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# CRIMINAL LIABILITY FOR CONVERSION PRACTICES AND QUEERPHOBIC SEXUAL VIOLENCE UNDER THE BHARATIYA NYAYA SANHITA, 2023: A COMPARATIVE AND RIGHTS-BASED ANALYSIS

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## ABSTRACT

This research paper examines the criminal liability for coercive conversion practices and queer phobic sexual violence within the ambit of the Bharatiya Nyaya Sanhita (BNS), 2023. Although the BNS restructures the substantive part of the criminal law in India, it does not distinctly recognise or penalise conversion practices, i.e., coercive actions aimed at “correcting” a person’s sexual orientation or gender identity. It also fails to incorporate pertinent factors vis-à-vis queer phobic motives in cases of sexual violence. Using a doctrinal and comparative approach, this study examines how current laws on hurt, confinement, assault, intimidation, and sexual offences do not effectively address the specific harms that the members of the LGBTQ+ community face. It further reviews international laws banning conversion therapy. For instance, the laws in Canada, Germany, New Zealand and so on, alongside global hate-crime frameworks that protect the LGBTQ+ communities.

A constitutional and human-rights analysis based on Articles 14, 15, and 21, along with Supreme Court rulings in *Navtej Singh Johar*, *NALSA*, and *Puttaswamy*, highlights the State’s obligation to protect bodily autonomy, dignity, and equality for queer individuals. The study suggests focused reforms, including a specific crime for conversion practices, clear acknowledgement of queerphobic motives as an aggravating factor in sexual violence, and better systems for reporting, investigation, and victim protection.

## 1. INTRODUCTION

The regulation of criminal conduct in contemporary India needs to be framed within the evolving constitutional values and shifting socio-cultural landscapes. The Bharatiya Nyaya Sanhita, 2023 (BNS 2023), is one of the most imperative legislative reforms undertaken by independent India to modernise and indigenise the substantive criminal law. The legal regime is expanding to cover new forms of emerging violence. However, persistent structural inequalities in historically marginalised communities remain and create unique vulnerabilities that continue unabated.

Of these, LGBTQ+ individuals continue to be disproportionately targets of specific harm—both physical and psychological—that emanates from deeply ingrained social bigotry. Practices such as coercive measures to alter a person's sexual orientation or gender identity or both, and sexual violence driven by queerphobic motives, illustrate the multifaceted ways in which identity, stigma, and violence are interrelated. These are not only interpersonal violations but also indicative of deeper systemic discrimination through family structures, religious institutions, medical practitioners, and social norms.

Contemporary criminal jurisprudence in most parts of the world increasingly recognises the need for specific offences pertaining to conversion therapy, as well as hate-crime legislation that takes into account the motive-based targeting of queer communities. India's constitutional jurisprudence, specifically judgments upholding the rights to equality, dignity, privacy, and gender identity, provides a sound normative basis for such reform. Yet, the BNS 2023 does not explicitly address these harms, nor does it extend greater protection to queer individuals.

A key illustration of the systemic challenges faced by queer individuals is the case of *S. Sushma v. Commissioner of Police* (Madras High Court, 2021),<sup>1</sup> wherein the Court had to intervene to protect a lesbian couple from police harassment. The honourable court directed the State to prohibit conversion practices. The judgment acknowledged that queer persons face unique forms of familial and institutional violence, including forced counselling, confinement, and coercive attempts at altering their identity. The Court's explicit condemnation of conversion therapy marked a crucial judicial recognition of the harm and unconstitutionality of such practices—yet the absence of a statutory criminal prohibition underlines the ongoing legal

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<sup>1</sup>S. Sushma v. Commissioner of Police, (2021) SCC OnLine Mad 2096.

vacuum. This paper attempts a comprehensive analysis of these gaps, placing the issue within doctrinal, comparative, and rights-based perspectives. By highlighting the limitations of existing provisions and presenting concrete reform proposals, the study aims to contribute to the discourse on inclusive and constitutionally sound criminal law policy in India.

### 1.1 Background: Reframing vulnerability and emerging harms under BNS 2023

The Bharatiya Nyaya Sanhita, 2023 (BNS 2023), embarks on a paradigm shift in India's substantive criminal law after replacing the erstwhile Indian Penal Code, 1860. It is not merely a recodification of the criminal law, but also an attempt to examine vulnerability, harm, and state protection in a broader context. BNS 2023 broadened its horizon by encompassing digital exploitation, psychological coercion and abuses of authority. In *Justice K.S. Puttaswamy (Retd.) v. Union of India*,<sup>2</sup> the apex Court held that privacy and decisional autonomy form the core of dignity, and that vulnerability must be understood contextually, arising from unequal social power rather than inherent fragility. Similarly, in *Navtej Singh Johar v. Union of India*,<sup>3</sup> affirmed that criminal law cannot reinforce prejudice, especially against queer persons whose vulnerability stems from systemic discrimination, social exclusion, and a history of criminalisation.

Yet, to understand the vulnerability of the members of the LGBTQ+ community in a better way, a more modern approach is required, i.e., acknowledging how community policing, familial control, and institutional biases create new arenas in relation to which the queer community becomes an easy target of coercion.

### 1.2 Review of Literature

Academic and journalistic work on queerphobic sexual violence in India highlights the profound mismatch between lived realities of violence and their recognition under criminal law. For instance, an analysis of official statistics reveals that in 2020, only **236** victims registered with the National Crime Records Bureau (NCRB) were identified as transgender, a figure representing a vanishing fraction (0.006%) of total crime victims for that year; and the NCRB recorded no rape or serious sexual-offence cases with transgender complainants.<sup>4</sup>

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<sup>2</sup>Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

<sup>3</sup>Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

<sup>4</sup>Vandana Bansal, "How lack of documentation of transgender persons in India is hindering justice for them" *IndiaSpend*, June 23, 2022.

According to the experts, this figure is not a reflection of a low crime rate, but of the lack of documentation of transgender persons, which leads to a misleading record of crimes against the community.<sup>5</sup>

The Supreme Court, in 2014, recognised transgender individuals as the third gender,<sup>6</sup> which means that any violence that these individuals went through wasn't recorded in a separate category. Moreover, the article discusses the pendency of applications in relation to the issuance of transgender certificates and ID cards, which not only sheds light on the under-registration of cases but also on the legal backlog.

Internationally, the medical and forensic literature and other experts of the Independent Forensic Expert Group (IFEG) under the International Rehabilitation Council for Torture Victims (IRCT) document how conversion practices involve forced drugging, confinement, psychological coercion, and humiliation, concluding that these practices amount to cruel, inhuman or degrading treatment prohibited under international law.<sup>7</sup>

Legal theorists such as Ilias Trispiotus and Craig Purshouse argue on the wrongness of “conversion therapy”. They target that even non-violent “talk therapy” forms of conversion attempts produce a level of psychological degradation that qualifies as ill-treatment.<sup>8</sup> They focus on how conversion therapy is unlike other therapies. It single outs the LGBTQ+ community in the sense that something needs to be “corrected”, therefore, failing to recognise that every person is equal regardless of their sexual orientation or gender identity. It includes instances wherein some individuals go through “conversion practices” voluntarily, which stems from the fear of being ill-treated. In addition, they shed light on how some individuals, who are part of the community, motivate themselves or others to go through the practice as they believe they are superior to cis-heterosexuals. Trispiotus and Purshouse explain how and why the evil of “conversion therapy” is disrespectful in more than one way.

