

Transgender Rights in the Bharatiya Nyaya Sanhita: Identifying Gaps and Proposing Reforms

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Abstract

The Bharatiya Nyaya Sanhita (BNS) was enacted to modernize India's criminal justice system and replace the colonial-era Indian Penal Code. Nevertheless, its importance still is not sufficient to provide the specific rights and protections of transgender individuals in the context of hate crime and gender-based violence. In many cases, transgender persons experience discrimination, violence, and systemic marginalization because of prejudice and bias directed toward their gender identity. Lack of express hate crime clauses on the BNS presents a big gap in the law that weakens the protection, dignity, and fundamental rights of the transgender. The paper has critically examined legal frameworks by extensive survey of literature, and safeguards provided by Transgender Persons (Protection of Rights) Act, 2019 on hate crime. It is observed that BNS has several deficiencies in terms of transgender protections and underline the overwhelming importance of introducing strong hate crime law. Recommended reforms such as the introduction of explicit clauses on hate crime, increase in the punishment of gender-related crimes, and expanded legal acknowledgments of rights and dignity of transgenders. Closing these gaps is not only a legal issue, it is one of dignity, safety and humanity of transgender people.

I. Introduction

The transgender population in India is highly discriminated, socially excluded and even violated. The shift in the legal framework has taken place, yet the number of hate crimes committed against transgender individuals grows to amaze. Social crimes that are caused by prejudice toward individuals based on their gender identity do not receive coverage, in part because of a deficiency of

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legal coverage, stigma, and the reporting pre-conceptions of police officers. As an indicative of the necessity of reforming, the Indian government is re-organising the whole system of criminal justice³. Three significant legislature bills were introduced to Parliament in August 2023, in place of the Indian Penal Code of 1860, the Code of Criminal Procedure of 1973 and the Indian Evidence Act of 1872 respectively: The Bharatiya Nyaya Sanhita Bill, 2023, the Bharatiya Nagarik Suraksha Sanhita Bill, 2023, and the Bharatiya Sakshya Bill, 2023⁴. These Bills were all approved, and they came into effect on 01 July 2024. The aim of these new laws is to streamline and update the criminal law of India, have victim-focused approach, clarify, displacing unnecessary steps in the processes, to make the process and the institutions therein more productive and to use the information and communication technology to streamline the system with the facts and demands of our society⁵. However, despite the progress, the three new laws have been accused of not providing a means against hate crimes by transgender people. Although Bharatiya Nyaya Sanhita does not view gender identity as a category that is worthy of protection and does not establish definitions of crimes that constitute hate towards transgender people and their transphobia. Putting transgender persons at the threat of crimes committed against them due to prejudice with no identified reinforcement that the court may provide against hate crimes. The past laws that aim to safeguard transgender individuals like The Transgender Persons (Protection of Rights) Act, 2019 have been harshly condemned with the failure to guard transgender individuals against hate crimes⁶. On the one hand, case laws have reinforced the rights of transgender people over the years but, on the other hand, statutes have not established the hate crimes against transgender people. This paper seeks to

³ Govindasamy Agoramoorthy & Minna J. Hsu, *Living on the Societal Edge: India's Transgender Realities*, 54 J RELIG HEALTH 1451 (2015), <http://link.springer.com/10.1007/s10943-014-9987-z>.

⁴ *Justice Deferred? Transgender Protections and The Bharatiya Nyaya Sanhita*, INT. J. ENVIRON. SCI. 69 (2025), <https://doi.org/10.64252/49yfdb03>.

⁵ Team MyGov, *Exploring India's New Criminal Laws: A Paradigm Shift in Legal Framework*, MYGOV (2024).

⁶ Shamayeta Bhattacharya, Debarchana Ghosh & Bandana Purkayastha, 'Transgender Persons (Protection of Rights) Act' of India: An Analysis of Substantive Access to Rights of a Transgender Community, 14 JOURNAL OF HUMAN RIGHTS PRACTICE 676 (2022), <https://academic.oup.com/jhrp/article/14/2/676/6566269>.

analyze the existing legislation, that is the law of Transgender Persons (Protection of Rights), 2019 and its effects on hate crimes. It highlights gaps in the current legal framework, examines the 2023 criminal law reforms, and advocates for explicit hate-crime protections and stronger legal recognition of transgender rights. For this purpose, the following research questions are formulated:

- How do the Bharatiya Nyaya Sanhita, 2023 and the Transgender Persons (Protection of Rights) Act, 2019 fall short in addressing hate crimes against transgender persons in India?
- What are the implications of the lack of explicit hate crime provisions in the Bharatiya Nyaya Sanhita, 2023 for the safety, dignity, and constitutional rights of transgender persons in India?
- What reforms are required to strengthen hate crime protections and ensure greater recognition of transgender rights within India's criminal law framework, so as to effectively protect transgender persons from violence, discrimination, and injustice?

Through an examination of these questions, the paper seeks to highlight the urgent necessity for meaningful legal reforms within India's justice system for Transgender.

II. Research Methodology

This study has utilized a wide doctrinal and literature approach of investigating the legal framework concerning the regulation of transgender rights and transgender hate crimes in India. The research has carried out an in-depth review of a large replica of the literature such as scholarly literature, the legal provisions, the judicial works, policy papers, government reports as well as the international human rights instruments. The study, based on these sources, with a robust and critical perception regarding the current legal framework and the loopholes that remain to be addressed in governing the hate crimes that are perpetrated against transgender persons. Specific keywords were used to conduct the data collection process which include, transgender rights in India, hate crimes against transgender persons, hate crime laws in India, BNS

framework⁷, Transgender Persons Act 2019, gender-based violence laws in India, legal safeguarding of the transgender community, law reforms in criminal law in India. Academic databases and legal research services, including HeinOnline, LexisNexis, Google Scholar, JSTOR, Westlaw and PubMed, and official government sites, including the Ministry of law and Justice, National Human Rights Commission and well-established repositories of Indian law and case law were searched using these keywords. A summary of these extended literature reviews was then elaborated and criticized to come up with a unified argument that highlights on the urgent requirement of hate crime statutes and greater legal acknowledgement of the rights of transgender in criminal justice system of India. With such a method of studying and presenting information, the study will be able to guarantee the rigor and reliability of the considered study whereas offering a valuable contribution to the current discussion on the necessity of legal changes to protect the rights of transgender individuals against violence, discrimination, and systematic injustices⁸.

