

NATIONAL JUDICIAL ACADEMY



**NATIONAL WORKSHOP
FOR
GENDER SENSITIZATION OF JUDICIAL OFFICERS [SE-30]
(IN COLLABORATION WITH NATIONAL COMMISSION FOR WOMEN)
(2ND & 3RD DECEMBER 2023)**

REPORT

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National Judicial Academy organized a gender sensitization workshop in collaboration with the National Commission for Women. The participants of the workshop were judges of district judiciary from all across the country. The workshop sought to create a gender sensitive judiciary in our country free from any gender biases. The discussion in the workshop focused on the application of a gender perspective in adjudication; the creation and fostering of an equitable workplace environment. Matrimonial issues and gender justice; and emerging horizons of women-centric jurisprudence in India were also focused upon in the discussions.

SESSION 1

Theme: Women, Equality & Law

Speakers: Justice Sonia G. Gokani & Prof. V.K. Dixit

In the first session on “**Women, Equality & Law**” provided a panoramic view of issue of gender justice. It was noted that a degree of detachment on the issue of gender justice occurs due to social and cultural normalization of gender discrimination. The lack of importance and value assigned to the services rendered by a homemaker was highlighted as an issue and judges were requested to be cognizant of the same while dealing with homemakers in cases before them. Emphasis was placed on the need for sensitivity while examining the victim of a sexual offence in court and to ensure that the examination and deposition does not result in further victimization of victim. Discussion were undertaken on the reproductive rights and the laws relating to the same i.e. PCPNDT, MTP Act. The need for stringent implementation of the laws against discrimination in furtherance of the objectives of the laws was underscored. It was also emphasized that gender discrimination manifests in several ways such as malnutrition, non-access to health services and education etc. The evolution of the rights of women and the law in India was traced from the abolition of Sati to the recognition and enforcement of the right against sexual harassment of women in the workplace. The dimensions of rights of women – property rights, reproductive rights, political rights including right to vote, and right to education were examined. Discussions were undertaken on The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) as an international law standard on gender justice and reference was made to the judgment in *Vishaka & Ors v. State of Rajasthan & Ors*, (1997) 6 SCC 241. The roles played by women in varied areas – rearing of families, governmental services, education, business and commerce,

sports, art and culture, science and technology, politics, judicial services etc. were highlighted. Reference was made to the judgment in *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228 to highlight the issue of gender inequality in the area of guardianship. Emphasis was placed on the aspect of women's rights as a parent, and *Budhadev Karmaskar (I) v. State of W.B.*, (2011) 11 SCC 538 on the right of sex workers under Article 21. Reference was also made to *Anuj Garg v. Hotel Assn. of India*, (2008) 3 SCC 1 on the issue of gender discrimination in the aspect of the right to livelihood, *Shakti Vahini v. Union of India*, (2018) 7 SCC 192 on the right to marry by one's own choice. Reference was made to the judgments in *Indian Young Lawyers Association & Ors. v. The State of Kerala*, (2019) 11 SCC 1, *Joseph Shine v. Union of India*, (2019) 3 SCC 39, *Independent Thought v. Union of India*, (2017) 10 SCC 800, *Railway Board v. Chandrima Das*, (2000) 2 SCC 465. Discussions were undertaken on cultural beliefs and practices propagated in traditions which perpetuate gender inequality. The concept of battered women syndrome was dwelt upon and reference was made to the judgments in *Emperor v. Mt. Dhirajia*, AIR 1940 All 486, *Gyarsibai v. State*, 1953 CrLJ 588 and *R v. Ahluwalia* [1992] 4 All ER 889. Reproductive rights of women was discussed referring to the judgments in *X v. Union of India*, 2023 INSC 919, *X v. Union of India*, (2017) 3 SCC 458, *X v. Health and Family Welfare Department*, 2022 SCC Online SC 1321, and *Suchita Srivastava v. Chandigarh Administration*, (2009) 9 SCC 1

