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EXPLORING GENDER-INCLUSIVE LANGUAGE IN LEGISLATIVE DRAFTING: PROMOTING EQUALITY AND REPRESENTATION

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The goal of this research is to examine the role that language plays in promoting discrimination and inequities. This paper specifically discusses the use of gender-neutral legal language while crafting laws and the importance of doing so. It demonstrates how readily language can cause discrimination and inequality through specific examples and a comparative analysis that considers six different countries. This study offers a practical means of eliminating biases and offering greater and broader protection for human rights. It focuses specifically on gender

neutral legal language. Every one of these experiences offers workable solutions to the issue of language-based discrimination, adding a distinct perspective to the discussion of legal language and drafting. Furthermore, while relevant issues exist in the various systems under discussion, the issues themselves have shown to be a suitable beginning point for an improvement in drafting and favouring equality and non-discrimination. The aim of the paper is to show that adopting alternatives to the legal language that is more gender inclusive can be a possible and effective measure to curb the long-standing societal prejudices towards marginalised genders.

1. INTRODUCTION

In the context of legislative drafting, language holds immense power and importance. A power that can shape and influence the behaviour of the society and at the time of necessity, holds the ability to uphold justice. But beyond the supposedly neutral language that makes up rules and regulations, there frequently exists a hidden world of prejudices and presumptions that can support inequalities. This research aims to investigate the role of gender-inclusive language in legislative drafting, its importance in promoting equality, and its ability to reshape the very foundation of legal systems.

Gender prejudices have always been embedded in the judicial system, which has been a mirror of cultural norms. Traditional legislative texts have unintentionally excluded non-binary, transgender, and genderqueer people by using terminology that is gender-binary and does not accurately reflect our shifting understanding of human diversity.

The absence of gender-inclusive language in legislative drafting fails to acknowledge the

complexity of gender and promotes structural imbalances that harm marginalized people. When language is not consistent with the inclusive values that contemporary societies try to uphold, discrimination and unequal treatment develop deep roots in legal systems.

The necessity to review and change legal language has taken on an unprecedented relevance in a time of increased awareness of gender diversity and a desire for equity. The use of terminology that is gender inclusive has the power to eliminate past prejudices, recognise the flexibility of gender, and guarantee that everyone in society, regardless of gender identity, is protected by the law.

By assessing its current state, identifying best practices, and recommending strategies for its successful implementation, this research intends to get a thorough understanding of gender inclusive language in legislation writing. By doing this, it aims to bridge the gap between legislative language and societal advancement, promoting a more inclusive legal system.

2. HISTORICAL BACKGROUND

The historical evolution of gendered language in Indian legislation shows the colonial influences and current social conventions that have shaped legal frameworks. Gendered language, which excludes non-binary people and reinforces traditional gender roles has both

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repeated and maintained gender inequities throughout history. This section digs far into the past, charting the development of gendered language in Indian law.

Indian legal systems were greatly impacted by British law while under British colonial rule. The gendered language of the English legal system made its way into the drafting of Indian legislation, thereby reinforcing patriarchal standards. The pronouns "he," "him," and "his" were frequently used in gender-neutral contexts with the assuming a male default.¹

Laws from the colonial era, such the infamous "Sati Regulation" of 1829 and the "Age of Consent Act" of 1891, were framed in terminology that was gendered and mirrored the patriarchal prejudices of the day. These legislation further consolidated traditional gender roles by influencing the legal discourse on women's rights and gender relations.²

Prior to independence, there was a surge in efforts to change the language used to create laws. Notably, social reformers like Dr. B. R. Ambedkar and supporters of women's rights worked

to modify language to be more inclusive. There is a rising understanding of the necessity for equal language, as seen by the adoption of gender-neutral terminology in some laws.³

After gaining independence, India embarked on a journey to establish a just and inclusive legal framework. The Indian Constitution itself, while revolutionary in many respects, still bore traces of gendered language. Although the Constitution's preamble speaks of gender equality, the use of masculine terms like "he" and "his" continued to persist in various articles.⁴

An intentional attempt has been made in recent years to eliminate gender biases in the writing of legislation. In order to replace exclusive gendered terminology with more inclusive alternatives, many changes and legal reforms have been made. Gender-neutral wording is used in the "Domestic Violence Act" of 2005, for example, which acknowledges that both men and women can be victims and perpetrators of domestic violence.⁵

¹ Choudhury, Cyra Akila. "Unsettling the Archival Politics of Legal History: Of Sultanas and Sati in Colonial India." *Journal of Law, Culture & the Humanities*, vol. 9, no. 2, 2013, pp. 194-213.