III. Background on Transgender Rights and Hate Crimes in India

Despite the landmark recognition of transgender persons as a third gender and the affirmation of their constitutional rights in *National Legal Services Authority v Union of India*⁹, transgender communities in India continue to face deep-rooted discrimination, marginalization, and violence. Prejudiced gender identity acts of violence and hate crimes still happen with alarming regularity¹⁰. Stigma, fear of being punished, invisibility in the society and inadequate legal mechanisms to respond to it make many such incidents to go unreported.

A. Historical Context

The status of transgender individuals in India is particularly that of the Hijra community, which occupies a complex position in society. They have existed throughout centuries and their existence is part of the culture, religion and the social norms of the country. Nonetheless, even after such long duration in

⁷ Bharatiya Nyaya Sanhita (BNS) Act, 2023.

⁸ Justice Deferred? Transgender Protections and The Bharatiya Nyaya Sanhita, *supra* note 2.

⁹ AIR 2014 SC 1863.

¹⁰ Ila Nagar & Debanuj DasGupta, *Transgender Rights and Religiosities in India: NALSA Judgment and Beyond*, 29 (2023).

Indian society, they do not receive the acceptance they warrant. The fact that they have a very long history is strange in that they have not known how to be more understanding and inclusive. Rather on the contrary, they are usually contradicted and put into difficult situations in their day to day lives¹¹. For example, they are excluded and marginalized in most practices of a given society although they play an important role in certain cultural and religious activities. This paradox explains why more awareness and acceptance of transgender people in India and specifically the Hijra community is necessary. Through acknowledging and valuing their rights and dignity, we are able to transform it to a more inclusive and fair society to all. Hijras were very active in rituals in many traditional communities. They performed at significant occasions such as weddings and births often as they could bring good fortune and fertility since it was believed that they possessed special powers. However, although the Hijras were accepted by rituals, they were not always treated as fully accepted persons in the civil life. They were apparent in rituals, though they were kept at a distant by the society. Transgender persons are in most occasions excluded in key aspects of life. Acquiring education, a good job, healthcare and a place to reside are difficult to them. Due to this, they are compelled to survive in poverty and hazardous activities to make ends meet, such as begging, sex work etc. It is not that they wish to but because they have no other option. Surprisingly, transgender individuals are treated badly in their day to day lives yet they are accorded honour during certain cultural ceremony. This indicates that the society cannot yet make up its mind on how to treat such categories of people¹². It became even more difficult when colonial masters conquered it by introducing Criminal Tribes Act, 1871¹³. Although the Criminal Tribes Act was repealed in 1952, its legacy of stigma and exclusion continues

¹¹ Nur Ain Nasuha Anuar & Moussa Pourya Asl, *Gender and Sexual Identity in Arundhati Roy's The Ministry of Utmost Happiness: A Cixousian Analysis of Hijra's Resistance and Remaking of the Self*, 29 JSSH 2335 (2021), <http://www.pertanika.upm.edu.my/pjssh/browse/regular-issue?article=JSSH-8167-2021>.

¹² JESSICA HINCHY, *GOVERNING GENDER AND SEXUALITY IN COLONIAL INDIA: THE <I>HIJRA</I>*, c.1850–1900 (1 ed. 2019), <https://www.cambridge.org/core/product/identifier/9781108592208/type/book>.

¹³ *Id.*

to shape the lived experiences of transgender persons despite modern constitutional guarantees of dignity and equality.

B. Legal Standing and Developments

The landmark Supreme Court decision in *National Legal Services Authority v. Union of India*¹⁴ (NALSA) marked a turning point in transgender rights in India. The Court recognized transgender persons as a distinct gender and affirmed their rights under Articles 14, 15, 19(1)(a), and 21 of the Constitution. It upheld the principle of self-identification and held that gender identity is closely linked to dignity, equality, autonomy, and freedom of expression. The Court also directed governments to eliminate discrimination and implement welfare measures in education, employment, healthcare, and social welfare.

In response to NALSA, Parliament enacted the Transgender Persons (Protection of Rights) Act, 2019, which prohibits discrimination and provides for welfare and grievance-redressal mechanisms. However, the Act was criticized for requiring a certificate of identity from the District Magistrate and for lacking specific hate-crime protections. Subsequently, the Transgender Persons (Protection of Rights) Amendment Act, 2026, introduced further changes to the recognition process, which have been challenged before the Supreme Court for allegedly undermining the NALSA principle of self-identification. As the constitutional validity of the 2026 amendments remains under judicial consideration, this paper focuses on a critical assessment of the 2019 Act and its effectiveness in protecting transgender persons from discrimination, violence, and bias-motivated crimes.

C. Criticisms of the Transgender Persons (Protection of Rights) Act, 2019

In spite of clear guidelines that were followed by the Supreme Court in NALSA, there was a slow advance in the legislature. Only in 2019, Parliament passed the Transgender Persons (Protection of Rights) Act, and its formulated purpose was to create an organized legal mechanism to protect the rights of transgender persons. The law outlaws the discrimination in the fields of education, work, healthcare services and the means of accessing the community services and suggests the establishment of a welfare mechanism. However,

¹⁴ AIR 2014 SC 1863

despite the fact that this law is a giant stride, several kinds of significant flaws have been facing a large-scale criticism¹⁵.

Ambiguity and Procedural Intrusion

The most controversial aspect of the legislation is the fact that transgender individuals are required to receive a special document known as the certificate of identity that will be issued by a high-ranking official in order to have their gender being officially acknowledged. They are required to present papers in order to have this document and may even take a medical test. Critics argue that it is a violation of the principle that one must be left to determine his or her gender, with a major court case, NALSA, advocating the same. This ruling stated that individuals were supposed to be in a position to discover themselves without the need to have identification done by others. The new rule appears to contravene this concept, which makes the process of transgender people receiving the needed recognition even more difficult. Since the law leaves the control of establishing gender identity to state officials, the applicant is vulnerable to bureaucracy, prejudice, and degradation. These procedural forms of gatekeeping bring forth the issue of privacy, dignity and bodily autonomy. Besides, international human rights law is becoming more and more attentive to letting self-determination of gender identity that is not based on medical or administrative certification, which makes the framework of the Act relatively restrictive¹⁶.

