

Justice Deferred? Transgender Protections And The Bharatiya Nyaya Sanhita

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Abstract:

The Bharatiya Nyaya Sanhita (BNS), introduced to replace the Indian Penal Code (IPC), aimed to modernize India's criminal justice system but criticized to fall short in protecting transgender individuals, especially against hate crimes and gender-based violence. Despite the persistent discrimination and violence faced by transgender persons in India, the BNS lacks explicit provisions addressing these motivated bias offenses. This paper critically examines the legal framework, focusing on the gaps between the BNS and the protections offered under the Transgender Persons (Protection of Rights) Act, 2019. Through a comprehensive research methodology, it highlights the legal inadequacies in safeguarding transgender rights and underscores the urgent need for reforms. Key recommendations include introducing explicit hate crime provisions, enhancing penalties for gender-based offenses, and ensuring broader legal recognition of transgender rights. Strengthening these legal protections is vital for creating an inclusive justice system that upholds the dignity, safety, and fundamental rights of transgender individuals in India.

Keywords: Hate crime, gender-based violence, BNS, legal framework, transgender

I. INTRODUCTION

The transgender community in India has historically faced systemic discrimination, social exclusion, and violence. Despite incremental legal advancements, hate crimes against transgender individuals remain disturbingly prevalent (Uma, 2023). These crimes, motivated by bias against a person's gender identity, often go unreported due to stigma and inadequate legal protections (Gupta, 2008). Recognizing the need for comprehensive legal reforms, the Indian government has undertaken significant initiatives to overhaul the country's criminal justice system (PIB Delhi, 2023). In August 2023, three landmark bills were introduced in Parliament: the Bharatiya Nyaya Sanhita Bill, 2023, intended to replace the Indian Penal Code of 1860; the Bharatiya Nagarik Suraksha Sanhita Bill, 2023, to replace the Code of Criminal Procedure of 1973; and the Bharatiya Sakshya Bill, 2023, to replace the Indian Evidence Act of 1872. These three bills were given assent by the President of India which came into force on 1st July, 2024. These three Acts are brought into effect to modernize India's criminal laws, making them more victim-centric and reflective of contemporary societal values. The reforms seek to simplify legal procedures, enhance the efficiency of the justice system, and incorporate technological advancements ("India's New Criminal Codes: The Hindu's Detailed Coverage," 2024).

However, despite these progressive efforts, the three new laws have been critiqued for not explicitly addressing hate crimes against transgender individuals (CJP, 2024). The Bharatiya Nyaya Sanhita does not include gender identity as a protected category, nor does it define hate crimes motivated by transphobia. This omission raises concerns about the continued vulnerability of transgender persons to bias-motivated violence without adequate legal recourse. Past legal frameworks, such as the Transgender Persons (Protection of Rights) Act, 2019, have been criticized for their shortcomings in effectively protecting transgender individuals from hate crimes (Fazi & Bibi, 2021). Over time, while judicial pronouncements have advanced transgender rights, legislative measures have not sufficiently addressed the specific issue of hate crimes against this community.

This article critically examines the existing legal frameworks, particularly the Transgender Persons (Protection of Rights) Act, 2019, in relation to hate crimes. It highlights the shortcomings of current laws and underscores the imperative need for robust hate crime legislation and explicit recognition of transgender rights within India's criminal code. By analyzing recent developments in criminal law, including the new laws introduced in 2023, the article advocates for comprehensive reforms to ensure the protection and dignity of transgender individuals. Such reforms are essential to foster an inclusive legal system that effectively safeguards transgender individuals from violence, discrimination, and injustice.

To comprehensively understand and address the gaps in the Indian legal system, the following key research questions are posed:

1. What are the shortcomings of the existing legal frameworks in India, particularly the BNS and the Transgender Persons (Protection of Rights) Act, 2019, in addressing hate crimes against transgender individuals?
2. How does the absence of explicit hate crime provisions in the BNS impact the safety, dignity, and fundamental rights of transgender persons in India?
3. What legal reforms are necessary to incorporate robust hate crime legislation and enhance the legal recognition of transgender rights within the Indian criminal code to effectively safeguard transgender individuals from violence, discrimination, and injustice?

By exploring these questions, the paper aims to shed light on the critical need for legal reforms that will ensure the protection and dignity of transgender individuals within the Indian legal system.

II. RESEARCH METHODOLOGY

This study adopts a comprehensive literature-based research methodology aimed at critically analyzing the existing legal frameworks related to transgender rights and hate crime legislation in India. The research involves a systematic analysis of a diverse range of sources, including scholarly articles, legal documents, government reports, and international human rights treaties. By thoroughly examining these materials, the study seeks to construct a nuanced understanding of the current legal landscape and its shortcomings in addressing hate crimes against transgender individuals. Data collection was meticulously carried out using specific keywords such as "Transgender rights in India," "hate crimes against transgender individuals," "BNS legal framework," "Transgender Persons Act 2019," "gender-based violence laws India," "legal protections for transgender persons," "hate crime legislation India," "discrimination against transgender individuals," "transgender legal recognition," and "criminal code reforms India." These keywords guided the search across various academic databases and search engines, including Google Scholar, JSTOR, HeinOnline, LexisNexis, Westlaw, PubMed, and official government websites like the Ministry of Law and Justice, National Human Rights Commission, and legal repositories of Indian statutes and case laws.

The findings from this analysis were then synthesized to construct a coherent and compelling argument that highlights the necessity for explicit hate crime provisions and enhanced legal recognition of transgender rights within the Indian criminal code. This comprehensive methodology not only ensures the reliability and validity of the research findings but also aims to contribute significantly to the discourse on legal reforms needed to protect transgender individuals from violence, discrimination, and injustice.

