
THE GENDERED GAVEL: GENDER STEREOTYPES AND EVOLVING JUDICIAL CONTOURS OF INDIAN JUSTICE

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ABSTRACT

Patriarchal, cultural, caste and gendered norms often make women's negotiation towards justice elusive. The "*sentinel on the qui-vive*" is responsible for protecting the rights of women and preventing justice from being squandered through judicial decisions, which form the basis of constitutional equality and justice, keeping constitutional morality at the highest pedestal by pondering upon the issues of gender sensitisation to ensure substantial equality to break the shackles of gender stereotypes.

This paper navigates through various judicial decisions influencing the changing contours of the Indian Judiciary in ensuring women's safety, freedom and dignity by strengthening various fundamental rights granted vide the Indian Constitution. The Courts in India have increasingly acted in a corrective capacity to realign with gender sensitive discourses, especially in cases involving sexual offences, wherein issues such as distinction between preparation and attempt, ideal victim myth, compromise culture, clothing, behaviour, previous conduct and character, etc., which traumatise the victim/survivor. Further, the paper delves into various instances wherein the superior Courts have guided trial courts and laid down stringent frameworks for sentencing practices in gender-sensitive cases and have encouraged constitutional morality over social morality, ensuring equality and gender justice. The Sabrimala judgment, the POCSO and POSH norms, etc., are instrumental in the said aspect.

By scrutinising current sentencing trends, the paper highlights how the Court has transitioned from a focus on "paternalistic protection" to a framework of bodily autonomy and dignity. Further, the paper examines the role of superior courts in adopting institutional behavioural reform rather than merely providing vocabulary advice in championing women's rights. The paper conclusively calls for a holistic approach with strong legislative reforms, judicial consistency, gender-sensitive policing, trauma-informed procedures, and restorative forms of justice. Only through comprehensive legislative, judicial and social responses can the pernicious stereotypes be tackled in cases involving gender sensitive issues.

Keywords: Gender, Stereotype, Justice, Sensitisation, Constitutional Morality, Sexual Offences, Judicial, Contours.

CHAPTER I

INTRODUCTION

The fundamental tenet of gender justice lies in the equal treatment of men and women in the administration of justice. However, it is often the case that women are deprived of such equal treatment and are denied justice owing to the patriarchal mindset of the framers of legislation and overlooked by those delivering justice because of the associated stereotypical role assigned to women. Even in the contemporary era of modernisation and open-mindedness, women are the continuous subject of discrimination. The never-ending and ever-growing cases of domestic violence, human trafficking, dowry death, sexual violence, child marriage, unequal representation, ill treatment in public, as well as in professional settings, depict the prevalent mirage of rights and privilege ensured to the women vide constitution and different legislation.

The Indian society perceives women as “the creator, reproducer and propagator of culture and a new social order”.¹ The very infamous verse from the Manusmriti “*यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः। यत्रैतास्तु न पूज्यन्ते सर्वास्तत्राफलाः क्रियाः॥*” depicts the Indian culture and tradition wherein women are placed at a very high pedestal and worshipped. In essence, women are respected in every sphere of society. Conversely, we have also witnessed that when the quest for dharma arises, the character of women has always been dragged into. In the Hindu epics, the pursuit and validation of Dharma often paradoxically unfold through the trial of women’s virtue. The public humiliation of Draupadi at the royal court of Hastinapur in the Mahabharat, after Yudhishtira lost her in a rigged dice game, leading to her becoming the catalyst for the war of Kurukshetra, and the demand for a trial by ‘Agni Parikshya’ imposed upon Devi Sita in the Ramayana to prove her chastity, whereas she herself was the victim of Ravana’s misconduct.

These events poignantly depict that these social norms, cultural and religious practices, often act as an impediment to the progress of women. Also, the very institutions that have been established to protect the life, liberty and dignity of women are often seen to be in a state of slumber to prevent the perpetuation of inequalities and discrimination against women.