Disproportionately Lenient Penal Provisions

Laws that protect the transgender people against hurting are not effective. In other words, when an individual abuses a transgender by being sexually engaged, the punishment will be two years in jail and a fine. However, they would get into substantial trouble in case they did the same thing to a woman who is not transgender. This demonstrates the fact that the legality does not favour transgender individuals. It is a concern that the legislation is not serious in the aspect of violence against the transgender. In cases where a law that is supposed to keep people safe has lesser punishments compared to the normal

¹⁵ Aashita Nair & Ria Mishra, *The Transgender Persons (Protection of Rights) Act, 2019-A Legislative Review*, 2 INDIAN JL & LEGAL RSCH. 1 (2021).

¹⁶ Sourav Agarwal, *Civil and Political Rights of Transgenders in Indian Constitutional Perspective*, 4 (2017).

criminal law, it may destroy the notion of everyone being treated equally. It is an issue as it may create an impression that violence against transgender people is not as egregious as violence against people¹⁷.

Lack of Hate Crime Provisions

Although the Act has the aspects of anti-discrimination, it does not explicitly define and concern hate crimes against transgender individuals. Bias-motivated violence is not identified as a separate and aggravated form of offence. This means that any acts which are committed to prejudice based on gender identity is punished as any other criminal offense, without any recognition of the discriminatory motive which increases their victimization. The lack of an explicit hate criminal system leaves law enforcement and judicial systems without a legal base to determine and prosecute gender-identity-based violence. This piece of legislative silence undercuts the preventive nature of the law and continues invisibility of the criminal justice system to transphobic violence¹⁸.

Absence of Improved Sentencing of Bias-Motivated Offences

A major issue is that the law fails to prescribe heavier penalties in case of committing offences which are driven by the prejudice made against the gender of a person. When transgender individuals suffer the violence due to their gender, it does not only hurt them and it harms their entire community. Such violence would bring about prolonged trauma to a group of people, who are already vulnerable to it. Law should not be seen as light enough and do not ensure that such crimes receive serious punishments, this leaves individuals with the attitude that they may face the consequences of such offenses and makes the damage done by such prejudiced attacks appear less severe. This is quite alarming in the sense that the legal system may end up making the community believe that they are not concerned with their safety and well-being. Ensuring that the laws on hate crimes are enhanced is significant in two aspects; it helps to prevent the hate crimes and demonstrates the commitment of the government to treat all people equally and in a dignified way. Several nations have stronger punishment on crimes induced by prejudice directed at

¹⁷ M Mohsin Alam Bhat, *Hate Crimes in India*, 11 JINDAL GLOBAL LAW REVIEW 1 (2020), <https://link.springer.com/10.1007/s41020-020-00119-0>.

¹⁸ CJP, *BNS 2023 Does Nothing to Bring in a Nuanced Effective Understanding of Hate Speech, Making Its Prosecution Even More Difficult*, (2024).

the race, religion, gender, and sexual orientation of an individual since these offenses can cause a tremendous effect on the society. The existing legislation is also not sufficient to prevent the violence of transgender individuals since it is not linked to hate crimes. By making the law more effective to acknowledge hate crimes and punish them accordingly, it will be brought more into the international standards, will assist in keeping the promise that is contained in the constitution that of equality. This modification is needed to ensure that no one is left vulnerable and everyone is treated equally in spite of their gender or any other feature. Such a move will allow the government to demonstrate its commitment to ensuring equality and violence against marginalized groups. As it currently is with the Transgender Persons Act, it is a step in the right direction, though it is not sufficient to prevent hate-based violence¹⁹. India should have laws that not only stop the discrimination but also have a good system that can penalize individuals that perpetrate crimes due to the bias. It implies that hate crimes do not belong to the same category and should have stiffer sentences.

D. The Transgender Persons (Protection of Rights) Amendment Act, 2026

The Transgender Persons (Protection of Rights) Amendment Act, 2026 signifies a radical departure from the model provided by the Supreme Court in NALSA judgment. Whereas the amendment appears to make stringent provisions for ensuring protection from forced transgenderization, trafficking, and exploitation, at the same time, the act seeks to move away from self-identification as the criterion for transgender identity to one based on medical evidence and certification. One particular aspect of amendment that has created debate is the provision for the establishment of the medical board ("authority") and its recommendation for granting the transgender persons' certificate of identity. The striking out of section 4(2), which granted the rights to transgender individuals with respect to their self-perceived gender identities, reflects a radical departure from the NALSA judgment.

The amended definition of "transgender person" narrows the scope of recognition by emphasizing socio-cultural identities, intersex variations, and

¹⁹ NATHAN HALL ET AL., THE ROUTLEDGE INTERNATIONAL HANDBOOK ON HATE CRIME / EDITED BY NATHAN HALL, ABBEE CORB, PAUL GIANNASI AND JOHN G.D. GRIEVE; FOREWORD BY NEVILLE LAWRENCE, OBE. (2015).

persons compelled into transgender presentation, while expressly excluding persons with different sexual orientations and self-perceived sexual identities. Critics argue that this approach medicalizes and restricts transgender identity rather than recognizing it as a matter of self-determination.

The Act, however, introduces stronger penal provisions. Section 18 now provides severe punishments for forced castration, mutilation, coercive gender presentation, trafficking, forced begging, and exploitation of adults and children. These provisions strengthen protection against organized abuse and exploitation of vulnerable persons.

Nevertheless, the new Amendment fails to fill in the lacuna in Indian legislation in terms of the absence of provisions specifically dealing with hate crimes against people based on their sexual identity. Attacks against transgenders remain unpunished since the crimes committed are still being seen as ordinary offenses without taking into account that the motivation for those crimes was hatred towards another human being. As a result, the law focuses mainly on regulation and certifying people rather than punishing those who discriminate and practice violence based on hate. Generally, the Amendment of 2026 is aimed at switching from the approach developed in the previous case to the model that involves medicine as the basis for the new regulations. The new law, however, introduces constitutional issues that deal with articles 14, 19, and 21 of the Indian Constitution.

