

Stonewall

ABOUT THIS RESOURCE

This resource is produced by Stonewall, a UK-based charity that stands for the freedom, equity and potential of all lesbian, gay, bi, trans, queer, questioning and ace (LGBTQ+) people.

At Stonewall, we imagine a world where LGBTQ+ people everywhere can live our lives to the full.

Founded in London in 1989, we now work in each nation of the UK and have established partnerships across the globe. Over the last three decades, we have created transformative change in the lives of LGBTQ+ people in the UK, helping win equal rights around marriage, having children and inclusive education.

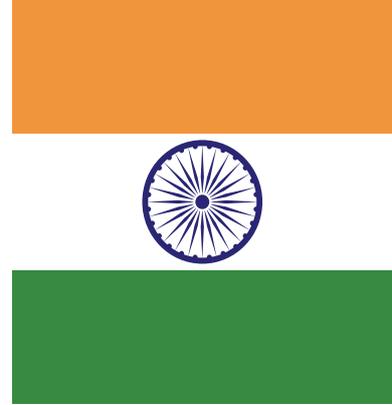
Our campaigns drive positive change for our communities, and our sustained change and empowerment programmes ensure that LGBTQ+ people can thrive throughout our lives. We make sure that the world hears and learns from our communities, and our work is grounded in evidence and expertise.

To find out more about our work, visit us at www.stonewall.org.uk

Registered Charity No 1101255 (England and Wales) and SC039681 (Scotland)

Stonewall is proud to provide information, support and guidance on LGBTQ+ inclusion; working towards a world where we're all free to be. This does not constitute legal advice, and is not intended to be a substitute for legal counsel on any subject matter.

INDIA



Population: 1.28+ billion people



Stonewall Global Diversity Champions: 68

THE LEGAL LANDSCAPE

In Stonewall's **Global Workplace Equality Index**, broad legal zoning is used to group the differing challenges faced by organisations across their global operations.

India is classified as a Zone 3 country, which means sexual acts between people of the same sex are illegal.

Two further zones exist. In Zone 1 countries, sexual acts between people of the same sex are legal and clear national employment protections exist on grounds of sexual orientation. In Zone 2 countries sexual acts between people of the same sex are legal but no clear national employment protections exist on grounds of sexual orientation.

FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY

The Constitution **protects all citizens' rights to freedom of expression, association and assembly** under Article 19, **subject to 'reasonable restrictions'**.

The **obscenity law** contained in Section 292 of the Indian Penal Code **can restrict the right to freedom of expression**, including dissemination of information that is deemed 'obscene'. While this law does not specifically restrict LGBT people's rights to freedom of expression, it **has been used against LGBT people and groups in practice**.

FAMILY AND SAME-SEX RELATIONSHIPS

Voluntary 'carnal' intercourse 'against the order of nature' is criminalised with a penalty of up to 10 years' imprisonment and a fine under Section 377 of the Indian Penal Code. **Sexual acts between men are prohibited and criminalised** under this law.

The **constitutionality** of the section was **upheld by the Supreme Court** in 2013.

Same-sex marriage is not legal.

Same-sex relationships are **not** otherwise **recognised** by law.

Only married couples and single individuals can legally adopt (with certain restrictions on single men) under Adoption Rules 2017 and the Hindu Adoption and Maintenance Act 1956.

EQUALITY AND EMPLOYMENT

Articles 14-16 of the Constitution provide for **equality before the law** and for **non-discrimination** on grounds of 'sex' **in respect to employment by the state**.

There is **no comprehensive employment anti-discrimination law** in force that **protects LGBT people**.

The caselaw on LGBT rights is evolving and **courts have taken the view** that there **should be no discrimination based on sexual orientation and gender identity**.

Notification S.O.186(E) of 19 January 2017 issued by the Ministry of Labour and Employment provides for the **same rate of wages** (for the same work or work of similar nature) **for men, women and trans people engaged in specified forms of employment**.

No law considers hate crimes based on sexual orientation or gender identity as an **aggravating circumstance** in sentencing.

However, on a few occasions **courts have taken into account atrocities committed against the trans community** in their rulings.

GENDER IDENTITY

In 2014, the **Supreme Court recognised trans people as 'third gender'** and directed the Centre and State Government to grant people the right to legally identify as 'male', 'female' or 'third gender' (National Legal Services Authority v Union of India).

The **Court also ruled that the government had to give several social benefits and legal rights** to 'third gender' people.

A **relating Bill** providing for such rights, as well as legal gender recognition, is still pending and has **not yet been enacted**.