¹ Kalpana Kannabiran, Tools of justice: Non-discrimination and Indian Constitution, 317 (Routledge 2012).

This paper, in essence, employs a doctrinal descriptive method to understand the root cause of existing discrimination against women, the continuing assassination of the character of women, disturbing misconduct of legal and law enforcement institutions, treatment of women in a pejorative way when they are the victims of sexual offences, discrimination against female prosecutors, etc., and highlights the existing structural as well as legal barriers or loop holes that impedes gender equality.

This paper further analyses landmark case laws involving biased judgments and comments emanating from not only trial courts but also the apex courts of our nation. Also, various instances of harassment of women in public institutions like police stations, court premises, and centres of legal education, etc., are the aspects that the paper delves into.

Conclusively, the paper argues that there is an urgent need to revisit the prevailing women's rights and the tools to protect these rights of women and the need to sensitise courts and law enforcement institutions so that, owing to stereotyping, the integrity and impartiality of justice and the law enforcement system are not compromised, leading to miscarriage of justice.

CHAPTER II

THE VICIOUS CYCLE OF MISOGYNY, PATRISRCHY AND STEREOTYPES

The contemporary Indian society, notwithstanding today, is witnessing women progressing in various aspects in the society, a series of feminist moments underway, pejorative against women and derogatory practices still exists and surprisingly, the Courts in India are in a state of slumber and yet to wakeup and realise the seriousness of issues related to discrimination, crime, injustice and persistent stereotypes against women. Women are placed at a subjugated position, to which the French philosopher and feminist, Simon de Beauvoir, aptly remarked in her book *The Second Sex*² (1949) that “[W]oman is not a completed reality, but rather a becoming” on other words “[O]ne is not born, but rather becomes a woman”, highlighting the cause of relegation of women to such a position being the socio-cultural environment.³ In the Hindu society, the character Sita, personifies ideal womanhood and is in existence in contemporary society as a measure of virtue, chastity, infidelity and satitwa/pativrata for a

² Simone De Beauvoir, *The Second Sex*, (Lowe And Brydone (Printers) Ltd., London).

³ Tanvi and Narayana, *The Challenge Of Gender Stereotyping In Indian Courts*, 8 (1) Cogent Social Science 2 (2022), DOI: 10.1080/23311886.2022.2116815.

woman. It is paradoxical to observe that when there is a quest for 'Dharma', the virtue of a woman has already been dragged into the instance of harassment of Draupadi in the Rajasabha of Hastinapur, where she was portrayed to be characterless or the instance of agniparikshya by Mata Sita for the mischievous conduct of Ravana. In both instances, women were never a party to the conflict, but their virtue was questioned. In epics, women are always portrayed as the epitome of sufferers of pain and of tolerance, leading to the denial of the right of women to a dignified life. It is often the fact that such stereotypes are sanctioned through the veil of custom and tradition, so that they are either not questioned or least questioned as rightly observed by Simon de Beauvoir, "[I]f the respect or the fear inspired by woman prevents the use of violence towards her, then the muscular superiority of the male is no source of power. If custom decrees - as in certain Indian tribes - that the young girls are to choose their husbands, or if the father dictates the marriage choice, then the sexual aggressiveness of the male gives him no power of initiative, no advantage".

Even today, the position of women in society is decided by public morality. In an offence against women, it is the women who suffer the questions put forth upon her virtue and conduct through the raised eyebrow of society. Kate Millet, in her work *Sexual Politics*, pondered upon the harsh reality that men often acquire a dominant position over women by treating them in a degrading, humiliating way and by punishing them through the social construction of heteronomy and commonly practiced patriarchy rather than by their innate biological dominance.⁴ Sadly, most often, Courts too become biased and fails to acknowledge the seriousness and disbelieve women, alleges to have misused the law or have failed to gauge the seriousness of the allegation or crime. In the words of Debiprasad Chattopadhyaya, "[T]he mind that interprets is not a *tabula rasa*: neither is it just a calculating machine or an electronic brain. The interpreter is a thinking being, and as such, he will have to interpret with a mind having a system of beliefs and from a standpoint which he happens to occupy at the time of his interpretative activity. Subjectivism in this sense is inevitable in all human thinking."⁵ According to Jerome Frank, "judges...., interpreting a complex and often ambiguous body of law through a deeply personal lens."⁶ Sonia Sotomayor, Justice of the U.S. Supreme Court, contends that "The judge's personal philosophy, background and life experiences inevitably