SESSION 2

Theme: Applying a Gender Perspective in Adjudication

Speakers: Justice Sonia G. Gokani & Justice C.S. Dias

The second session on “**Applying a Gender Perspective in Adjudication**” commenced highlighting the distinction between sex and gender. The speaker pointed out the contribution of patriarchal norms in the creation of gender stereotypes with regard to women's role, abilities, attributed, social role and place in society. Reference was made to the Handbook on Combating Gender Stereotypes by the Supreme Court of India. Reference was made to the judgment in *Aparna Bhat v. State of MP*, 2021 SCC OnLine 230 to highlight the unconscious bias that creep into judicial orders and the need for gender sensitivity while passing orders. Reference was made to *VK v. Bulgaria* (Communication No. 20/2008, Committee on the Elimination of Discrimination against Women). It was stated that stereotyping excludes the consideration of the specific circumstances of each case and rather results in outcomes based on general perceptions. The need for judges to avoid creating inflexible standards and notions regarding gender based issues as

the adjudication of cases based on such standards and notions may impact the fair trial rights of women. Reference was made to ***Karen Tayag Vertido v. The Philippines*** (Communication No. 18/2008, UN Doc. CEDAW/C/46/D/18/2008 (2010) (CEDAW)) to emphasize on the need for sensitive and unbiased adjudication of cases of gender violence.

The role of a judge in ridding the judicial system of gender stereotypes was emphasized referring to Para 38 of the judgment in ***Aparna Bhat***. It was underscored that judges must identify prevalent gender stereotypes and adopt measures to ensure that the same is not propagated through the judicial decisions and judicial processes. Emphasis was placed on the use of appropriate language, reasoning, actions and judicial approach which is gender sensitive. Judges were advised against the practice of promoting compromise in sexual offence cases and the use of conditions in grant of bail which may impact the woman's dignity, privacy and honour. Judges were advised against making gendered statements in court and in the judgment which propagate gender stereotypes.

The Constitutional provisions and laws regarding gender equality were highlighted in the discussion. Reference was made to the judgments in ***Air India v. Nergesh Meerza***, (1981) 4 SCC 335, ***Mohd. Ahmed Khan v. Shah Bano Begum***, (1985) 2 SCC 556, ***Danial Latifi v. Union of India***, (2001) 7 SCC 740, ***Rupan Deol Bajaj v. Kanwar Pal Singh Gill***, (1995) 6 SCC 194, ***Vishaka, Githa Hariharan, Apparel Export Promotion Council v. A.K. Chopra*** AIR 1999 SC 625, ***Seema v. Ashwani Kumar*** (3), (2008) 7 SCC 509, ***Indra Sarma v. V.K.V. Sarma***, (2013) 15 SCC 755, ***Charu Khurana v. Union of India*** (2015) 1 SCC 192, ***Hiral P. Harsora v. Kusum Narottamdas Harsora***, (2016) 10 SCC 165, ***Union of India v. Annie Nagaraja***, (2020) 13 SCC 1, ***Kirti v. Oriental Insurance Co. Ltd.***, (2021) 2 SCC 166, ***UPSC v. Bibhu Prasad Sarangi***, (2021) 4 SCC 516 and ***State of Jharkhand v. Shailendra Kumar Rai***, 2022 SCC OnLine SC 1494. The challenges faced in the judicial system were highlighted viz.

- prevalence of gender stereotypes and inner biases,
- need for a suitable courtroom environment and approach to enable victims and witnesses,
- need for the adoption of restorative justice principles,
- necessity for the use gender sensitive language in court proceedings,
- discrimination in technical training of women court staff,
- need for grievance redressal mechanisms for women,
- absence of counselling and support services for women
- lack of adequate medical facilities, washrooms, day care/ crèches waiting areas for women in court premises

The guidance for judges in the Bangkok General Guidance for Judges on Applying a Gender Perspective in Southeast Asia was highlighted. Emphasis was placed on the need for – adoption of impartiality and non- discrimination, avoid inner biases, gender sensitivity in judgment writing and gender sensitivity in judicial administration.