A Comparative legal research study conducted by Lucas Ramón Mendos with the help of Enrique López de la Peña and Lucía Belén Araque demonstrates that countries adopting

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<sup>5</sup>*ibid.*

<sup>6</sup>National Legal Services Authority (NALSA) v. Union of India is AIR 2014 SC 1863 and (2014) 5 SCC 438

<sup>7</sup>International Rehabilitation Council for Torture Victims (IRCT), It's Torture, Not Therapy: A Global Overview of Conversion Therapy Practices (2020)

<sup>8</sup>Ilias Trispiotis, Craig Purshouse, 'Conversion Therapy' As Degrading Treatment, *Oxford Journal of Legal Studies*, Volume 42, Issue 1, Spring 2022, Pages 104–132

express prohibitions—such as Malta and Canada—saw improvements in reporting, victim support, and judicial clarity because the legal framework recognised the specific nature of the harm.<sup>9</sup> This comparative insight is crucial for India, where conversion practices often occur in familial or community settings that do not neatly fit within the traditional structure of criminal offences like assault or wrongful confinement. It becomes a conundrum for the courts to consider aggravated penalties based on hate crimes and for advocates to prove an animus.

Across this literature, a clear gap emerges: despite growing documentation of coercive conversion practices and identity-targeted sexual violence, India lacks doctrinal engagement linking these harms to its newly enacted criminal code. Existing work highlights the existence of harm but rarely analyses whether BNS 2023 can sustain criminal liability for conversion practices or how its provisions compare with international best practices. This research gap underscores the necessity of a rights-based, comparative, doctrinal study examining how India's criminal-law regime should respond to queer-specific harms that remain unrecognised despite their prevalence.

Malabika Dhar, the associate editor at feminism in India, in her article<sup>10</sup> elaborates on why a ban on conversion therapy is not enough. She mentions the conversion therapy (prohibition) bill, 2022<sup>11</sup> and the lacunae present in the said bill. For instance, the bill gives protection merely in terms of conversion therapy as a medical practice and not essentially the practice itself. In her article, she takes into account several queer individuals who faced the torment of not only having to go under conversion therapy but also of sexual violence—getting stripped in public, coercive coitus, molestation by the so-called healers and whatnot.

The research, published by the BMC Public Health and conducted in 2024<sup>12</sup> by academicians Suraj Pal, Praveen Kumar Pathak, Margubur Rahaman, and Niharika Tripathi, sampled 300 self-identified MSM in six cities in India. The survey showed that 78.7% gay men and 44% bisexual men have faced some sort of violence, be it verbal, physical, or sexual. It further pointed out that out of them, men belonging to rural areas, low-income households, backward

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<sup>9</sup>Lucas Ramón Mendos, *Curbing Deception: A World Survey on Legal Regulation of SoCalled “Conversion Therapies”* (Geneva: ILGA World, 2020).

<sup>10</sup>Malabika Dhar, “The Name Of Faith And Family: The Mental Health Impact Of Conversion Therapy On Queer Individuals In India” *Feminism in India*, Aug. 14, 2025.

<sup>11</sup>Aparupa Poddar, *The Conversion Therapy (Prohibition) Bill, 2022*, Bill No 115 of 2022 (Lok Sabha)

<sup>12</sup>Ashna Bhutani, “High prevalence of sexual violence among gay, bisexual men across six cities: study” *The Hindu*, Nov.11, 2024.

classes, and minorities are more likely to face these evils, and the new law does not effectively protect them.

All of these studies taken together demonstrate that conversion practices and homophobic sexual violence are recognised in India as well as internationally as a form of harm. However, the Indian criminal law shows persistent gaps, from the erstwhile Indian Penal Code, 1860, to the current BNS, 2023.

Across jurisdictions, scholars emphasise the need for a rights-based approach grounded in autonomy, bodily integrity and decisional privacy, cautioning that criminalisation must be accompanied by psychosocial safeguards. The BNS 2023 remains under-examined in existing academic work, leaving uncertainty about whether its broader definitions of harm, aggravated assault and sexual offences adequately capture coercive conversion attempts or queerphobic violence. This gap in scholarship reveals a clear need for focused doctrinal and comparative analysis, situating the BNS within global trends while evaluating its capacity to respond to emerging harms against queer individuals.

### **1.3 Statement of research problem**

Despite significant developments recognising the rights, dignity and autonomy of the LGBTQ+ community, the Bharatiya Nyaya Sanhita (BNS) 2023 fails to adequately address two of the most persistent and detrimental experiences faced by individuals of the community—coercive conversion practices and queer phobic sexual violence. These practices might involve injury in terms of body, mind or reputation. The BNS 2023 treats them only through a generic lens, mitigating the gravity of the offences committed essentially due to motive-based aggravation. Certain developed countries, such as Canada, Germany and New Zealand, have already banned conversion therapy and have strengthened hate-crime provisions under their respective laws. The study aims to examine the gaps, evaluate international frameworks and recommend necessary reforms in Indian criminal law with regard to the current human rights standards.

### **1.4 Objectives of the Research**

This research aims to:

1. Examine the nature, scope, and evolving forms of conversion practices and queer phobic sexual violence in India.

2. Analyse the substantive provisions of the Bharatiya Nyaya Sanhita, 2023.
3. Identify doctrinal and procedural gaps with BNS 2023.
4. Conduct a comparative analysis of jurisdictions that have explicitly criminalised conversion practices.
5. Evaluate how queer phobic sexual violence is currently addressed under BNS 2023.
6. Propose legal and policy recommendations for strengthening India's criminal law response.

### **1.5 Questions of Research**

1. How adequately does the Bharatiya Nyaya Sanhita, 2023, address conversion practices and queerphobic sexual violence within India's criminal law framework?
2. What gaps persist in defining, prosecuting, and preventing conversion practices under BNS despite protections under other Indian statutes?
3. How do queerphobic motives operate within sexual violence cases, and what legal reforms are required for explicit recognition under BNS?
4. How do institutional, procedural, and socio-cultural barriers shape reporting, investigation, and adjudication of queerphobic offences?
5. What comparative insights can be drawn from international jurisdictions to strengthen India's approach to criminal liability for conversion practices?

### **1.6 Research Hypothesis**

Despite the Bharatiya Nyaya Sanhita, 2023, there exists a legal gap in addressing queerphobic sexual violence, and coercive conversion practices.

### **1.7 Research Methodology**

This study adopts a doctrinal and analytical research methodology, focusing on the interpretation of statutory provisions under the Bharatiya Nyaya Sanhita, 2023, and their applicability to conversion practices and queerphobic sexual violence. Doctrinal analysis is

supplemented by a comparative method, drawing from jurisdictions such as Malta, Canada and Germany, where conversion practices have been expressly addressed through criminal and human-rights frameworks. The research also employs a rights-based analytical lens. Secondary sources—including peer-reviewed articles, queer-rights reports, judicial commentary, and international guidelines—provide contextual understanding of coercive practices and identity-based harm. The methodology is entirely qualitative and non-empirical; anecdotal incidents shared by peers are used illustratively, without constituting formal empirical data. All primary and secondary materials are sourced through legal databases, official government portals, and academic repositories to ensure methodological reliability.