IV. New Criminal Laws and Their Impact on Transgender Protections

In 2023, the criminal justice system in India was significantly changed, and three new laws were enacted by the government. Such laws substituted the previous penal code which was developed in the colonial period. Indian Penal Code was replaced with the Bharatiya Nyaya Sanhita and was implemented in 1860²⁰. The Code of Criminal Procedure that was in place in 1973 was replaced with the Bharatiya Nagarik Suraksha Sanhita. Finally, the Indian Evidence Act, 1872 was also abolished in favour of the Bharatiya Sakshya Adhiniyam. In December 2023, the President signed these new laws and they came in force in

²⁰ Indian Penal Code of 1860, s 375.

July 2024²¹. These changes were meant to eliminate the old colonial laws and come up with a new criminal justice system that is in tandem with the present Indian constitution and social values. The redesigning of the criminal justice system was a massive turn over in line with modernization and relevancy to an order, which currently tends to reflect the development and evolution of the country²².

The new laws also helped India to form a fairer and balanced society, the society that is more aligned to the needs of its citizens in modern times. The reforms focus on processes oriented on the victim, the optimization of processes, and the use of technological applications like the internalization of digital records of evidence, increased reliance of forensic methods and well-defined investigation and trial schedules. In most aspects, these actions indicate a bid to become more efficient and more accountable as an institution. However, as much as this has been modernized, there have been concerns concerning whether the new system is responsive enough to identity-based vulnerabilities. Concerns have been expressed by scholars and other rights advocates on whether the amended statutes address adequately the problem of bias-based violence and institutionalized discrimination against transgender individuals. The reform package is indeed a significant structural change, but in the areas of substantive inclusiveness, particularly concerning hate-based crimes, it is still a field that can be considered in terms of reflection and even enhancement. While the BNS, BNSS, and BSA modernize India's criminal justice system through technology, efficiency, and victim-centric reforms, they do little to address identity-based violence, particularly against marginalized groups such as transgender persons.

A. Lack of Explicit Gender Identity Guardianships.

Another significant drawback of the Bharatiya Nyaya Sanhita is the inability to consider gender identity as one of the categories that are shielded in the sense of bias-motivated offences. Some jurisdictions around the world have enacted hate crime laws recognizing that crimes committed out of a prejudiced motive anchored in race, religion, ethnicity, sexual orientation, or gender identity cause

²¹ Justice Deferred? Transgender Protections and The Bharatiya Nyaya Sanhita, *supra* note 2.

²² *Id.*

a greater harm to both the individuals and communities. Transgender persons in India continue to face a lot of harassment, beating and ostracism²³. However, when they commit crimes against them, they are not handled as another crime and that the individual was targeted due to the gender identity is disregarded. It implies that the hate crimes, perpetrated against transgender individuals, are not regarded as any different than other crimes, which conceals the fact that hate crimes are usually driven by prejudice. Failure to appreciate this in the law is costly. The gender identity of people is not specifically covered by the law, which can only exacerbate the situation of people who are already marginalized, as they are not even recognized as the subject of harm. Unless the law states that violence against transgender is a serious fact, it may serve to create an impression that violence of such nature is a minor issue. This may give an impression in mind that the law is not having the safety and well-being of transgender people. The consequence of the unawareness of the discriminatory will in the law can be extensive in its impact, such as continuing to marginalize transgender people and not giving them the necessary protection²⁴.

B. Conceptual Underdevelopment of Hate Crimes in Indian Law

The area of hate crime jurisprudence is underdeveloped in the Indian legislation. Despite some laws being provided in relation to incitement of communal disharmony or specific hostilities, no real statutory definition of hate crimes has been offered that would be inclusive of gender identity.

The BNS fails to establish a specific framework in which crimes against transgender people will be detected, investigated, and punished. Hate crimes do not resemble any other crime since they assault the essence of a human being. In the case of transgender people, they will also be overlooked because of their identity, and the fact that they cannot express themselves leads to them being

²³ Dr Subhrajit Chatterjee, *Problems Faced by Transgender Community in India: Some Recommendations*, 6 (2018).

²⁴ M. Mohsin Alam Bhat & Neil Chakraborti, *Lost in Translation? Applying the Hate Crime Concept to an Indian Context*, 39 JOURNAL OF INTERPERSONAL VIOLENCE 3855 (2024), <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85201035681&doi=10.1177%2f08862605241260008&partnerID=40&md5=f54dabb40782d4898e333b9c75cd79dc>.

even more susceptible²⁵. In the absence of laws that explicitly establish the definition of hate crimes and provide guidelines of how to establish that a given crime was driven by bias, the police and prosecutors might be left in the dark, on how to go about such cases. This would guide the prosecution of hate crimes and offer the investigator more stability in their investigations and hold judges more responsible because there is a clear set of rules to follow when dealing with hate crimes. It would also send a signal that violence depending on the identity of a person is not a personal problem, but a social menace to the entire society. This is relevant since it recognizes that not only the person is affected by hate crimes, but the community as well. When one can identify the ill effects of hate crimes, it will be easier to make the world a safer and healthier place to live. It is important to note that identity-based violence is a social phenomenon that is to be addressed by everyone²⁶.

C. Implications of Transgender Safety and Access to Justice.

In that Bharatiya Nyaya Sanhita does not explicitly identify the gender identity has practical repercussions on transgender individuals who require securing the protection of the law. The discrimination might not be detected in the law when one is assaulted, harassed, or intimidated due to his or her gender identity²⁷. Lack of a law that documents that motivation of bias worsens a crime causes

²⁵ Avanish Bhai Patel, Sumant Kumar & Vineetha Sivakumar, *Determinants of Hate Crime Against Religiously and Socially Marginalized Groups in India*, CRIME AND DELINQUENCY (2024), <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85199990731&doi=10.1177%2f00111287241266583&partnerID=40&md5=215beb5f592f195aff26189e63700d4d>.

²⁶ Philip Birch et al., *Policing Hate Crime: Exploring the Issue with a Cohort of Sworn Police Officers*, JOURNAL OF POLICE AND CRIMINAL PSYCHOLOGY (2024), <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85183735048&doi=10.1007%2fs11896-023-09641-y&partnerID=40&md5=a2a42b417a8825514150d369c3d5185e>.