⁴ Kate Millet, *Sexual Politics* (University of Illinois Press 1970).

⁵ Debiprasad Chattopadhyaya, *Lokayata: A Study In Ancient Indian Materialism*, xi-xii (Peoples Publishing House 1959).

⁶ Wakoli Sam Kharemwa, *Impartiality In Judicial Decision-Making: Personal Bias As An Inherent Factor In Judicial Judgments*, SSRN, (September 25 2025), <https://dx.doi.org/10.2139/ssrn.5506218>.

influence their perception of the law.”⁷ “No judge, however he tries, can completely transcend the subjective influence of his own experience.”- Benjamin Cardozo, J. U.S Supreme Court.⁸ These biases are therefore the result of social, cultural, traditional and personal experience, mostly inherent and operate automatically, whether with consciousness or without consciousness. In the next chapter, examples of biased and pejorative attitudes of judges and the substantial evidence of reflection of existing stereotypes in the Indian courts would be highlighted by citing cases and events depicting the continuing gender stereotypes. The patriarchal stereotypes is acquiring a vicious cycle and accumulating a systematic position even in legal institutions by updating, reshaping and adapting itself with the changing social contours. Judicial stereotyping perpetuates inequalities, violates human rights, negates fundamental freedom, deprives women of educational and professional opportunities and reiterates gender-biased norms leading to further subjugation of women. It is often the woman who is victimised and her conduct, character, personality and attribute is questioned. Women are often stigmatised, their character is assassinated, and in many instances, children are labelled as bastards. Such stereotypes in institutions of law plague not only the institution but also paralyse the delivery of justice.

CHAPTER III

MISOGYNY WITHIN THE JUSTICE DELIVERY SYSTEM IN INDIA

The patriarchal stereotype prevailing has been the cause of the oppression of women for thousands of years. With the efflux of time, it has been adopted, acquired and resulted in a vicious cycle. Courtrooms, albeit, are considered as the institution of justice and a place to challenge discrimination and to end patriarchal culture, have never, in reality, escaped the existing vicious cycle, and such could be evident from various instances discussed hereinafter.

The active enforcement of laws and regulations by the State without pondering upon gender stereotypes leads to the institutionalisation of such. The nation that commits itself to ensuring justice, fairness, non-discrimination and equality and takes pride in its endeavour to achieve the goal of social welfare and non-discrimination, has a persisting disheartening reality. There exist gender biases and stereotypes woven into the very fabric, despite progressive legislations,

⁷ *Id.*

⁸ *Id.*

of the Indian Legal System, impeding the attainment of gender justice in true essence.

Provisions of existing statutes and codes like the of Indian Penal Code (IPC), the Code of Criminal Procedure (CrPC), and the Code of Civil Procedure (CPC) employ masculine terminology like he/him/his, reinforcing by default the idea of men and a sense of belongingness of women in the lower strata in the social hierarchy of men and women.

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The Mathura rape case is one of all shocking incidences wherein the Supreme Court set aside the conviction by High Court relying upon the observation of the Session Court who concluded and stated the victim to be “a shocking layer” and her testimony is “riddled with falsehood and improbabilities” while distinguishing “rape” from mere “sexual intercourse” stating the victim to have consented to the act of the police officer as there was no injury in her body and hence is a case of “passive submission”. The victim was subjected to character assassination by contending that she was groped by the police as she was “habituated to sexual intercourse”.⁹

It is a general perception that, owing to the duty to fulfil marital obligation by the wife, marital status exempts husbands from the definition of rape, whereby non-consensual sex with a wife doesn't fall within the ambit of rape.

