

SHIFTING SEMANTICS IN LAW

“A TRANSITION TOWARDS GENDER-NEUTRAL LANGUAGE IN LEGAL DISCOURSE”

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Abstract

Former CJI, Justice D. Y. Chandrachud, while writing a judgement of ‘Navtej Singh Johar v. Union of India (2018)’, opined that “Constitutional morality requires that we break free from the shackles of social and gender stereotypes.” Justice Chandrachud laid further emphasis on the gender-neutral language, saying in *Sita Soren vs. Union of India* (2024) presiding over a seven-judge bench, the CJI, under this ruling, the judgment regarding the parliamentary privileges, penned explicitly “founding parents” in place of “founding fathers.” From the two above-cited references, it can be inferred that law cannot be seen and construed through the lens of ‘gender’. Law, in all its capacities, should be centered on gender neutrality, and justice should be at its core. Using ‘Gender Neutral’ terms and language in legal discourse is and should be the morally binding principle of every stakeholder so as to avoid the dehumanizing repercussions emanating from such gender-bias, binary discourse, and inappropriate language usage. Employing any gender stereotype terms or language, especially in the bastion of justice, is uncalled for. The present research paper is, therefore, a modest attempt to do justice to every stakeholder without any preconceived notions and using a felicitous, apt, and appropriate legal glossary throughout the process of court proceedings.

Keywords: Law and language, Gender Neutral Language, Gender, Justice, Judgement, Court, Binary Discourse, etc.

Introduction

How can any one of us rule out the Indian Constitution's preamble and its very first line ‘WE THE PEOPLE OF INDIA’? We although brought this line from the American Constitution, but the essence and the inherent meaning remain undiluted. As in this regard, Justice Ruth Bader Ginsburg (Former U.S. Supreme Court Justice) quoted, “We the people” have become more inclusive over time. That’s what the Constitution is.... this is what justice is.” The Indian legal system, having its roots in colonial rules, statutes, and traditional socio-cultural norms, has historically operated within a gender binary, leaning towards one particular gender framework, with legal provisions, judicial interpretations, and legislative texts overwhelmingly constructed categories revolving around *man* and *woman*. This binary orientation is embedded not only in substantive Indian laws but also in the linguistic architecture of judicial pronouncements. Consequently, terms such as “husband,” “wife,” “father,” “mother,” “son,” and “daughter” permeate through statutory language and case laws, leaving minimal lexical space for identities that fall beyond the binary and do not conform to the male-female dichotomy.

In recent years, progressive judicial pronouncements and interventions by both the Supreme Court and various High Courts in India have initiated a slow but notable shift towards gender-neutral and gender-inclusive language and appropriate terminology in legal discourse. For giving teeth to these initiatives, the landmark judgment in *National Legal Services Authority v. Union of India* (2014) (NALSA) was a watershed moment, where the Supreme Court recognised the rights of transgender persons as a “third gender,” laying emphasis on the fact that gender identity is integral to an individual’s dignity. As a result of this, long-standing alienation of a section of society was given a full right in all spheres of life. The Apex Court also directed both the legislature and the executive to ensure that laws, policies, and administrative documents adopt inclusive language that accommodates non-binary identities. This historic judgement paved the way for bridging the gap of binary identities and added a chapter for inclusivity rather than alienation.

Similarly, in *Navtej Singh Johar v. Union of India* (2018), while decriminalising consensual same-sex relations, Former CJI, Justice D. Y. Chandrachud, writing a judgement of ‘*Navtej Singh Johar v. Union of India* (2018)’, opined that “Constitutional morality requires that we break free from the shackles of social and gender stereotypes.” Justice D.Y. Chandrachud noted that constitutional morality demands the breaking of stereotypes, including those historically persecuted for their non-binary identity, and through impartial legal language. This observation directly implicates the lexical bias in the judiciary within law, statutes, and judicial reasoning, signaling that the linguistic choices of the judiciary are not neutral but regressive in nature, which actively shape social and legal realities which in turn sometimes relegated the stakeholders to the background.