²⁷ Brendan Lantz, Zachary T. Malcom & Marin R. Wenger, *The Consequences of Hate Crime Victimization: Considering Prejudicial Attitudes as an Outcome of Interracial Bias-Motivated Conflict*, 61 JOURNAL OF RESEARCH IN CRIME AND DELINQUENCY 772 (2024), <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85162707169&doi=10.1177%2f00224278231179418&partnerID=40&md5=671999e908d6b60b4c02c1057678b953>.

the courts to treat these crimes as any other without the acknowledgement of the underlying prejudice which in most cases prompts them. This might also create the impression that the experiences of transgender victims are not special and in fact, the victims become a victim due to the type of person they are, rather than simply due to the personal conflict. Consequently, the law system is not always able to fully comprehend the harm that the transgender people suffer, and does not offer them protection that might be necessary. Such absence of realization can lead to severe outcomes, such as difficulty in achieving a feeling of safety and protection by the law on the part of transgender. The impacts of this extend further than the courts and to people reporting crimes. The police have been unfair to transgender individuals in India who have been viewed as stigmatized. The rulings in significant cases such as the NALSA indicated that the gender identity of an individual is the essential component of dignity and autonomy of the individual, which is safeguarded by the Articles 14 and 21. Subsequent decisions, particularly *Navtej Singh Johar v Union of India*²⁸, reaffirmed that constitutional values of dignity, equality, and liberty must prevail over societal prejudice. Nevertheless, a situation in which the laws that do not explicitly acknowledge crime based on bias depict a scenario in which victims may have a feeling that there is a chasm between the spirit of the constitution and the actual application of the law. This may reduce willingness to report crimes by people, create mistrust, and create a culture of silence and impunity. The new amendments of the criminal law have been a positive move, although there are more improvements yet to be made. There are procedures, needs of the victims and new technology which they update. Nevertheless, they transform the equality principle in the constitution into the transgender specifically in regard to hate crimes yet they do not establish it yet. By making gender identity a category with a degree of protection and imposing a heavier sentence in case the prejudice has been taken, it would not be adjudicating in special rights, but in fact simply executing the principles of equality earlier stated in NALSA and deliberately enforced in *Navtej Singh Johar*. This would go a long way in ensuring that trans others are given fair treatment and equal treatment before the law. Criminal law does not only involve penalizing individuals in committing the wrongs, but it also reveals to us, as a society, what is significant to us. By the law

²⁸ (2018) 10 SCC 1.

acknowledging the basis of violence on who a person is, an individual who practices prejudice will not be accepted in a fair and equal society²⁹. Therefore, by ensuring that the law keeps people off hate crimes because of the gender they belong to, it would make the law more effective as well as exemplify that we mean well when it comes to treating all people with dignity and respect and providing equal protection to all. This is even important in this case of democracy where all people are expected to be equal. In this manner, we are sending a strong signal we appreciate inclusion and equality, and we will not accept hate or discrimination of various kinds³⁰.

V. Comparative Analysis with International Legal Standards on Transgender Protections

There has been an increasing global acknowledgment that transgenders need protection of an explicit and clear nature in the laws. The treatment of gender identity has become one of the characteristics that are safeguarded by anti-discrimination and hate crimes acts in many countries. It implies that no action can be considered as violence or harassment because of prejudice against the gender identity of an individual and should be considered as a grave error, which is punished more severely and is subject to civil damage³¹s. Countries like the United States, the United Kingdom and Canada have actively included gender identity in their hate crime systems, which has indicated an institutional acceptance of the concept of dealing with harm based on prejudice³². Conversely, the recent reforms in the criminal law in India especially Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam have updated the substantive, procedural and evidentiary areas of criminal law. Nevertheless, they do not go a notch further to acknowledge the provision of gender identity under the hate crime. Even though these changes

²⁹ Matthew A. Bills & Michael S. Vaughn, *A Contemporary Review of Hate Crime Legislation in the United States*, 34 CRIMINAL JUSTICE POLICY REVIEW 115 (2023), <https://www.scopus.com/inward/record.uri?eid=2-s2.085135014431&doi=10.1177%2f08874034221112847&partnerID=40&md5=c4bb5c6ffa9f204e3d443d4d348e87a0>.

³⁰ Justice Deferred? Transgender Protections and The Bharatiya Nyaya Sanhita, *supra* note 2.

³¹ *Id.*

³² HALL ET AL., *supra* note 17.

can be considered as structural change, the lack of explicit guidelines on the protection of gender identity under the jurisdiction of hate crimes exposes a considerable loophole. This divergence is even more significant when we consider it in the light of the changing standards of international human rights, and we may wonder whether the criminal law system of India responds to the lived reality and the vulnerability of transgender people in a proper way³³.

A. United States: Federal Hate Crime Protection

In the United States, one of the most significant developments in hate crime law came with the enactment of the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act in 2009³⁴. Named after two victims of brutal bias-motivated killings Matthew Shepard and James Byrd Jr³⁵, the law marked a decisive moment in federal recognition of violence rooted in prejudice³⁶. It expanded earlier hate crime statutes by allowing federal authorities to prosecute crimes motivated by bias based on race, colour, religion, national origin, gender, sexual orientation, gender identity, or disability. Importantly, it permitted federal intervention even when state or local authorities were unwilling or unable to pursue effective prosecution.

What makes this legislation particularly transformative is its explicit inclusion of “gender identity” as a protected characteristic. This was not a symbolic gesture. It reflected a growing awareness within Congress that transgender individuals are disproportionately targeted for violence because of who they are³⁷. By formally recognizing gender identity within hate crime law, the United States acknowledged that such violence is not random or isolated it is structurally linked to deep-seated prejudice. In doing so, the law treats attacks on transgender persons not merely as individual assaults, but as crimes that strike at equality itself.

³³ Bhat and Chakraborti, *supra* note 22.

³⁴ Bills and Vaughn, *supra* note 27.

³⁵ Justice Deferred? Transgender Protections and The Bharatiya Nyaya Sanhita, *supra* note 2.

³⁶ *Id.*

³⁷ *Id.*

The broader constitutional foundation for this approach can be traced to the Supreme Court's reasoning in *Wisconsin v. Mitchell*, where the Court upheld enhanced penalties for bias-motivated crimes³⁸. The Court observed that:

"Bias-motivated crimes are more likely to provoke retaliatory crimes, inflict distinct emotional harms on their victims, and incite community unrest."

This insight is central to modern hate crime jurisprudence: such crimes harm not only the immediate victim but also send a message of fear and exclusion to an entire community.