India is amongst those few countries where non-consensual intercourse with a husband within the marriage doesn't fall under the ambit of rape.¹⁰ Such an exception is the general consequence of customary and traditional beliefs that a husband has absolute right over his

⁹ *Tukaram v. State of Mathura*, 1979 SCC (2) 143.

¹⁰ Anusha Agrawal, *Marital Rape In India: Deconstructing 'Consent'*, III(I) IJRL 2, <https://ijirl.com/wp-content/uploads/2024/09/MARITAL-RAPE-IN-INDIA-DECONSTRUCTING-CONSENT.pdf>.

wife, and such stereotypes are being reflected in the exemption of “marital rape” from the ambit of “rape” under Section 63 of Bharatiya Nyaya Samhita (BNS) as well as from the derogatory words used by Courts while adjudicating cases.

"When two people are living as husband and wife, however brutal the husband is, can the act of sexual intercourse between them be called rape?", asked Chief Justice of India SA Bobde to the girl's lawyer in a matter where, on the pretext of marriage, the girl was brutally abused sexually. The arrest of the accused was stayed.¹¹

Justice C Hari Shankar in the case of *RIT Foundation and Ors. Vs. The Union of India and Ors*¹² while contending husband's expectation of sex to be legitimate stated “346....Introducing, into the marital relationship, the possibility of the husband being regarded as the wife's rapist, if he has, on one or more occasions, sex with her without her consent would, in my view, be ‘completely antithetical to the very institution of marriage’”.

The High Court of Chhattisgarh acquitted the accused in the case of *Gorakhnath Sharma v. State of Chhattisgarh*¹³ and was of the opinion that:

14.....if any unnatural sex as defined under section 377 is committed by the husband with his wife, then it can also not be treated to be an offence. 16.....if the age of the wife is not below the age of 15 years, then any sexual intercourse or sexual act by the husband with her wife cannot be termed as rape under the circumstances, as such absence of consent of the wife for unnatural act loses its importance.

In the case of *State of Punjab vs Gurmit Singh*¹⁴, the trial court interlinked the rape survivor was habituated to sexual intercourse as the speculum could get into her vagina easily, hence, she is of loose character. The trial court not only disbelieved the narration of the girl who was a minor, but also characterised her as a girl of ‘such type of girl’ or ‘of loose morals’. This shocked the judicial conscience, and the SUPREME COURT condemned the observation of the trial court as it lacked sobriety. The court further observed that such stigmas have the

¹¹ Radhika Roy, *Can Sex Between People Living As Husband And Wife Be Called Rape? SC Asks While Giving Relief To Rape Accused*, Live Law (Mar 1 2021), <https://www.livelaw.in/top-stories/supreme-court-grants-8-week-protection-from-arrest-to-rape-accused-in-false-marriage-promise-case-170525>.

¹² *RIT Foundation and Ors. v. The Union of India and Ors*, MANU/DE/1638/2022.

¹³ *Gorakhnath Sharma v. State of Chattisgarh*, CRA No. 891 of 2019.

¹⁴ *State of Punjab vs Gurmit Singh*, 1996 SCC (2) 384.

potential to discourage victims of sexual assault to raise complaint. Hence, the courts must be subjected to self-restraint where the future of the victim as well as the society is at stake. It was ruled by the court that even if the woman has a history of sexual intercourse earlier, she has the absolute right to deny to sexual intimacy to anyone as she is not prey or vulnerable object for sexual assault.

