



Review Article

Transgender marriage in India: A critical analysis of the legal, social and religious scenarios

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Abstract

The liminal existence of the transgender community has always been an unresolved issue in most countries where discrimination and exclusion from society are high. Despite ongoing efforts towards inclusivity, transgender individuals continue to face significant challenges, particularly in finding acceptance for their marriages amidst the existing legal, religious, and social contexts in their respective societies. This research paper focuses on highlighting one such challenge faced by transgenders in India in finding acceptance for their marriages amidst the existing legal, religious, and social situations in the country. Through an extensive review of literature and content analysis, the findings of the research suggest that the social stigma attached to transgender marriage, lack of legal recognition, lack of awareness of discriminatory marginality, and traditionality enforced by the religious institutions in society cause consequences to the marriage among the transgender community. Besides, the lack of family support, economic instability, and the challenges from intersectional streams make the situation worse. However, as the significance and relevance of inclusiveness and equality in society is a major concern of the present decade, empowerment and representation of the transgender community, regardless of their population strength, could help in achieving their requirements in society.

Keywords:

Liminality, Marriage, Same-sex marriage, Sexuality, Transgender

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Introduction

The transgender community has always been at the forefront of social and political conversations globally for many reasons associated with the cause of being victimised due to gender discrimination and exclusion from society. The yet unresolved issues around the world, despite efforts for significant changes, continue to have conflicts with the ideological standpoints of the diverse cultural,

legal, religious, and social institutions. The perception of transgender individuals varies across cultures and societies. In some societies, they are viewed positively, while in others, they are stigmatised and discriminated against. In many countries, transgender individuals face legal challenges, including the lack of legal recognition of their gender identity, limited access to healthcare and other services, and discrimination in employment, education, and housing. The lack of legal recognition of their gender identity also affects their ability to marry and have families. Transgender individuals also face physical violence and hate crimes globally. According to the Trans Murder Monitoring Project ^[1], which tracks transgender murders globally, there were 375 transgender murders reported between October 2020 and September 2021. Among them, 96% were trans women or femmes. This indicates the severity of the situation for transgender individuals globally. Research has shown that transgender women, who identify as women but were assigned male at birth, often experience significant discrimination and marginalisation in the workplace. This discrimination can manifest in various ways, including lower pay, lack of job security, and fewer job opportunities. As a result, transgender women often face greater barriers to obtaining and maintaining employment than non-binary transgender individuals and transgender men. On the other hand, non-binary transgender individuals who do not exclusively identify as male or female and transgender men, who identify as male but were assigned female at birth, tend to experience similar outcomes in terms of employment experiences. While they may still face discrimination and marginalisation in the workplace, they may not experience the same degree of systemic discrimination as transgender women. ^[2] Despite these challenges, the transgender community has been actively working towards improving its situation globally. They have been advocating for legal recognition of their gender identity, inclusion

in healthcare and other services, and challenging societal norms that perpetuate stigma and discrimination.

On historical accounts, the transgender community in India has been associated with religious and cultural practices. They were often seen as spiritual or mystical beings, and their blessings were considered auspicious. However, with the advent of British colonialism in India, the perception of the transgender community changed. The Criminal Tribes Act of 1871, enacted by the British in India, criminalised transgenders, and the imprisonment could be for up to two years if they dressed as a woman in public. ^[3] Although it was repealed later, the changed perspective remained the same. On September 2018, the Supreme Court of India ruled that Section 377 of the Indian Penal Code (1860) remains unconstitutional and suggested to read down as it penalises consensual sexual activity between two adults. Colonisation and the imposition of Victorian morality continued to have an impact until a revision was ruled. ^[4] However, with such efforts, the annulment of Article 377 is ensured and legally permissible for consensual intercourse for LGBTQ+ people. ^[5] Under such prevailing circumstances of the non-binary communities in various countries, the identity is always in question as it is being continuously equated with the majoritarian binary population.