III. Background on Transgender Rights and Hate Crimes in India

The transgender community in India has long faced systemic discrimination, social exclusion, and violence. Despite significant legal strides such as the Supreme Court's recognition of transgender individuals as a "third gender" in the landmark *National Legal Services Authority (NALSA) v. Union of India, 2014* case, the transgender community in India continues to face systemic discrimination, social exclusion, and violence (Ila Nagar & Debanuj DasGupta, 2023). Hate crimes against them persist, driven by deep-rooted biases against their gender identity. These offenses often go unreported due to pervasive societal stigma and inadequate legal protections.

Transgender individuals, commonly referred to as "Hijras" in India, have held a unique and complex position in Indian society for centuries. Historically, they have been both revered and marginalized. On one hand, Hijras are considered to possess special powers to confer blessings of fertility and prosperity, making their presence desirable at weddings and childbirth ceremonies. Their roles in religious and cultural rituals are well-documented, reflecting a certain level of societal acceptance.

On the other hand, transgender persons have faced severe ostracism and discrimination in daily life. They are often denied access to education, employment, healthcare, and housing. Social exclusion forces many into begging or sex work, exposing them to exploitation and violence. This dichotomy stems from deep-rooted cultural beliefs and societal norms that both venerate and stigmatize transgender identities. During British colonial rule, the plight of transgender individuals worsened significantly. The enactment of the Criminal Tribes Act of 1871 criminalized entire communities by labelling them as "habitually criminal". This law specifically targeted Hijras, reinforcing negative stereotypes and legitimizing harassment and abuse by authorities. The Act allowed for surveillance, control, and punitive actions

against these communities, institutionalizing discrimination that persisted long after India's independence (Criminal Tribes Act, 1871, 1950). Even after the repeal of the Criminal Tribes Act in 1952, the legacy of colonial laws continued to impact transgender individuals. Societal prejudices remained entrenched, and the legal system offered little protection. Transgender persons were largely invisible in the eyes of the law, with no recognition of their identities or rights. This legal vacuum perpetuated their marginalization and vulnerability to violence and discrimination.

The struggle for transgender rights in India gained momentum in the late 20th and early 21st centuries, driven by advocacy from within the community and support from civil society organizations. A watershed moment occurred with the Supreme Court's judgment in *National Legal Services Authority v. Union of India* in 2014.

In the NALSA case, the Supreme Court recognized transgender persons as a "third gender" and affirmed that they are entitled to fundamental rights enshrined in the Constitution of India, including the rights to equality (Article 14), non-discrimination (Article 15), freedom of speech and expression (Article 19), and personal liberty (Article 21). The Court emphasized that gender identity is an integral aspect of one's personal autonomy and self-expression, and that no one should be forced to undergo medical procedures as a prerequisite for legal recognition (Waggy & Bashir, 2025).

The Court directed the central and state governments to take affirmative actions to address the historical injustices faced by the transgender community. These directives included:

- ❖ **Legal Recognition of Gender Identity:** Recognizing the right of transgender persons to self-identify their gender without medical or surgical intervention.
- ❖ **Prohibition of Discrimination:** Implementing measures to eliminate discrimination in employment, education, healthcare, and access to public spaces.
- ❖ **Social Welfare Schemes:** Formulating social welfare programs to improve the socio-economic status of transgender individuals.
- ❖ **Public Awareness Campaigns:** Promoting awareness and sensitivity towards transgender issues to reduce societal stigma.

The NALSA judgment was hailed as a progressive step towards inclusivity and equality, setting a legal precedent for the protection of transgender rights. Despite the Supreme Court's directives, legislative action was slow. In 2019, the Transgender Persons (Protection of Rights) Act was enacted, aiming to provide a comprehensive framework for protecting transgender rights. The Act sought to prohibit discrimination in various fields, including education, employment, and healthcare, and mandated the establishment of welfare boards for transgender persons (Bhattacharya et al., 2022).

However, the Act faced substantial criticism for several key shortcomings:

i. **Ambiguity and Invasive Procedures**

The Act requires transgender individuals to obtain a "certificate of identity" from a District Magistrate to legally recognize their gender identity. This process involves submitting an application along with proof of gender identity and may require a medical examination or scrutiny by a screening committee. Critics argue that this requirement undermines the principle of self-identification upheld by the Supreme Court in the NALSA judgment.

The certification process can be demeaning and violative of the privacy and dignity of transgender individuals. It places the power of recognition in the hands of government officials, potentially subjecting applicants to discrimination and bias. Such invasive procedures contradict international human rights standards, which advocate for self-determination of gender identity without external validation (Fazi & Bibi, 2021).

ii. **Inadequate Penalties for Offenses**

The Act prescribes penalties for offenses against transgender persons, but these are considered disproportionately lenient compared to similar offenses under the Indian Penal Code (IPC). For instance, the maximum punishment for sexual abuse against a transgender person under the Act is two years' imprisonment with a fine. In contrast, the IPC provided for harsher penalties for the same offenses against cisgender women, including imprisonment of up to seven years or more (Indian Penal Code, 1860).

The Act intended to secure basic human rights for transgender persons, including protection from discrimination in employment, education, and healthcare. However, while this legislation represents a meaningful advance, it falls short in crucial ways, particularly in addressing hate crimes (Transgender Persons (Protection of Rights) Act, 2019).

iii. **Gaps in Hate Crime Legislation**

The Act, while providing anti-discrimination clauses, lacks specific provisions addressing hate crimes against transgender individuals. Existing statutes fail to define "hate crimes" adequately, leaving this vulnerable group unprotected in cases of gender-motivated violence (Boeckmann & Turpin-Petrosino, 2002). Moreover, without a clear understanding of hate crimes within the Act, there is little guidance for law enforcement agencies or judicial bodies to prosecute such crimes effectively. The absence of hate crime provisions not only undermines the Act's protective intentions but also perpetuates the notion that violence against transgender individuals is less reprehensible than other forms of gender-based violence (Fazi & Bibi, 2021).

