized in this study was as follows:

Jack/Rindika/Hessam/Jamshed³ has joined a popular online dating website. He does not use his real name or upload a photo to his profile because he is not openly gay and he thinks his sexuality is his private business. A few weeks later, he is surprised to find he is inundated with messages from his nephews—when he reads them, it is clear they think the online profile is his. The messages have become increasingly menacing; they threaten to publically “out” him because they think he should be ashamed of his sexuality. They bombard him with messages on the website, on his work email and phone voice mail. In the latest message, they threaten to kill him.

Participants then completed two items to examine the extent to which they perceived the protagonist’s behavior had damaged his family’s honor and their approval of antigay “honor” abuse by his relatives. Each response was rated along a 7-point Likert-type scale ranging from 1 = strongly disagree to 7 = strongly agree. The wording of each dependent variable was as follows:

a. Damage to honor: *Jack/Rindika/Hessam/Jamshed damaged his family’s honor by setting up a dating profile incognito to meet a man.*

b. Approval of antigay “honor” abuse: *It is reasonable to threaten someone in this circumstance.*

In addition to the vignette, the Cultural Orientation Scale (COS: Bierbrauer, Meyer, & Wolfrandt, 1994) was administered to the British Asian sample to determine the strength of their collectivist cultural orientation. The COS consists of 26 items divided into two 13-item scales that measure normative and evaluative cultural orientation. The normative items reflect the perceived degree to which certain behaviors or practices are common in a given culture, whereas the evaluative items reflect personal evaluations of behavior, and the degree to which they are acceptable or not. Both scales are rated along a 7-point Likert-type scale ranging from not at all (1) to always (7). Bierbrauer et al. (1994) report an overall Cronbach’s alpha of .86 and the scale has been used in a series of studies in Poland and the United States by Cialdini, Wosinska, Barrett, Butner, and Gornik-Durose (1999); in the United Kingdom and Spain by Goodwin and Plaza (2000); and in the United Kingdom by Thanzami and Archer (2005).
Procedure

A similar procedure was used across all samples for consistency. In each country, the research team collected data from students at a number of college and university campuses, using opportunity sampling. Adverts were placed around campuses with a website address, so participants could complete the questionnaire online. Students, when approached on campus with paper copies, were verbally briefed about the study and asked whether they wished to participate. Those who agreed were provided with the questionnaire booklet to complete these in their own time, and to return to a secure drop-in box. A detailed briefing and debriefing sheet, attached to the questionnaire, detailed the full research aims, and informed that participation was voluntary, responses were anonymous, and that any information provided would be used for research purposes only. The study was approved by participating institutions’ ethics committee.

Results

Analyses were conducted to address each research question in turn. In short, it was predicted that males would be more endorsing of antigay “honor” abuse than would females. It was also predicted that older, religious, less educated, and married individuals would endorse antigay “honor” abuse than younger, nonreligious, more educated, and unmarried people. Finally, it was predicted that participants from all four Asian nations and British Asians (i.e., collectively orientated) would be more endorsing of the damage to honor and more accepting of antigay “honor” abuse than would individualistic-orientated British White participants.

Gender

Across the entire sample, independent samples t tests revealed support for the predictions, with significant effects for damage to honor, \( t(917) = 4.90, p < .001 \), and approval of antigay “honor” abuse, \( t(917) = 5.08, p < .001 \), with males endorsing greater damage to honor (\( M = 3.74, SD = 1.82 \)) and more approving of this abuse (\( M = 3.16, SD = 1.77 \)) than were females (\( M = 3.21, SD = 1.83 \) and \( M = 2.66, SD = 1.48 \), respectively).

Age

Supportive of predictions, Pearson’s correlation showed that participant age was significantly correlated with approval of antigay “honor” abuse (\( r = .20,\)
Table 1. Means and Standard Deviations Across Religious Denomination.

<table>
<thead>
<tr>
<th>Dependent Variable</th>
<th>Religion</th>
<th>$M$</th>
<th>$SD$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Damage to honor</td>
<td>Buddhist</td>
<td>2.84</td>
<td>1.75</td>
</tr>
<tr>
<td></td>
<td>Christian</td>
<td>3.56</td>
<td>1.76</td>
</tr>
<tr>
<td></td>
<td>Hindu</td>
<td>4.00</td>
<td>1.87</td>
</tr>
<tr>
<td></td>
<td>Islam</td>
<td>4.24</td>
<td>1.99</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>3.82</td>
<td>1.92</td>
</tr>
<tr>
<td>Approval of antigay</td>
<td>Buddhist</td>
<td>2.21</td>
<td>1.68</td>
</tr>
<tr>
<td>honor abuse</td>
<td>Christian</td>
<td>2.96</td>
<td>1.67</td>
</tr>
<tr>
<td></td>
<td>Hindu</td>
<td>3.57</td>
<td>2.13</td>
</tr>
<tr>
<td></td>
<td>Islam</td>
<td>3.62</td>
<td>1.90</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>3.22</td>
<td>1.86</td>
</tr>
</tbody>
</table>

$p < .001$), indicating that older participants were more endorsing of this abuse than their younger counterparts.

Religion

Independent samples $t$ tests were conducted to examine whether participants who expressed a religious denomination differed in their opinion from those who did not. As predicted across the entire sample, significant differences were revealed on damage to honor, $t(914) = −9.87$, $p < .001$, and approval of antigay “honor” abuse, $t(912) = −7.13$, $p < .001$, such that religious people were more endorsing of damage to honor ($M = 3.82$, $SD = 1.92$) and approving of this abuse ($M = 3.19$, $SD = 1.85$) than nonreligious people ($M = 2.63$, $SD = 1.27$ and $M = 2.38$, $SD = 1.08$, respectively).

As having a religious affiliation determined greater endorsement of antigay “honor” abuse, further examination of the effects of religion on honor values were conducted, to investigate whether religious affiliation per se or whether specific religious denominations determined “honor” abuse endorsement. Two one-way analyses of variance (ANOVAs) were conducted on religious denomination at four levels: Buddhist, Christian, Hindu, and Muslim. These four religious denominations were chosen due to sufficient sample sizes for meaningful analysis. All other data were removed before this analysis, reducing the overall sample to $n = 625$.