More recently, in *Bostock v. Clayton County*, while interpreting Title VII of the Civil Rights Act, the Supreme Court held:

"It is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

Although *Bostock* concerned employment discrimination rather than criminal law, its reasoning reinforces the broader federal understanding that discrimination and violence targeting transgender persons are inseparable from questions of equality and constitutional protection³⁹.

Another crucial feature of the 2009 Act is its strengthening of institutional accountability. It empowers federal agencies particularly the Department of Justice to step in where local enforcement may be compromised by political pressure, social hostility, or institutional inertia. This oversight function is especially significant in regions where marginalized communities might otherwise struggle to secure impartial justice⁴⁰. By enabling federal prosecution, the statute reduces disparities in enforcement and promotes a more uniform national standard. Taken together, the U.S. framework reflects a

³⁸ HALL ET AL., *supra* note 17.

³⁹ Eaven Holder & Logan Ledford, *Assessing the Ecological Variation in the Police Response to Hate Crime: Evidence From New York City*, CRIMINAL JUSTICE REVIEW (2024), <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85199795926&doi=10.1177%2f07340168241265104&partnerID=40&md5=449d366f2d9fbe1e1be6fac1a0d04308>.

⁴⁰ Dipshreeya Das & Neetu Banduni, *Transgender Rights in the UK in the Backdrop of the 2025 Supreme Court Judgment: A Critical Reflection with Reference to India*, 3 DISCOVER GLOBAL SOCIETY 122 (2025), <https://doi.org/10.1007/s44282-025-00262-w>.

mature recognition that hate crimes are not ordinary offences. They are acts that “injure not only the individual victim but the community at large,” echoing the language used by courts in bias-crime jurisprudence⁴¹.

B. United Kingdom: Sentencing Enhancements for Hostility Based on Gender Reassignment

In the United Kingdom, protections for transgender persons are embedded within the sentencing framework of the Criminal Justice Act 2003⁴². Section 146 of the Act provides that a court must treat an offence as aggravated where-

“The offender demonstrated hostility towards the victim based on the victim’s sexual orientation (or presumed sexual orientation)” or where the offence was “motivated (wholly or partly) by hostility towards persons who are transgender.”

The statute further clarifies that the court

“Must treat the fact that the offence was so aggravated as an aggravating factor”

and must state in open court that the offence was aggravated by such hostility⁴³. This explicit statutory language ensures that prejudice based on gender reassignment is not merely acknowledged rhetorically but formally incorporated into sentencing analysis⁴⁴.

Rather than creating separate, standalone hate crime offences, the U.K. model strengthens existing criminal provisions by attaching enhanced consequences where bias motivation is established. The substantive offence whether assault, harassment, or criminal damage remains unchanged; however, when hostility toward a victim’s transgender identity is demonstrated, the sentencing court is

⁴¹ Justice Deferred? Transgender Protections and The Bharatiya Nyaya Sanhita, *supra* note 2.

⁴² HALL ET AL., *supra* note 17.

⁴³ *Id.*

⁴⁴ Nehaluddin Ahmad, Gary Lilienthal & Arman Bin Asmad, *The Impact of Social Media on UK Hate Crime: A Brief Study*, 2023 IBIMA BUSINESS REVIEW (2023), <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85178085522&doi=10.5171%2f2023.989773&partnerID=40&md5=cf6f7c81683fd605507825d84f50b8b2>.

required to increase the severity of punishment. This approach reflects an understanding that crimes rooted in prejudice cause a distinct and heightened harm, as they target individuals because of who they are rather than because of their conduct⁴⁵.

C. Canada: Integrated Civil and Criminal Protections

Canada is frequently cited as an example of a jurisdiction that has adopted a comprehensive and internally coherent framework for the protection of transgender persons. Legislative amendments in recent years have ensured that both civil and criminal law explicitly recognize “gender identity” and “gender expression” as protected grounds. Reforms to the Canadian Human Rights Act prohibit discrimination on these bases within areas under federal jurisdiction, including employment, housing, and access to goods, services, and facilities. Section 3(1) of the Act now lists “gender identity or expression” among the prohibited grounds of discrimination, thereby placing transgender persons within the core structure of equality protections. By doing so, Canadian law affirms that participation in public and economic life cannot be denied or restricted based on gender identity⁴⁶.

At the criminal level, the Criminal Code of Canada incorporates bias against gender identity or expression into its sentencing framework. Section 718.2(a)(i) provides that evidence an offence was motivated by

“Bias, prejudice or hate based on... gender identity or expression”

must be treated as an aggravating factor during sentencing. This statutory mandate ensures that courts formally acknowledge prejudice-driven motivation and impose correspondingly enhanced penalties. The inclusion of gender identity within aggravating circumstances reflects legislative recognition that identity-based hostility causes distinct and heightened harm.

Canada’s approach is particularly notable for its dual structure. Anti-discrimination provisions operate preventively by addressing systemic exclusion and ensuring equal access to rights and opportunities, while hate crime sentencing enhancements function reactively by responding to acts of

⁴⁵ Das and Banduni, *supra* note 38.

⁴⁶ Abbee Corb, *Hate and Hate Crime in Canada*, in THE ROUTLEDGE INTERNATIONAL HANDBOOK ON HATE CRIME 163 (2014).

violence rooted in prejudice. Together, these mechanisms create an integrated regime that confronts both structural inequality and overt bias-motivated harm.

This model reflects a substantive conception of equality one that extends beyond symbolic acknowledgment to enforceable legal protection across multiple domains⁴⁷. By embedding gender identity within both civil rights legislation and criminal sentencing provisions, Canada reinforces accountability while affirming a broader societal commitment to dignity, inclusion, and substantive equality for transgender persons⁴⁸.

VI. Normative Significance of Explicit Hate Crime Recognition

The area of hate crime jurisprudence is underdeveloped in the Indian legislation. Despite some laws being provided in relation to incitement of communal disharmony or specific hostilities, no real statutory definition of hate crimes has been offered that would be inclusive of gender identity. In the case of transgender people, they will also be overlooked because of their identity, and the fact that they cannot express themselves leads to them being even more susceptible. In the absence of laws that explicitly establish the definition of hate crimes and provide guidelines of how to establish that a given crime was driven by bias, the police and prosecutors might be left in the dark, on how to go about such cases. This would guide the prosecution of hate crimes and offer the investigator more stability in their investigations and hold judges more responsible because there is a clear set of rules to follow when dealing with hate crimes. It would also send a signal that violence depending on the identity of a person is not a personal problem, but a social menace to the entire society.