iv. **Insufficient Penalties for Gender-Based Offenses**

The absence of enhanced penalties for offenses driven by gender bias within the Transgender Persons (Protection of Rights) Act, 2019, represents a critical oversight in India's legal system. Gender-based crimes, particularly those targeting transgender individuals, are pervasive and carry severe psychological and social impacts on victims and the broader transgender community. When offenders receive lenient sentences for these offenses, it weakens the Act's intended protections and fosters a culture of impunity, implicitly signalling that society may not prioritize the safety and dignity of transgender individuals. This lack of accountability not only fails to penalize offenders appropriately but also undermines the foundational goals of anti-discrimination legislation, suggesting that violence or bias against transgender persons may be tolerated. Without provisions for harsher penalties, the Act loses its potential to deter hate-motivated crimes, leaving a vulnerable population inadequately protected (Witten & Eyler, 1999). Introducing heightened penalties for gender-based offenses would address these gaps, reinforcing a legal stance that hate crimes against transgender individuals are serious offenses that demand a robust response. Enhanced penalties serve as both a deterrent to potential perpetrators and a statement from the legal system that bias-motivated violence is not only reprehensible but warrants significant consequences. Furthermore, such penalties would align the Act with international standards on hate crime legislation, where many jurisdictions recognize that crimes motivated by race, gender, or sexual orientation carry added harm and should be met with stricter sentences. By implementing these changes, India can affirm its commitment to protecting transgender individuals, not just through anti-discrimination clauses but by creating a criminal justice system that actively safeguards their rights, promotes dignity, and works to eradicate gender-based violence.

IV. New Criminal Laws and Their Impact on Transgender Protections

The introduction of three landmark legislative Acts in 2023 marked one of the most comprehensive transformations of India's criminal justice system in recent history. These reforms, which received the President's assent on December 25, 2023, include the Bharatiya Nyaya Sanhita (BNS) Act, 2023, replacing the colonial-era Indian Penal Code of 1860; the Bharatiya Nagarik Suraksha Sanhita (BNSS) Act, 2023, which replaces the Code of Criminal Procedure of 1973; and the Bharatiya Sakshya Act, 2023, substituting the Indian Evidence Act of 1872. Together, these Acts aim to modernize India's criminal justice framework by aligning it with contemporary Indian values, prioritizing victim-centric protections, increasing procedural efficiency, and incorporating advanced investigative technologies. While these reforms represent a progressive step forward, questions have emerged regarding their inclusivity, particularly in addressing the unique forms of violence and discrimination faced by transgender individuals. Concerns remain about whether these updated laws offer adequate protections against bias-motivated violence, commonly known as hate crimes, that often target this vulnerable community. The reform efforts, encapsulated within the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Acts, underscore an intent to move India's criminal justice system beyond its colonial roots. Long critiqued for rigidity and limited protections for victims, the older legal framework struggled to meet the needs of a diverse and evolving society. Recognizing this need, the government crafted these reforms to streamline legal procedures, prioritize victim rights, and facilitate greater judicial efficiency through simplified processes and advanced technological support in evidence collection. Enhanced forensic capabilities, digital record-keeping, and technologically empowered investigative tools feature prominently in the acts, representing the government's commitment to reliable and contemporary justice practices (Team MyGov, 2024).

Despite these promising advancements, critiques have arisen regarding the lack of explicit protections for transgender individuals, particularly in instances of hate crimes. The BNS Act, despite its comprehensive

scope, does not recognize transgender persons as a distinct, protected group deserving of specific safeguards under hate crime legislation. This omission overlooks the significant advocacy efforts by rights groups calling for robust protections against bias-motivated crimes, leaving transgender individuals exposed to discrimination and violence without sufficient legal recourse. Consequently, the exclusion has led many to question the inclusivity and comprehensiveness of these new legal frameworks.

A particularly glaring gap within the Bharatiya Nyaya Sanhita Act is the absence of gender identity as a protected category in the context of hate crimes. Globally, many jurisdictions recognize the importance of hate crime provisions that protect individuals based on race, religion, ethnicity, sexual orientation, and gender identity, acknowledging the unique harm inflicted by bias-motivated crimes on these groups. In India, where transgender individuals experience persistent discrimination, harassment, and violence, the lack of such provisions in the BNS Act remains a significant concern. Without explicit protections, hate crimes targeting transgender individuals are not legally distinguishable, making prosecution challenging. The absence of gender identity as a recognized category within hate crime provisions also exacerbates the marginalization of transgender individuals, reinforcing the social and legal barriers they encounter. When the law does not explicitly acknowledge the biases and violence transgender individuals face, it indirectly suggests that these harms are of lesser significance than other forms of discrimination. This lack of formal recognition not only hampers accountability but may lead to hate crimes being treated as general offenses, neglecting the prejudice driving these actions. The omission of protections specific to gender identity ultimately undercuts the acts stated objectives of fostering a safer, more inclusive society, failing to address the demands and expectations of modern rights advocacy.

Hate crimes remain an underdeveloped concept within Indian criminal law, as evidenced by the BNS Act's limited scope on this issue. At present, Indian criminal law lacks clear definitions or classifications for hate crimes, particularly those motivated by biases against gender identity or sexual orientation. Hate crimes are distinct from other offenses because they target individuals based on core aspects of their identity, whether it be race, religion, or gender. For transgender individuals, who are often victims of such bias-motivated violence, the absence of hate crime recognition compounds their vulnerability (Colliver & Silvestri, 2022). The lack of a clear hate crime definition within Indian law impedes law enforcement and judicial officials in effectively addressing bias-motivated violence. In the absence of specific hate crime classifications, police officers, prosecutors, and judges may lack the resources or training to adequately investigate, prosecute, and adjudicate these crimes. A defined hate crime framework in the BNS Act would help address these limitations, creating a legal standard to guide the treatment of bias-motivated offenses and fostering a more just, equitable criminal justice system (Paterson et al., 2018).