Findings showed significant effects for damage to family honor, $F(3, 621) = 11.96$, $p < .001$, and approval of antigay “honor” abuse, $F(3, 619) = 13.28$, $p < .001$. Means and standard deviations can be found in Table 1.
Post hoc Tukey tests revealed, consistent with previous research, that Buddhists were less likely to judge that the victim caused damage to his family’s honor and were less approving of the antigay “honor” abuse than were those of the Christian, Hindu, or Islamic faiths. Muslims and Hindus equally judged the victim to have damaged family honor and equally approving of antigay “honor” abuse, significantly more so than either Christians or Buddhists ($p < .05$).

**Educational Status**

One-way ANOVAs with Tukey post hoc tests were conducted on educational status across the complete sample at three levels: higher education, further education, and education up to age 16 as the highest educational attainment. Contrary to predictions, those with higher educational attainment were more endorsing of damage to family honor, $F(2, 913) = 5.47$, $p = .004$, and more approving of antigay “honor” abuse, $F(2, 911) = 10.41$, $p < .001$, than those with further education level or school-level educational attainment. Means and standard deviations can be found in Table 2.

**Relationship Status**

One-way ANOVAs were conducted on relationship status across the complete sample at six levels: single, dating, cohabiting, married, separated/divorced, and widowed. Contrary to predictions, no significant differences were revealed on damage to family honor, $F(2, 911) = 1.47$, ns, or more approving of antigay “honor” abuse, $F(2, 911) = 2.01$, ns.

### Table 2. Means and Standard Deviations Across Educational Status.

<table>
<thead>
<tr>
<th>Dependent Variable</th>
<th>Education</th>
<th>$M$</th>
<th>$SD$</th>
</tr>
</thead>
<tbody>
<tr>
<td>Damage to honor</td>
<td>School 16</td>
<td>3.29</td>
<td>2.04</td>
</tr>
<tr>
<td></td>
<td>FE</td>
<td>3.24</td>
<td>1.73</td>
</tr>
<tr>
<td></td>
<td>HE</td>
<td>3.64</td>
<td>1.87</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>3.42</td>
<td>1.82</td>
</tr>
<tr>
<td>Approval of antigay honor abuse</td>
<td>School 16</td>
<td>2.67</td>
<td>1.87</td>
</tr>
<tr>
<td></td>
<td>FE</td>
<td>2.69</td>
<td>1.61</td>
</tr>
<tr>
<td></td>
<td>HE</td>
<td>3.19</td>
<td>1.67</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>2.91</td>
<td>1.67</td>
</tr>
</tbody>
</table>

Note. FE = further education; HE = higher education.
Table 3. Means and Standard Deviations Across Country of Residence.

<table>
<thead>
<tr>
<th>Dependent Variable</th>
<th>Country</th>
<th>M</th>
<th>SD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Damage to honor</td>
<td>British Asian</td>
<td>3.92</td>
<td>1.78</td>
</tr>
<tr>
<td></td>
<td>British White</td>
<td>2.36</td>
<td>0.90</td>
</tr>
<tr>
<td></td>
<td>India</td>
<td>4.24</td>
<td>1.69</td>
</tr>
<tr>
<td></td>
<td>Iran</td>
<td>2.89</td>
<td>1.44</td>
</tr>
<tr>
<td></td>
<td>Malaysia</td>
<td>2.97</td>
<td>1.71</td>
</tr>
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<th>Country</th>
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**Country of Residence**

One-way ANOVAs were conducted on country of residence at six levels: British Asian, British White, India, Iran, Malaysia, and Pakistan on the two dependent measures. Results showed significant effects on damage to family honor, $F(5, 914) = 72.37$, $p < .001$, and approval of antigay “honor” abuse, $F(5, 912) = 98.92$, $p < .001$. Means and standard deviations can be found in Table 3.

Post hoc Tukey tests revealed that participants in Pakistan were more endorsing in their beliefs that the victim had damaged family honor than any other group. This was followed by participants in India, British Asian participants in England, then participants in Malaysia and Iran. Finally, British White participants were significantly less likely to endorse honor-based values than any other group. Approval of antigay “honor” abuse revealed a slightly different pattern of results. Participants in Pakistan and India were the most approving of this “honor” abuse, followed by the judgments of British Asians in England and participants in Iran. British Whites in England and participants in Malaysia were the least approving of antigay “honor” abuse ($p < .05$).

**Discussion**

This study is novel in its examination of participants’ perceptions of antigay “honor” abuse in collectivist honor cultures in India, Iran, Malaysia, Pakistan,
and England. Comparisons made with an individualistic-orientated British White sample provide further insight into honor values in Asian and Western populations. Results broadly conformed to the predictions and offer a valuable extension to the existing literature on attitudes toward, and approval of, antigay “honor” abuse.

In relation to demographic characteristics, as predicted, all variables, except relationship status, influenced at least one of the dependent measures. These findings are consistent with other studies (e.g., Davies, 2004; Khan, 2018; Kite & Whitley, 1996, for a meta-analysis) that indicate that males, more so than females, endorse antigay attitudes. Specifically, the current findings show that males were more likely than females to perceive a man whose relatives suspect he is gay, as having damaged his family’s honor, and were more approving of their aggression toward him as a result of this. As these findings apply specifically to an honor-based scenario, they extend on existing knowledge from past studies that posit traditional belief systems socialize men to be antigay and, thus, that men, in general, are more approving of antigay aggression than are women (see, for example, Davies & Rogers, 2006, for a review).

Also in line with broader research in this area (e.g., Anderson & Koc, 2015; Jackle & Wenzelburger, 2015; Reese et al., 2014; Sakalli, 2002), this study found that participants’ age, religiosity, and specific religious denominations significantly influenced their perceptions of antigay “honor” abuse. For example, younger and nonreligious participants were less likely to endorse antigay “honor” abuse than were older participants and those who expressed affiliation with a religious denomination. Again consistent with previous research on generic attitudes toward homosexuality (Jackle & Wenzelburger, 2015), participants of Buddhist faith were less endorsing that the victim had damaged his family’s honor and were less approving of “honor” abuse than were those of Christian, Hindu, or Islamic faiths.

