

INDIA

LGBT+ Business Climate Score

Out Leadership's snapshot of the current state of affairs for LGBT+ people, through the lens of international business.

The Business Climate Score score is out of ten possible points, and is based on ten independently verifiable indicators of the legal, cultural and business context for LGBT+ people.

5



How to Use This Brief:

As a business leader, you have the opportunity to create change for LGBT+ people around the world – both within your organizations and in the countries where you do business. This brief provides valuable information to inform your conversations with:

Internal Staff: Ensure that staff at your company who do business in-country are aware of the laws and other regulations that impact LGBT+ people there, and that they've adopted the appropriate internal policies for their location.

Government Leaders: In your meetings with government leaders, particularly those focused on business expansion or diplomacy, we encourage you to bring up the information shared in this brief in an appropriate way, and help them understand how LGBT+ inclusive policies are part of your company's best practices, and acknowledged as global standards. You are the best person to judge whether you have the ability to have such a conversation with a local leader in an appropriate way. Your Government Affairs officer, Diversity & Inclusion head, or equivalent may be appropriate to include in these conversations.

In-country Business Partners: In conversations with business partners, when appropriate, ask them what they're doing to address LGBT+ inclusion, and help explain why inclusion positively impacts your ability to conduct business there.

TALKING POINTS

“Ending discrimination against LGBT+ people in India will help the economy. According to a special report issued by the World Bank, the economic impact of homophobia costs India anywhere from 112 billion rupees (\$1.9 billion) to 7 trillion rupees (\$30.8 billion) annually.”

“Currently, India is at a tipping point: Several senior government leaders, including Minister of Finance and Corporate Affairs Arun Jaitley and Member of Parliament Shashi Tharoor, have spoken out in support of decriminalization. A bill that would prohibit discrimination against trans people, drafted in 2016, is also pending.”

“The Supreme Court's decision to uphold Section 377 in 2013 – and its refusal to hear a challenge to the law in 2016, after initially agreeing to do so – hurts India's international reputation as an open society that is friendly to international business. Repealing Section 377 will help make India an even more attractive country for foreign ”

“Even based on conservative estimates that from 4-6% of the general population identifies as LGBT+, there could be 50-75 million LGBT+ people in India. If the government repeals anti-LGBT+ laws, millions of LGBT+ people will be able to participate more fully in the economy.”



Current Legal Status of LGBT+ People

Legal Status of the Lesbian, Gay, and Bisexual Community

Under Section 377, LGBT+ people can be imprisoned for engaging in same-sex sexual contact.

While convictions under Section 377 are rare, its existence has been used for blackmail, violence and the denial of basic human rights to sexual minorities.

In *Naz Foundation v. Govt. of NCT of Delhi* in 2009, the Delhi High Court ruled Section 377 and other legal prohibitions against same-sex conduct to be in violation of the Indian Constitution. However, the Supreme Court of India overturned this decision in December 2013 and upheld Section 377.

Five prominent LGBT+ celebrities brought another challenge to Section 377 to the Supreme Court. The court referred it to the chief justice, and it remains unclear whether the case will actually be heard.

A currently pending bill, introduced in 2016, would ban same-sex couples from using surrogates.

Legal Status of the Transgender Community

In 2010 the Election Commission officially recognized a gender identity of “other” in voter registration forms for transgender and gender non-binary individuals. In 2014, the Supreme Court decided in *National Legal Services Authority v Union of India* that “transgender” would be a third option on all official documents.

The benefits accorded to transgender persons vary across India. In certain provinces, transgender people are provided with resources and government assistance; in other provinces, the needs of the transgender community are sorely neglected.

Some transgender people decline to officially change their gender because it would exclude them from some of the country’s gender-based inheritance laws.

Government Statements and Actions

In November 2015, Arjun Jaitley, Finance Minister, said that in recriminalizing homosexuality the Supreme Court had taken a “conservative view” that was “not correct” and would need to be “reconsidered.”

While Prime Minister Narendra Modi has not spoken out about LGBT+ rights or made any public commentary, some members of his party, the Bharatiya Janata Party, have endorsed the Supreme Court’s upholding of Section 377.