The lack of gender identity protections within the Bharatiya Nyaya Sanhita Act, 2023 holds significant implications for the safety and legal recourse available to transgender individuals. In the absence of explicit hate crime provisions, the criminal justice system may fail to fully recognize and respond to the violence transgender individuals face. For instance, a transgender victim of assault might struggle to secure justice if their case is not treated as a hate crime driven by prejudice. This omission inadvertently perpetuates discriminatory practices by denying transgender individuals the protections that bias-motivated crime victims in other categories may receive. Also, the exclusion of gender identity protections may deter transgender individuals from engaging with the legal system altogether. Many transgender people already face barriers when accessing justice, including societal bias and institutional stigma. Without specific legal protections for hate crimes motivated by gender identity, victims may feel that pursuing justice would yield inadequate support or results. This reluctance to seek legal recourse further perpetuates cycles of violence, alienating transgender individuals from the protection the criminal justice system is intended to offer (Ashley, 2018).

The lack of transgender protections within the Bharatiya Nyaya Sanhita Act, 2023 and broader reforms signals a missed opportunity to establish a truly inclusive criminal justice system. While the Acts represent significant progress in many respects, they overlook the distinct needs of transgender individuals and fail to incorporate specific provisions for gender-based hate crimes. Such protections would not only enhance the security of transgender individuals but also align India's criminal framework with global human rights standards, where gender identity is increasingly recognized as a protected category under hate crime laws (Flores et al., 2023). To position itself as a leader in human rights, India must prioritize inclusive reforms that address the unique experiences of all marginalized groups. Laws are more than mechanisms of justice; they reflect the values and priorities of a society. Explicit recognition of gender-based hate

crimes within the legal system would affirm India's commitment to a society that values and protects all individuals, irrespective of gender identity. The impact of such legal acknowledgment would extend beyond the criminal justice system, encouraging societal acceptance and reducing stigma over time.

V. Global Legal Standards for Transgender Protections: A Critical Overview

As countries around the world increasingly recognize the need for explicit legal protections for transgender individuals, several nations have set precedents by including gender identity as a protected characteristic within their legal frameworks. These protections often encompass anti-discrimination statutes and hate crime legislation aimed at shielding transgender individuals from bias-motivated violence and discrimination. Examples from the United States, the United Kingdom, and Canada illustrate global progress toward inclusivity, demonstrating how targeted legal protections can improve safety, dignity, and justice for transgender people. This section provides a detailed comparison of these international legal standards with India's newly introduced criminal laws, which, despite representing a significant transformation, have omitted explicit protections for transgender individuals. The lack of comparable provisions in India's legislation could hinder its alignment with international human rights standards, especially regarding hate crimes and bias-motivated violence.

The United States has made considerable strides in protecting transgender individuals from hate crimes, particularly through the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act of 2009. This federal legislation, named after victims of hate crimes, Matthew Shepard and James Byrd Jr., was a significant expansion of the country's hate crime laws. It authorizes federal prosecution of hate crimes motivated by actual or perceived race, colour, religion, national origin, gender, sexual orientation, gender identity, or disability. By including "gender identity" as a protected characteristic, the Act provides specific federal recourse for transgender individuals targeted by bias-motivated violence (Trout, 2015). Also, the Act permits federal authorities to intervene when local authorities are unwilling or unable to prosecute such cases adequately (Boram, 2015).

The inclusion of gender identity in U.S. hate crime legislation underscores the understanding that transgender individuals face unique forms of violence due to prejudice against their gender identity or expression (Erba, 2014). This approach provides a clear legal standard that can be consistently applied, allowing law enforcement agencies and courts to recognize and address hate crimes with the appropriate seriousness. Furthermore, federal involvement ensures that transgender individuals have access to justice, even in areas where local law enforcement may lack resources or be less supportive of LGBTQ+ protections. The Act's implementation has been credited with not only improving protections for transgender individuals but also promoting public awareness of the distinct harms caused by hate crimes, thus contributing to a more inclusive societal attitude (Uhrich, 1999).

The United Kingdom has also integrated protections for transgender individuals within its criminal justice framework, primarily through the Criminal Justice Act 2003. This legislation permits courts to impose enhanced sentencing for offenses deemed "aggravated by hostility" towards a person's gender identity (Giannasi, 2014). Specifically, the Act allows judges to consider hostility toward the victim's "gender reassignment" status as an aggravating factor, which can lead to harsher sentences for offenders. This provision explicitly recognizes the unique challenges faced by transgender individuals and aims to deter bias-motivated offenses by attaching additional penalties for such crimes (Duffy, 2025).

By allowing enhanced sentencing for crimes motivated by gender identity prejudice, the U.K. sets a precedent for addressing the specific vulnerabilities of transgender individuals within its criminal justice system. Enhanced sentencing provisions do not merely act as punitive measures; they also carry a symbolic weight, signalling to society that crimes targeting transgender individuals are considered especially reprehensible and warrant stronger legal responses (Walters et al., 2020). The recognition of gender identity in U.K. hate crime legislation has also fostered greater social awareness and acceptance, as the law serves as a public declaration of the nation's commitment to protect marginalized groups. While gaps remain in the U.K.'s hate crime frameworks such as calls for the inclusion of a broader definition of gender identity, these protections nonetheless provide a robust foundation for transgender rights.

Canada's legal protections for transgender individuals are among the most comprehensive internationally, with both the Canadian Human Rights Act and the Criminal Code including gender identity and gender expression as prohibited grounds of discrimination (Cohen & Vincent-Wright, 2022). Amendments made in 2017 to the Canadian Human Rights Act added "gender identity" and "gender expression" as protected characteristics, making it illegal to discriminate against individuals on these

grounds in areas under federal jurisdiction (Hammond, 2020, p. 2). This inclusive approach ensures that transgender individuals are safeguarded from discrimination in employment, housing, and access to services.

In addition, Canada's Criminal Code includes provisions that treat crimes motivated by bias against gender identity or expression as hate crimes, allowing for enhanced penalties for such offenses (Vipond, 2015). By explicitly acknowledging gender identity and expression as aggravating factors in sentencing, Canadian law provides a robust framework for prosecuting bias-motivated violence against transgender individuals (McCaslin, 2014). The dual approach of anti-discrimination protections and hate crime legislation illustrates Canada's comprehensive commitment to protecting transgender individuals both preventively, through anti-discrimination laws, and reactively, through hate crime penalties (Corb, 2014). Canada's inclusive framework highlights the importance of addressing transgender rights within both civil and criminal law, creating a model for other nations to emulate.