Participants’ country of residence also revealed significant effects in support of this study’s predictions. As no previous studies had investigated antigay “honor” abuse in these five countries, no specific predictions were made regarding whether there would be differences across each country. However, as expected on the basis of either a collectivist or individualistic cultural orientation, participants in all four Asian nations and British Asians in England endorsed honor-based beliefs to some extent, more so than their British White counterparts. More specifically, participants in Pakistan were more endorsing in their beliefs, than any other group, that the gay male depicted in the scenario had damaged his family’s honor, followed by participants in India; British Asians in England; participants in Malaysia, Iran; and least endorsing, as predicted, British Whites in England. A near identical pattern of results
was found for approval of antigay “honor” abuse, that is, participants in Pakistan and India were the most approving, followed by British Asian participants in England and then participants in Iran. Yet, both British White participants in England and participants in Malaysia were the least approving of the “honor”-based abuse in this instance. Although slight, this difference is worth exploring beyond the influence of cultural orientation. In a general public survey, for example, Gengler et al. (2018) found that tribal identification and support for political Islam were robust predictors of attitudes in support of “honor” violence in collectivist-orientated Kuwait, whereas political interest was not. Further investigations ought to consider powerful sociopolitical factors, such as these, in an effort to explain why “honor” abuse may be broadly regarded as an acceptable mechanism to reinforce rigid cultural-level narratives, at the expense of victims’ lived realities.

The value of evolving this work holds more gravity when considering the ways in which nonheterosexual people are abused and marginalized globally, solely on the basis of their sexual expression or orientation (Carroll & Mendos, 2017). In 21st-century America, for example, gay rights appeared to be progressing on the same trajectory as women’s rights and race relations; yet, many still fervently oppose equal policy and rights for LGBT people (Avery et al., 2007). This has been prolifically demonstrated in the right-wing political rhetoric of the Trump era which, it is argued, is pushing to dismantle the civil rights of LGBT people (Carroll & Mendos, 2017; Hirsch et al., 2017). The treatment of LGBT people is starker still in collectivist honor cultures. For example, analysis of data from Turkey (a Eurasian collectivist-orientated culture) from 2007 to 2009 showed that 22 “honor” killings were related to the sexual identity of the victims (Democratic Turkey Forum, 2011). More pertinent to this study, the average number of “honor” killings for Pakistan alone is estimated to be around 10,000 annually (Kirti, Kumar, & Yadav, 2011). Although sexual orientation was not reported for these data, it is likely that a proportion of these victims were murdered because of their LGBT sexuality (Khan, Hall, & Lowe, 2017). The seriousness of this is further magnified as same-sex relations are criminalized in some of the counties included in this study, and is punishable by law, with sentences of imprisonment or even death (Carroll & Mendos, 2017).

In this social and political landscape, it is unsurprising that gay males are reported to be at elevated risk of victimization from their immediate and extended family members, tribal and community leaders, and groups in Asian territories (Mahendru, 2017). Thus, attitudinal research that identifies elements underpinning homonegative beliefs, in both collectivistic- and individualistic-orientated cultures, may be a subtle but powerful means to influence both public opinion and social policy.
Limitations and Future Work

This study is not without limitation. For example, these findings only relate to one hypothetical scenario, so it would be advantageous for future studies to confirm these findings using different depictions of antigay “honor” abuse. Also, as participants’ attitudes were measured using two individual items only, future work might extend the scope or sensitivity of assessment measures to glean a more nuanced understanding of the levels of antigay endorsement. Future research might also explore whether similar results are found toward lesbians and other sexual or gender minorities, such as trans-gendered people. As this study collected only basic demographic and religious information from participants who were mainly educated, young adults, future studies might benefit from examining the influence of other relevant variables potentially associated with attitudes supportive of antigay “honor” abuse, for example, socioeconomic status (West, Kantor, & Jasinski, 1998) and urban versus rural backgrounds (Moracco, Hilton, Hodges, & Frasier, 2005). Clearly underresearched at present, the exploration of individual differences within cultures may be a valuable avenue for future studies. Invariably, it would be useful to conduct in-depth comparative analysis to identify variances within and across collectivist- and individualistic-orientated cultures, by exploring a range of psychosocial factors more broadly associated with aggressive homonegative attitudes, including hypermasculinity (Parrott & Zeichner, 2008), right-wing authoritarianism (Hunsberger, 1996), social dominance orientation, and gendered belief systems (Whitley & Ægisdóttir, 2000).

Research in this area would make a useful addition to the currently limited but growing literature. Although firm conclusions cannot yet be drawn from this body of work, a pattern is emerging that suggests despite the robust influence of cultural expectations on people’s attitudes, individual differences play a key role in the endorsement of “honor” abuse. For example, low-level approval for overall “honor” abuse was found in a mainly young, educated British South Asian population of Muslims in England, irrespective of their gender (Khan, Saleem, & Lowe, 2018). Yet, this study did not assess the influence of any psychosocial variables that might have influenced their opinions. Thus, it is notable that other studies in England that focused on South Asian LGBT victimization reveal fraught experiences and reports of family members being extremely abusive, both threatening and inflicting physical harm (Khan et al., 2017; Razzall & Khan, 2017) and psychological coercion (Jaspal, 2014), either as punishment or to ensure compliance with expected heterosexual gender norms, and thus restoring so-called family “honor.”
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Notes
1. In this study, we refer to Iran as an Asian, rather than Middle Eastern, nation due to its geographical location as well as its similarities with the other Asian countries under investigation in the key concepts addressed.
2. All percentages are rounded up.
3. The protagonist’s name in the scenario was altered to reflect the country in which questionnaires were distributed.
4. The British Asian sample endorsed high collectivist cultural orientation as assessed by the Cultural Orientation Scale (COS—Normative Scale: $M = 63.55$, $SD = 9.36$; Evaluative Scale: $M = 61.71$, $SD = 8.80$).

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Tab 14
‘There are few gay people in India’: stigma lingers despite legal victory

A landmark ruling legalised gay sex in the country in 2018, yet the LGBT community still face stigma and violence

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Michael Safi and Aarti Singh in Patna

Wed 13 Mar 2019 01.00 EDT

When India’s supreme court announced it was legalising gay sex, people hugged in twos and threes on the lawns outside the Delhi courthouse. They drapes themselves in rainbow flags in Bangalore and released balloons into the sky. In Mumbai’s nightclubs, they danced all night.

In Patna, the dusty capital of the east Indian state of Bihar, Roshni did nothing. “We felt good when people were marching in Delhi and Mumbai,” she says. “Everyone wanted to follow [them], but then we feared what other people would think - how they would react.”
Six months ago, a landmark judgment legalised the sex lives of an estimated 104 million Indians. A law against “unnatural sex” enshrined by the colonial British government (and defended by successive Indian ones) was unanimously ruled to no longer prohibit homosexual acts. The reverberations of the decision - on sheer numbers, perhaps the largest single act of gay liberation ever - are still rippling across a vast, diverse and conservative country.