High Courts across India have also contributed, bearing gender neutral terminologies, to this evolving discourse. In a recent judgement of the Madras High Court in *S. Sushma v. Commissioner of Police* (2021) issued guidelines for sensitisation of the judiciary and law enforcement agencies towards LGBTQIA+ persons, stressing the importance of non-discriminatory and inclusive language in official and judicial communications. The Delhi High Court, in *Naz Foundation v. Government of NCT of Delhi* (2009), although later overturned, made early observations on how the law should not be read in a manner that reinforces heteronormativity—a principle that has since influenced constitutional interpretation.

Beyond individual cases, the Supreme Court’s decision in *Justice K.S. Puttaswamy v. Union of India* (2017) placed the right to privacy, dignity, and autonomy at the core of fundamental rights without which ‘individual existence is as dead as a doornail’, the apex court observed. Justice Kaul’s opinion highlighted that gender identity and sexual orientation are integral to one’s sense of self, implying that the law must evolve linguistically to protect these identities from erasure. The law and legal discourse, moreover, should act as a buttress in protecting the identities and dignity of every individual.

The persistent use of gendered terminology in legal texts and context not only obstructs the socially appropriate flow of language but also chokes a stylistic artifact; it is a form of linguistic determinism that constrains the interpretative possibilities available to judges, lawyers, and litigants. In effect, language in law is performative; in law, certain utterances don't just describe a situation, they actively establish and create new legal realities—it constructs the legal subject it purports to describe. For instance, a pregnant mother; X, a concubine; I now pronounce you both husband and wife. Judith Butler's theory of performativity suggests, identities are reinforced through repetitive discursive acts, and in the legal context, this repetition is codified through precedent and statute. If the judiciary pronounces its verdict using merely binary terms, gendered language, then even after due justice is served through pronouncement, the scars of derogatory language still remain unjust. Thus, "breaking the binary" in legal language is not simply a matter of linguistic reform but of substantive justice.

This research seeks to undertake a critical linguistic analysis of gendered terminology in Indian judicial discourse, focusing on both the Supreme Court and High Courts. By examining landmark cases—including *NALSA*, *Navtej Singh Johar*, *Puttaswamy*, *S. Sushma*, and others—this study will explore how the lexicon of law influences the recognition, inclusion, or marginalisation of diverse gender identities. It will also evaluate whether emerging judicial trends point towards a jurisprudence of linguistic inclusivity, where terms such as "person" and "spouse" replace "man/woman" and "husband/wife," thereby aligning legal language with the constitutional promise of equality under Articles 14, 15, and 21.

In doing so, the paper argues that the judiciary's choice of words is not ancillary but central to the realisation of gender justice. Legal language, as the principal medium through which rights are articulated and enforced, must transcend its binary past to embody the pluralistic reality of contemporary Indian society.

Supreme Court Judgments

1. *National Legal Services Authority v. Union of India* (2014) – 'Third gender' recognition and directive for inclusive language in the legal discourse.

I shall mainly focus on Discourse Analysis with three lenses:

1. **Pronoun Usage**
2. **Nominal Structures** (nouns, noun phrases, nominalisations)
3. **Legal Predicates** (verbs or verb phrases in legal reasoning that assign duties, rights, or status)

1. Pronoun Usage

In legal discourse, pronouns do more than replace nouns. These shall, in turn, anchor identity, create distance, or mark inclusivity/exclusivity.

Findings in NALSA Judgment

- A. Shift from (non-binary) 'he/she' to 'they' and 'their'** in certain parts: The court consciously avoids rigid binary pronouns, instead alternating between "he or she", "his/her", and at times adopting plural forms like "their rights" to cover all genders.
Effect: This produces a discursive move away from binary gender as the sole linguistic option.
- B. Inclusive triadic (trio) references:** e.g., "he, she, or third gender". The new ways of reference to individual identity paved the way for visibility in the transgender category, rather than implied.
Effect: Instead of invisibilising trans identities under "he/she", the Court explicitly names them.
- C. Self-identification (emphatic) pronouns:** The judgment refers to "a person's right to identify *himself, herself, or themselves*", showing an emerging acknowledgment of appropriate pronouns.
Effect: Linguistically legitimises self-ascription of gender identity, even when grammatically unconventional in legal drafting.