In December 2015, and again in February 2016, Congress Party MP Shashi Tharoor introduced a bill to decriminalize homosexuality. It was defeated both times, largely by Modi’s party, the BJP.

In 2016, India abstained from a successful UN Human Rights Council vote to create an independent position charged with preventing discrimination against LGBT+ people.

Socio-cultural Environment of LGBT+ People

Status of LGBT+ Organizing and Community

LGBT+ groups are active throughout the country, though mostly in urban areas. Advocacy groups and collectives regularly sponsor pride marches, cultural events, and public demonstrations.

Cultural Views of the LGBT+ Community

LGBT+ groups report that they face widespread discrimination and violence throughout society, particularly in rural areas. However, there is growing support from the media, general public, and several political parties.

Particular groups of transgender people, such as Hijras and Shiv Shaktis, have played a major role in Indian culture for centuries, and are accepted within certain communities.

Advocacy organizations, such as the Mission for Indian Gay and Lesbian Empowerment (MINGLE), have documented workplace discrimination against LGBT+ persons, including slurs by colleagues and supervisors, as well as unjustified dismissals.

Impact of LGBT+ Discrimination on Business and Talent



BRAND RISK



In terms of supporting LGBT+ inclusion, there is little brand risk to operating in India.

CLIENT RISK



The Indian government does not actively persecute LGBT+ individuals; accordingly, there is low risk of an international firm losing LGBT+ clients because they do business in India.

TALENT RISK



Same-sex spouses aren't recognized and therefore cannot easily obtain spousal visas. This creates difficulties for companies seeking to relocate employees who are in same-sex marriages and

MARKETING CHALLENGES



The World Bank estimates that homophobia costs India's economy between 112 billion rupees (\$1.9 billion) and 1.7 trillion rupees (\$30.8 billion) in 2012 alone. Based on those numbers, India lost anywhere from 0.1% to 1.7% of its potential Gross

Local Leaders Advocating for LGBT+ Equality

There are many openly LGBT+ activists and experts in Australia. Out Leadership recommends:

Arun Jaitley

Indian Minister of Finance

Shashi Tharoor

MP, Congress Party

Anjali Gopalan

Executive Director, The Naz Foundation

Ashok Ro Kavi

Founder and Chairperson, Humsafar Trust

Kapil Sibal

Former Indian Minister of Justice

Gopi Shankar

Intersex Activist

Purpose

Multinational companies face operational and reputational risk when they do business in countries where the legal and/or social atmosphere makes it difficult for LGBT+ people to live openly. Discrimination against LGBT+ people creates serious challenges for talent mobility, retention, and development.

Out Leadership's LGBT+ CEO Business Briefs seek to help C-Suite leaders understand and respond to these risks. Secondly, these Briefs seek to inform and empower corporate executives to engage in conversations with trade officials and other local stakeholders about why discrimination against LGBT+ people negatively impacts their ability to do business.

Additional Resources

UN Human Rights Council Periodic Review Report for India

This document outlines human rights-based recommendations from the UN Human Rights Council's universal review process.

The Naz Foundation (India) Trust

The Naz Foundation is a public health and HIV/AIDS organization that does extensive work on a national level with the LGBT community.

The Mission for Gay and Lesbian Empowerment (MINGLE)

MINGLE is a national-level advocacy group and think tank that works for LGBT rights in every sphere of public life in India.

Solidarity Foundation

The Solidarity Foundation provides support for non English speaking working class sexual minorities and sex workers throughout India.

The Humsafar Trust

The Humsafar Trust works for the rights and health of sexual minorities and for the promotion of rational attitudes toward sexuality.

U.S. State Department Report on Human Rights Practices in India

This U.S. State Department report includes information on the human rights of LGBT persons in India in addition to more general human rights information.



Additional Resources

2014 International Gay and Lesbian Association State Sponsored Homophobia Report

This report contains a country-by-country analysis of anti-LGBT laws and policies around the world.

2016 Human Rights Watch World Report

This report contains country-by-country analysis of human rights concerns for 2014, and includes specific information pertinent to LGBT issues.

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