The research objective of this study is to examine the challenges and struggles faced by the transgender community in India with respect to their marriages. It explores the legal, religious, and social obstacles that transgender individuals encounter in gaining acceptance for their marriages in the country. Besides, the research also examines how the non-binary community experiences discrimination and marginalisation that can lead to unhealthy criticism and targeted bullying. To achieve this objective, the research conducts an extensive literature review and interpretative content analysis of media reports, articles, and legal

documents so as to identify the challenges and struggles encountered by the transgender community in their pursuit of marriage equality. The study is highly significant and relevant because continuous exploitation of the non-binary gender groups occurs in different parts of the country, of which a few are only reported.

Non-binary existence: The liminal status of the transgender community

According to the American Psychological Association (APA), transgender is an umbrella term that refers to individuals whose gender identity, gender expression, or behaviour does not align with the sex they were assigned at birth.^[6,7] This definition recognises that gender is not binary and that there is a wide spectrum of gender identities and expressions that exist beyond traditional male and female categories. It is important to note that being transgender is not a choice or a mental disorder but rather a natural aspect of human diversity. As the World Health Organization (WHO)^[8] states, "Gender identity and sexual orientation are integral aspects of our selves and should never lead to discrimination or abuse". Therefore, it is crucial to respect and support the rights of transgender individuals, including their right to access healthcare, education, employment, and legal recognition of their gender identity.

Considering the majoritarian group of binary gender, the extremity assigned by society is the male and the other female gender. What if in between both extremes/not involved in either? The liminality of gender is such a situation of being neither one nor the other, or both^[9] wherein the identity experiences a sense of in-betweenness or 'betwixt and between' state^[10], crisis and alienation. It either has the mixed characteristics of both or gets excluded from showing any of the binary extremes. Transgender individuals are often considered to be in a liminal category, meaning they occupy an intermediate or in-between state between the male and female genders.

This existence of the liminal condition is due to the fact that transgender individuals do not identify with the gender they were assigned at birth but instead identify with a gender that is different from their assigned sex. This sense of in-betweenness is further exacerbated by societal norms and expectations that reinforce binary gender categories. As stated by Judith Butler, "Gender is a performative act, something that is done rather than simply innate or natural".^[11] This means that gender identity is not determined solely by biological sex but is also shaped by social and cultural factors. The liminality experienced by transgender individuals is a result of the disjuncture between their gender identity and the gender roles and expectations assigned to their biological sex.

However, does this gender liminality experienced by the non-binary community express its characteristics? The answer would be yes. The continuous exclusion, insecurity feelings, and discrimination from society may lead to traumatic experiences of the uncertainty of their normative existence, the anxiety of how society would perceive their existence, and ambiguity on the same allowing the transformation of social structures in an individual.^[12] The liminal status of individuals who do not conform to traditional gender roles or binary gender categories can create insecurity and vulnerability, particularly when that liminality is socially imposed and permanent. This continuous experience of being on the threshold between different states of being is a characteristic of existing in permanent liminality.^[13,14] This can be especially true for individuals who exhibit ambiguity in their gender presentation and who may or may not identify as transgender.^[15] However, the reality of transgenders in India is much worse as they still face significant challenges, discrimination, limited access to education, healthcare, and employment opportunities, and many experience violence and harassment. Progress towards achieving

equality and inclusion for the transgender community in India is slow and uneven, pointing to the existing myths about the community leading to transphobia.^[16]

The complexities of Trans-marriage: exploring the legal and social challenges

India has a long and complex history of recognising and acknowledging transgender individuals, often referred to as hijras or kinnars. These individuals have been documented in ancient texts such as the Kama Sutra, the Mahabharata, and the Ramayana, and were often seen as occupying a unique, liminal space between male and female, sacred and profane according to the various beliefs.^[17] The imperative roles of transgenders in the royal courtyards of Mughal emperors and the glories in the scriptures^[18] point to the fact that they were treated way better than their existence in the past and present centuries. However, during the colonial era, British authorities criminalised hijra identities and practices, leading to their marginalisation and persecution.^[19] In modern times, transgender individuals have gained some legal recognition and protections, most notably with the 2014 Supreme Court ruling that officially recognised a 'third gender' category and granted legal rights and protections to transgender people.^[20] It is evident from the Fundamental Rights (articles 14-16, 19(1), and 21) that the Constitution of India provides a guarantee to the rights of every citizen. Thus, Section 377 is a clear violation of the Indian Penal Code. Despite these legal advancements, discrimination and violence against transgender individuals remain widespread in India. They often face challenges in accessing healthcare, employment, education, and housing.^[21] The social stigma and discrimination that transgender individuals face can lead to mental health issues such as depression, anxiety, and suicidal ideation.^[22]