In *Shafin Jahan vs Asokan K.M.*¹⁵ (Hadiya case) it was held by the High Court that the woman, being at the age of 24, is weak and vulnerable to exploitation. The apex court, reversing the decision of the High Court, held that the court erred in not taking into account the fact that the woman is a major and capable of taking decision for herself. Hence, she has the full autonomy of selecting her partner for marital life and exercise all other rights relating to marriage. The court cannot extend its jurisdiction to transgress into these private affairs as *parens patriae*.

While hearing a plea of bail in rape on the false pretext of marriage case, the bench of Justices Ujjal Bhuyan and Nagrathna raised a question to the woman that how she could travelled to Dubai or Delhi with the man as they were total strangers to each other before the marriage even the accused promised to get married in future and *how they could indulge in a physical relationship before marriage as they should have circumspect*. They further recommended opting for mediation as the sexual intimacy was consensual, stating these are not cases of trial and conviction. It is important to highlight the fact that, allegedly, the accused person took the girl to various places in Delhi and Dubai, where they engaged in sexual intercourse, and the accused person videographed the intimate scenes without her consent, threatening to circulate.¹⁶

It is consistently observed in the observations and judgment of trial courts that the courts focus predominantly on how the victim reacts or behaves after the assault, rather than seeking or proving the acts, i.e. the courts rely on a “flawed manual of ideal victim”. In the case of *Mahmood Farooqui v. State (Govt of NCT of Dehi)*¹⁷, the Delhi High Court shockingly observed that the accused might have mistakenly considered the feeble denial to be an allowance, as a feeble “No” means “Yes”. Further, the court stated that in the case of a delayed

¹⁵ *Shafin Jahan vs Asokan K.M.*, (2018) 16 SCC 368.

¹⁶ ‘Don’t Trust Anyone’: SC Cautions The Young Against Pre-Marital Sex, Times of India, (Feb. 17, 2026), <https://timesofindia.indiatimes.com/india/dont-trust-anyone-sc-cautions-the-young-against-pre-marital-sex/articleshow/128444171.cms>.

¹⁷ *Mahmood Farooqui v. State (Govt of NCT of Dehi)*, Criminal Appeal 944 of 2016 (High Court of Delhi, 25 September 2017)

complaint, it is a “lie”. Also, in the case of *Tarun Tejpal v. State of Goa*, the Goa Trial Court acquitted the accused, observing that the victim seems to be “joyful” and not “disturbed” from the images of the victim revealed. Further, in 2017, the Punjab and Haryana division bench granted bail to three convicts of a gang-rape case on a student of OP Jindal Global University, on the ground that the statement of the victim was “misadventure stemming from a promiscuous attitude and a voyeuristic mind”. It is also contended that women who are subject to sexual assaults or rape should “incessantly cry and show depressed-suicidal tendencies” otherwise they are lying about the incidence.¹⁸ Such pejorative comments distort the meaning of “consent” and ignore the fact that there could be no strict jacket way in which a survivor should behave. Moreover, the Madhya Pradesh Court in *Dilip v. State of Madhya Pradesh* opined that “the survivor should have attacked the appellant like a ‘wild animal’, but the fact that she did not even resist suggests nothing other than consent”.¹⁹

It is not only that women are judged by their conduct, but based on caste, class and age, society perceives as to the probability or improbability of the occurrence of such violence against women. The trial court in *Bhanwari Devi’s Case* while acquitting the accused, *inter alia* observed: “members of a dominant caste would not rape a woman of oppressed class; men of different castes would not participate in gang rape; older men aged 60-70 cannot participate in a gang rape; it is improbable that a women could be raped in the presence of her husband.”²⁰

Victims of sexual assaults are generally subjected to character assassination not only by society but also observed in the comments and observations made in the Courts. In *Varun Hiremath v. State of NCT Delhi*, the character assassination of the victim by the opposing counsel by slut-shaming her with disparaging and pejorative remarks was joined by Justice Khanagwal in demeaning the character of the woman rather than to oppose the opposing counsel. Also, in cases of minors’ rape, while interpreting the Protection of Children from Sexual Offences (POCSO) Act, Justice Pushpa Ganiriwala of the Nagpur Bench of the Bombay High Court observed that mere “groping” is not sufficient without “skin-to-skin contact” with the intent of sexual assault. The SC struck down the whole judgment due to widespread public criticism. In a case of the Allahabad High Court, the view was that it is very likely on the part of women to falsely allege sexual assault or rape.²¹ Further, a woman with a previous sexual relationship is

¹⁸ Handbook on Combating Gender Stereotypes, Supreme Court of India, (2023), <https://sci.gov.in>.