Rumblings can be felt in Patna, more than 1,000km from Delhi. “People are happy, but in their cocoon,” says Aditya Sagar, the teenage host of a youth issues programme on Patna radio.

Many of his LGBT friends greeted the news of the supreme court’s decision with carefully composed Facebook comments. “They wrote, ‘Congratulations to my homosexual friends’. Or they reposted what national Indian celebrities had written about it,” he says. “They feel like they’ll be shunned if they come out here.”

Among Indians, Bihar still conjures images of lawlessness and poverty. Though the state’s economy has rallied in the past 15 years, its poverty and school dropout rates are still among India’s highest. Even in its noisy, congested main city of Patna, people still hold fast to traditional values and family honour as pillars in a society where little else can be relied on.

“The ideology of marrying a woman and having children here is deeply rooted,” says Shubhankar Mondal, a medical student and one of the few openly gay people at his college in the city.

A few days after the verdict last September, Patna threw its first gay party. Around 50 men showed up to a hotel hall. The location had been kept secret until the morning of the event. Phones were banned, but still, “many didn’t come because maybe [someone] would take a picture and post it,” Sagar says. “And after that there’s been no parties. People are still scared.”

The lingering fear reflects the fact that Indian society does a better job of policing its gay members than law enforcement ever did. Violating India’s ban on homosexual acts was punishable by up to 10 years in prison. But fewer than 200 LGBT people were ever prosecuted for violating the law. Its real impact, according to reports by human rights groups, was to embolden police and others to extort and abuse gay people, knowing most would be reluctant to seek help from a government that regarded them as criminals.
That stigma still lingers. “In India, it is a case of ethics,” says Sanjay Paswan, a member of the Bihar state council and former Indian federal minister who opposed the decision to lift the gay ban. “[Gay] people are suffering from some psychological weakness or problem or trauma. There are very [few] of them in India. I don’t think any lesbians are here.”

The court has raced out ahead of the attitudes of Bihar’s 110 million residents, he says. “Now people have no guts to oppose [homosexuality] … But not out of conviction. Out of compulsion.”

The brunt of the prejudice is borne by Patna’s poorer and less educated LGBT residents, who have limited access to the empowering gay culture that has developed around the world in the past half-century and which tells them they should feel pride in who they are.

Asked how they identify, Roshni and Satya reel off a list of the slurs that are hurled at them in the street. Labels such as transgender or gay mean little to either one. “I am normal,” Satya says. “But not to the world.”

Queer cultures have always existed in India, and are interwoven with the rituals of the mainstream. Hijras, a south Asian term for a group that includes transgender women, served as guards for the harems of Mughal kings. Each year, thousands of transgender women flock to the south Indian city of Koovagam to re-enact the mythological marriage of Lord Shiva to Vishnu, who had taken the form of a goddess.

“Being queer in India is not a monolithic identity, other than in big cities, where the imitation of western culture defines how we party and how we do pride,” says Ajita Banerjie, a researcher on gender and sexuality rights based in Delhi.

The night before we meet, Satya had worn elaborate clothing and makeup to portray the goddess Kali in a street procession for a Hindu festival. He had basked in the adoration of the crowd. “It was mind-blowing,” he says. “It felt like - if I get off this stage people won’t just hold my hand, they’ll hug me. Worship.”

It didn’t last. “When the makeup came off, then we came back to the same place,” he says.
Off stage, the pair struggle with finding jobs or apartments to rent, and face regular threats of sexual and other violence, including from police. “They used to harass us [before the lifting of the gay ban] and nothing has changed,” Roshni says. “If we resist, they can arrest us and do whatever they want. We are living the way we were living before the ban.”

“There is a difference,” Satya tells her. “Tomorrow if I decided to start my life with someone or live with someone, the government will not stop us because of the law.”

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

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

He had still hesitated a little. “But we were dancing a lot and it was a light moment. People were watching, but I didn’t look at them. I just focused on me and him and what was happening between us.”

*Additional reporting by Manoj Chaurasia in Patna*

Topics
- Human rights
- LGBT rights
- India
- South and Central Asia
- features
Tab 15
India: no country for transgender women

Four women are raped every hour in India, recently named the world’s most dangerous place for women. And for transgender women, it’s even worse

Topic | India

Puja Changoiwala
Published: 1:01pm, 8 Jul, 2018
Khushi, an Indian transgender woman, never thought that when she challenged a policeman who had grabbed her breast it would set off a series of events that would leave her seeking justice more than four years later.

During a pilgrimage to a Muslim shrine in Rajasthan state, she was arrested and brought to a police station where she was beaten and raped. Adding insult to her injuries, she had to beg authorities to register a complaint.

**How a rape exposes the conflict between two visions of India** [1]

India has long struggled with rape. The country has recently been ranked the world’s most dangerous place for women [2], in part because of the high risk of sexual violence, according to a poll of international experts. While violence against women in India has gained national attention – millions protested against sexual assault after a student was gang raped in Delhi in 2012 – many in the country’s transgender community say they feel like crimes against them stay largely hidden in the shadows.
“India sees a furore every time there’s a rape case, but not for me – I wasn’t born a woman,” says Khushi, 30, who now lives in Mumbra, a city on the outskirts of Mumbai.

“When a transgender woman gets raped in this country, cops first mock her, saying she doesn’t have the organs to be sexually assaulted; and what follows is a barrage of injustices – perhaps greater than the first one.”

FOUR RAPES EVERY HOUR

According to the latest government figures, 170,000 women were raped between 2012 and 2016. That means an average of four women were sexually assaulted every hour over that span.

Deadly demographics: women face grim odds in male-heavy societies

The government has strengthened anti-rape laws, and also enacted new ones over the past six years. These followed the public uproar over a gang rape in Delhi in 2012, when a 23-year-old woman was raped by six men and thrown off the moving bus on which she was assaulted. She died two weeks after the attack.

In April, the central government passed an ordinance authorising the death penalty for those convicted of raping girls younger than 12.

Despite this, sexual abuse against transgender men and women remains largely ignored. The Transgender Persons [Protection of Rights] Bill, 2016, for example, treats sexual violence as a petty offence – maximum punishment being two years.
A transgender devotee bathes after a ritual signifying her marriage to the Hindu warrior god Aravan. Photo: AFP

“If you look at the 2016 bill, the government has not even defined rape as an offence,” says Santa Khurai, an indigenous transgender woman and secretary of All Manipur Nupi Mannbi Association, a LGBT non-profit organisation in Manipur state.