The United States, the United Kingdom, and Canada provide important examples of how transgender protections within criminal law can function both as preventive and corrective measures. These countries have recognized that crimes against transgender individuals are often motivated by a specific, deeply ingrained bias, requiring distinct legal responses to deter perpetrators effectively and deliver justice to victims. By integrating gender identity into hate crime legislation, these nations reinforce the idea that bias-motivated crimes against transgender individuals are not only offenses against individuals but also against societal values of inclusivity and equality. The enactment of such protections carries a broader societal impact, as it conveys a strong message against prejudice and fosters a culture of acceptance.

In India, however, despite recent criminal justice reforms, similar protections regarding hate crimes on transgender have yet to be implemented. The absence of specific provisions addressing gender identity within India's new laws represents a missed opportunity to bring India's legal framework in line with international human rights standards. Without the inclusion of gender identity as a protected characteristic, transgender individuals in India remain vulnerable to discrimination and violence without the assurance of robust legal recourse. This gap in India's criminal justice system could hinder progress in building a society that values and upholds the dignity of all its citizens, regardless of gender identity.

India's recent criminal law reforms, including the Bharatiya Nyaya Sanhita Act, 2023, Bharatiya Nagarik Suraksha Sanhita Act, 2023 and Bharatiya Sakshya Act, 2023 offer a timely opportunity to address the legal gaps affecting transgender individuals (Team MyGov, 2024). While these acts reflect significant advancements in procedural efficiency, victim-centric protections, and technological integration, they have been critiqued for not explicitly recognizing gender identity within hate crime legislation (Uma, 2023). Given the global momentum toward explicit transgender protections, India risks falling behind international standards if it does not adapt its legal framework to meet the needs of marginalized communities. Incorporating gender identity as a protected characteristic in hate crime legislation would bring India closer to global human rights norms, signalling the country's commitment to inclusivity and justice.

Even the addition of transgender protections within India's criminal justice system would have practical benefits by improving access to justice for transgender victims. Hate crimes are unique in that they target individuals based on intrinsic aspects of their identity, often resulting in heightened psychological harm and community-wide impact. Recognizing these crimes within the legal system and instituting enhanced penalties for such offenses would serve as a deterrent, reducing the frequency of hate-motivated violence and improving safety for transgender individuals. India's decision-makers have the opportunity to foster a more inclusive society by acknowledging and addressing the specific vulnerabilities of transgender people within the criminal justice framework (Agoramoorthy & Hsu, 2015).

To bring India's criminal justice system in line with international standards, it is essential to incorporate specific protections for transgender individuals within the Bharatiya Nyaya Sanhita Act, 2023 and other relevant acts. This can be achieved by amending the existing laws to include "gender identity" as a protected characteristic, allowing for the classification and prosecution of hate crimes motivated by transphobia (Bajpai et al., 2023; Giannasi, 2014; Uhrich, 1999). Establishing clear definitions and provisions for hate crimes based on gender identity would provide law enforcement and the judiciary with the necessary tools to recognize and respond to bias-motivated violence appropriately (Walters et al., 2020). India could also adopt an approach like that of Canada, which integrates both anti-discrimination laws and hate crime provisions to create a comprehensive framework for transgender rights. By enacting

enhanced criminal protections for transgender individuals to fight against hate crimes, India would send a powerful message affirming the country's dedication to upholding the dignity, safety, and equality of all its citizens. This commitment could also foster a cultural shift, encourage greater societal acceptance and reduce the stigma surrounding gender diversity. India's adoption of such reforms would not only benefit transgender individuals but also reinforce the values of human rights and inclusivity that underpin a just society (Chatterjee, 2018).

VI. Recommendations for Ensuring Transgender Protections in the New Laws

To address the concerns surrounding the absence of explicit protections for transgender individuals in the new criminal laws, it is imperative to implement comprehensive measures that ensure their rights and safety are safeguarded. The following recommendations provide a detailed roadmap for integrating transgender protections from hate crimes into the Bharatiya Nyaya Sanhita Act, 2023 and related legislation. To effectively protect transgender individuals, it is imperative to amend the Bharatiya Nyaya Sanhita Act by explicitly including gender identity as a protected characteristic. This inclusion aligns the legislation with constitutional principles of equality and non-discrimination. Specifically, the definitions section of the Act should be revised to incorporate "gender identity" alongside other protected categories such as race, religion, and caste. Ensuring that all provisions related to discrimination, violence, and harassment explicitly reference gender identity will provide transgender individuals with equal protection under the law. Although the new criminal laws provided protections under considering "Any person" under The BNS Act 2023, it missed the opportunity to provide explicit protection to the transgender who repeatedly facing the hate crimes due to their gender identity (Bharatiya Nyaya Sanhita Act, 2023). The Act should introduce a clear definition of hate crimes encompassing offenses motivated by bias, prejudice, or hatred towards a person's gender identity. Enumerating specific offenses such as assault, sexual violence, harassment, and property damage that qualify as hate crimes when committed due to transphobic motives is essential (Fallik et al., 2024). Enhanced penalties should be prescribed for these crimes to serve as a strong deterrent, and courts should be allowed to consider transphobic motivation as an aggravating factor during sentencing. Aligning these amendments with international human rights obligations, such as those under the International Covenant on Civil and Political Rights (ICCPR), and referencing successful legal frameworks from other jurisdictions will demonstrate India's commitment to global best practices in protecting transgender rights (Scheinin, 2009).