Transgender marriage is still a relatively new concept in India, and there are several social challenges that trans individuals face in their

pursuit of marriage. Currently, Indian law only recognises marriages between a man and a woman, effectively excluding transgender individuals from marriage rights.^[23] This legal barrier is rooted in the binary gender system prevalent in India, which only recognises male and female genders and excludes the existence of transgender individuals. Because of the reason that legal institutions do not accept transgender marriage, the social stigma and discrimination are high. Transgender individuals in India are often ostracised by their families and communities, making it difficult to find a partner who accepts them.^[24] Even within the LGBTQ+ community, transgender individuals face discrimination, as they are often seen as less desirable partners than cisgender individuals.^[25] Several organisations have been working towards creating awareness about transgender rights and advocating for legal recognition of transgender marriages. One such organisation is the National Legal Services Authority (NALSA) which took forward the issue, where the Supreme Court in 2014, in the case NALSA vs Union of India and others, recognised transgender individuals as a 'third gender' and called for their inclusion in all aspects of society, including marriage.^[26,27] Prior to this and after, there have been interventions from various courts in the country. Some of them are the Delhi High Court Judgement (2019), the Supreme Court Judgment (2013), the Rights of the Transgender Persons Bill (2014), and the decriminalisation of Section 377 of the Indian Penal Code by the Supreme Court (2018). In 2019, the Madras High Court called for the recognition of transgender marriages under the Hindu Marriage Act of 1955, marking a significant step towards the legal recognition of transgender marriages in India.^[28]

According to Shaji^[29], a few transgender women in India have managed to register their marriages by identifying as male or female in their documentation. The report quotes the

experience of Maya SR Nayak, a transgender woman who was cheated on by her husband by getting married to a cis woman. She could not go to the police as her marriage does not stay valid under the existing law in the country. Although the number of such marriages is small, they face uncertainty about the legality of their marriages if challenged in court. This arises because of the existing legal formality that defines marriage as a contract between a man and a woman.

The plaintiffs in a case for same-sex marriage for a Constitutional review before the court in India claim discrimination, as they are denied the same rights and benefits as heterosexual married couples. These include inheritance, health directives, property ownership, and starting a family through Indian surrogacy. While the Supreme Court previously rejected a marriage equality challenge in 2020, it has since expanded protections for 'a typical' families, including same-sex couples.^[30] Some activists remained cautious, but many were hopeful that a final decision would soon grant equal marriage rights to all individuals in India. Quoting the case of Supriyo and Abhay, the petition says that despite having the freedom to love each other, the transgenders still cannot have a happy marriage and suggests that equality must extend to all spheres of life, especially for LGBTQ+ citizens who form 7-8% of the population of the country.^[31]

Another notable incident of breaking gender stereotypes is the first legally married transgender bride in West Bengal, Shree Ghatak, and Sanjay Muhuri, in 2015. It was possible only because Shree underwent sex reassignment surgery and was able to provide the necessary documents to prove her transition. If they were not able to provide enough supporting evidence to the authorities, their marriage would not have been approved. Here lies the significance of considering the marriage of transgender individuals in the country. When the existing law only approves marriages between a male and a female who

are considered to be in the binary category of gender, the individuality and freedom to express one's sexual orientation are hindered. Even though there needs no special law for marriages between individuals who state themselves as among the binary gender, transgenders who have undergone their reassignment surgery are also made into uncertainty and legal complications. Ranjita Sinha, a transgender activist, points out clearly that there is no law that allows such transgender individuals to marry, but transwoman marriages do not come under this category and do not require any special sanction as they are categorised as women under the marriage act.^[32]