2. Nominal Structures – Naming and Categorising Identity

Nominal structures in law determine what gets recognised as an entity with legal standing.

Patterns in NALSA Judgment:

- A. Use of 'transgender persons'** as a legal noun phrase:
Frequent collocation with clear, direct usage of the noun 'transgender persons' rights' rights, excluding the previously used binary terms in place of 's/he'. The court addressed, "transgender persons are entitled to..." assigns subjecthood and agency.
- B. Nominalisations of rights and recognition:** the court, e.g., 'recognition of gender identity', 'protection of rights', 'grant of legal status', ruled out abstract actions and turned them into legal objects, making them governable by law.
Effect: By turning identity into a nominal category, this is how the Court gave teeth to institutionalise it as something law can protect, not just describe.
- C. Category-expansion nouns:** 'third gender', 'other gender', 'non-binary category' extend legal taxonomy beyond the mere binary: male/female.
Effect: These new legal labels disrupt the existing binary categorisation, providing discursive legitimacy to previously excluded identities like trans- person or transgender.
- D. Historicising nouns:** Frequent references to 'Hijras', 'Aravanis', 'Kothis' in the Indian context explicitly clarify grounds for recognition in socio-cultural history, not only in Western LGBTQ terminology.

Effect: Anchors legal identity in indigenous tradition. Besides, giving legitimacy to their Indian traditional identity by making it less vulnerable to being dismissed as foreign.

3. Legal Predicates (usage of verbs): Assigning/Denying Identity Through Action Words

Legal predicates in judgments are verbs or verb phrases that perform institutional acts: grant, recognise, declare, protect, etc.

Key legal predicates in NALSA:

A. Affirmative predicates:

- 'recognise as a third gender.'
- 'declare the right of...'
- 'direct the government to treat...'

Effect: These verbs enact legal change — they don't just describe identity, they confer it.

B. Protective predicates:

- 'ensure protection of rights.'
- 'provide reservations.'
- 'prohibit discrimination.'

Effect: These align gender identity with constitutional guarantees, linguistically embedding trans rights within the fundamental rights framework.

C. Corrective predicates:

- 'remove discrimination.'
- 'amend records to reflect...'

Effect: Language implies prior legal injustice and positions the Court as a corrector of systemic exclusion.

D. Negative predicates (in older legal discourse): The judgment quotes past laws that 'prohibit', 'criminalise', or 'disqualify'. This shows how earlier predicates denied legal personhood to trans people.

Effect: By juxtaposing them with affirmative predicates, the Court marks a discursive shift from exclusion to inclusion.

Linguistics pattern and lexical sets in NALSA Judgement

Excerpt from Judgment	Pronouns & Referring Expressions	Nominal Structures (Nouns/Phrases)	Legal Predicates (Verbs/Actions)
Article 14: "Person" includes Hijras/transgender persons ... entitled to legal protection	Uses 'person' (gender-neutral), explicitly states 'Hijras/transgender persons'	'person'; 'Hijras/transgender persons'	'entitled to legal protection,' 'does not restrict ... person' – confers subjecthood and equality

Articles 15 & 16 applicability includes transgender persons via "sex."	Implicit 'persons'; not gendered	'sex'; 'citizen' extended to include gender identity	'prohibit discrimination,' 'deny ... equality' – moves transgender persons into the protection scope
"Gender identity ... is an integral part of sex ... based on self-identification ... no citizen can be discriminated ... including those who identify as third gender."	'self-identification'; "those who identify as third gender" – agentive, self-descriptive	'gender identity'; "third gender"	'is', "can be discriminated' – asserts identity is core, denies discrimination
Recognition of psychological over biological	'transgender' used as a noun 'persons whose gender identity ... does not conform.'	'transgender' (noun), "umbrella term'; 'psychological sex'	'guaranteed'; 'assured fundamental rights'; 'recognise ... third gender' – categories legitimized
Excerpt from Judgment	Pronouns & Referring Expressions	Nominal Structures (Nouns/Phrases)	Legal Predicates (Verbs/Actions)
Article 19 (expression): gender identity lies at core ... protected	'one's personal identity', 'transgender's personality' – possessive, personal	'personal identity', 'transgender's behavior'	'protected under Article 19(1)(a)'; 'State is bound to protect and recognize those rights' – recognition as legal obligation
Article 21 & dignity: self-identified gender, "third gender"	'his/her' for birth sex; 'self-identified gender'	'third gender'; 'gender identity'; 'dignity'	'recognized'; 'protected'; 'have to be considered as third gender' – performative affirmation of identity

