
GENDER SENSITIVITY IN INDIAN COURTS

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ABSTRACT

Gender sensitivity is crucial across all sectors, particularly within the Indian judiciary. The imbalance is evident across all levels of the courts, regardless of hierarchy. While society is evolving—reflected in the growing number of women entering the legal profession—there remains a reluctance to truly accommodate this shift. What's needed is not just a change in laws, but a transformation in attitudes and mindsets.

Promoting gender sensitivity in courts is not about advocating feminism; rather, it is about ensuring that the legal profession provides equal opportunities for those who aspire to build their careers and identities within it. This article offers an overview of the current realities within Indian courts, the societal expectations surrounding women in law, their struggles in establishing themselves professionally, the relevant jurisprudence, and the reforms required to create a judiciary that is neutral, inclusive, and committed to upholding the rule of law.

Keywords: Gender Sensitivity, Indian Courts, Societal Expectations, Professional Women, Representation of women in Judiciary

Gender Sensitivity in Indian Courts

Legal Profession, Social Expectations: The Double Burden on Women

In quest for gender justice, promoting gender inclusivity across all sectors has become imperative. For centuries, women have been dependent on their fathers, husbands, and later their sons—not by choice, but because they have been conditioned to believe they cannot stand on their own. Indian society—especially its judicial system—has long been male-dominated. From the very beginning of her life to her final days, a woman is often burdened with the expectation to surpass men at every stage. Unlike men, women are rarely perceived as synonymous with success, progress, courage, or leadership. They must consistently exceed expectations merely to gain basic recognition. Tragically, even when they serve as homemakers, their voices are frequently disregarded and their contributions undervalued.

When we examine the Indian judicial system—be it the Supreme Court, High Courts, or Trial Courts—women remain significantly underrepresented, whether as judges, advocates, or court staff. While the proportion of women may differ across various levels of the judiciary, the overarching reality of gender imbalance persists. This prompts a crucial question: why does this disparity continue to exist, especially when an increasing number of women are studying law and entering the legal profession?

Our society is progressing in a way where we are teaching our girls to be educated, highly qualified and be independent but until they got married. Few are the exceptions who continue to work not just as a hobby but to actually support their family's well-being and establish their own identity. Many are left with the choice of either having a career or family. In the legal field especially, the environment in courts mainly for the women lawyers are not conducive. Advocacy demands long hours, energy, intense preparation and complete dedication. Yet, when a woman comes home late from work, she is subjected to judgment, suspicion and unsolicited questions, both spoken and unspoken. The profession requires unwavering commitment, focus, persistence, and availability during odd hours—early mornings and late nights. However, these time constraints and social expectations disproportionately burden women. Society continues to hold them to a different standard.

Marriage is often seen as a milestone that a woman is expected to reach as soon as she turns 25 or even early. Ironically, this is also the time when her career is just beginning. While parents

start searching for a suitable groom—typically someone from a respectable family, well-educated, and financially stable—they often overlook a crucial trait: whether the man will support their daughter in building her own career and identity. While their intentions are rooted in care and concern, they sometimes miss the importance of choosing a partner who values and encourages a woman's independence and professional growth. Marriage, children, and other social responsibilities often limit a woman's ability to fully dedicate herself to her career, forcing her to choose between professional advancement and family life. While female judges may have the option of a spouse posting—if both partners are in the judiciary—this flexibility is rarely available to women lawyers. A woman who establishes her legal practice in one city may be required to relocate after marriage, starting her career from scratch in a new place and waiting for it to gain stability again. Unfortunately, the life of a woman is challenging—balancing numerous responsibilities at home and meeting high expectations at work often compels her to sacrifice one for the other.