There is **currently no law addressing the right of trans people to change their legal gender**. However **legal gender change to 'third gender' on certain documents and forms** seems to be **possible in practice**.

There is **no specific law** giving trans people the **right to change their legal name**.

However, **Guidelines for Change of Name of Adults** (as available on the website of the Department of Publications, Ministry of Housing and Urban Affairs) **state that legal name change** is subject to a **notarised affidavit**, a **newspaper publication** and a **publication in the official gazette**. Additional **requirements may be added** by individual regulators.

IMMIGRATION

There are **no laws that support immigration of same-sex spouses** or partners.



A VIEW FROM INDIA

Ashok Row Kavi is founder of The Humsafar Trust. The Humsafar Trust works with over 50 LGBT community groups across India and has 300 staff in four strategic work streams: health, research, capacity-building and advocacy.



How often is section 377 enforced in the courts?

Section 377 of the Penal Code has rarely been enforced because the police find it hard to implement. However, fear of the law and the lack of other protections make gay men particularly vulnerable to extortion and blackmail by gangs. Fear of arrest under Section 377 also makes it hard for LGBT people to access medical care.

What is the situation for lesbians, bi women and trans people?

India is a very patriarchal society and there is limited social mobility for women in general. There is a huge degree of pressure on women to marry young and it's very unusual for women to be open about their sexual orientation. On the whole, lesbians and bi women are not understood and often face issues of domestic violence. In regard to trans people, in April 2014 a landmark judgment from the Supreme Court on the NALSA case recognised the legal rights of the trans community. This positive development ultimately opens the floor for discussion, negotiation and further dialogue to highlight the concerns of the trans community.

How are LGBT people portrayed in the media?

Nationwide media tends to be more tolerant than local media. Smaller cities and towns often have anti-LGBT stances but in big cities such as Mumbai, where regular Pride parades take place and LGBT events and forums are more common, the media is more used to LGBT culture. However, issues of sex, gender and sexuality are still not clearly understood.

What is the workplace like for LGBT people?

India is very diverse with a very complex class system, several religions and over 22 spoken languages. However, management of diversity is poor. If you're in a conservative Indian workplace, people who are open about being or presumed to be LGBT will often be marginalised. HR is also unlikely to be sympathetic to, or properly trained to deal with, the problems that stem from this in the workplace. Some progress is being made by international organisations through inclusive policies, codes of conduct and diversity training. However, often companies place more of a focus on discrimination based on sexual orientation and neglect gender identity and as a result do not have anti-discrimination policies that address gender identity.

Do Indian or international organisations publicly support LGBT equality?

Some Indian organisations are more progressive than others, such as Godrej, Tata and Infosys who have awareness-raising events and LGBT-inclusive policies. International organisations such as IBM, Levi and Google have also had some public LGBT-inclusive marketing. The government has not interfered with this sort of public support. The Supreme Court judgment regarding trans rights in 2014 did open up discussions and highlight concerns of the trans community. More businesses are now hiring trans employees and supporting the LGBT movement.

LGBT INCLUSION IN THE WORKPLACE

THE FOUNDATIONS

There are several steps employers can take to start creating a supportive workplace environment for their LGBT employees in India:

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| <ul style="list-style-type: none">  Consult local LGBT organisations to understand the local context for LGBT people  Introduce explicitly LGBT-inclusive anti-discrimination and bullying and harassment policies | <ul style="list-style-type: none">  Train HR staff and promote inclusive policies  Carry out LGBT-inclusive diversity training |
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NEXT STEPS

Once a foundation has been built, there are further steps employers can take to bring about positive change for LGBT people. For example:

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| <ul style="list-style-type: none">  Audit and extend partner benefits to same-sex partners  Establish employee engagement mechanisms like LGBT networks and allies programmes  Carry out LGBT awareness-raising events | <ul style="list-style-type: none">  Partner with local LGBT groups to advance LGBT equality beyond the workplace  Work with suppliers and partners to advance LGBT workplace equality |
|--|---|

Employers can improve their initiatives by participating in Stonewall's Global Workplace Equality Index - a free benchmarking tool offering a clear roadmap to LGBT inclusion in the workplace. www.stonewall.org.uk/gwei



LEARN FROM STONEWALL'S GLOBAL DIVERSITY CHAMPIONS

Barclays Barclays ensures that suppliers of call-centre services train their staff on Barclays' values, which include non-discrimination on the grounds of sexual orientation and gender identity. This fulfils a global commitment to working towards more inclusive practices for all stakeholders, including their customers worldwide.