### **1.8 Significance of the Topic**

The Grund norm of the country, i.e., the Constitution of India, ensures certain fundamental rights, including, but not limited to, the right to live a life with dignity, equality, and personal liberty, as per Articles 14, 15, and 21. These articles prohibit discrimination and give paramount consideration to autonomy and bodily integrity. Conversion practices and queer phobic sexual violence are an infringement of the above-mentioned fundamental rights. The study of the criminal liability of these societal and criminal evils is significant as it examines whether India's reformed criminal law can address identity-based coercion and harm. These practices cause a power imbalance, which leads to the suppression of sexual orientation and gender identity, furthering long-term psychological, emotional and spiritual trauma. The study aims to highlight the law's potential to respond to emerging and existing harms and to bridge the gap between constitutional principles and criminal law, keeping in view the intersection of law reform, constitutional rights, public health and social justice.

### **1.9 Limitations of the study**

Although the study focuses on the doctrinal aspect, there remain certain limitations. It does not include empirical fieldwork, structured interviews, or crime statistics due to several constraints. There exists no proper classification and quantitative data on the number of individuals who have faced or are currently facing sexual violence solely because of their gender identity or sexual orientation. In addition, the crime categories are devoid of a "conversion practice" classification. The comparative analyses are rather indicative than exhaustive. The research identifies gaps and promotes reforms. However, it cannot predict the exact outcome under the new criminal laws.



To corroborate doctrinal and judicial sources, the study incorporates non-identifiable anecdotes shared by friends and peers who have been victims of conversion attempts or homophobic sexual violence. These incidents demonstrate forms of coercion, intimidation and sexual violence the survivors faced. The sole reason to incorporate these anecdotes is to illustrate how harms manifest in practice. The accounts are used as mere contextual illustrations, not empirical evidence, and are used ethically with complete anonymity.

## **2. CONVERSION PRACTICES AS CRIMINAL HARM**

“Conversion therapy”, also known as “reparative therapy”, is defined by the UN independent expert on sexual orientation and gender identity as “ a therapeutic approach, or any model or individual viewpoint that demonstrates an assumption that any sexual orientation or gender identity is inherently preferable to any other, and which attempts to bring about a change of sexual orientation or gender identity,<sup>13</sup> ” This practice is often called therapy when therapy is supposed to “help” people with their traumas and not harm them. Usually, conversion practices “injure” the mind or the body or both of a person subjected to it. For instance, depression, anxiety, self-harm, active and passive suicidal tendencies and so on. These attempts to change someone’s sexual orientation or gender identity are humiliating, belittling and imply that something is medically wrong with individuals who don’t comply with heteronormative standards. The World Medical Association (WMA) has already made it cogent “that homosexuality does not represent a disease, but a normal variation within the realm of human sexuality.”<sup>14</sup>

### **2.1 Forms of “conversion therapy”**

Conversion practices in India manifest through multi-faceted forms of coercion, which aim at suppressing, curing or altering a person’s gender identity or sexual orientation. These practices constitute severe criminal harm.

#### **2.1.1 Physical Coercion**

Physical coercion involves subjecting an individual to bodily harm forcefully. These practices

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<sup>13</sup>*Supra* note 8.

<sup>14</sup>World Medical Association, “Statement on Natural Variations of Human Sexuality” (2013) World Medical Assembly. Available at: <https://www.wma.net/policies-post/wma-statement-on-natural-variations-of-human-sexuality/> (last visited 4 December 2025).

range from beatings to electroshock therapy (ECT) to administering antipsychotic drugs.<sup>15</sup> It exacerbates the victim's esteem, confidence and makes them lose their sense of reality. Since the victim is subjected to these practices for years, the aftermath of it leads to stomach ulcers, gastrointestinal disorders, skin diseases, sexual and eating disorders, and migraines.<sup>16</sup>

### 2.1.2 Sexual Coercion

To enforce heterosexuality, sexual coercion, also known as “corrective rape”, is often perpetrated by the victim's society. These practices include coercing a person to have sexual intercourse with a person of the opposite gender. Sexual coercion may stem in the form of masturbatory reconditioning,<sup>17</sup> intrusive medical check-ups, or disrobing in public.

### 2.1.3 Psychological Coercion

Psychological coercion is based on emotional blackmail and manipulation. It is used against the individual as a weapon involving guilt, fear and shame. It can appear in the form of threats of expulsion from one's house—parental or rental, forceful religious counselling, shaming them verbally or blackmailing outings.

An anonymised personal account known to the author illustrates this pattern: A lesbian individual in her later teens and early twenties was subjected to physical as well as psychological torment in the name of “counselling” the “disease” of homosexuality out of her. She was threatened that she would be withdrawn from the society of her peers, family and friends. Moreover, she would be banished from going to school and pursuing her senior secondary education. Eventually, she had to leave her hometown. The individual described long-lasting anxiety and was diagnosed with severe depression and post-traumatic stress disorder.<sup>18</sup> Such experiences mirror the harm caused by attempts at conversion practices.

### 2.1.4 Socio-Familial Coercion

The most common type of socio-familial coercion is forcing a person against their will into heterosexual marriage. A classic depiction of this setting is seen in a 2022 film<sup>19</sup> where the

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<sup>15</sup>International Federation of Educators and Guardians (IFEG), “Statement on Conversion Therapy” page 4 (July, 2019).

<sup>16</sup> *Id.* at 5.

<sup>17</sup> *Supra* note 9.

<sup>18</sup> anonymous personal communication with an LGBTQ+ individual, punjab, 2022.

<sup>19</sup> *Badhaai Do*, directed by Harshavardhan Kulkarni (Jungle Pictures, 2022), feature film, accessed on YouTube, <https://www.youtube.com/> (last accessed 3 Dec. 2025)

main characters are forced (indirectly) into a heterosexual marriage, and to evade ruining the lives of six people, they enter into a “lavender marriage”. The concept of lavender marriage is that when two individuals of different genders who are interested in the same sex as themselves come together and marry each other to conform to the norms of heteronormity, while in reality they are with their same-sex partners. This institution includes the consent of all individuals affected by the marriage.

## 2.2 How BNS 2023 provisions (hurt, confinement, assault) inadequately cover these harms

The new Bharatiya Nyaya Sanhita, 2023 retains a chapter from the erstwhile Indian Penal Code, 1860, on Offences Affecting the Human Body. The said chapter contains the provisions that deal with Hurt (sections 114-125),<sup>20</sup> Wrongful restraint/wrongful confinement (sections 126-127),<sup>21</sup> Criminal force and assault (sections 128-136).<sup>22</sup>

### 2.2.1 OF HURT

Conversion therapy involves coercive psychological conditioning, identity erasure, confinement, humiliation and sometimes sexual coercion—harms that the Bharatiya Nyaya Sanhita, 2023 (BNS) provisions on *hurt* and *grievous hurt* cannot adequately capture because they criminalise only “bodily pain, disease or infirmity” and specific physical injuries such as fractures or permanent disability.<sup>23</sup>

The statutory definition ignores the core dignitarian, psychological and identity-based violence inherent in conversion practices, which the Supreme Court has recognised as central to constitutional rights of autonomy and privacy under *Navtej Singh Johar v. Union of India*.<sup>24</sup>

**Section 117(4)**<sup>25</sup> makes it an offence — when **five or more persons** act in concert and cause grievous hurt to someone, **on grounds of “race, caste or community, sex, place of birth,**

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<sup>20</sup>Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 114-125.