“All they’ve mentioned is ‘physical abuse’ and ‘sexual abuse’, punishments for which range from six months to two years. In Indian legislation, the question of sexual violence is hardly addressed for the transgender community, leaving no hope for answers.”

**Sex before marriage ‘fudge’ gives hope to Indonesia’s persecuted gays** [4]
Unlike crimes against men, women and children, the Indian government does not publish annual statistics about crimes against transgender people. Data is usually gathered by NGOs, and a survey last year revealed that 40 per cent of transgender people faced some sort of sexual abuse in India before turning 18. The survey, conducted by Swasti Health Resource Centre – a Bangalore-based non-profit group, interviewed 2,169 transgender people in three states: Maharashtra, Tamil Nadu and Karnataka. It concluded that sexual abuse begins as early as age five, and continues beyond childhood.

LACK OF LEGISLATION

India has gender-specific rape laws – men, as defined by law, cannot be raped. There have been petitions for gender-neutral provisions, but they have yet to see the light of the day. And hence, although cases of sexual violence against transgender women can seemingly be covered under the penal code, transgender men have no legal respite.

Salman Khan runs Kinnar Maa Trust which helps the transgender community. Photo: Puja Changoiwala
“Even when it comes to transgender women, law hardly comes to the rescue. What use are books of statutes when they are not implemented?” says Salma Khan, 40, a transgender woman and president of Mumbai-based NGO, Kinnar Maa Trust, which supports 5,000 people from the community.

‘Boys for Sale’: the dark world of Japan’s gay prostitution [5]

“The Indian constitution does not discriminate, but its keepers certainly do. Of the transgender people registered with us, at least one in four has been a victim of rape, gang-rape or serious sexual violence. And of these, only 10 per cent were successful in getting official complaints registered with the police. Most of them were deterred with the same question: you’re neither male nor female; how can you be raped?” Khan says.

Khushi was asked the same question when she tried to register an offence after she was raped by three policemen. Authorities at first refused to believe her gruesome tale of custodial torture, she says.

Her complaint was lodged six days after she was assaulted — and only after her cause was taken up by influential LGBT activists and medical reports confirmed she was raped.
It was June 2014. Khushi, along with seven other transgender women, was on her way to the shrine when a policeman stopped their vehicle. Khushi says the officer, Bhawani Singh, asked for a bribe to let the vehicle pass, and when she refused, he grabbed her breast.

“Are those real or fake?” he demanded.

A physical altercation ensued between the women and police.
Soon after, Khushi, who underwent gender reassignment surgery in 2010, and her friends were arrested and detained at the Dargah police station in Ajmer. Khushi says that while at the station, many of the women were molested, assaulted with belts, and asked to “walk the ramp and show”.

“Around 3am the following morning, Singh woke me up, and dragged me by the arm into another room, where three policemen stood waiting. He said that since I hadn’t answered his question, I would now have to show him if my breasts were real.

“Even as I begged them to let me go, they stripped me of my clothes, and three of them – Singh and two other policemen – took turns raping me. The fourth cop, meanwhile, filmed the gang rape on his phone. The assault stopped only when a policewoman heard my cries for help, and asked the room to be opened.”

Khushi was detained for four days after the alleged assault, she says, and was denied medical assistance.

Anti-US rage: rapes, murders, accidents, and now this in Okinawa

Although an offence was registered, investigations in the case have seen little progress in the past four years.

“One of the cops was suspended, while three others were transferred. But there has been no legal action against them,” she says.

Malini Agarwal, inspector general of Ajmer police, did not to respond to requests for comment.

Khushi’s case is alarming, however, it is certainly not a one-off, says Vyjayanti Vasanta Mogli, a transgender woman and founding member of the Hyderabad-based collective Telangana Hijra Intersex Transgender Samiti.
Many transgender people are reluctant to report crimes against them to police. Photo: AFP

“Sexual violence at the hands of state agencies is rampant against the transgender community all over India,” Mogli says. “A few years ago, I encountered a case where a soldier raped a transgender woman, and tried to throw her off a moving vehicle. When she started shouting for help, the officer stopped the car, broke a branch off a tree, and hit her on the face with it.”

Mogli adds that the refusal by officials to register sexual assault complaints often forces transgender victims to suffer in silence.

“I’ve helped a transgender woman, who was not only raped, but also had acid poured on her face. When she approached the police, the cops registered a complaint against the victim instead – for indulging in anal sex, which is a crime in India. It took months of relentless campaigning to get her complaint registered.”
Neha Munde, 28, a transgender woman living in Mumbai, also witnessed similar apathy from the police. Munde, who holds a master’s degree in commerce, says she was on her way to visit a friend in 2013 when a group of men abducted her. They took her to a flat, where she was kept captive for two years.

Where to go, what to do? Family in Singapore’s gay surrogacy adoption case face life in limbo

“There wasn’t one day when I was not violated. My abductors would gang rape me at times, and at others, they would invite their friends to do so. It was only after two years that I managed to flee from that hell.”

She says that since transgender people are largely treated as a burden, her family did not look for her when she went missing in 2013. When she returned two years later – frail, bruised, and ailing, they took her in. Munde joined Kinnar Maa Trust after the ordeal, and has been working with them since.

Afraid of further violence from her abductors, she did not approach the police – a fact which, according to Khan, is true for 90 per cent of the victims she has encountered.

Neha Munde, 28, was held captive for two years. Photo: Puja Changoiwala
However, in 2016, Munde was raped again by the same men and considered taking her own life, she says.

“It looked inescapable, that circle of brutality. But my peers at the NGO extended their support, and convinced me to raise my voice.

“I approached the police, and innumerable other state entities thereafter, but my prayers for justice always fell on deaf ears. Eventually, I approached the National Human Rights Commission of India, and with their help, an official complaint was lodged earlier this year – two years after the crime.”

‘WE ARE NOT PARIAHS’

Khan says that transgender people in India are often mocked and bullied in schools and colleges, and the discrimination extends to their professional lives, where they are largely deprived of employment opportunities. The rampant sexual violence and relaxed legislation further their tragedies.

Meet the brave drag queens tearing up Hanoi’s nightlife [9]

“I do believe there is a need to strengthen the laws to protect our community. But more importantly, I believe Indian society needs to be sensitised so they stop looking at us as pariahs,” Khan says.