² Sarkar, Tanika. "Spectres of 'Women' and 'Nation' in Indian History." *Gender & History*, vol. 21, no. 3, 2009, pp. 577-601.

³ Degraef, Véronique. "Signs. *Journal of Women in Culture and Society*, Vol 13, N° 2, Hiver 1988." 1988. ⁴

Basu, Srimati. "Constitutional Practices and Gender Justice: A Feminist Reading of the Indian Constitution." *Economic and Political Weekly*, vol. 33, no. 4, 1998, pp. WS9-WS16.

⁵ Desai, Tripta. "The Struggle for Gender Justice: Some Reflections on Indian Law." *Indian Journal of Gender Studies*, vol. 9, no. 1, 2002, pp. 85-100.

3. EVOLUTION OF GENDER TERMINOLOGY SUCH AS NON-BINARY, GENDER-QUEER, AND TRANSGENDER

Transgender people, according to academic literature, are people who do not identify with the sex or gender assigned to them at birth.⁶ Given that a transgender person can identify "anyhow" other than the sex and thus gender assigned at birth—as the opposite gender, as not having a gender, as gender-fluid, as gender-queer, and so on—the transgender community is difficult to capture in a single description. The term "transgender" has also been used to refer to a variety of cultural identities in India that do not fit neatly into the categories of male or female. People with intersex variants, whose genitalia don't neatly fit into either sex male or sex female, also pose a threat to the sex-based basis of society. Body parts that challenge such distinctions pose a threat to the entire system upon which

discrete and binary gender is founded in a culture where such divisions are fundamental and are based on "objective" biological characteristics of genitalia. Despite the biological, behavioral, and psychological diversity of identities, the law nevertheless enforces clear distinctions based on sex and gender, and this body of knowledge has its normative foundations firmly rooted in the binary gender/sex model. As a result, the law has rendered invisible any identities and bodies that do not fall into the predetermined categories.⁷

The fact that NALSA mandates transgender people to be considered as "Other Backward Classes" and guarantees affirmative rights in the form of reservations in terms of public employment and education may account for India's unique approach to defending transgender rights. It is crucial to establish which individuals belong to a class of people before extending affirmative rights in the form of reservations to that group, necessitating the definition of that group. This was the strategy of the 2016 Bill (as well as the 2018 Bill), which created the category of "transgender" instead of safeguarding gender identity and gender expression. "transgender". While the State was required by the 2016 and 2018 Bills to provide welfare benefits to transgender people, they remained silent on the subject of reservations. Furthermore, despite decisions made after the NALSA directing governments to give reservations to transgender people, this problem has not yet been settled at the level of policy and been reflected in legislation. allowed how identities, particularly those of gender and caste, interact, it was suggested at the consultation that transgender people

⁶ Paisley Currah, 'Gender Pluralism under the Transgender Umbrella', *Transgender Rights* (University of Minnesota Press, 2006); NALSA, Para 11.

⁷ *Queering the Law* (Vidhi Centre for Legal Policy, 24 July 2020) accessed 2 September 2023.

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might be allowed horizontal reservations that cut through caste's vertical classifications. It remains to be seen whether a subsequent transgender rights bill would solve the 2018 bill's flaws and abolish the taboo surrounding reservations.