<sup>21</sup>Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss.126-127.

<sup>22</sup>Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 128-136.

<sup>23</sup>Bharatiya Nyaya Sanhita, 2023, ss. 114–125 (definitions of hurt and grievous hurt), *India Code*: <https://www.indiacode.nic.in/bitstream/123456789/20062/1/a2023-45.pdf>

<sup>24</sup>*Supra* note 3.

<sup>25</sup>Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 117(4)

**language, personal belief or any other similar ground”** — each of those persons shall be punished (up to 7 years + fine).

While this suggests that BNS recognises harm against a person belonging to a certain “community”, it covers a collective—homophobic or conversion-therapy—violence, meaning the act is conducted by five or more persons. In practice, conversion therapy is often implemented individually. Thus, while “community-based” targeting under s.117(4) may theoretically stretch to queerphobic harm, the absence of explicit recognition of sexual-orientation-based violence, coercive psychiatric interventions, and psychological injury renders the BNS hurt framework insufficient for addressing the full spectrum of conversion-therapy abuse.

### 2.2.2 OF WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT

The punishment of wrongful confinement is given under **Section 127(2)**,<sup>26</sup> which provides that any person who wrongfully confines—prevents a person from proceeding beyond circumscribing limits, another shall be punished with imprisonment of either description for a term which may extend to five thousand rupees, or with both.

This makes serious queer-phobic sexual violence or conversion practices potentially subject to only light punishments, thereby reducing deterrence and failing to reflect the gravity and dignity-related harms involved.

### 2.2.3 CRIMINAL FORCE AND ASSAULT

Conversion therapy often involves humiliating rituals, forced prayers, threatening gestures, intimidation by religious leaders, administering medications without consent, or compelling victims to undergo “counselling” sessions—acts that degrade dignity yet may not qualify as “force” under the BNS, as courts have historically demanded tangible physical contact or an attempt thereof.<sup>27</sup> The familial and institutional context further weakens prosecution because actions by parents, doctors, or counsellors are framed as “care,” complicating the establishment of *mens rea* to cause fear or harm.

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<sup>26</sup> Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 127(2).

<sup>27</sup> *Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Anr.*, (1995) 6 SCC 194.

Indian courts have recognised that queer persons face coercive threats, intimidation, and degrading treatment in the name of “conversion,” yet case laws such as *S. Sushma v. Commissioner of Police*<sup>28</sup> illustrate that courts use constitutional protections rather than penal assault provisions—highlighting a statutory gap where identity-targeted intimidation and psychological violence fall outside the BNS assault framework. And therefore, even though BNS 2023 defines assault and criminal force under sections 128-130<sup>29</sup>, these provisions remain insufficient vis-à-vis the violence encountered due to conversion therapy.

### 2.3 Indian case studies

In the case of *S. Sushma v. Commissioner of police*,<sup>30</sup> the Madras High Court delivered a landmark judgment on banning “conversion therapy” conducted by medical practitioners as an attempt to “cure” queer persons' sexual orientation or gender identity. In this case, a lesbian couple moved the court as their parents had filed a missing person report, in the pretext of which the police traced them down and harassed them. The judgment reiterates the Constitutional guarantees of freedom of sexual orientation and freedom of gender identity and puts the same into practice<sup>31</sup>.

X and Y were living with each other in Ernakulam from January 2023 after a Malappuram Magistrate Court issued an order in their favour. In May 2023, X was allegedly forcefully taken away from her workplace by her family. She let Y know via texts that she was being subjected to several medications and torture by her family and the hospital.<sup>32</sup> In 2022, the National Medical Commission (NMC) deemed conversion therapy as a professional misconduct, yet some medical practitioners continue to indulge in so-called “conversion therapies”.

In 2021, 21-year-old Anjana Harish, an openly queer person, committed suicide.<sup>33</sup> Anjana went through at a de-addiction and mental health centre in Palakkad, where she was admitted for ‘conversion therapy’. The torment was so excruciating that she had to take her life to be at

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<sup>28</sup>*Supra* note 1.

<sup>29</sup>Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), ss. 128-130.

<sup>30</sup>*Supra* note 1.

<sup>31</sup>*Ibid.*

<sup>32</sup>Azeefa Fathima, “Kerala lesbian couple move HC seeking action against hospital for ‘conversion therapy’,” *The News Minute*, 23 March 2024, <https://www.thenewsminute.com/kerala/kerala-lesbian-couple-move-hc-seeking-action-against-hospital-for-conversion-therapy>.

<sup>33</sup>Deena Theresa, “Unscientific and illegal, yet conversion therapy rampant,” *The New Indian Express*, 16 October 2020, <https://www.newindianexpress.com/cities/kochi/2020/oct/16/unscientific-and-illegal-yet-conversion-therapy-rampant-2210730.html>.

peace finally.

## 2.4 CONCLUSION

The foregoing analysis demonstrates that conversion therapy inflicts a spectrum of physical, psychological, and dignitary harms that extend far beyond the narrow injury categories contemplated under the *Bharatiya Nyaya Sanhita, 2023*. Survivors consistently report severe trauma, coercion, and identity-erasure, and in several documented cases, the cumulative violence of such practices has precipitated suicidal ideation and self-harm. The true prevalence of these abuses remains obscured by stigma, familial control, and societal pressure to conceal any deviation from heteronormative expectations—conditions that ensure severe under-reporting. While the National Medical Commission’s prohibition on conversion therapy and progressive High Court interventions mark important constitutional recognition of the problem, the absence of a comprehensive statutory offence leaves large domains of harm—particularly those perpetrated by families, religious authorities, and unregulated counsellors—beyond the effective reach of criminal law. A rights-centred legal framework must therefore move beyond piecemeal administrative measures and explicitly address identity-based coercion, psychological violence, and non-consensual “treatment” practices as distinct and punishable offences. Only then can the law reflect the gravity of the harm, affirm queer autonomy, and respond to the structural conditions that make conversion therapy both possible and invisible.

## 3. QUEERPHOBIC SEXUAL VIOLENCE AND MOTIVE

Queerphobic sexual violence constitutes a distinct and deeply insidious category of harm that operates at the intersection of sexual coercion and identity-based persecution. Unlike general sexual offences, these acts are driven by a specific motive: the belief that non-heteronormative identities are deviant, curable, or punishable. This animus shapes practices such as “corrective rape,” sexualised punishments within families, coercive sexualised rituals in religious or pseudo-therapeutic settings, and forced exposure to heterosexual acts—all intended to discipline, suppress, or “convert” queer individuals. The ideological motive behind such violence distinguishes it from conventional sexual offences: it is designed not merely to violate bodily integrity but to eradicate queer identity, autonomy, and selfhood. In this sense, queerphobic sexual violence reflects both the structural prejudices of society and the limitations of existing criminal-law frameworks, which rarely account for motive grounded in sexual-orientation-based hatred or corrective intent.