Emphasis was placed on the need to ensure that gender insensitive and demeaning conditions are not imposed in the grant of bail in matters relating to women especially sexual offences as these result in the re-victimization of the woman and the perpetration of gender bias and stereotypes. Reference was made to the observations of the Supreme Court in *Aparna Bhat*. Participants were advised to –

- Ensure adequate support and compensation to victims.
- Ensure sensitivity in appreciating the evidence of the prosecutrix in sexual offence cases and to avoid practices of casting aspersions on or deprecation of the victim.
- Ensure gender sensitive practices in examination and cross examination
- Ensure non-disclosure of the identity of victims in sexual offence cases

Reference was made to the judgments in *Delhi Domestic Working Women’s Forum v. Union of India & Ors.*, (1995) 1 SCC 14, *Ankush Shivaji Gaikwad v. State of Maharashtra*, (2013) 6 SCC 770, *State Of Punjab v. Gurmit Singh & Ors*, (1996) 2 SCC 384, *Nipun Saxena v. Union of India*, (2019) 2 SCC 703. *Laxmi v. Union of India*, (2014) 4 SCC 427. Emphasis was placed on the need for judges to play an active role in the trial to ensure the court process is gender sensitive.

SESSION 3

Theme: Women in the Workplace

Speakers: Justice C.S. Dias & Justice Manju Goel

The third session on “**Women in the Workplace**” commenced dwelling on the role of women professionals and the need for appreciating and valuing the contributions of women in every aspect of life. The challenges and opportunities for women in judicial services was discussed. The CEDAW was discussed to identify factors which lead to discrimination against women. The necessity of providing essential requirements in the workplace (including the court as a workplace) to ensure an appropriate and gender sensitive workplace was discussed. The gender disbalance in workplaces and the causes for the

same were discussed. It was pointed out that family and society play a significant role in perpetuating gender stereotypes especially in respect of gendered understanding of roles of men and women in society and in the workforce. The cultural understanding of appropriate professions for women was considered to a factor which limits women's participation in varied professions and the roles deemed suitable for women are limited to certain professions. The withdrawal of women from professions due to marriage, pregnancy and family duties was discussed and it was also noted that the fact of marriage, pregnancy and family responsibilities also act as a factor which affects promotion, role allocation and recruitment of women professionals. Discussions were also undertaken on assignments given to men and women based on the gendered perception that women are more empathetic and sensitive than men. The rationale for requiring women judges in Family Courts, Courts handling sexual offences, Mahila Court etc. was discussed.

The historical factors resulting in gender inequality were discussed and the constitutional mandate of gender equality was highlighted. The major manifestation of gender inequality in the workplace was stated to be the disparity in pay between men and women. Sexual harassment in the workplace was also dwelt upon as a major issue impacting women. Reference was made to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), *Vishaka & Ors v. State of Rajasthan & Ors*, (1997) 6 SCC 241 and *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, (1995) 6 SCC 194. Emphasis was placed on Article 11 of CEDAW. Discussions were undertaken on Sexual Harassment of Women at Workplace. (Prevention, Prohibition and Redressal) Act, 2013 and the mechanism provided in the Act for redressal in cases of sexual harassment in the workplace. The duties of the judge/ judicial system as an employer under the Act was underscored. Reference was made to the judgments in *Apparel Export Promotion Council v. A.K. Chopra* AIR 1999 SC 625 and *D.S. Grewal v. Vimi Joshi*, (2009) 2 SCC 210.

SESSION 4

Theme: Matrimonial Issues & Gender Justice

Speakers: Justice Moushumi Bhattacharya & Justice Anubha Rawat Choudhary

The fourth session on “**Matrimonial Issues & Gender Justice**” it was noted that unlike USA and UK, India does not have a regime for compensation in case of vexatious or frivolous litigation. Reference was made to the judgment in *P. Rajeshwari and Another v. The State of A.P.* CRL.P.Nos.6400 and 7242 of 2013 judgment dated July 14, 2022 wherein it was observed that false complaint based on general and omnibus allegations would lead to the misuse of law. Further, reference was made to the judgments in