In depth research has been done on gender variation throughout history and among many civilizations. The term "genderqueer" originally originated in the 1990s. According to one definition, it is "any type of trans identity that is not exclusively male or female." There, people also feel like a hybrid of men and women. (2005) *Monro*, p. 13. Despite the diversity of genderqueer identities, they all disassociate from rigid gender binaries and, in

some cases, explicitly challenge the societal systems that support binaries (see Bradford et al., 2018, Davy, 2018, and Yeadon-Lee, 2016). The term "non-binary" refers, according to Masuno and Budge (2017), to those whose identities lie outside of or in between that of a man and a woman, including those who can experience both genders at different times or do not choose to have a gender identification at all. As with genderqueer, the origins of non-binary can be found in the writings of transgender and transsexual authors who rejected or went beyond gender norms, such as Bornstein, who asserted that "Gender fluidity recognises no borders or rules of gender."⁸(1994, p. 52)⁹. In publications like *Unseen Genders: Beyond the Binaries* by Haynes and McKenna (2001), the word "non-binary" first appears to have been used about 2000.¹⁰

Despite how flimsy and unreliable this progress may be, there has been a change in the options available for gender expression in several countries during the past few years. For instance, a study conducted in the UK by Bragg, Renold, Ringrose, and Jackson (2018) revealed "expanded vocabularies of gender identity/expression" (2018, p. 1). With "non binary" becoming a more widely accepted social identity in the UK, institutional norms and structures have changed in various ways. One such example is the civil service's adoption of a non-binary identity option (see Monro, Crocetti, Yeadon-Lee, Garland, & Travis, 2017).¹¹ The rising visibility of non-binary and genderqueer (NBGQ) people in therapeutic settings is also covered by Nieder et al. (2018).

The literature emphasizes visibility challenges despite some improvements in the social acceptance of non-binary (Taylor, Zalewska, Gates, & Millon, 2018). This is apparent at

⁸ Dembroff, Robin. "Beyond Binary: Genderqueer As Critical Gender Kind." 2018,

⁹ Motmans J, Nieder TO and Bouman WP, *Non-Binary and Genderqueer Genders* (Routledge, Taylor & Francis Group 2021)

¹⁰ Monro, S. (2019) 'Non-binary and genderqueer: An overview of the field', *International Journal of Transgenderism*, 20(2–3), pp. 126–131. doi:10.1080/15532739.2018.1538841

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the level of individual subjectivity. For instance, in a 2018 UK poll of non-binary people, 76% of respondents chose not to disclose their gender identification out of concern for unfavourable responses (Government Equalities Office, 2018). The topic of invisibility is relevant to contexts for formulating policy and doing practise. For instance, NBGQ persons are made invisible when health monitoring systems employ gender binary categories (see Jaspal, Nambiar, Delpech, & Tariq, 2018).¹²

4. CURRENT DISPARITIES IN LEGISLATIVE LANGUAGE

A draftsman's friend strolled into his office late one evening and said, "Did you do any useful work today?" "Well, to be honest, I inserted a comma before a specific word this morning, took it off in the afternoon, and just as you were entering my room, I was doing it again. I'm thinking about putting it back. That is all I have accomplished today."

In a world where we are taught to question ourselves several times over the addition of a comma, gender neutral is a feat seemingly too hard to achieve for our legislators. In order to ensure that "any man" or "any woman" is changed to "any person" in the sections of the Act relating to sexual offenses, a bill was submitted in parliament to reform the Indian Penal Code (IPC), the Criminal Procedure Code (CPC), and the Indian Evidence Act (IEA). It will extend the protection of the law to women, men, and transgender persons. Interestingly, by changing the definition of the perpetrator and victim of sexual assault from "man " and "woman" to "any person"¹³, the bill allows for the recognition of not only transgender persons defined as the 'other' gender under Indian law, but would potentially leave the door open for the recognition of other.¹⁴

❖ Criminal (Amendment) Bill, 2019

Rape and sexual assault are now sex-neutral offences under the 2013 Legislation on Criminal Law (Amendment) Ordinance. Sexual assault has totally taken the place of the word "rape." The women's organisations, however, have raised major concerns, and the law has now recognised sexual assaults to be a widespread problem. sexes. Feminists have advanced several arguments in support of this, such as the notion that men who are not as

¹³ A case for gender neutral law for sexual harassment at workplace <https://www.amicusx.com/post/a-case-for-gender-neutral-law-on-sexual-harassment-at-workplace>.

¹⁴ India News, 'Bill in Parliament to make sexual crimes gender neutral' India News - Times of India (Jul 13, 2019)

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vulnerable, who also desire equality, unable to physically harm men, men who are not everyone is similarly impacted by rape, etc.