### 3.1 CONCEPT OF MOTIVE-DRIVEN OFFENCES IN CRIMINAL LAW

In criminal law, a *motive-driven offence* refers to conduct where the underlying reason or animus behind the act forms a critical aspect of how the harm is understood, punished, and situated within broader social structures. While *mens rea* determines the mental state with which the act is carried out, motive explains why the offender formed that intent, making it especially relevant in contexts involving identity-based hostility or “corrective” violence.

When a crime is driven by a particular motive, it is seen that the perpetrator selects the victim because of his or her membership in a group; this suggests that one member of such a group is interchangeable with any other.<sup>34</sup> The point is that the criminal act is not merely an attack on an individual but an assault on a *group identity* and the autonomy of the victim, resulting in broader social harm. The individuals are put through the violence not because of who they are but because of what they represent—the community.

### 3.2 LACK OF HATE CRIME OR MOTIVE-BASED AGGRAVATION UNDER BNS 2023

The common law doctrine of “*actus non facit reum nisi mens sit rea*”, which means that an act done without a guilty intent does not make a man guilty, has no application to statutory crimes in India, as every section of the erstwhile IPC and current BNS contains the requisite *mens rea*, and the rest are cases of strict liability.<sup>35</sup> However, there is no explicit provision treating discriminatory motive as an aggravating factor for sentencing.

Indian courts have acknowledged that identity-based violence results in distinct harms, as seen in the cases of scheduled tribes and castes or cases with an ideological purpose and aggravations based on vulnerability. These are covered under the scheduled castes and scheduled tribes (Prevention of Atrocities) Act, Unlawful Activities (Prevention) Act, and POCSO, respectively. Thus, queer persons remain one of the vulnerable groups with no enhanced protection.

### 3.3 IMPLICATIONS FOR SENTENCING, DETERRENCE AND REPORTING

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<sup>34</sup>Organisation for Security and Co-operation in Europe (OSCE), *Hate Crime Laws: A Practical Guide* (Revised ed. 2022)

<sup>35</sup>State of Maharashtra v. M.H. George, AIR 1965 SC 722, 1965 SCR (1) 123.

### 3.3.1 SENTENCING IMPLICATIONS

The absence of a hate crime or motive-based aggravation framework under the Bharatiya Nyaya Sanhita, 2023, directly erases the heightened harm associated with queerphobic offences during sentencing. Courts are compelled to treat identity-targeted harms—such as corrective rape, forced confinement for conversion therapy, and queerphobic assault—as equivalent to motive-neutral offences of hurt or wrongful restraint, depriving judges of statutory authority to recognise the enhanced psychological and symbolic injury characteristic of bias-motivated crimes.

### 3.3.2 DETERRENCE IMPLICATIONS

Enhanced punishment serves a critical signalling function—detering offenders by communicating that identity-targeted harm attracts higher moral and legal condemnation—but the BNS omits this possibility, enabling families, religious actors, and practitioners of conversion therapy to operate with minimal fear of criminal consequences.

International hate-crime standards highlight that motive-based aggravations strengthen general deterrence by marking such conduct as particularly egregious, a principle reaffirmed by bodies such as the Organisation for Security and Co-operation in Europe – Office for Democratic Institutions and Human Rights (OSCE-ODIHR) and United Nations Office of the High Commissioner for Human Rights (UN OHCHR).

### 3.3.3 REPORTING AND CLASSIFICATION IMPLICATIONS

In robust hate-crime systems, police are required to identify bias indicators and record suspected motive at the FIR stage, but India has no such procedural requirement, leading to chronic under-classification of identity-based harms and their disappearance into generic categories like hurt, sexual assault, or criminal intimidation.

Empirical studies by the Humsafar Trust and international research on queer violence show that victims often avoid reporting due to fear of police hostility, minimisation, or moral judgement, all of which are exacerbated when the law lacks explicit recognition of bias motive.<sup>36</sup>

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<sup>36</sup>Humsafar Trust, Research and Publications (2023) available at <https://humsafar.org/>



### 3.4 QUEERPHOBIC SEXUAL VIOLENCE AND CASES

Queerphobic sexual violence in India remains widely underreported due to stigma, fear of retaliation, and systemic non-recognition within the criminal justice process. Empirical studies show that LGBTQIA+ persons face targeted sexual assault as a means of “corrective” punishment, coercive conformity, or familial control, particularly against queer women and transgender persons.

The 2018 judgment in *Nipun Saxena v. Union of India*<sup>37</sup> recognised that male, transgender, and non-binary survivors require equal protection and privacy safeguards, marking a jurisprudential shift away from a cis-female-only framework.

In *NALSA v. Union of India*,<sup>38</sup> the Supreme Court acknowledged the structural violence faced by transgender persons, forming the foundation for later recognition that sexual violence against queer bodies is rooted in systemic discrimination.

Although BNS 2023 retains gendered definitions of rape, courts such as the Madras High Court have affirmed that harassment, coercion and threats against queer couples constitute actionable violations within Indian criminal law.<sup>39</sup>

### 3.5 CONCLUSION

The persistence of non-gender-neutral rape laws under BNS 2023 undermines protection for many victims, especially men, transgender and non-binary persons, because the offence remains defined in strictly gendered terms — that a “man” rapes a “woman.” Under BNS S. 63 (rape) and S. 64 (punishment), only a male can be accused, and only a female can be the statutorily recognised victim.<sup>40</sup> This exclusion means that non-female survivors of non-consensual sexual violence — including transgender persons, men in queer relationships, or inter-sex persons — have no recourse under the rape provision at all.<sup>41</sup> As a result, many survivors of queerphobic sexual violence and corrective rape are forced to rely on weaker and

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<sup>37</sup>*Nipun Saxena v. Union of India*, (2019) 2 SCC 703.

<sup>38</sup>*Supra* note 4.

<sup>39</sup>*Supra* note 1.

<sup>40</sup>Dhruv Bhanushali & Lekisha Daga, “Rape Laws in India: Gender Neutral?”, *Indian Journal of Legal Review*, 3(1) (2023), 49–54

<sup>41</sup>Project 39A, “Criminal Law Bills 2023 Decoded #2: Concerns with the Proposed Landscape of Sexual Offences in BNS 2023,” *P39A Criminal Law Blog*, 16 September 2023, <https://p39ablog.com/2023/09/criminal-law-bills-2023-decoded-2-concerns-with-the-proposed-landscape-of-sexual-offences-in-bns-2023/>

less appropriate charges.

#### 4. INTERNATIONAL LEGAL PERSPECTIVES

The Bharatiya Nyaya Sanhita, 2023 (BNS) — projected as a modernized successor to the colonial penal code — reconfigures several offence categories but remains largely silent on two urgent contemporary concerns: *conversion practices* aimed at altering sexuality or gender identity, and *queerphobic sexual violence*, including violence motivated by homophobia, transphobia, or enforcement of heteronormative norms. While the BNS reorganises and rephrases sexual-offence provisions, it continues to rely on gender-specific formulations. It omits explicit recognition of sexual-orientation or gender-identity-based bias as an aggravating factor.