Breaking Barriers: The Silent Struggle of Women in Legal Profession

Women working in the Supreme Court, High Courts, and Trial Courts often face similar challenges within the legal profession. Female advocates, in particular, encounter uncomfortable and inappropriate behavior as they walk through court corridors—often being subjected to unwanted touching, stares, and comments. Those who respond assertively to such harassment are frequently labeled as cantankerous or rebellious, while those who remain silent are often advised to quit and stay at home. Such experiences can deeply shake their confidence. They are told that the legal field is a man's world and are shown examples of women who left the profession to lead comfortable lives as homemakers. Unfortunately, only a few people encourage them to stay in the profession, uphold their integrity, and seek inspiration from positive role models. It is often observed that women are retained as junior associates by renowned senior advocates in the High Courts and Supreme Court, yet they are rarely given the opportunity to appear before the court. Instead, they are expected to stand quietly in the background and hand over files—treated more like showpieces than professionals. As a result, their career growth is stunted. They experience limited professional growth, spending several years as juniors. Even when they continue and begin practicing independently, they are often entrusted with fewer important briefs. Women often face such treatment because they are not perceived as independent lawyers or recognized as leaders.

When we observe the professional environment of the Supreme Court and High Courts, we find that more women are practicing there compared to trial courts. One possible reason is that, in higher courts, interactions are limited primarily to appearances before judges. In contrast, trial court practice involves comprehensive case handling, including direct and often intense dealings with clients. For women practicing criminal law, this may involve interactions with individuals accused of serious crimes such as murder, rape, or dacoity—people whose integrity is frequently in question. This can lead to concerns about personal safety, and in many cases, families discourage women from continuing in such roles, instead urging them to pursue more conventional 9-to-5 jobs. While women in higher courts also face harassment, it often takes subtler forms. In trial courts, however, the harassment can be more overt and intimidating.

India is known for its diversity, and the idea of 'unity in diversity' is often celebrated as one of our greatest strengths. However, this principle seems to fade when it comes to gender diversity within the judiciary. A recurring observation is that, in our society, respect is often given more to the individual than to the position they hold. While this might be seen as admirable in everyday life—since positions are temporary and individual's permanent—in the context of the judiciary, it reveals a troubling bias. Female judges often do not receive the same level of respect as their male counterparts. Moreover, there remains a discomfort in accepting women in higher positions or as advocates. Many still hold the outdated belief that a woman's place is within the confines of the home, rather than in positions of authority.

It is both disheartening and troubling to witness such bias. Men and women alike dedicate themselves to their studies, often burning the midnight oil in pursuit of becoming professionals. They strive to excel and make their mark in their respective fields. Yet, women continue to be treated differently. Why is this the case? The answer lies in the deep-rooted prejudice and unconscious bias that still persist in our minds. We have been so culturally conditioned that gender bias feels almost ingrained in us. Society has long upheld the image of men as the primary workers and women as ideal homemakers. While there is nothing wrong or less valuable about being a homemaker, but today's world also sees women achieving great success in professional spheres — and this shift must be acknowledged and embraced.

Being gender sensitive goes beyond merely accommodating other genders; it begins with introspection—understanding and challenging one's own biases, and accepting that the legal profession is not the exclusive domain of men. It's about creating an inclusive space that fosters

healthy competition among all individuals, regardless of gender. With the legal recognition of the third gender in our society, the discourse is no longer limited to men versus women—it now encompasses the broader struggle for equal opportunity among all genders.

Evolving Jurisprudence on Gender Sensitivity through Judicial Interpretations

In, National Legal Services Authority (NALSA) v. Union of India¹, the Supreme Court granted legal recognition to transgender persons in the country. Noting that each individual possesses a right of self- determination of their gender identity, the Supreme Court held that discrimination on the basis of gender expression and identity violates the fundamental rights to life, liberty, and equality as well as the freedom of expression.

In Aureliano Fernandes v. State of Goa², The Supreme Court took strong exception to the fact that even a decade after the enactment of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act of 2013 (POSH Act), there remained serious lapses in its effective enforcement. The Court underlined that all the state functionaries, public authorities, private undertakings, organizations and institutions are duty bound to implement the POSH Act in letter and spirit.

In XYZ v. State of M.P., (Aparna Bhat³), Stereotyping affects women's right to a fair trial and the judiciary must be careful not to create inflexible standards based on preconceived notions of what constitutes domestic or gender-based violence. The greatest extent of sensitivity is to be displayed in the judicial approach, language, and reasoning adopted by the judge. Judges play at all levels a vital role as teachers and thought leaders. It is their role to be impartial in words and actions, at all times. If they falter, especially in gender-related crimes, they imperil fairness and inflict great cruelty in the casual blindness to the despair of the survivors.