To effectively address offenses motivated by bias against gender identity, it is crucial to clearly define hate crimes within the legislation. A precise legal definition ensures that the unique nature of these crimes is captured, facilitating effective enforcement and prosecution (Schweppe, 2021). The legislation should define hate crimes as criminal acts committed against individuals or property that are motivated, in whole or in part, by bias or prejudice based on the victim's actual or perceived gender identity (Kalunta-Crumpton, 2024). Using inclusive and clear language that encompasses all transgender identities is essential to ensure that no subgroup is excluded from legal protections (Chakraborti & Garland, 2009). Identifying bias motivation is a critical component of this definition. The legislation should outline criteria for determining such motivation, including evidence like derogatory language used during the commission of the crime, previous expressions of transphobic sentiments by the perpetrator, or targeting symbols associated with transgender communities. Developing investigative protocols will aid law enforcement in effectively identifying and documenting evidence of bias motivation, leading to more accurate charges and prosecutions.

The legislation should also prescribe enhanced penalties for hate crimes to reflect their severity and the broader impact on society. Establishing statutory provisions that mandate higher penalties for hate crimes compared to similar offenses without bias motivation serves as a strong deterrent against such acts. Providing clear sentencing guidelines assists judges in consistently applying enhanced penalties (Garland, 2012). Encouraging the inclusion of victim impact statements during sentencing can highlight the personal and communal harm caused by hate crimes, and exploring restorative justice options may address the needs of victims while promoting rehabilitation of offenders.

Implementing mandatory training programs for police officers and judicial personnel is crucial to sensitize them to transgender issues and ensure respectful and fair treatment. These comprehensive training modules should cover topics such as understanding gender identity, the legal rights of transgender persons, challenges faced by the community, and appropriate protocols for interaction. Making these programs compulsory for all levels of law enforcement and judiciary including police officers, prosecutors,

and judges will help overcome prejudices and improve interactions with the transgender community (McLaughlin et al., 2000). Collaboration with transgender advocates and experts in human rights law, psychology, and social work is essential to develop and deliver training content that is authentic, relevant, and provides a multidisciplinary perspective.

The training should also address cultural sensitivity and awareness by helping personnel recognize and overcome personal biases and stereotypes that may affect their professional duties. Emphasizing respectful communication practices, including the correct use of names and pronouns, is vital for building trust and ensuring dignity (Gagliardi et al., 2023). Establishing ongoing education through regular refresher courses and updates to training materials will reflect legal developments and evolving societal norms. Implementing mechanisms to assess the effectiveness of training programs and incorporating feedback from participants and the transgender community will ensure continuous improvement and the success of these initiatives (Hardy et al., 2020).

Creating dedicated support systems for transgender victims of crime is crucial in assisting them to navigate the legal system and recover from the trauma of victimization. Providing free or subsidized legal aid services ensures access to justice, helping transgender individuals understand their rights and effectively engage with legal procedures (Duggan, 2014). Establishing specialized legal units within existing legal aid organizations, staffed by professionals trained in transgender rights and sensitive to the community's needs, can significantly enhance the support available. These units would offer tailored legal guidance and representation, ensuring that transgender victims receive equitable treatment within the justice system. Counselling and mental health support are also essential components of a comprehensive support mechanism. Offering trauma-informed care delivered by mental health professionals trained in gender identity issues addresses the psychological impact of hate crimes on transgender individuals (Cramer et al., 2025). Ensuring that these services are provided in a confidential and non-judgmental environment builds trust and encourages victims to seek the help they need. Such support not only aids in individual recovery but also contributes to the overall well-being of the transgender community by fostering resilience and empowerment (Auth et al., 2022). Moreover, rehabilitation and reintegration programs play a vital role in assisting victims to rebuild their lives. Developing holistic support programs that include assistance with education, employment, housing, and healthcare can help transgender individuals overcome barriers exacerbated by victimization. Collaborating with NGOs and community organizations enhances the reach and effectiveness of these services by leveraging existing resources and expertise. Establishing 24/7 support lines and creating accessible reporting mechanisms, such as online portals and mobile applications, ensure that victims have immediate access to assistance and can report crimes safely and conveniently. These measures collectively contribute to a supportive environment that upholds the rights and dignity of transgender individuals while promoting their full participation in society (Office for Democratic Institutions and Human Rights, 2009).

Meaningful engagement with the transgender community is crucial for developing effective laws and policies that reflect their lived experiences. To ensure that their concerns and needs are adequately addressed, it is essential to involve representatives from the transgender community directly in the legislative process. This can be achieved by implementing formal consultative processes during the drafting and revision of legislation and including transgender representatives in legislative committees, working groups, and advisory panels. Such inclusive policy-making not only enriches the legislative content but also fosters trust and cooperation between the government and the transgender community. Community empowerment is another vital aspect of engagement. Supporting initiatives that enhance the advocacy skills of transgender individuals enables them to participate effectively in policy discussions and decision-making processes. Recognizing and promoting transgender leaders within governmental and non-governmental organizations acknowledges their contributions and provides role models within the community. Capacity-building efforts, such as leadership training and educational programs, can strengthen the community's ability to advocate for their rights and interests, leading to more sustainable and impactful outcomes.

Establishing robust feedback mechanisms ensures transparency and accountability in the legislative process. Organizing public hearings and forums allows members of the transgender community to voice their concerns and provide input on proposed laws. Conducting surveys and research helps gather data on the specific needs and challenges faced by transgender persons, informing evidence-based policy-making. Maintaining open communication channels regarding legislative developments and involving

community members in monitoring the enforcement of laws and policies foster a sense of ownership and responsibility and that responsibility should not be biased or ignored as it can result in negative consequences (McPhail, 2000). This collaborative approach not only enhances the effectiveness of laws and policies but also strengthens the relationship between the transgender community and policymakers (Walters et al., 2017).