❖ Draft Digital Personal Protection Bill, 2022,

The two pronouns are mentioned in the draught Digital Personal Protection Bill, 2022, which was released for public comment on Friday. The draft Digital Personal Protection Bill, 2022, which has been put up for public consultation on Friday, finds mention of the two pronouns. "With the philosophy Prime Minister Narendra Modi's government works, we have attempted to use the word 'she' and 'her' in the entire Bill instead of 'him' and 'his'. This is an innovative thing attempted in the bill," Union Minister for Railways, Communications, Electronics and Information Technology Ashwini Vaishnaw said on Friday.¹⁵ As India is currently a global leader in the digital economy, the Bill's main objectives are to safeguard internet users from harm when using the internet and to establish a secure and reliable digital ecosystem. A bill to amend the Indian Penal Code (IPC), the Criminal Procedure Code, was introduced in parliament to ensure that "any man" or "any woman" be changed to "any person" in the parts of the Act relating to sexual offences.

Women, men, and transgender people are all entitled to legal protection. Surprisingly, by altering the definitions of the sexual assaulter and the victim shift from "man" and "woman" to "any person".

The proposed law acknowledges those who are not only transgender people who are considered the "other," but it may also pave the way for the legal recognition of other genders in India.¹⁶

¹⁵In a First, India Uses “She”, “Her” to Refer to All Genders in Draft Law’ Webdesk – Organiser voice of India (19 November 2022)

¹⁶‘In a First, India Uses She, Her to Refer to All Genders in Draft Law’ (newKerala.com, 19 November 2022)

- I. Exclusion from Legal Protections:** The gendering of legislation is the norm and, in many cases, even desired, despite the fact that the Indian Constitution recognises equality before the law⁵⁴ and the equal protection of the laws. Laws that solely apply to particular gender identities—most notably women—are said to be gendered. According to Article 15(3) of the Constitution, for instance, "any special provision for women and children" is recognised and protected. Based on the understanding that the guarantee of equality should be among equals, such a provision is an indication of substantive equality. In contrast to simple equality of treatment, substantive equality implies equality of outcomes and the opportunity to succeed. Formal equal treatment may not lead to actual freedom because identities may be connected with varying levels of vulnerability. Legal recognition of identities, including gender identities, is therefore necessary to account for the various vulnerabilities they bring with them. While noting that legislation should not discriminate based on sex, the Indian Constitution nevertheless permits specific protections for women and children, acknowledging the historical disadvantages associated with such identities as contrasted to cisgender men.
- II. Representation:** Gender-neutral language is important for ensuring equal representation and recognition of all individuals, regardless of their gender identity. When legal documents, such as constitutions or laws, use gendered language, it can send a message that only certain genders are fully recognized and protected under the law. This can undermine the rights and visibility of marginalized groups.
- III. Access to Services:** Gender-inclusive language is crucial in areas such as healthcare, education, and social services. Failure to use inclusive language can result in barriers to accessing services and benefits for transgender, non-binary, and gender-diverse individuals. It can also discourage these individuals from seeking help or support when needed.
- IV. Reporting and Data Collection:** Gender-specific language can complicate data collection efforts and reporting mechanisms related to discrimination and violence against marginalized groups. This can hinder efforts to gather accurate statistics and

information about the experiences of these groups, which is essential for policymaking and addressing inequalities.

V. International Human Rights Standards: Many international human rights agreements and conventions emphasize the importance of non-discrimination and the protection of gender identity and expression. Failing to use gender-inclusive language in domestic legislation and policies can be seen as a violation of these international standards, potentially leading to legal challenges or diplomatic pressure.