VII. Implications of Transgender Safety and Access to Justice

In that, Bharatiya Nyaya Sanhita does not explicitly identify the gender identity has practical repercussions on transgender individuals who require securing the

⁴⁷ Barbara Perry, *Policing Hate Crime in a Multicultural Society Observations from Canada*, 38 INTERNATIONAL JOURNAL OF LAW, CRIME AND JUSTICE 120 (2010), <https://linkinghub.elsevier.com/retrieve/pii/S1756061610000327>.

⁴⁸ Matthew Stein, Barbara Perry & Irina Levit, *Punishing "Privilege": Antisemitic Hate Crime in Canada*, 39 JOURNAL OF INTERPERSONAL VIOLENCE 3876 (2024), <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85201030947&doi=10.1177%2f08862605241259996&partnerID=40&md5=ac16e12fc93a68e4b026af444f599d19>.

protection of the law. The discrimination might not be detected in the law when one is assaulted, harassed or intimidated due to his or her gender identity. Lack of a law that documents that motivation of bias worsens a crime causes the courts to treat these crimes as any other without the acknowledgement of the underlying prejudice which in most cases prompts them. This might also create the impression that the experiences of transgender victims are not special and in fact, the victims become a victim due to the type of person they are, rather than simply due to the personal conflict. Consequently, the law system is not always able to fully comprehend the harm that the transgender people suffer, and does not offer them protection that might be necessary. Such absence of realization can lead to severe outcomes, such as difficulty in achieving a feeling of safety and protection by the law on the part of transgender⁴⁹. The impacts of this extend further than the courts and to people reporting crimes. The police have been unfair to transgender individuals in India who have been viewed as stigmatized. The rulings in significant cases such as NALSA have indicated that the gender identity of an individual is the essential component of dignity and autonomy of the individual, which is safeguarded by the Articles 14 and 21. Such withholding by decisions later on, like the case of Navtej Singh Johar v Union of India, 2018⁵⁰, made it clear that the postulates of the constitution must come forward first than societal prejudices⁵¹. Although the new criminal laws modernize procedures and strengthen victim-centric justice, their failure to explicitly recognize transgender hate crimes creates a gap between constitutional equality and legal protection, undermining trust, reporting, and substantive justice for transgender persons.

By making gender identity a category with a degree of protection and imposing a heavier sentence in case the prejudice has been taken, it would not be adjudicating in special rights, but in fact simply executing the principles of equality earlier stated in NALSA and deliberately enforced in Navtej Singh Johar⁵². Criminal law does not only involve penalizing individuals in

⁴⁹ S Hasthisha Desikan, *Legal Regulation of Hate Crimes in India: A Look at the Current Regime and Its Shortcomings*, 4 16 (2021).

⁵⁰ (2018) 10 SCC 1.

⁵¹ Justice Deferred? Transgender Protections and The Bharatiya Nyaya Sanhita, *supra* note 2.

⁵² Navtej Singh Johar v. Union of India (2018) 10 SCC 1.

committing the wrongs, but it also reveals to us, as a society, what is significant to us. By the law acknowledging the basis of violence on who a person is, an individual who practices prejudice will not be accepted in a fair and equal society. Therefore, by ensuring that the law keeps people off hate crimes because of the gender they belong to, it would make the law more effective as well as exemplify that we mean well when it comes to treating all people with dignity and respect and providing equal protection to all.

Globally, there is growing recognition that gender identity should be explicitly protected under anti-discrimination and hate-crime laws, with bias-motivated violence against transgender persons attracting enhanced legal penalties and remedies. Countries like the United States, the United Kingdom⁵³ and Canada have actively included gender identity in their hate crime systems, which has indicated an institutional acceptance of the concept of dealing with harm based on prejudice. Conversely, the recent reforms in the criminal law in India especially Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita and Bharatiya Sakshya Adhiniyam have updated the substantive, procedural and evidentiary areas of criminal law. Nevertheless, they do not go a notch further to acknowledge the provision of gender identity under the hate crime⁵⁴.

VIII. Recommendations for Ensuring Transgender Protections in the New Laws

While the new criminal laws represent an important step toward modernizing India's justice system, further reforms are needed to provide explicit protections for transgender persons against bias-motivated violence. Introducing specific hate-crime provisions in the Bharatiya Nyaya Sanhita and related laws would strengthen constitutional guarantees of dignity, equality, and non-discrimination.

A. Change in Bharatiya Nyaya Sanhita Act, 2023

To strengthen protections for transgender persons, the Bharatiya Nyaya Sanhita should be amended to explicitly recognize gender identity as a protected characteristic. Such an amendment would align the law with the constitutional guarantees of equality and non-discrimination under Articles 14 and 15 by

⁵³ Das and Banduni, *supra* note 38.

⁵⁴ Bhat and Chakraborti, *supra* note 22.

including gender identity alongside other protected grounds such as religion, race, caste, and ethnicity. In case we ensure that the descriptions in the law on discrimination, violence, intimidation, and harassment specifically reference gender identity, this will serve to ensure that transgender individuals receive equal treatment and equal protection by the law⁵⁵. An additional clarification that can be made to the law is to have a definition of hate crimes clearly stated to incorporate attacks based on the prejudice on another person over their gender identity. This would imply that other crimes such as assault, sexual violence and harassment would also be reported as hate crime in case they were perpetrated based on the haters or the perpetrator being prejudiced towards transgender people. Stricter punishments of these crimes would have assisted in keeping them at bay and enhance the law to be serious about enforcing them since it would be punishments that are serious and the law system cares about them⁵⁶. India by doing so would be abiding by its international human rights commitments and this includes that which was outlined in the International Covenant on Civil and Political Rights (ICCPR) and by so doing would be demonstrating that it is willing to establish a just and fair system of laws that protect the rights of everyone⁵⁷. This would also be consistent with other countries dealing with hate crimes in the same manner, and would aid in moving India forward in their quest to make the society more inclusive and equitable.