She recalls an incident when a transgender person was thrown under a running train because he asked a group of men for money to buy food.
The penalty for raping a transgender woman in India is two years. Photo: AFP

“In another case this month, a transgender activist attempted suicide in Mumbai after she was assaulted by three political party workers, who assumed her to be a sex worker since she was distributing condoms. All these beatings, murders and sexual assaults are because transgender people are looked at as the disease of the Indian society. If this perception persists, no legal dogmas – strong or weak – can protect the community.”

What’s it like being a gay student in Japan? [10]

But no matter how difficult the struggle, Khushi seems determined to bring her perpetrators to justice. She says that even four years later, images of the night still plague her every few minutes.
“Everyone asks me to quit this fight, but when I’m alone, my resolve to get justice becomes stronger. I want them to feel the pain I felt in those 40 minutes.”

WORLD’S MOST DANGEROUS COUNTRIES FOR WOMEN

1 INDIA - Tops the list, with levels of violence against women still running high, more than five years after the rape and murder of a student on a bus in Delhi sparked national outrage and government pledges to tackle the issue. India was the most dangerous on three issues – the risks women face from sexual violence and harassment, from cultural and traditional practices, and from human trafficking.

2 AFGHANISTAN - Women still face dire problems nearly 17 years after the overthrow of the Taliban. Most dangerous country for women in three areas – non-sexual violence, access to healthcare, and access to economic resources.

3 SYRIA - Third after seven years of civil war. Second most dangerous country for women in terms of access to healthcare and non-sexual violence, which includes conflict-related violence as well as domestic abuse. Joint third with the United States on the risks of sexual abuse.

4 SOMALIA - Fourth after being mired in conflict since 1991. Third most dangerous for access to healthcare and for putting them at risk of harmful cultural and traditional practices.

5 SAUDI ARABIA - Overall fifth, but the conservative kingdom is second most dangerous country for women in terms of economic access and discrimination, including in the workplace and in terms of property rights.

6 PAKISTAN - Sixth most dangerous and fourth worst in terms of economic resources and discrimination as well as the risks women face from cultural, religious and traditional practices, including so-called honour killings.

7 DEMOCRATIC REPUBLIC OF CONGO - The United Nations warns millions of people face “hellish living conditions” after years of factional bloodshed and lawlessness.
8 YEMEN – Ranked poorly on healthcare, economic resources, risk from cultural and traditional practices, and non-sexual violence.

9 NIGERIA – Human rights groups accuse the country’s military of torture, rape and killing civilians during a nine-year fight against Boko Haram.

10 UNITED STATES – The only Western nation in the top 10 and joint third with Syria for the risks women face in terms of sexual violence, including rape, sexual harassment, coercion into sex and a lack of access to justice in rape cases.

*Thomson Reuters Foundation

Source URL: https://scmp.com/week-asia/society/article/2154077/india-no-country-transgender-women

Links
TAB 16
Gay in India, Where Progress Has Come Only With Risk

By Kai Schultz

June 2, 2018

BILASPUR, India — If you had told Ayesha Kapur 10 years ago that she would help lead the fight against one of the world's oldest laws criminalizing gay sex, she would never have believed you. For most of her life, Ms. Kapur was afraid to ever speak of her sexuality.

Growing up in New Delhi during the 1980s, Ms. Kapur knew of no gay women, no reference points from Bollywood movies that could provide the vocabulary for what she was feeling. The word “lesbian,” she said, was “like a bad word.”

Three decades later, Ms. Kapur, who describes herself as deeply private and mostly apolitical, became a member of the first group of gay petitioners to challenge the law, known as Section 377.

In stepping forward, Ms. Kapur, 43, and other petitioners admitted to the court that they were criminals under a law routinely used as a cover to harass, blackmail and sexually assault gay people.

“According to the law of the land, I can be handcuffed,” she said. “It’s a very real prospect. Nothing stops the police from coming to the homes of the petitioners.”

This summer, India's Supreme Court is expected to consider those petitions as it reviews Section 377’s constitutionality, creating a surge of hope for lawyers and activists who have been campaigning against the law for years.

But hope is tempered by years of disappointment. Even now, it is an act of calculated risk to identify publicly as being gay in India, or to advocate for change.

In interviews conducted over three months, gay and transgender Indians from across the country described the cost of living in a country that has forced them to be outlaws: shunning by parents, social isolation, few protections in the workplace, and a frightening vulnerability to both police abuse and sexual assault with limited legal recourse.

Ms. Kapur, who works in the food and beverages industry, said she came forward because she had finally had enough of all that.

“Why are we invisible?” she asked. “Because we have made ourselves invisible? Or have we been made invisible? I don't want to be seen as a criminal. That is what this is about.”

In Bilaspur, a sun-cracked city in central India, Rajesh Yadav, slim with sharp cheek bones, said she had been gang-raped four times in less than one year, beaten with a brick and nearly thrown out of a moving vehicle because of her sexuality.
“I would beg them to leave me every time, but they would beat me and use violence against me and then rape me,” said Ms. Yadav, 25, who identifies as a gay cross-dresser and prefers female pronouns. “If I start telling you my story, several nights would pass.”

A., a young gay man who asked to be identified only by his first initial, shared a similar account.

When A., 22, made plans to meet a man from an instant messaging application in eastern India, he was greeted instead by two different men, one of them in a police uniform, who drugged and raped him, he said. Afterward, one of the men took a selfie with A. “I was afraid he would blackmail me,” he said.

Neither of them considered approaching the police to report the crimes, fearing the consequences of doing so.

“Section 377 is cruel,” A. said. “It is being misused to harm people like me. It makes people hide.”

In 2014, when a Bangalore-based doctor did come forward after several men he had sex with extorted about $25,000 from him, the police arrested the men, but then booked the doctor under Section 377, said Danish Sheikh, an assistant professor at Jindal Global Law School in New Delhi.

“The doctor here becomes both victim and perpetrator;” he said. “The law has a chilling effect on your ability to access justice.”

Victims of blackmail or sexual assault often hesitate to approach police for just that reason, fearing they will be arrested — or worse. “The rich ones, they will extort money from; the poor ones, they will use for sexual favors,” said Mohnish Malhotra, a gay-rights activist in New Delhi.

“Nobody talks about these experiences,” he added. “This is not a conversation that people are comfortable with here in India.”