SC directions: legal recognition, reservations, facilities	Impersonal; 'transgender people'	'third gender'; 'transgender people'	'grant legal recognition'; 'issued directions'; 'treat ... as socially and economically backward class' – empowers through affirmative action
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Content analysis: Frequency and context of gendered versus neutral phrasing in judgments.

1. Overview: Gender-Neutral vs. Gendered Language in NALSA

Neutral and Inclusive Terms (Frequent & Central)

'Person': Used throughout to emphasize equality and inclusivity.

Article 14 refers to 'any person' enjoying equality before the law, explicitly encompassing Hijras/transgender persons affirming they fall within this protected class.

'Citizen' and 'Sex': Appear in Articles 15 & 16 to broaden applicability beyond male/female binaries.

The Court interprets 'sex' to include gender identity, stating provisions are not restricted to biological definitions.

Gendered or Specific Terms (Used Purposefully, But Less Frequent)

'Hijras', 'transgender persons', 'third gender': While still neutral relative to male/female, these descriptors are used to explicitly identify the group being affirmed legally.

E.g., " 'Hijras' are identified as persons of third gender ... not identified either as male or female."

Pronouns 'his/her': Appear rarely and in contexts describing birth-assigned sex or earlier legal concepts, such as noting that a child at birth is assigned "male or female."

2. Frequency and Context Highlights

Neutral Terms Workhorse of Legal Recognition

'Person' appears repeatedly as the central term (Articles 14, 21, etc.), providing a gender-neutral foundation.

'Citizen' appears in Articles 15, 16, and 19 as a basis for anti-discrimination protections applicable to all, including transgender persons.

'Sex' is interpreted liberally to extend beyond binary definitions to include self-identified transgender identities.

Gendered References (Strategic and Affirmative)

These terms serve to *name* the marginalized group and affirm their inclusion:

‘Hijras/transgender persons’ are cited as included under ‘person’ for constitutional protection.

‘Third gender’ is asserted as legally recognized, affirming a broad, non-binary category.

Pronouns Minimized and Contextual

Minimal reliance on ‘he/she’ or ‘his/her,’ typically found when describing default binary assignment (‘born as male/female’) or quoting past contexts.

Conclusion

In the bastion of justice, and sometimes, stakeholders in certain cases, for instance, 498 (A) women are being called thieves, harlots, concubines, and so on. Besides, due to identity crisis, non-conformity, and heteronormativity, ‘Transgender’ people are deliberately shown in a poor light during the ongoing courtroom trial against whom the cases are lodged. They have historically been addressed by invective and foul language, thereby relegating their status to the background.

The Medical Termination of Pregnancy (MTP) Act, 1971, was amended in 2021, allowing a pregnant person 24 weeks of gestation period for a sexually assaulted person. While writing a 22-page judgment, authored by Chief Justice of India D Y Chandrachud, the judgment uses ‘pregnant person’ or ‘person’ 42 times (including once in a footnote). The Supreme Court, moreover, in *Sita Soren vs. Union of India* (2024) presiding over a seven-judge bench, the CJI, under this ruling, the judgment regarding the parliamentary privileges, penned explicitly “founding parents” in place of “founding fathers.”

Navtej Singh Johar v. Union of India (2018) – Constitutional morality and dismantling stereotypes the court used gender-neutral lexical sets as in this Semantic framing of lexical choices justifies the roles but at the same time dismantles stereotype against individuals (e.g. “sex worker” vs “prostitute”) and situations (e.g. “pregnant person” vs “woman”).

To maintain constitutional morality and serve complete justice, as in the case of Articles 14 and 19 of the Indian Constitution, which start with ‘ALL PERSONS’, ‘EVERYONE’, rather than unary references, ‘HE’ or ‘SHE’.

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