B. Adding a Definite Concept of Hate Crimes to the Statutory Framework.

These heinous crimes can only be curb with passing of legislation encompassing a clear cut and broad understanding of hate crimes to safeguard the transgender because of their gender identity⁵⁸. Such offences would be differentiated through stressing a carefully defined definition and make certain

⁵⁵ CJP, *supra* note 16.

⁵⁶ Justice Deferred? Transgender Protections and The Bharatiya Nyaya Sanhita, *supra* note 2.

⁵⁷ Martin Scheinin, *The United Nations International Covenant on Civil and Political Rights: Article 27 and Other Provisions*, in SYNERGIES IN MINORITY PROTECTION: EUROPEAN AND INTERNATIONAL LAW PERSPECTIVES 23 (Kristin Henrard & Robert Dunbar eds., 2009), <https://www.cambridge.org/core/product/D557CDE963B9972476CDE89108D3AE3F>.

⁵⁸ Desikan, *supra* note 47.

that their bias-based nature would be under the law. The law may define hate crimes as any criminal act committed with or without the participation of the individual, property, entirely or in part, based on hostility, prejudice, or bias, regarding the real or perceived gender of the victim. A language to be used should be accommodative and wide enough to cover all the transgender identities within its defence.

The significant thing about this framework is to establish the purpose of discrimination or biasness. The law can describe exemplifying indicators, which may be used to determine the bias motivation, which might be the use of transphobic slurs when committing the offence, written statements of hostility towards transgender persons by the accused, or a deliberate targeting of spaces, occasions, or symbols linked with transgender communities. To support the police officers, it is necessary to create proper structure of investigative protocols to detect, document and maintain the evidence of bias to enhance prosecution against such crimes and also consistency in the legal process.

Hate crimes where one commits an evil due to prejudice should be punished more stringently by the law⁵⁹. The reason is that hate crimes do not only hurt an individual, and also the entire community. Sentencing should also have clear rules in order to ensure that the judges are fair. The offender accepts responsibility for the harm caused, enabling victims to heal and fostering a fairer and more effective justice system.

C. Capacity Building and Sensitization of Law Enforcement Agencies

We should do more than change laws to protect transgender people. We must as well ensure that those employed in the institutions such as police and judges are ready to assist them. This can be done by rendering the training programs of this official compulsory. Such programs must impart to them on significant issues such as the meaning of gender identity, the rights of the transgender people, issues that affect them as well as how they should treat the gay

⁵⁹ G.S. Bajpai et al., *Hate Crime in India: Understanding Nuanced Discrimination Against North-Eastern Population*, HATE CRIME IN INDIA: UNDERSTANDING NUANCED DISCRIMINATION AGAINST NORTH-EASTERN POPULATION (2023), <https://www.scopus.com/inward/record.uri?eid=2-s2.0-85172116789&doi=10.1007%2f978-3-031-30522-1&partnerID=40&md5=4e32464744fa07614a33113711e9cc11>.

members with respect. By making such programs mandatory to all in society, including the police who have to investigate the crimes, and judges who should have to pass judgment, we will be able to decrease the biases that are already present and make those institutions more welcoming to the requirements of transgender individuals. This would be useful when dealing with people who promote transgender rights and specialists in such area as human rights, psychology, and social work in order to ensure that the training is quality and referred to the actual experiences. Besides this, cultural awareness and recognizing bias should also be highlighted in the training structure. The staff needs to be advised to take a critical look at personal stereotypes that tend to affect professional behaviour unknowingly. Real-life elements, like advice on how to communicate with respect, including appropriate names and pronoun usage are crucial to promote dignity and build trust between law enforcement agencies and transgender communities.

D. Meaningful Engagement with the Transgender Community

The law reform cannot be useful when it is created without people whose lives it aims to control. As transgender rights, a mutually beneficial interaction with the community is not only desirable but also a prerequisite. They should use real life experience as a guiding force in policies that deal with discrimination and violence issues instead of mere conceptual notions. The effectiveness of legal reforms and their increase in the practical use can be achieved to a considerable degree through the involvement of the representatives of the transgender in the organized consultation when developing and revising the legislation. The involvement in advisory committees, working groups and legislative debates involves the direct ability to influence the outcome through the voice of the community.⁶⁰ This kind of engagement can be used to also create a connection with the marginalized communities, which in most cases seem to be distant because of their state institutions, one that will feel trusted and accountable to each other. Access to education can stem advocacy and empower informed participation in policy debates. The identification of

⁶⁰ Natarajkumar, *Andhra Pradesh Launches Welfare Board for Transgender Persons, Community Welcomes Move*, THENEWSMINT (2017), <https://www.thenewsminute.com/article/andhra-pradesh-launches-welfare-board-transgender-persons-community-welcomes-move-60742>.

transgender leadership in the state and in civil society quarters is also significant both symbolically and practically. This is possible through holding the meetings to the masses, seeking opinion and open discussions⁶¹.

IX. Conclusion

Despite significant judicial and legislative progress, violence against transgender persons motivated by prejudice remains inadequately addressed in Indian criminal law. While the NALSA judgment recognized gender identity as central to dignity, equality, and autonomy, this constitutional promise has not been fully translated into criminal law protections. Although the Bharatiya Nyaya Sanhita, Bharatiya Nagarik Suraksha Sanhita, and Bharatiya Sakshya Adhiniyam modernize the criminal justice system through digitalization and victim-centric reforms, they do not explicitly recognize gender identity within hate-crime provisions. As a result, bias-motivated violence against transgender persons' risks being treated as ordinary crime rather than as discrimination-driven harm.

Comparative analysis from countries such as the United States, the United Kingdom, and Canada demonstrate that recognizing bias motivation strengthens criminal law by enhancing deterrence and affirming democratic values of equality. In the Indian constitutional framework, protecting transgender persons from hate-based violence is not a matter of granting special rights but of ensuring substantive equality under Articles 14 and 21. Recognizing gender identity as a protected ground in hate-crime legislation would acknowledge existing vulnerabilities and reinforce the State's commitment to dignity, inclusion, and equal protection of the law.

⁶¹ Hale M. Thompson et al., *Community Engagement to Improve Access to Healthcare: A Comparative Case Study to Advance Implementation Science for Transgender Health Equity*, 21 INT J EQUITY HEALTH 104 (2022), <https://equityhealthj.biomedcentral.com/articles/10.1186/s12939-022-01702-8>.