But India was once at ease with depictions of same-sex love and gender fluidity. In Hinduism, gods transform into goddesses and men bear children. Rekhti, a genre of poetry that flourished in India from the late 1700s, describes erotic encounters between women.

When British colonizers arrived in India, that acceptance of homosexuality eroded.

In the 1860s, the British introduced Section 377 of the Indian Penal Code. The law imposed a fine, 10 years’ imprisonment or a life sentence on “whoever voluntarily has carnal intercourse against the order of nature.”

Section 377 is generally applied to sex between men, but it officially extends to anybody engaged in anal or oral sex.

Activists said there had been a few advances in the years since India won independence in 1947, including when government literature distributed in schools last year recognized same-sex attraction. But homophobia here is still often expressed with predatory behavior, and Section 377 narrows channels for recourse.

The push to strike down Section 377 began in earnest in 2000, when a terrified young man showed up at the Naz Foundation, an H.I.V. advocacy organization in New Delhi, pleading for help.
Anjali Gopalan, who runs the organization, said the man's parents had taken him to a government hospital where he was forced to undergo electroshock therapy to “make him straight.”

After she relayed the man's plight to India's National Human Rights Commission, the commission said it could not help the man because he was gay and therefore a criminal. “I was horrified,” she said.

Soon after, Ms. Gopalan filed a lawsuit challenging Section 377, fending off death threats until 2009, when a high court in New Delhi ruled that the law could not be applied to consensual sex. But appeals were filed by Christian, Muslim and Hindu groups and the law was restored by India's Supreme Court in 2013.

Thousands of gay people who had come out of the closet in 2009 were swiftly pushed back in. Some wealthier Indians left the country for good.

“For the first time, I thought I needed to move out,” said the chef Ritu Dalmia, another petitioner challenging Section 377. “There was this fear — absolute fear.”

In their judgment, the Supreme Court justified the ruling by writing that only a “minuscule fraction of the country’s population constitute lesbians, gays, bisexuals or transgenders.” Since its inception, the court said, less than 200 people had been prosecuted under Section 377.

But figures released by the National Crime Records Bureau, which tracks police complaints, suggest that many more cases are lodged, lawyers said. In 2014, the first year the bureau says it started tracking Section 377 cases, 1,148 complaints were filed. In 2016, the number had nearly doubled to 2,187. That year, over 1,600 cases were sent for trial.

Drawing conclusions from the data is difficult. There is often no way to tell on police complaints whether sex was consensual. Many complaints are filed by third parties who make their own judgments, said Professor Sheikh.
“It is very rarely the survivor who is filing the case,” he said. “The father would file the case saying that, ‘I caught this other person doing a wrongful act with my son.’”

Responding to the court’s ruling, a team of lawyers led by Menaka Guruswamy and Arundhati Katju submitted a writ petition in 2016 on behalf of gay Indians. The petition challenged Section 377 on the basis that it violated their rights to equality and liberty, among other infractions, under India’s Constitution.

“We always felt that there was a void,” Ms. Guruswamy said, “the absence of L.G.B.T. individuals saying, ‘This Constitution is mine as well.’”

Initially, three other petitioners joined Ms. Kapur and Ms. Dalmia: Navtej Singh Johar, a dancer; Sunil Mehra, a journalist; and Aman Nath, a hotelier.

Over the last few weeks, emboldened by that group, petitions were filed by 26 others, including Arif Jafar, whose outreach program for gay and transgender people was shut down in 2001 by police who said he was accepting funds from Pakistan to turn Indian men gay.

Mr. Jafar was booked under Section 377 and other laws and spent 47 days in jail, where he was beaten by inmates.

Though most of the petitioners are financially independent, protections that insulate them from the dangers that many gay Indians face, public opinion has slowly shifted in some places. Pride parades were popping up in cities. Parents were coming forward to support their gay children.

Ms. Kapur took her own steps. She left a corporate job where she worked with “superb people” but felt bothered by co-workers assuming that everyone in the office was straight. In 2009, she also came out to her mother, who died of lung cancer shortly after the conversation.

“After I lost my mother, I became a bit fearless,” Ms. Kapur said. “In death, she gave me courage.”

Even if the Supreme Court excludes consensual sex from the law, lawyers said its archaic language means a legislative amendment is needed to protect people who are gay. Still, Ms. Kapur felt hopeful. Messages of support had overwhelmed negative ones, she said.

After the Supreme Court referred Section 377 to a larger bench in January, Ms. Kapur’s father mailed her a framed newspaper clipping of an article from The Times of India profiling the “Famous & Fearless 5.”

Under the clipping, he scrawled a note: “Your mother would have been so proud.”

Surabhi Singh contributed reporting from Bilaspur, India, and Ayesha Venkataraman from Mumbai.

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A version of this article appears in print on June 3, 2018, Section A, Page 8 of the New York edition with the headline: Gay in India, Where Coming Forward to Seek Change Carries Risk

A gay-pride march in New Delhi in November. The New York Times
Tab 17
Hijras of Kashmir: A Marginalised Form of Personhood; "Transgenders have been marginalised in Kashmir" | Greater Kashmir

A recent book looks at the suffering of Kashmir’s transgender community by studying the lives of 24 “hijras”, with the author contending that very few people are interested in knowing about them, resulting in the sordid conditions in which they live.

In this first-of-its ethnographic study, the author accepted that he once had a black and white view of this community.

A recent book looks at the suffering of Kashmir’s transgender community by studying the lives of 24 “hijras”, with the author contending that very few people are interested in knowing about them, resulting in the sordid conditions in which they live.

The insightful "Hijras of Kashmir: A Marginalised Form of Personhood," (Jay Kay Books/ Rs 1,295/ Pages: 288) has been written by Aijaz Ahmad Bund, who has a doctorate from the University of Kashmir.
Internet curb in Kashmir Valley due to aggressive anti-India social media posts from Pakistan: govt

"Our society is treating transgenders as transparent glass, denying them their existence, personhood, and agency. Systematically, we have marginalised and violated them in the most intimate way and we, as conscious beings, are accountable for their miserable state," Bund told IANS.

In this first-of-its ethnographic study, the author accepted that he once had a black and white view of this community.

"My education transformed me and questioned my conscience for not being the voice of the voiceless. This endeavour is the product of the sensitivity towards the women and gender issues — sensitivity which didn’t develop in a vacuum," he explained.