VI. Social and Cultural Impact: Beyond legal consequences, the absence of gender inclusive language can perpetuate harmful societal norms and attitudes. It can contribute to a culture of exclusion and discrimination, making it more difficult for marginalized groups to exercise their rights and participate fully in society.¹⁷

6. CASE STUDIES

Here are two examples of legislation from various nations that successfully used gender inclusive language, as well as the effect this had on how the law was interpreted and applied:

Case Study 1: Canadian Gender-Neutral Language in the Canadian Human Rights Act

The Canadian Human Rights Act was amended in 2016 to replace gender-specific language with gender-neutral terms¹⁸. It protects individuals from discrimination within the sphere of federal jurisdiction, as well as protects against hate propaganda and hate crimes, on the basis of gender identity and gender expression.¹⁹

The changes involved the substitution of pronouns like "they", "their", and "them" with pronouns like "he or she," "his or her," and "him or her." This modification recognised that there are many different gender identities and that people of any gender might be the victims of discrimination.

¹⁸ Bill C-16, An Act to Amend the Canadian Human Rights Act and the Criminal Code, 1st Sess, 42nd Parl, 2016

(assented to 19 June 2017), SC 2017, c 13 [Act to Amend CHRA].

¹⁹ University of Toronto, Law Journals, Volume 68 Issue 1, winter 2018, pp. 37-79.

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The integration of gender-inclusive language in the Canadian Human Rights Act had significant impacts on inclusivity of all genders, and legal that the protections provided by the Act apply to all individuals equally, regardless of their gender, and non-binary recognition. This has contributed to a cultural shift in societal attitudes, promoting the acceptance of diverse gender identities. The amendments set a precedent for other legislative changes, encouraging lawmakers in other jurisdictions to adopt gender-inclusive language.

Case Study 2: Uruguay's Comprehensive Law on Gender Equality

Uruguay's Comprehensive Law on Gender Equality, enacted in 2007, is a comprehensive legal framework aimed at promoting gender equality in various aspects of life, including education, labour, politics, and more. Article 8 of the Constitution of Uruguay upholds the equality of all citizens, but does not specifically refer to gender equality. Uruguay has ratified CEDAW and, in 2007, passed a law on equal rights and opportunities for men and women.²⁰

The legislation avoids gender-specific terminology and incorporates gender-neutral language throughout its text. The incorporation of gender-inclusive language in Uruguay's Comprehensive Law on Gender Equality has led to notable outcomes such as public awareness, promotion of equality, and representation of all.

These case studies show how including gender while creating legislation can have a significant impact on how the law is applied, how it is interpreted, and how society views gender. These laws support more equitable and inclusive societies by acknowledging the variety of gender identities and questioning prevailing gender conventions.

²⁰ OECD (2010), "Uruguay", in Atlas of Gender and Development: How Social Norms Affect Gender Equality in non-OECD Countries, OECD Publishing, Paris, <https://doi.org/10.1787/9789264077478-64-en>.

7. COMPARATIVE ANALYSIS

In comparing approaches to gender-inclusive language in legislative drafting, several countries demonstrated distinct strategies and effects. The following quick summary covers the approaches of six countries.

- 1) **United Kingdom (UK)**: In recent years, attempts in the UK to adopt gender-inclusive terminology have gained traction. The UK Government Equalities Office advises using gender-neutral terminology in official communications and legislation. For example, the "Gender Recognition Act" was revised to include non-binary gender identities, reflecting a broader societal trend. While these modifications are a step forward, problems remain, particularly in changing deeply embedded linguistic conventions²¹.
- 2) **Sweden**: Sweden, on the other hand, has been a pioneer in embracing gender-neutral terminology. In the 1960s, the Swedish Language Council issued rules to encourage gender-inclusive words, and these concepts are reflected in legislative writing. The pronoun "hen," which is gender-neutral, gained widespread use and was even used in official papers. This method has transformed legal interpretation by fostering diversity and questioning traditional gender roles.²²
- 3) **Canada**: Gender-inclusive language has been emphasized in legal papers and government communications in Canada. In 2016, the Canadian Human Rights Act was updated to replace gender-specific wording with gender-neutral terminology, indicating the government's commitment to inclusivity and equality. This change aims to ensure that all individuals, regardless of gender identification, are protected from

discrimination.²³

- 4) **Australia:** Australia has also made progress towards gender-inclusive terminology in legislative writing. To achieve inclusivity, guidelines from many Australian jurisdictions advocate the usage of gender-neutral language. The state of Victoria, for example, has provided assistance for designing gender-neutral laws and regulations, demonstrating a commitment to representing multiple gender identities in legal frameworks.²⁴
- 5) **South Africa:** Gender-inclusive terminology is an essential component of legal writing in South Africa. The country's progressive constitution expressly forbids gender

²¹ UK Government Equalities Office. (2021). "Gender-neutral language." Gov.uk.