Also, Patan Jamal Vali v. State of A.P.⁴, Victim being physically disadvantaged, she was already in a socially disadvantaged position which was exploited maliciously by the accused for his own ill intentions to commit fraud upon her and rape her in the garb of promised marriage which has put the victim in a doubly disadvantaged situation and after the waiting of many years it has worsened. It would not be possible for the victim to approach the National

¹ (2014) 5 SCC 438

² (2024) 1 SCC 632

³ (2021) 16 SCC 179

⁴ (2021) 16 SCC 225

Commission for Women and follow up for relief and rehabilitation. Accordingly, the victim, who has already suffered a lot since the day of the crime till now, needs a special rehabilitation scheme.

The guidelines issued in the aforementioned cases reflect the judiciary's commitment to encouraging greater participation of women in the legal profession by striving to create a work environment that is as supportive and inclusive as possible. Additionally, the release of the Handbook on Gender Stereotypes underscores the progressive mindset of the Hon'ble Supreme Court and its efforts toward embracing and accommodating all genders—ensuring that deserving individuals have equal opportunity to thrive in the profession. Talent, intellect, skill, and knowledge are not gender-specific; those who possess them should rightfully excel.

While the primary role of a judge is to dispense justice through judgments, it is also true that judges often serve on various administrative committees. On the bench, a judge is respected as a judge, regardless of gender. However, in administrative matters, it often becomes a challenge to advocate for basic and dignified facilities—such as clean and functional washrooms. There are districts in India that do not have separate washroom and crèche facility even for Judges. For women advocates entering the courtroom, especially those who are also mothers, the availability of crèche facilities is a fundamental necessity. Unfortunately, such facilities are either absent or severely lacking in most of the courts in the country today.

Conclusion and Suggestions

Laws have been enacted, and the judiciary has emphasized through its interpretations that gender sensitivity—both in courtroom conduct and in the language of judgments—is a crucial step toward conveying its importance to society. However, the issue of gender sensitivity runs far deeper. It is not something that can be selectively applied—sensitive in one instance and indifferent in another. Rather, it must be a mindset, ingrained at the core of one's values. Although the topic has been widely discussed and debated, and some may feel the conversation has reached a point of saturation, the reality is that much work remains to be done in changing societal attitudes and mindsets. Gender sensitivity does not equate to feminism—it simply means treating every individual with equal respect and dignity. Women have made their mark in every field, yet they often go unrecognized, unacknowledged, and unaccepted. A recent example is 'Operation Sindoor', where women led the mission with remarkable success and addressed the nation through several press conferences. This demonstrates that the government

had recognized and honor their contributions and struggles. Cornelia Sorabji became the first woman lawyer entitled to practice in 1924, Anna Chandi, was the first female judge in 1937 and then High Court judge 1959, Fathima Beevi was an eminent jurist and the first woman Judge in the Supreme Court of India. Although our judicial system is regarded as one of the finest in the world, it is disheartening that India will witness its first woman Chief Justice, Justice B.V. Nagarathna, only in 2027. The presence of women in the legal profession has steadily grown. However, a glass ceiling still persists—women make up only 14.27% of judges in the High Courts (109 out of 764)⁵. The representation of women in the District Judiciary is relatively higher, as many qualify through competitive exams and demonstrate their capabilities to join the bench. However, their presence in the bar and elevation from the bar to the higher judiciary remains significantly underrepresented.

Despite these challenges, such milestones continue to inspire young women, giving them the strength and motivation to continue. They affirm that their struggles are not in vain, diversity and merit are not contradictory. In a pluralistic society like ours, diversity strengthens the legal profession by making it more inclusive, representative, and morally credible. We must strive for a time when the entry of women—whether as lawyers or judges—is so normalized that it does not seem out of ordinary at all.

⁵ As per The Hindu, Monday, March 10th 2025