¹⁹ Tanvi, *supra* note 3, at 6.

²⁰ Handbook on Combating Gender Stereotypes, Supreme Court of India, 19 (2023), <https://sci.gov.in>.

²¹ *Id.*, at 21.

considered to be of “loose morals” or “loose character”, hence can’t be raped.²²

The courts have, in various instances, observed to have negotiated the matter through private settlement by marriage or by tying Rakhi. It is contended that a crime like rape taints or tarnishes the reputation and honour of the survivor victim’s family and could be restored if she marries or ties Rakhi to the rapist. It is so unfortunate to observe such an attitude of the Indian Courts that it has failed to realise the moral and mental sufferings of the victim. Former Chief Justice S.A. Bobde’s statement, “. . . if you marry her, we can help; if not, you lose your job and go to jail,” in the case of *Mohit Subhash Chavan v. State of Maharashtra*, is a mockery of the justice delivery system itself.²³

It is unfortunate and disheartening to see the Indian courts, which should be at the forefront in upholding justice, eliminating stereotypes and implementing human rights, becoming prey to the vicious stereotypes and patriarchy and institutionalising such pejoratives while adjudicating women-related issues.

CHAPTER IV

POSITIVE TRENDS AND THE EVOLVING COUNTOURS OF INDIAN JUSTICE

A woman cannot be herself in the society of the present day, which is an exclusively masculine society, with laws framed by men and with a judicial system that judges feminine conduct from a masculine point of view.”

- Henrik Ibsen

In the case of *Aparna Bhat vs State of Madhya Pradesh*,²⁴ relying upon the International Commission of Jurist’s, ‘Bangkok General Guidance for the Judges in South East Asia’, the Supreme Court observed that the courts while making judicial decisions should avoid certain stereotypes which involves women being physically weak are unable to take their own decisions and men being the head of family shall take all decisions in respect to family concerns; women are characterised as chaste if and when they are submissive and obedient, bow down to husband’s words should not wear clothes that make them subjected of being

²² *Id*, at 22.

²³ Tanvi, *supra* note 3, at 4.

²⁴ *Aparna Bhat v. State of Madhya Pradesh*, AIR 2021 SUPREME COURT 1492.

attacked by sexual remarks and gestures. Non-resistance often portrayed as involvement of consent, easy to access, of loose virtue without considering the sensitivity of offence and mental agony upon the victim. It was further directed that the courts while adjudicating cases involving violence against women shall consider the following:

Courts should not mandate, require or permit contact between the accused and the victim. Such conditions should seek to protect the complainant from any further harassment by the accused; should avoid reflecting stereotypical or patriarchal notions about women and their place in society, and must strictly be in accordance with the requirements of the Cr. PC. In other words, discussion about the dress, behavior, or past “conduct” or “morals” of the prosecutrix, should not enter the verdict; should not suggest or entertain any notions (or encourage any steps) towards compromises between the prosecutrix and the accused to get married, suggest or mandate mediation between the accused and the survivor, or any form of compromise as it is beyond their powers and jurisdiction; sensitivity should be displayed at all times by judges, who should ensure that there is no traumatization of the prosecutrix, during the proceedings, or anything said during the arguments, and judges especially should not use any words, spoken or written, that would undermine or shake the confidence of the survivor in the fairness or impartiality of the court.