Globally, jurisdictions have introduced targeted statutory prohibitions on conversion practices, paired with victim-centred protections and regulatory sanctions. These developments reflect an emerging consensus that conversion efforts constitute degrading and harmful treatment, often rising to the level of cruel, inhuman, or degrading treatment under international law.

##### 4.1 RELEVANT INTERNATIONAL/RIGHTS-BASED STANDARDS AND COMPARATIVE NORMS

Core international principles and recommendations that bear directly on criminal liability and state obligations:

##### 4.1.1 THE YOGYAKARTA PRINCIPLES

In 2006, in response to well-documented patterns of abuse, a distinguished group of international human rights experts met in Yogyakarta, Indonesia, to outline a set of global principles relating to sexual orientation and gender identity. The result was the Yogyakarta Principles: a universal guide to human rights which affirms binding international legal standards with which all States must comply.<sup>42</sup> These principles recommend protection from violence, equal treatment before the law, and that states treat SOGIE-motivated violence as distinct and often aggravated.

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<sup>42</sup>Yogyakarta Principles, Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007), available at: <https://yogyakartaprinciples.org/>

#### 4.1.2 UN INDEPENDENT EXPERT / OHCHR

Multiple reports call for the prohibition of conversion practices (including the recommendation for states to ban conversion practices in law), the inclusion of SOGIE as a protected ground in hate-crime frameworks, and better data, investigation and victim-centred remedies. The Independent Expert's 2018–2021 reporting explicitly links conversion practices to serious rights violations and recommends legal prohibitions.<sup>43</sup> The United Nations Independent Expert on protection against violence and discrimination based on Sexual Orientation and Gender Identity (IESOGI)<sup>44</sup> has called for a global ban on practices of “conversion therapy” ever since 2020.

#### 4.1.3 HUMAN-RIGHTS ORGANISATIONS SUCH AS CAT

Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) defines torture as an act by which severe pain or suffering is caused to another intentionally on any basis, including for ‘discrimination of any kind’<sup>45</sup>. While some forms of sexual violence may amount to ‘other cruel, inhuman or degrading treatment or punishment’ (“ill-treatment”) rather than torture, violations based on sexual orientation or gender identity amount to torture where they carry all elements of this crime and therefore should not be reduced to ill-treatment.<sup>46</sup>

### 4.2 COMPARATIVE CRIMINAL-LAW REFORMS

Comparative criminal-law reforms show a clear global trend toward prohibiting conversion practices and recognising queer-targeted violence as aggravated harm.

#### 4.2.1 MALTA

Malta's 2016 law helps demonstrate a public-health-plus-criminal-law hybrid approach. By banning both professional and non-professional conversion practices and regulating claims of

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<sup>43</sup>Human Rights Council, United Nations General Assembly, “Report of the Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity,” 38th Session, 18 June–6 July 2018, Agenda Item 3.

<sup>44</sup>Independent Expert on Protection against Violence and Discrimination based on Sexual Orientation and Gender Identity (IESOGI), “Conversion Therapy: Practices, Impacts and Global Human Rights Responses,” May 1, 2020.

<sup>45</sup>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, art. 1.

<sup>46</sup>United Nations Human Rights Council, “Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” (5 January 2016), UN Doc A/HRC/31/57, para. 8.

“treatment,” it treats conversion practices as a form of consumer fraud and psychological harm, not merely assault.<sup>47</sup> This offers India a model for integrating penal sanctions with professional discipline and misinformation control.

#### 4.2.2 CANADA

Canada’s Bill C-4 is instructive because it adopts a *comprehensive criminal model* that prohibits not only performing conversion practices but also promoting, advertising, profiting from, or transporting minors abroad for such practices.<sup>48</sup> This wide regulatory net demonstrates to India that effective bans must prevent the displacement of conversion practices into informal or religious spaces by criminalising the broader enabling ecosystem.

#### 4.2.3 GERMANY

Germany’s 2020 Act is helpful because it demonstrates a graduated regulatory model. It focuses criminal penalties on cases involving minors, coercion, or deceit, while also banning advertising.<sup>49</sup> This shows India that bans can be tailored with varying thresholds of criminal liability, allowing a calibrated response that balances autonomy with protection from psychological harm.

#### 4.2.4 OTHER JURISDICTIONS

Other jurisdictions such as New Zealand (2022),<sup>50</sup> France (2022),<sup>51</sup> and Victoria, Australia (2021)<sup>52</sup> take a more holistic, victim-centred approach, combining criminal prohibitions with counselling, civil remedies, trauma-sensitive reporting, and institutional support measures. These models illustrate that criminal law must be accompanied by support services and affirmative protections, which remain absent in the BNS 2023.

Collectively, these legislative models highlight essential elements India lacks: clear statutory definitions, liability for advertising and profit, explicit protections for minors, recognition of

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<sup>47</sup>Malta, Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act, 2016

<sup>48</sup>Canada, Bill C-4, *An Act to Amend the Criminal Code (Conversion Therapy)* (2021), available at: [https://www.justice.gc.ca/eng/csj-sjc/pl/charte-charte/c4\\_1.html](https://www.justice.gc.ca/eng/csj-sjc/pl/charte-charte/c4_1.html)

<sup>49</sup>Germany, Act to Protect against Conversion Treatments (Gesetz zum Schutz vor Konversionsbehandlungen) (2020).

<sup>50</sup>New Zealand, *Conversion Practices Prohibition Legislation Act* (2022).

<sup>51</sup>France, *Law No. 2022-92 to Ban Conversion Therapy* (2022).

<sup>52</sup>Victoria (Australia), *Change or Suppression (Conversion) Practices Prohibition Act*, 2021.

coercion or SOGI-bias as aggravation, and integrated support services. They show that effective state responses must be explicitly queer-inclusive, multi-layered, and attentive to the discriminatory motives underpinning queerphobic sexual violence.

#### **4.3 GAP ANALYSIS— WHERE BNS FALLS SHORT (RIGHTS-BASED PROBLEMS)**

##### **4.3.1 NO EXPLICIT CRIMINAL PROHIBITION OF CONVERSION PRACTICES**

International guidance, such as IESOGI, Yogyakarta +10, et cetera, recommends banning conversion practices. BNS, currently, does not make it an offence to leave the survivors with weak claims under general assault/medical-regulation only.

##### **4.3.2 SEXUAL-OFFENCE ARCHITECTURE REMAINS GENDERED AND MAY MISS QUEER VICTIMS AND CONTEXTS**

BNS formulations in the sexual-offence chapters still proceed on a framework of “offences against women and children”<sup>53</sup> that risks excluding or under-protecting queer men, trans and non-binary people who face sexual violence motivated by homophobia/transphobia.