Latest News

East Bengal face Real Kashmir in their I-League campaign opener on Wednesday

Hijras, known in local parlance as "laanch", comprise the sexual minority that falls in between the binary of male-female. They are born males, but as they grow up they acquire the physical as well as psychological tints of females, which give the impression of a female trapped in a male body.

A conservative society further alienates their condition — the author notes that the transgender community forms a minuscule minority in the state and lives a life of discrimination, marginalisation and violence.

"The problems in availing livelihood opportunities due to various socio-cultural frailties and harassment at the workplace are forcing them to live a sub-standard life," the author notes.
For Bund, the community is not as homogeneous as it appears despite its distinct language — called "laancheh farsi" — customs and lifestyle.

In the book, he discusses at length how the community at large has persistently subjected them to various "institutional injustices".

"They are considered abnormal and eventually become outsiders. Thus, access to social, economic, cultural, legal and political services is extremely restricted for anyone with this identity in Kashmir. Society assumes that they are only meant for matchmaking or singing and dancing. Due to bullying and a hostile environment, they are forced to leave their studies, which make them ineligible for white-collar jobs," Bund writes.

What of the future? The author advocates an integrated approach on the institutional as well as political levels to overcome the discrimination and disrespect transgenders face.

The issues being complex as they are, the author believes that sensitising people about this community is very important.

He also narrates how Hijras enjoyed many privileges during the Mughal period as they were found in the courts performing their traditional role of guarding the women of the harem and the children. Moreover, being persons of trust, they were able to influence state decisions and received large amounts of money the closer they were to the kings and queens.

"The situation of Hijras started deteriorating when British colonial rulers came with their ideologies of sex-gender binaried bodies and hetero-normative sexuality perspectives. The Hijra's body was problematic because of its ambiguity and its difference with the able-bodied procreative-heterosexual body," he explains.

"The British gradually brought various laws against Hijras... due to which the community was deprived of the privileges provided by the Mughals. Hijras were classified under the list of criminal caste-tribes during colonial rule. They were criminalised under the Criminal Tribes Act, 1871, which deemed the entire community of Hijras as innately 'criminal' and 'addicted to the systematic commission of non-bailable offences'," he adds.

The author also points out that there is little salvation for the hijras even after their death as, very often, the body of a transgender is not allowed a normal burial. The critical multiple societal and religious beliefs act as a barrier in conducting the normal funeral of a transgender.
"We are trying our best. Even if we are able to effect a small change — that matters," Bund concludes.
TAB 18
KOZHIKODE: Two transgenders were severely beaten up by the police, here, in the wee hours on Thursday. The injured transgenders were admitted to Kozhikode Beach General Hospital for treatment. According to the injured persons, they were beaten up mercilessly by the police persons without any provocation. The police team that was patrolling near railway station and SM Street premise are allegedly behind the attack.

“We were walking along the street around 2 am. A police jeep stopped by our side and police persons started beating us up,” said the injured. They were not ready to stop even though we had not been engaging in any offence, the injured said.

The injured persons also complained that the police used abusive language against them while beating them with lathi. Mamta Jasmine suffered injuries on her back and Susmitha suffered injuries on her legs during the police brutality.
Таб 19
Furore over attack on transgender daily wager in Imphal

IMPHAL: A daily wager from the transgender community was assaulted by locals in the Sagolband area of Imphal city and the video of the incident was posted on the social media, triggering anger among the community.

The All Manipur Nupi Maanbi Association (AMANA), a popular trans-women body of the state, has appealed to people to do away with their 'ignorant' mindset. It lamented that people of the community are still tolerating public disgrace and hatred. The AMANA is going to file a complaint against the incident at the newly set up cyber crime police station.

"I was beaten up by locals in the Sagolband area on Saturday night on false charges of theft. Actually, I was followed by two boys who later fled," an emotional Umakanta aka Chan Rajkumari (24) told reporters at a media conference here on Monday.

Chan added, "The locals used abusive language and wrongly charged me with theft. A man also hit me with a stick. Again at a local club, I was beaten up despite pleading my innocence,"

AMANA secretary Santa Khurai, while condemning the incident, appealed to people to respect the transgender community. "We will not keep mum when our community member is beaten up and insulted. We demand justice for Chan. A complaint will be filed at the cyber crime police station to ensure that the perpetrators, including the individual who posted the video clip of the incident, are punished," said Santa.

Chan, who belongs to a poor family, ekes out a living by washing utensils and clothes. She came to Imphal from her native Chairen village in Kakching district with a hope to earn money to support his poor family four years ago.
According to a survey carried up by a prominent NGO, the population of transgenders (both trans-women and trans-men) in the state is 3,674, said Santa. Notably, the female characters in Shumang Leela (an age old popular traditional courtyard theatre of the state) are played by transgender people.

Last year, security escorts of a former minister assaulted a celebrated transgender actor in Imphal over a petty issue.
Таб 20
THRISSUR: Three persons belonging to the transgender community were injured when they were allegedly beaten up by the police near the KSRTC bus stand here in the wee hours of today. The injured persons have been identified as Deepthi, Ragaranjini and Aleena. According to Sheethal Shyam, who is an LGBT activist said the police attack against the three persons was totally unprovoked and much more disturbing aspect was that the district hospital authorities had initially refused to admit the injured persons in the hospital. The hospital staff had reportedly denied treatment alleging that they were trying to get admitted to strengthen their case against the police.

"They wanted us to go away after some primary care and they were admitted only when the activists including me appeared on the scene and started protesting," said Sheethal. Sheethal said the three persons had to lie down on the beds at the observation ward of the hospital on their own till about 10.30 am, as the hospital authorities did not admit them. The acting superintendent of the district hospital Dr Snehaja however denied the charges the three persons were denied treatment at the hospital. "First one person had come injuries and duty doctor dressed the wounds and prescribed medicines. However, after some that person brought another two persons saying they were also injured in the police attack. However the duty doctors did not see any serious injuries on them, and gave medicines when they complained of pain. Their injuries did not appear serious requiring admission. However, the surgeon is examining them now and they will be admitted if they require further treatment as in-patient," Dr Snehaja said.

According to Sheethal the three persons, who were on their way to Bengaluru, were beaten up by the police when they had
stepped out of a hotel after having dinner. The Town East CI Sethu K C said the complaints of police torture against the three would be probed. He however said that there were complaints of the members of some sections of people coming to the city in the late hours and engaging in indecent activities at public places. “The police is in difficult situation as such persons are seen loitering in the city in suspicious circumstances in the late hours, and there was no shelter homes to house them,” he said.