During training and sensitization of judges and attorneys, a gender sensitization module be incorporated. The aim of this module must be to eradicate ingrained social bias particularly misogyny and teach judges how to hear and decide cases of social assault with greater sensitivity. As a part of this training use of language and suitable words and phrases should be stressed.

The courts used to routinely rely upon the “Two-Finger Test” to determine the virginity and or chastity or the sexual history of rape victims which raises the presumption of consent for a woman who is sexually active until the case of *Lillu @ Rajesh v. State of Haryana*²⁵. In this case the court firmly declared that this test itself and the interpretation thereof is violative of privacy, dignity and integrity of rape survivors, and it can give, ipso facto, the presumption of consent

²⁵ *Lillu @ Rajesh v. State of Haryana*, (2013) 14 SCC 643.

even if the test report is affirmative. Again, the court, in *Jharkhand v. Shailendra Kumar Rai*²⁶, reiterated the ban on Two Finger Test or the pre-Vaginum Test and stated:

“64. Whether a woman is “habituated to sexual intercourse” or “habitual to sexual intercourse” is irrelevant for the purposes of determining whether the ingredients of Section 375 of the IPC are present in a particular case. The so-called test is based on the incorrect assumption that a sexually active woman cannot be raped. Nothing could be further from the truth - a woman’s sexual history is wholly immaterial while adjudicating whether the accused raped her. Further, the probative value of a woman’s testimony does not depend upon her sexual history. It is patriarchal and sexist to suggest that a woman cannot be believed when she states that she was raped, merely for the reason that she is sexually active.”

The honourable Supreme Court in the case of *Joseph Shine v. Union of India*²⁷, while considering striking of section 497 of IPC contended that the said provision is constitutionally untenable arguing “...*the provision proceeds on the notion that the woman is but a chattel; the property of her husband.*”

After the shocking remarks in *Mahmood Farooqui Case* and owing to growing gender stereotypes against women in Indian Courts the Supreme Court under the guidance of Former Chief Justice of India D.Y Chandrachud in 2023 launched a “Handbook on Combating Gender Stereotypes” highlighting the issues of gender stereotypes through various decisions and rendered proclivity to the point that court should avoid use of certain words and harmful stereotypes while adjudicating cases. For the same purpose, the Handbook also highlights certain alternative language to stereotype-promoting language and contrasts it with perceived stereotypes and possible realities.²⁸

However, CJI Surya Kant states the Handbook to be too “Harvard Oriented” and pondered upon the need for fine-tuning of the same and directed the National Judicial Academy (NJA) to constitute a panel for the same purpose, comprising experts in the domain to frame guidelines afresh and submit the report to the SC.

²⁶ *Jharkhand v. Shailendra Kumar Rai*, 2019 SCC OnLine SC 2239.

²⁷ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

²⁸ Handbook on Combating Gender Stereotypes, Supreme Court of India, (2023), <https://sci.gov.in>.

The report 'Towards Equality' by the 'Committee on the Status of Women in India' highlighted the existing and continued dismal state of affairs of the role of both the judiciary and executive in their failure to educate and inform women of their legal rights and in establishing a mechanism for effective and constructive interpretation and enforcement of the law.

The courts have time and again condemned stereotypical and pejorative statements by trial and appellate courts. The Sabarimala judgment²⁹, the POCSO and POSH norms, the Triple Talaq Judgement³⁰ etc., are instrumental in upholding constitutional values, women's dignity and preventing discrimination. CEDAW has acknowledged "Stereotyping and gender bias in the justice system have far-reaching consequences for women's full enjoyment of their human rights. They impede women's access to justice in all areas of law, and may have a particularly negative impact on women victims and survivors of violence.... Stereotyping also affects the credibility given to women's voices, arguments and testimony as parties and witnesses. Such stereotyping can cause judges to misinterpret or misapply laws...Stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice, including the revictimization of complainants ... Eliminating judicial stereotyping in the justice system is a crucial step in ensuring equality and justice for victims and survivors".³¹