##### **4.3.3 NO EXPLICIT RECOGNITION OF SOGI-BIAS AS AN AGGRAVATING FACTOR**

International guidance<sup>54</sup> urges governments to recognise bias-motivation (SOGI-hate) as an aggravating factor for sentencing and to collect data on such crimes. BNS does not appear to include SOGI-based aggravation or mandatory data/reporting mechanisms. Absence of these measures weakens deterrence and reduces visibility of queerphobic violence.

##### **4.3.4 INSUFFICIENT SPECIAL MEASURES FOR VICTIMS (ACCESS, CONFIDENTIALITY, TRAUMA-INFORMED APPROACH)**

International practice recommends victim-centred investigation protocols, protections for reporting persons (including asylum/relocation where necessary), and a prohibition on “rehabilitation” measures that re-victimise.

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<sup>53</sup>Bharatiya Nyaya Sanhita, 2023, Chapter V — “Of Offences Against Woman and Child” (Sections 63–99).

<sup>54</sup>Office of the United Nations High Commissioner for Human Rights (OHCHR), “*Born Free and Equal: Sexual Orientation and Gender Identity in International Human Rights Law*” (2023).

#### 4.3.5 RISK OF MEDICAL/REGULATORY FRAGMENTATION

Because conversion practices are often carried out by non-medical actors (religious counsellors, clergy, unlicensed “therapists”), relying solely on professional regulation may leave gaps. International best practice favours criminal prohibitions that cover both medical and non-medical actors, plus advertising/profit,<sup>55</sup> BNS offers no such tailored offence.

#### 4.4 CONCLUSION

Measured against contemporary international standards, the Bharatiya Nyaya Sanhita, 2023, falls short of global expectations concerning both conversion practices and queerphobic sexual violence. International bodies—including the OHCHR, the UN Independent Expert on SOGI, and regional mechanisms—identify queerphobic sexual violence as a distinct form of bias-motivated harm requiring heightened protection, aggravated sentencing, and systematic reporting. These bodies also emphasise that States must criminalise all forms of conversion practices, regulate both medical and non-medical actors, prohibit advertising and profit-making, and treat SOGI-based bias as an aggravating factor in all relevant offences, particularly sexual offences where stigma and power asymmetries intensify vulnerability.

### 5. IMPLICATIONS AND CHALLENGES

The Bharatiya Nyaya Sanhita, 2023, marks a transformative shift by introducing gender-neutral sexual offence provisions, theoretically extending protection to all persons regardless of gender or sexual orientation. Yet, the lived realities of queer survivors of sexual violence and conversion practices reveal persistent gaps. Legal reform alone cannot safeguard victims if social stigma, institutional biases, and practical limitations remain unaddressed. Research and policy analysis in this area must therefore account for both the structural dimensions of law and the human experiences of those affected.

#### 5.1 PRACTICAL CHALLENGES: POLICING, INVESTIGATION & SURVIVOR IDENTIFICATION

##### 5.1.1 REPORTING BARRIERS

Survivors often face fear of moral judgment, social ostracisation, or misidentification as

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<sup>55</sup>UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, *Report on Practices of So-Called “Conversion Therapy”*, UN Doc A/HRC/44/53 (2020).

perpetrators. LGBTQIA+ individuals may avoid approaching law enforcement entirely, increasing the invisibility of queerphobic sexual violence.<sup>56</sup>

### **5.1.2 FORENSIC AND MEDICAL LIMITATIONS**

Medico-legal protocols, rape kits, and clinical guidelines are primarily female-centered. There is inadequate guidance for injuries resulting from anal, oral, or non-penetrative assault, leaving survivors without adequate medical or legal documentation.

### **5.1.3 COERCIVE PRACTICES AND “CONVERSION THERAPY”**

BNS does not explicitly criminalise coercive conversion practices. Survivors may encounter institutional inertia when reporting abuse by non-medical actors, such as religious counsellors, family members, or unlicensed therapists.<sup>57</sup>

## **5.2 SOCIO-CULTURAL IMPLICATIONS**

Queerphobic sexual violence and coercive conversion practices occur within deeply patriarchal, heteronormative, and cisnormative social structures. Recognising sexual offences against all genders challenges existing cultural norms and may provoke social denial, resistance, or backlash.

### **5.2.1 SECONDARY VICTIMISATION**

Survivors face homophobia, transphobia, family rejection, or character assassination, compounding the trauma of the original abuse.<sup>58</sup>

### **5.2.2 INTERSECTIONAL VULNERABILITIES**

Queer individuals belonging to marginalised communities—such as low-income, caste-minority, or disabled persons—experience compounded risks,<sup>59</sup> often facing barriers to justice and support.

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<sup>56</sup>UN Independent Expert on SOGI, Report on Practices of So-Called “Conversion Therapy”, UN Doc A/HRC/44/53 (2020).

<sup>57</sup>Humsafar Trust, *Research and Publications* (2023), available at: <https://humsafar.org/research-publications/>

<sup>58</sup>UN Human Rights Council, Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity, UN Doc A/HRC/19/41 (2011).

<sup>59</sup>*Supra* note 8.

## **5.3 RESEARCH CHALLENGES**

### **5.3.1 DATA SCARCITY**

Social stigma and underreporting limit empirical research, making the true extent of queerphobic sexual violence difficult to measure.

### **5.3.2 DOCTRINAL COMPLEXITY**

Gender-neutral provisions, the deletion of Section 377, and the lack of explicit conversion-practice offences create ambiguity for legal analysis.

## **CONCLUSION**

The Bharatiya Nyaya Sanhita, 2023, represents a significant legal step toward modernising India's criminal justice framework, introducing gender-neutral sexual offence provisions and broader recognition of coercive conduct. Yet, as this analysis demonstrates, the law remains incomplete in addressing the unique vulnerabilities of queer communities. Conversion practices continue to operate in grey areas, queerphobic sexual violence lacks explicit aggravation measures, and institutional procedures are ill-equipped to handle the social, psychological, and digital dimensions of these harms.

Comparative and international perspectives reveal that effective legal protection requires more than declarative gender neutrality. Jurisdictions such as Canada, Malta, and New Zealand criminalize conversion practices explicitly, recognise SOGI-based bias as an aggravating factor, and implement systematic reporting, data collection, and survivor-centred procedural safeguards. Harmonising BNS with existing Indian statutes — including the Mental Healthcare Act, 2017, the Transgender Persons (Protection of Rights) Act, 2019, and the Juvenile Justice Act — would strengthen coherence and reinforce legal protections for marginalised queer populations.

Furthermore, addressing institutional and procedural gaps is critical. Law enforcement sensitization, trauma-informed forensic protocols, judicial awareness, accessible legal aid, and digital evidence frameworks are essential to ensure that survivors' experiences translate into justice rather than further marginalization. Public awareness campaigns, policy reforms, and multi-agency coordination can complement statutory reforms, fostering social recognition of



queerphobic violence and challenging coercive norms.

Ultimately, this study underscores that criminal liability for conversion practices and queerphobic sexual violence cannot be realized through legislation alone. Effective protection demands a holistic approach, integrating legal reform, procedural safeguards, institutional capacity-building, and societal awareness. Re-evaluating BNS provisions through a comparative, rights-based lens offers a path toward a justice system that truly affirms the dignity, autonomy, and equality of all individuals, regardless of sexual orientation or gender identity.