Unusualness in the marriage: Social media bullying and criticism

In the contemporary world of technological advancement, discussions and debates have been confined itself to the parallel online medium wherein the involvement and influence of social media in projecting the positive and negative aspects of an event is high. The desperations of individuals in a society that pretends to be forward-minded and inclusive are evident in social media as they pretend to be themselves, with or without declaring their identity. Biased-based bullying is found to have more effects of victimisation on negative outcomes compared to non-biased-based victimisation. The levels of depression, alienation, suicidal ideation, attempts of suicide, substance use, and truancy^[33, 34] tend to be high in such a form of biased-based and targeted bullying in social media. Recently, though the frontline media reported the parenthood of a trans couple in Kerala whose pregnancy photos had gone viral, many comments and views on various social media platforms were against it by questioning their identity. The couple responded, "Though there are many negative comments, we focus only on the positive parts".^[35] Though termed as transgender marriage and pregnancy, this does not satisfy

the requirements of transgenders their right to get married in the identity of transgender because Ziya Paval and Zahhad underwent hormone therapy to change their genders into the binary identity.

Contrary to this is the case of Manu Karthika and Syama S. Prabha who had to approach the High Court of Kerala to register their marriage under the Special Marriage Act in the status of transgender identity instead of the gender binary.^[36] They were identified as transgender in their identity cards, unlike the cards that identify other transgenders as male or female. However, there is a continuous struggle for transgender couples to get formal acceptance and legal approval for their marriages. As marriage in India is usually governed by a set of laws tailored by religious groups, the Special Marriage Act becomes the secular law and hope for people of the transgender community. Utkarsh Saxena and Ananya Kotia, a gay couple, have filed a petition to the Supreme Court of India seeking the legalisation of same-sex marriage.^[37] Although this does not relate to transgender marriage, while considering the LGBTQ+ issues as a whole, especially their marriage, this attempt is highly relevant. Though it takes much time and complications to achieve it, constant efforts from individuals and groups would help to highlight the importance of such amendments that comply with the morale and essence of the constitution and the legal system.

Religious perspectives: Non-binary challenges

While discussing the religious perspectives on non-binary transgender marriages, it cannot be represented as the viewpoint of all individuals or communities within the religions, as there is a great deal of diversity and complexity within each tradition. These also depend on the regional cultural factors that shape attitudes toward transgender marriage. However, in general, a majority of religions oppose same-sex marriage. From the

Christian conservative perspective, transgender identity itself is a violation of God's intended gender binary and therefore opposes transgender marriage. Although this is the case, Pope Francis has declared homosexuality as not a crime and urged Catholics to welcome LGBTQ members to the church and supported civil unions for same-sex couples.^[38] But, this statement does not accept same-sex marriage and considers same-sex marriage as a threat to the family structure. In comparison, there are denominations and communities such as the United Church of Christ and the Episcopal Church that accept all categories of non-binary communities and their marriages.^[39]

Islamic teachings generally affirm the binary understanding of gender and biological sex, but there is also a recognition of the diversity of human experiences and identities. There is no specific mention of transgender marriage in the Quran, but some Muslim scholars argue that gender reassignment surgery can be permissible under certain circumstances. However, the majority of Muslim communities still hold traditional views on gender and do not accept transgender individuals and their relationships. In Hinduism, there is a recognition of the diversity of human experiences and identities, including gender non-conformity. The Hindu deity Ardhanarishvara, for example, is depicted as a half-male, half-female being, representing the unity and interdependence of masculine and feminine energies. This portrayal of divinity suggests that gender is not a fixed and immutable category but rather a fluid and dynamic aspect of human existence.^[40] The Kama Sutra, a Hindu text on sexuality, also acknowledges the existence of transgender individuals and provides guidance on how to treat them with respect and understanding. The text emphasises the importance of mutual consent and pleasure in sexual relationships, regardless of the gender identities of the partners involved. Despite these progressive attitudes towards gender diversity, there are also

traditional and conservative Hindu perspectives that view transgender identities and relationships as outside the norm. Some Hindu communities may be reluctant to accept transgender marriages, particularly those that are not aligned with traditional gender roles and expectations. In recent years, there have been efforts by some Hindu organisations and leaders to promote greater inclusivity and support for transgender individuals and their relationships. For example, in 2017, the Kinnar Akhara, a transgender Hindu monastic order, was recognised by the Akhil Bharatiya Akhara Parishad, a council of Hindu monastic orders, as a legitimate spiritual group.

