

GENDER AND LAW

The paradox of making gender-fluid lives legible to the law

Transgressive identities resist fixed and stable categories so crucial to the legal process.

Sumit Baudh

Apr 18, 2026 · 09:00 am



A pride parade in Chennai in June 2018. | AFP

In 2006, as the challenge to the criminalisation of homosexuality under Section 377 of the Indian Penal Code returned to the Delhi High Court, a civil society coalition, Voices Against 377, was trying to gather testimonial affidavits from those directly affected by the law.

An earlier dismissal of the public interest litigation in 2004 had turned, in part, on a familiar judicial move: the petition was considered too academic and insufficiently grounded in lived experience.

By the time the case was revived, there was a clear understanding among the petitioners that this should not happen again. The law would have to be shown in the lives it governed rather than as an

abstraction.

That was easier said than done. This was still a time of criminalisation. To sign an affidavit was to risk being exposed and made vulnerable to law and society alike. We put out calls. Few responded.

I found it difficult to ask of others what I was unwilling to do myself. So I agreed to file my own affidavit. A few others did too.

Gradually, we had a small set – eight in all – drawn from different lived locations: gay men, individuals identifying within the hijra and kothi communities, and others whose experiences spoke to same-sex desire under criminalisation.

One affidavit, in particular, troubled the process. It spoke in a language that unsettled the categories through which the legal argument had begun to take shape. Its account of self was marked by fluidity of gender, desire and identification, refusing to stabilise into terms such as gay or transgender, moving between and beyond them.

Within the spaces we inhabited, this was entirely understandable – consistent with a strong conviction that identities are fluid and shifting. Yet that conviction gave way quickly to a different calculation when the question became what the court would understand. There, legibility mattered. Categories had to hold. Claims had to be framed in terms the law could recognise and process.

This affidavit would be difficult to translate into a form the court could process. The limits of legal recognition were anticipated in advance and internalised within the process of representation itself.

This was a difficult choice. It sat uneasily with the very premise of the exercise, which was to bring lived experience into the courtroom. Here was a life, articulated with clarity and courage, that did not fit the available frames. It was precisely for that reason that it was put aside.

In the end, we filed the seven affidavits that could speak in a language the law would recognise.

What followed is often told as a story of progress. In 2009, the Delhi High Court read down Section 377. In 2013, that judgement was reversed. In 2018, the Supreme Court in the Navtej Singh Johar case finally decriminalised adult consensual sex in private. Each of these moments marks a shift in how the law approaches sexuality.

But this trajectory was never linear. The Supreme Court restored criminalisation in 2013, but within months, in the landmark NALSA case in 2014, it recognised the self determination of gender including forms of gender variance that exceeded fixed categories.

It points to a legal system moving unevenly – at times acknowledging fluidity, at others requiring stability. Despite these developments, the problem endures: that the law depends on forms that can be stabilised.

The affidavits we filed were, in many cases, acts of considerable courage. But they were also selective. They presented lives that could be organised into recognisable categories. They made possible a certain kind of legal claim that could be translated into rights, dignity and equality.

They left out lives that exceeded those categories.

The costs of that exclusion persist. Contemporary debates on gender recognition remain deeply invested in questions of identification, certification and classification. Fluidity sits uneasily within these frameworks because it resists the forms through which law operates.

The affidavit we left out was an early instance of a more enduring legal pattern. The law fails to recognise certain lives, and at times, it requires that they be put aside for recognition to proceed at all.

This failure also lies in the ways its limits are anticipated and accommodated – how representation is shaped by what the law is presumed able to hear.

The task, now as then, is to test these limits by presenting lives in their full complexity and to demand that the law reckon with what it cannot easily contain.

Sumit Baudh is a member of the civil society coalition, Voices Against 377, and has worked on its legal intervention in the Delhi High Court. Views are personal.