## **6. RECOMMENDATIONS FOR LEGAL REFORMS**

The growing international consensus on protecting sexual and gender minorities has triggered a global re-evaluation of criminal-law responses to practices rooted in heteronormative coercion, including conversion practices and queerphobic sexual violence. International human rights bodies increasingly characterise these harms as violations of dignity, bodily autonomy, and equality, requiring states to harmonise their domestic criminal frameworks with evolving standards on non-discrimination and affirmative protection. The Bharatiya Nyaya Sanhita, 2023—though representing a major structural reform of Indian criminal law—reveals gaps when assessed against these international benchmarks, particularly in its lack of a tailored offence for conversion practices and its failure to recognise queerphobic sexual violence or SOGI-based bias as aggravating factors. A comparative and rights-based analysis, therefore, becomes essential to understand how Indian law may converge with global norms and ensure substantive protection for queer communities.

### **6.1 NEED FOR RE-EVALUATION OF BNS PROVISIONS ON BIAS-MOTIVATED VIOLENCE**

A re-evaluation of the BNS 2023 is necessary because its current structure does not explicitly recognise bias-motivated violence, including queerphobic and transphobic harms, as aggravated or distinct forms of criminal wrongdoing. Although the BNS adopts a modernised framework, it remains largely silent on the role of discriminatory motive in shaping the severity, impact, and social meaning of violence targeted at queer communities. Without statutory recognition of SOGI-based bias, crimes rooted in hostility, “corrective” intent, or social stigma continue to be processed as generic assaults or sexual offences, obscuring the

identity-based nature of the harm. International practice demonstrates that bias-motivation clauses strengthen deterrence, improve reporting and documentation, and acknowledge the heightened vulnerability of marginalised groups. A systematic re-examination of the BNS through this lens would enable harmonisation with contemporary protections and ensure that the law reflects the specific gravity and structural nature of queerphobic sexual and physical violence.

## 6.2 EXPANSION OF SEXUAL-OFFENCE PROVISIONS

With the deletion of the old “unnatural sex” offence (from former Section 377 IPC), there remains uncertainty whether non-consensual sex against men, trans, or queer persons is adequately covered under BNS. Some legal commentators have argued that certain sexual-offence sections still presume women as victims, leaving male or transgender victims in legal limbo.<sup>60</sup>

A reform could involve drafting gender-neutral consent-based sexual-offence provisions (i.e., “whoever engages in non-consensual penetrative or non-penetrative sexual act with any person, without valid consent, is liable”), removing presumptions about victim/perpetrator gender.

## 6.3 ESTABLISHMENT OF MANDATORY DATA-COLLECTION AND REPORTING REQUIREMENTS

There is no mechanism within BNS mandating that police, prosecutors or courts record or report crimes involving queerphobic violence or conversion therapy. This lack of data perpetuates invisibility, under-reporting and impedes policy responses.

A reform could require all FIRs, charge-sheets and judgments involving sexual violence or alleged conversion practices to indicate — where relevant — the victim’s sexual orientation/gender identity, bias-motive, and other SOGI-relevant data (with appropriate consent/confidentiality safeguards). An annual public report on trends could aid transparency and inform further reforms.

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<sup>60</sup>“Section 377 is gone, but some fear the proposed Bharatiya Nyaya Sanhita, 2023 does not protect men against rape. This is why,” *The Indian Express*, 13 August 2023.

## 6.4 INCORPORATING SURVIVOR-CENTERED PROCEDURAL PROTECTIONS

Survivor-centred protections might include: confidentiality for queer survivors, trauma-informed investigation, legal aid, support for relocation or safe shelter when risk of further violence or conversion coercion is high, and access to queer-competent psychosocial services.

## 6.5 CRIMINALISING ADVERTISING, PROMOTION AND PROFIT-MAKING

Penalising promotion of “cure,” “treatment,” or “rehabilitation” services and prohibiting running conversion-therapy centres or monetising such practices will address a commercial vacuum in the BNS, which currently allows profiteering without liability.

## 6.6 HARMONISATION OF BNS WITH OTHER EXISTING STATUTES

6.6.1 The Mental Healthcare Act, 2017, expressly rejects the pathologisation of sexual orientation and gender identity,<sup>61</sup> which should help guide the interpretation of any BNS provision dealing with “conversion practices” or bias-motivated harms.

6.6.2 Similarly, the Transgender Persons (Protection of Rights) Act, 2019, establishes a statutory guarantee of dignity, bodily autonomy, and freedom from discrimination for transgender persons,<sup>62</sup> making it imperative that BNS offences reflect these protections rather than reproduce gender-binary assumptions.

6.6.3 The Juvenile Justice (Care and Protection of Children) Act, 2015 already recognises heightened vulnerabilities of minors to manipulation and coercion,<sup>63</sup> which should inform BNS treatment of forced “conversion” of queer minors or family-based pressure.

## 6.7 POLICY AND AWARENESS STRATEGIES

Legal reform addressing conversion practices and queerphobic sexual violence cannot operate in isolation; it must be complemented by policy initiatives and awareness strategies that sensitise institutions, professionals, and the broader society.

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<sup>61</sup>The Mental Healthcare Act, 2017, No. 10 of 2017, s. 18(2).

<sup>62</sup>The Transgender Persons (Protection of Rights) Act, 2019, No. 40 of 2019, ss. 3,4.

<sup>63</sup>The Juvenile Justice (Care and Protection of Children) Act, 2015, No. 2 of 2016, ss. 23–25.

### **6.7.1 INSTITUTIONAL SENSITISATION**

Even with legal reforms, a lack of training can leave enforcement gaps. Awareness programs for police, judiciary, and medical/mental health professionals can improve recognition and response to queerphobic violence and conversion practices.

### **6.7.2 PUBLIC EDUCATION**

Campaigns targeting schools, colleges, and communities can challenge stereotypes and inform citizens about the harmful and unlawful nature of conversion practices.

### **6.7.3 PERIODIC LEGAL REVIEW**

Introducing a mechanism for re-evaluating BNS provisions ensures the law stays aligned with international human-rights standards and evolving social realities.

### **6.7.4 MEDIA AND ONLINE REGULATION AWARENESS**

Public campaigns targeting advertisements, social media promotions, and online platforms to discourage promotion of conversion practices and spread awareness of legal consequences.

### **6.7.4 COLLABORATION WITH INTERNATIONAL AGENCIES**

Engaging with UN agencies, OHCHR, and regional human-rights bodies for training modules, research collaboration, and guidance on best practices in preventing bias-motivated violence.

## **6.8 CONCLUSION**

A re-evaluation of the BNS 2023 — through the lens of these reform proposals — would address critical structural gaps that currently leave queer persons vulnerable to unaddressed violence, coercion, and rights-violations. Rather than prescribing an exhaustive “shopping list,” these suggestions aim to prompt legislative and policy deliberation, opening space for inclusive, rights-based criminal law reform. Embedding reforms such as conversion-practice prohibitions, gender-neutral sexual-offence definitions, bias-motivation aggravation, data-collection, and periodic review would move India closer to legal coherence and equality for all, irrespective of sexual orientation or gender identity.

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