VII. CONCLUSION

The protection of transgender individuals from hate crimes in India is critically lacking and demands urgent attention. Despite progressive judicial pronouncements and legislative efforts, the absence of explicit legal provisions addressing hate crimes leaves transgender persons vulnerable to targeted violence and discrimination. Protecting them from such crimes is of paramount importance to uphold the constitutional principles of equality and human dignity. Several developed nations have enacted separate legislations on hate crimes that specifically protect transgender individuals. For instance, countries like the United States, the United Kingdom, and Canada have implemented laws that define hate crimes based on gender identity and prescribe enhanced penalties for such offenses. These legal frameworks demonstrate a commitment to safeguarding marginalized communities and serve as effective deterrents against bias-motivated violence. India must follow suit by bringing reforms in its new criminal laws to provide comprehensive protection to transgender individuals from hate crimes. Amending the Bharatiya Nyaya Sanhita Act, 2023 to include gender identity as a protected characteristic and defining hate crimes motivated by transphobia are essential steps. Such reforms will not only address the immediate legal gaps but also contribute to a broader cultural shift toward acceptance and inclusion.

By integrating these recommendations into the new criminal laws, India will demonstrate its commitment to the principles enshrined in its Constitution and international human rights instruments. Protecting transgender individuals from hate crimes is a critical component of upholding human rights and fostering a society where diversity is respected and celebrated. This initiative will set a precedent for other nations grappling with similar issues and reaffirm India's position as a leader in championing the rights of marginalized communities.

Authors' Contributions

Dipshreeya Das: Conceptualization, research design, formal analysis, and manuscript writing.

Denkila Bhutia: Supervision, validation, and final manuscript review. All authors have read and approved the final version of the manuscript.

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Conflicts of Interest

The authors declare no conflict of interest.

REFERENCES

1. Agoramoorthy, G., & Hsu, M. J. (2015). Living on the Societal Edge: India's Transgender Realities. *Journal of Religion and Health*, 54(4), 1451-1459. <https://doi.org/10.1007/s10943-014-9987-z>
2. Ashley, F. (2018). Don't be so hateful: The insufficiency of anti-discrimination and hate crime laws in improving trans well-being. *University of Toronto Law Journal*, 68(1), 1-36. <https://doi.org/10.3138/utlj.2017-0057>
3. Auth, N. M., Booker, M. J., Wild, J., & Riley, R. (2022). Mental health and help seeking among trauma-exposed emergency service staff: A qualitative evidence synthesis. *BMJ Open*, 12(2). Scopus. <https://doi.org/10.1136/bmjopen-2020-047814>
4. Bajpai, G. S., Pal, G., Singh, T., & Tambe, A. (2023). Hate Crime in India: Understanding Nuanced Discrimination Against North-Eastern Population. In *Hate Crime in India: Understanding Nuanced Discrimination Against North-Eastern Population*. <https://doi.org/10.1007/978-3-031-30522-1>
5. Bharatiya Nyaya Sanhita Act (2023).
6. Bhattacharya, S., Ghosh, D., & Purkayastha, B. (2022). 'Transgender Persons (Protection of Rights) Act' of India: An Analysis of Substantive Access to Rights of a Transgender Community. *Journal of Human Rights Practice*, 14(2), 676-697. <https://doi.org/10.1093/jhuman/huac004>
7. Boeckmann, R. J., & Turpin-Petrosino, C. (2002). Understanding the Harm of Hate Crime. *Journal of Social Issues*, 58(2), 207-225. <https://doi.org/10.1111/1540-4560.00257>
8. Boram, M. (2015). The Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act: A Criminal Law Perspective. *U. Balt. L. Rev.*, 45, 343.
9. Chakraborti, N., & Garland, J. (2009). *Hate Crime: Impact, Causes and Responses*. SAGE Publications Ltd. <https://doi.org/10.4135/9781446279694>
10. Chatterjee, D. S. (2018). Problems Faced by Transgender Community in India: Some Recommendations. 6(1).