²² Swedish Language Council. (2021). "Hen - a gender-neutral personal pronoun." Språkrådet.

²³ Government of Canada. (2017). "Backgrounder: Proposed Legislation on Gender Identity." ²⁴ Department of Premier and Cabinet, Victoria. (2020). "Gender-neutral language."

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discrimination and emphasises the importance of gender equality. Gender-neutral terminology is frequently used in legal papers and laws to ensure that the law respects the rights and dignity of all individuals, regardless of gender identity.²⁵

- 6) **New Zealand:** In keeping with its commitment to gender equality, New Zealand has adopted gender-inclusive language. The country's legal drafting rules emphasise the use of gender-neutral language, which aligns with New Zealand's larger efforts to encourage diversity and inclusion in all parts of society. This approach helps to create a legal framework that is sensitive to the requirements of people with different gender identities.²⁶

COMPARATIVE INSIGHTS

When these various techniques are compared, the impact of cultural context and the differing degrees of execution become clear. While the United Kingdom and Canada are modifying their policies, Sweden and Australia are demonstrating proactive initiatives. These approaches provide important insights into the difficult process of incorporating gender-inclusive language into legislative writing.

This comparison shows that successful gender-inclusive language integration necessitates a mix of legal reforms, social awareness, and cultural adaption. Legislators might be inspired by Sweden's consistency and inventiveness, Canada's dedication to equality, and Australia's proactive leadership. Lawmakers can identify strategies that resonate with their

societies, advancing the vital goal of fostering more inclusive and equitable legal systems.

²⁵ Republic of South Africa. (1996). "Constitution of the Republic of South Africa, 1996."

²⁶ New Zealand Legislation. (2021). "Guidelines for gender-neutral drafting."

8. RECOMMENDATIONS

Before concluding our comprehensive study on gender-inclusivity in legislative drafting, these are some of the recommendations that can help achieve gender inclusivity if incorporated

1. **Guidelines for Drafters**: Create and disseminate comprehensive guidelines for legislative drafters in India, emphasizing the use of gender-inclusive terminology. These rules should provide precise guidance on how to use gender-neutral terminology and avoid using gender-specific pronouns.

2. **Workshops on Inclusive Language**: Conduct workshops and training sessions for legal professionals, such as legislators, judges, and lawyers, to promote awareness about gender inclusive language. Collaborate with linguistic specialists and gender academics to provide hands-on training on using inclusive language in legal documents.

3. **Launch public awareness campaigns** in collaboration with women's rights organisations, LGBTQ+ groups, and language institutes. Educate the public about the necessity of gender-inclusive terminology in Indian legislation through media, social platforms, and community engagement.

4 **Inclusion of Non-Binary Identities**: Include definitions and terminology in appropriate

legislation that expressly recognise non-binary and transgender individuals. To guarantee accuracy and compassion, consult with LGBTQ+ advocacy groups.

5. Establish a reporting mechanism to monitor the compliance of gender-inclusive language guidelines on a regular basis. Publish progress reports on a regular basis that highlight adjustments achieved and issues encountered.

6. Invest in capacity building inside legislation drafting offices by hiring linguistic specialists, gender researchers, and consultants who can successfully guide the integration of gender-inclusive language.

9. CONCLUSION

We discovered a fundamental link between language, law, and societal change during our investigation of the significance of gender-inclusive language in legislative writing. We've seen the continuing influence of language on power structures and cultural norms by delving into historical contexts and comparative assessments. Our findings demonstrate that language is more than just a means of communication; it is also a reflection of values and a cause of change. We've made proposals adapted to the Indian context, emphasising the importance of complete legislative language change. This paper is a call to action, calling legislators, legal experts, and campaigners to recognise gender-inclusive language's revolutionary potential in transforming legal frameworks and achieving a more equitable society. As we close, we recognise that our road towards gender equality is continuing, and language is a powerful tool in this endeavour.