CHAPTER V

SUGGESTIONS:

TOWARDS EMPATHETIC JUDGING AND GENDER-SENSITIVE COURTROOMS

There is a need for extended legal education to incorporate literature reading and interdisciplinary approaches to foster empathy. The mind that conceptualizes literary art and interdisciplinary aspects recognizes the misery in society and enables equitable judgments. Compassion is the foundation of judicial reasoning. A judge must possess literary imagination and sympathy to be rational. She needs to develop both her technical and human attributes. To become a rational judge, one needs to foster social sympathy, the foundation of which can only be laid down at the grassroots level by parents in his/her home itself.

Further, the government and the legislature should be proactive in framing guidelines and a

²⁹ Indian Young Lawyers Association (Sabarimala Temple-5J) v. The State of Kerala, (2019) 11 SCC 1.

³⁰ Shayara Bano v. Union of India, (2017) 9 SCC 1.

³¹ Handbook on Combating Gender Stereotypes, Supreme Court of India, (2023), <https://sci.gov.in>.

course structure to be imparted during judicial training and focus on judicial accountability to render the institution accountable for such stereotypical and pejorative comments and foster an environment for restoration of the dignity and confidence of the victim to ensure social as well as institutional security. The courts need to negate stereotypes and uphold constitutional ideals time and again, as in the case of Bhanwari Devi, Bilkis Bano, Farooq, etc., to end stereotypes and discrimination against women owing to culture and patriarchy. The Court, for the first time, in a case of sex discrimination, applied the “anti-stereotyping principle” in *Anuj Garg v. Hotel Association of India*.³² The SC in 2018 firmly held that the victim being a sex worker doesn’t per se license the accused to rape her.³³

The society must be freed from misogyny, myths, patriarchy, prejudices, and intoxicating sexism through education, correct explanation of epics, culture, tradition and mythologies. The state must endeavour to promote and propagate Indic culture and identity. Education and awareness are the vital aspects in achieving the goals sought. Most importantly, language plays a vital role; therefore, the courts must be sensitised and shall be equipped with resources and candour to enable them to pronounce or ensure gender-sensitive remedies. A broader perspective and lesser subjectivity would cater immensely to the purpose, as remarked by Cook and Cusack, “what makes it possible for us to genuinely judge, to move beyond our private idiosyncrasies and preferences, is our capacity to achieve an enlargement of mind”.³⁴ The imperative of increased representation of female members in the judiciary can’t be squandered to assure people of a justice system free from bias and to ensure diversity in the judiciary, which is male-dominated. Furthermore, the need for UCC could be echoed and heard during the conflict between “constitutional morality” and “social/community morality,” as seen in the cases of Shabri and Triple Talaq.

CONCLUSION

In Indian society, which is deeply ingrained in patriarchy, misogyny is nothing new, and courts are no exception. But justice is a farce when courts are rife with misogyny and fail to acknowledge the violence against women. In a century where scientific and technological advancements have propelled the nation forward, progress in finding solutions for the

³² *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.

³³ Tanvi, *supra* note 3, at 10.

³⁴ Rebecca J. Cook & Simone Cusack, *Gender Stereotyping: Transnational Legal Perspectives*, University of Pennsylvania Press, Philadelphia, (2010).

oppression and subjugation of women appears to be moving slowly. Women are frequently discouraged from even discussing sexual violence and abuse due to the excessive delays in the administration of justice, degrading questions during the trial, and animosity during the investigation process. Because they render impartial decisions devoid of prejudice and personal bias, judges are essential to the progressive transformation of society. They cannot afford to work together with a system that encourages impunity. Because it gives victims of abuse confidence in the legal system, justice administered by respecting constitutional morality will significantly contribute to women's empowerment. It's time for courts to stop viewing women as the offspring of a lesser God. Judges need to harmonise social sensitivity while applying legal reasoning while adjudicating cases on discrimination and violence against women.