11. CJP. (2024). BNS 2023 does nothing to bring in a nuanced effective understanding of Hate Speech, making its prosecution even more difficult [Online post].
12. Cohen, M., & Vincent-Wright, S.-M. (2022). Conflict Resolution in Human Rights Cases: The Role of the Supreme Court of Canada. *Const. Rev.*, 8, 295.
13. Colliver, B., & Silvestri, M. (2022). The role of (in)visibility in hate crime targeting transgender people. *Criminology & Criminal Justice*, 22(2), 235-253. <https://doi.org/10.1177/1748895820930747>
14. Corb, A. (2014). Hate and hate crime in Canada. In *The Routledge international handbook on hate crime* (pp. 163-173). Routledge.
15. Cramer, R. J., Fording, R. C., Kaniuka, A. R., Tucker, R. P., Diaz-Garelli, F., Hill, R. M., Brooks, B., & Hanson, B. (2025). Hate crime law associations with mental health and discrimination experiences among transgender and gender diverse adults. *Analyses of Social Issues and Public Policy*, 25(1). <https://doi.org/10.1111/asap.12447>
16. Criminal Tribes Act, 1871 (1950).
17. Duffy, S. (2025). Moral panics and legal projects: Echoes of Section 28 in United Kingdom transgender discourse and law reform. *Gender and Justice*, 1(1), 78-99.
18. Duggan, M. (2014). Six: Working with lesbian, gay, bisexual and transgender communities to shape hate crime policy (pp. 87-98). Policy Press. <https://doi.org/10.51952/9781447308782.ch006>
19. Erba, J. (2014). Effective or symbolic? Testing the constitutionality of the Matthew Shepard and James Byrd Hate Crimes Prevention Act. *International Journal of Discrimination and the Law*, 14(2), 99-116.
20. Fallik, S. W., Gardner, S. E., Remillard, A., Venuto, T., Atkin-Plunk, C. A., & Dobrin, A. (2024). Defining Hate: A Content Analysis of State Hate Crime Legislation in the United States of America. In *Victims and Offenders* (Vol. 19, Issue 3, pp. 371-394). <https://doi.org/10.1080/15564886.2022.2140729>
21. Fazi, M. A., & Bibi, M. (2021). Discrepancies in transgender persons (protection of rights) act, 2018: A comparative study of transgender's rights in Pakistan and India. *International Journal of Law and Management*, 63(3), 347-356. <https://doi.org/10.1108/IJLMA-10-2020-0262>
22. Flores, A. R., Wilson, B. D. M., Langton, L. L., & Meyer, I. H. (2023). Violent victimization at the intersections of sexual orientation, gender identity, and race: National Crime Victimization Survey, 2017-2019. In *PLoS ONE* (Vol. 18, Issue 2 February). <https://doi.org/10.1371/journal.pone.0281641>
23. Gagliardi, S., Valverde-Cano, A., & Rice, O. (2023). Identifying and understanding barriers to investigation of gender-based hate crimes: Perspectives from law enforcement in Ireland and the United Kingdom. In *Criminology and Criminal Justice* (Vol. 23, Issue 5, pp. 880-896). <https://doi.org/10.1177/17488958221120885>
24. Garland, J. (2012). Difficulties in defining hate crime victimization. *International Review of Victimology*, 18(1), 25-37. <https://doi.org/10.1177/0269758011422473>
25. Giannasi, P. (2014). Hate crime in the United Kingdom. In *The Routledge international handbook on hate crime* (pp. 105-116). Routledge.
26. Gupta, A. (2008). This alien legacy: The origins of "sodomy" laws in British colonialism. *Human Rights Watch*.
27. Hammond, K. (2020). Unnecessary and Redundant? Evaluating Canada's Genetic Non-Discrimination Act, 2017. *Can. B. Rev.*, 98, 480.
28. Hardy, S.-J., Chakraborti, N., & Cuko, I. (2020). More than a Tick-Box? The Role of Training in Improving Police Responses to Hate Crime. *CrimRxiv*. <https://doi.org/10.21428/cb6ab371.b549c1a3>
29. Ila Nagar, & Debanuj DasGupta. (2023). Transgender Rights and Religiosities in India: NALSA Judgment and Beyond. 29(3). <https://doi.org/10.1215/10642684-10437222>
30. Indian Penal Code, § 375 (1860).
31. India's new criminal codes: The Hindu's detailed coverage. (2024, August 23). *The Hindu*.
32. Kalunta-Crumpton, A. (2024). Guest editorial: What is hate crime? Contemporary perspectives from four continents. In *Safer Communities* (Vol. 23, Issue 3, pp. 189-191). <https://doi.org/10.1108/SC-07-2024-057>
33. McCaslin, W. (2014). Hate-motivated Offences and Aboriginal Peoples: Sentencing Provisions of Section 718.2 (a)(i) of the Criminal Code of Canada.
34. McLaughlin, K. A., Malloy, S. M., Brilliant, K. J., & Lang, C. (2000). Responding to Hate Crime: A Multidisciplinary Curriculum for Law Enforcement and Victim Assistance Professionals.
35. McPhail, B. A. (2000). Hating Hate: Policy Implications of Hate Crime Legislation. *Social Service Review*, 74(4), 635-653. <https://doi.org/10.1086/516428>
36. Narrain, A., & Chandra, V. (2015). *Nothing to fix: Medicalisation of sexual orientation and gender identity*. SAGE Publications India.
37. Office for Democratic Institutions and Human Rights (Ed.). (2009). Preventing and responding to hate crimes: A resource guide for NGOs in the OSCE region. Office for Democratic Institutions and Human Rights.
38. Paterson, J., Brown, R., & Walters, M. (2018, November). The Short and Longer Term Impacts of Hate Crimes Experienced Directly, Indirectly, and Through the Media. <https://doi.org/10.1177/0146167218802835>
39. PIB Delhi. (2023, August 11). Union Home Minister and Minister of Cooperation, Shri Amit Shah introduces the Bhartiya Nyaya Sanhita Bill 2023, the Bharatiya Nagarik Suraksha Sanhita Bill, 2023 and the Bharatiya Sakshya Bill, 2023 in the Lok Sabha, today [Online post].
40. Scheinin, M. (2009). The United Nations International Covenant on Civil and Political Rights: Article 27 and other provisions. In K. Henrard & R. Dunbar (Eds.), *Synergies in Minority Protection: European and International Law Perspectives* (pp. 23-45). Cambridge University Press; Cambridge Core. <https://doi.org/10.1017/CBO9780511575372.003>
41. Schweppe, J. (2021). What is a hate crime? *Cogent Social Sciences*, 7(1). <https://doi.org/10.1080/23311886.2021.1902643>
42. Team MyGov. (2024). Exploring India's New Criminal Laws: A Paradigm Shift in Legal Framework. myGOV.
43. Transgender Persons (Protection of Rights) Act (2019).

44. Trout, M. (2015). Federalizing hate: Constitutional and practical limitations to the matthew shepard and james byrd, jr. Hate crimes prevention act of 2009. *Am. Crim. L. Rev.*, 52, 131.
45. Uhrich, C. L. (1999). Hate crime legislation: A policy analysis. *Hous. L. Rev.*, 36, 1467.
46. Uma, S. (2023). *Violence, Gender and the State: 'Not Just' a legal analysis*. Routledge.
47. Vipond, E. (2015). Trans rights will not protect us: The limits of equal rights discourse, antidiscrimination laws, and hate crime legislation. *WJ Legal Stud.*, 6, 1.
48. Waggy, M. M., & Bashir, D. (2025). Transgender Rights in India's Legal System: A Critical Analysis. *Sexuality Research and Social Policy*, 22(1), 101-107. <https://doi.org/10.1007/s13178-024-00984-7>
49. Walters, M. A., Paterson, J., Brown, R., & McDonnell, L. (2020). Hate crimes against trans people: Assessing emotions, behaviors, and attitudes toward criminal justice agencies. *Journal of Interpersonal Violence*, 35(21-22), 4583-4613.
50. Walters, M. A., Wiedlitzka, S., Owusu-Bempah, A., & Goodall, K. E. (2017). Hate Crime and the Legal Process: Options for Law Reform. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3427984>
51. Witten, T. M., & Eyler, A. E. (1999). Hate crimes and violence against the Transgendered. *Peace Review*, 11(3), 461-468. <https://doi.org/10.1080/10402659908426291>