The traditionality and orthodox mentality associated with religions, in general, could be a reason for not being accepted. It also depends on the people in the power positions of the religion and their decisions. This conventional nature of the religious institutions is sometimes adamant in their decision for which a strong base of religious texts and doctrines are considered to substantiate. The incident of declining permission for Neelankrishna and Adwaika, a transgender couple from Kerala, by the authorities of the Kachamkurissy temple in the district of Palakkad is an example. They refused permission for the couple for the traditional ‘thaalikkettu’, stating the reason that there was no precedence for transgender marriage in the temple.^[41]

Table 1: Critical elements: Legal, social, and religious scenarios

Legal Scenario	Social Scenario	Religious Scenario
In India, current marriage laws only acknowledge heterosexual unions, which unfortunately does not provide marriage rights to transgender individuals.	Transgender individuals in India frequently encounter social ostracism and discrimination, which can make it challenging for them to pursue marriage. Their families, friends, and communities may oppose their decision to marry, further adding to the challenges they face.	Religious views on transgender marriages in India are diverse, with some accepting all non-binary communities, while others do not recognise transgender individuals and their relationships due to traditional gender views.
Transgender individuals in India who have undergone hormone therapy or sex reassignment surgery are not impacted by the current marriage laws. However, those who haven't undergone such procedures may face legal obstacles in obtaining marriage rights, as their pleas for transgender marriages have been denied.	Transgender individuals in India are often subjected to social media bullying and criticism, which can have significant psychological and emotional consequences for both individuals and their families. The prevalence of such behaviour further highlights the challenges faced by the transgender community in India.	Although certain Hindu texts promote progressive views towards gender diversity, there are also traditional and conservative Hindu beliefs that consider transgender identities and relationships to be deviating from societal norms.
When the existing law only approves marriages between a male and a female who are considered to be in the binary category of gender, the individuality and freedom to express one's sexual orientation are hindered.	Given that marriage laws in India are typically influenced by religious customs, the Special Marriage Act serves as a secular alternative and a beacon of hope for transgender individuals seeking marriage rights.	Some religious groups limit transgender marriages by citing the absence of historical precedence for such unions within their traditions.
The existing marriage laws in India limit individuality and hinder the freedom to express one's sexual orientation, as they only allow marriages between individuals who identify as male and female and conform to the gender binary system. This can be particularly challenging for individuals who identify as transgender or non-binary.	Non-binary communities globally continue to confront persistent challenges to their identity, including societal comparisons to the binary majority population, and a lack of full acceptance and recognition within society.	The traditional nature of religious institutions in India, combined with the attitudes of influential figures within these institutions, may pose a substantial obstacle to the acknowledgment and acceptance of transgender marriages.

Conclusion

Based on the preceding discussion, it can be inferred that the provision of constitutional rights to citizens by a country necessitates their equal availability to all segments of society, irrespective of their gender and sexual orientation. The restriction of marriage rights to non-binary classifications of humans impedes the expression of their individuality and creates an institutional contract exclusively accessible to a majority group that does not identify as liminal gender. Although this research has considered only a few incidents involving transgender individuals, their experiences are indicative of the community’s shared struggles. Identifying the liminal status of the transgender community through this research reveals the identity crises and alienation they face throughout their lives, which is also reflected in the challenges and obstacles associated with transgender marriage in India. The legal, social, and religious repercussions faced by transgender individuals stem from a failure to adopt wider perspectives and uphold the values of equality, inclusion, and diversity. Much has been discussed and debated over time on this, and what is required for a decade that has witnessed several changes is an action to protect the rights of the marginalised section.

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