BP BP has developed staff training sessions on unconscious bias and being 'consciously inclusive'. These include addressing bias against the LGBT community. The trainings have been actively rolled out by the HR and Leadership teams to all staff throughout BP in India. This has been done with a view to support BP's Diversity & Inclusion strategy and to promote an inclusive workplace culture. Participation in the trainings has prompted staff to engage in discussions about barriers to inclusion, forms of biases and how their own experiences shape decisions and impact those around them. The Leadership team continues to engage and is committed to creating an inclusive workplace environment.

IBM As part of a global assessment of the extension of benefits across their operations, IBM have made sure that all their staff in India have access to adoption benefits and paternity extends to include same-gender domestic partners. IBM was the co-organiser and presenting sponsor at the Corporate Social Responsibility Forum, held in Mumbai in 2014 and attended by international and national businesses. The three-day event included one full day dedicated to developing an understanding of diversity and inclusion practices, including on sexual orientation and gender identity.

RBS To back up global inclusion and human rights policies, RBS ensure that their national policies explicitly prohibit discrimination and harassment based on sexual orientation and gender identity. These policies apply to over 15,000 employees in India. They provide the basis for an inclusive environment, including growth of the LGBT employee network group, Rainbow, which has 10% of its total global membership in India. In 2017, RBS consulted with the local legal team to include questions on sexual orientation and gender identity within its annual employee survey. 2017 also was the first year that a group of RBS colleagues collectively attended Prides across the country.

AIG AIG's unconscious bias training for managers and inclusion learning for employees are integral parts of the organisation's efforts to ensure that values of equality and non-discrimination are realised on a day-to-day basis. The training modules, which cover a number of different protected characteristics including sexual orientation and gender identity, have been rolled out virtually in Asia-Pacific and also in person, throughout AIG's offices in India. In addition, AIG encourages open dialogue among its employees through workshops, including a theatre-based workshop on unconscious bias, visualising various scenarios of discrimination in the workplace.



GET INVOLVED



THE ANNUAL LGBT CALENDAR

February - Mumbai Pride. www.mumbaipride.in

November - Delhi Queer Pride Parade.
www.facebook.com/delhiqueerpride/

Check the events websites for the most up-to-date information on dates.

November - Community Business India Conference.
www.indiaconference.communitybusiness.org

December - The Indian LGBT Youth Leadership Summit.
www.mingle.org.in



FIND LGBT GROUPS AND COMMUNITIES

Alternative Law Forum - a group providing legal services to marginalised groups and delivering research, education and training services inclusive of LGBT themes. www.altlawforum.org

DIAN India - a network of corporate organisations committed to progressing diversity and inclusion in India.
www.communitybusiness.org/india/DIANIndia.htm

Humsafar Trust - an organisation of 300 staff working with over 50 LGBT community groups across India on four strategic work streams: health, research, capacity-building and advocacy. www.humsafar.org

Integrated Network of Sexual Minorities (INFOSEM) - an alliance of community organisations concerned with sexual orientation and gender identity issues. www.infosem.org

Lawyers Collective - an organisation that provides services with a focus on human rights advocacy, legal aid and litigation, including LGBT-related issues and cases. www.lawyerscollective.org

MINGLE - a group focusing on LGBT workplace equality through research, training, events and more. The group partners with companies, community organisations and universities across India. www.mingle.org.in

Snehalaya - a group offering support for and focusing on women, children and LGBT communities affected by HIV and AIDS, trafficking, sexual violence and poverty. www.snehalaya.org

Solidarity Foundation - a foundation partnering with donors to provide support to sex workers and sexual minorities by offering fellowships and grants. www.solidarityfoundation.in



GET LOCAL LGBT UPDATES

Gaylaxy Magazine - an online news publication and discussion platform for LGBT people. www.gaylaxymag.com

Pink Pages - a national online LGBT magazine. www.pink-pages.co.in



STONEWALL'S GLOBAL DIVERSITY CHAMPIONS PROGRAMME WORKS WITH 63 ORGANISATIONS OPERATING IN INDIA.

Our team of workplace advisors offers tailored one-to-one advice on how to create LGBT-inclusive workplaces globally. If you would like to receive support or want to be featured as a case study in one of our Global Workplace Briefings, contact Stonewall.

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Every effort has been made to ensure that the information contained in this Global Workplace Briefing is correct as of February 2018. Introducing any new initiative requires careful consideration and the safety of staff should always be of paramount importance. This overview is for guidance purposes only and does not constitute, nor should it be interpreted as a substitute for, detailed legal advice. If you have any specific legal concerns, always consult with local legal experts. Stonewall Equality Ltd, Registered Charity No 1101255 (England and Wales) and SC039681 (Scotland)