G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693 which refers to an increase in matrimonial litigation; *Preeti Gupta v. State of Jharkhand*, (2010) 7 SCC 667 wherein the court calls for a closer scrutiny of cases involving allegations of harassment against relatives of the husband; *Anil Kumar Talan v. State (NCT of Delhi)*, (2022) 4 HCC (Del) 299 wherein it was stated that false and omnibus allegation against the entire family in the course of matrimonial disputes may lead to misuse of the law. Reference was made to the judgments in *H.S. Bedi v. National Highway Authority of India*, 2015 SCC OnLine Del 9524; *State of A.P. v. Vangaveeti Nagaiah*, (2009) 12 SCC 466; *Jijabrav Bhaskar Patil v. State of Gujarat*, 2015 SCC OnLine Guj 5752; *Mayurbhai Vinaybhai Kaku v. State of Gujarat*, 2018 SCC OnLine Guj 778; *Naresh Kr. Babbar v. Seema*, 2023 SCC OnLine Del 5438; *K. Srinivas v. K. Sunita*, (2014) 16 SCC 34; *Raj Talreja v. Kavita Talreja*, (2017) 14 SCC 194; *Rajesh Sharma v. State of U.P.*, (2018) 10 SCC 472; *Sushil Kumar Sharma v. Union of India*, (2005) 6 SCC 281; *Subhash Kashinath Mahajan v. State of Maharashtra*, (2018) 6 SCC 454; *Chander Bhan v. State*, 2008 SCC OnLine Del 883; and *N.G. Dastane (Dr) v. S. Dastane*, (1975) 2 SCC 326, to emphasize on the need for greater scrutiny to sift through false and legitimate cases. It was stated that while there is no magic formula to identify false cases, the duty is upon the judge to sift through the facts in each case and exercise his/her discretion to weed out vexatious cases. It was noted that the case diary is an important document to consider in the exercise of this discretion. The evidence such as the medical reports, statements of the relatives and neighbors would be relevant as indicators to examine the details involved in the case. Discussions were also undertaken on cases of rape on promise to marry and the factors to consider while determining the veracity of the allegations. Factors to consider include prior relations, property or other existing disputes between the families, cross complaints etc. It was underscored that while contemplating on the issue of frivolous litigation, due consideration must be given to the fact that only litigants with resources are able to come to the court and often our views are colored by individual cases of false claims. There is no data collated to indicate the true state of affairs with regard to matrimonial discord and domestic violence. Further, in addition to lack of resource and family support, there is significant social stigma associated with approaching courts for matrimonial issues. It is, therefore, crucial to ensure that judges do not adopted a negative stance in cases of matrimonial issues which may deter legitimate cases from coming to the court. It was stated that the high rate of acquittal in cases of matrimonial cruelty and domestic violence may be on account of extraneous factors such as settlements between parties, delay in trial, marriage of parties, improper investigation, intimidation, victim's lack of resources etc. and that acquittal does not portray the true state of affairs. Discussions also dwelt on counselling of parties and the encouragement of settlement of matrimonial disputes and the role of courts in this regard.

Discussion was undertaken on domestic violence as a prevalent form of gender based atrocity against women. The concept of domestic violence, causes, dimensions of domestic violence, perpetrators and the impact on the victim were elaborated upon. The scheme of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act) was discussed at length. The term ‘aggrieved person’ was dwelt upon and the judgments in *Prabha Tyagi v. Kamlesh Devi*, (2022) 8 SCC 90 and *D.Veluswamy v. D.Patchaiammal*, AIR 2011 SC 479 were discussed. The term ‘respondent’ under Section 2(q) of the PWDV Act was discussed with reference to *Hiralal P. Harsora v. Kusum Narottamdas Harsora*, AIR 2016 SC 4774. The term ‘shared household’ was also dwelt upon and the judgment in *Satish Chandra Ahuja v. Sneha Ahuja*, AIR 2020 SC 5397 was highlighted. The reliefs available under the PWDV Act were delineated. Discussions were also undertaken on ‘shared household’ and the rights of the woman to reside in a shared household. Reference was made to the judgments in *Juveria Abdul Majid Patni v. Atif Iqbal Mansoori and another*; (2014) 10 SCC 736; *Jogeshwar Saw v. State of Jharkhand*, 2015 SCC OnLine Jhar 4098; *S. Vanitha v. Deputy Commissioner, Bengaluru*, (2021) 15 SCC 730; *Satish Chander Ahuja v. Sneha Ahuja*, (2021) 1 SCC 414; *K.V. Prakash Babu v. State of Karnataka*, (2017) 11 SCC 176; *Arnesh Kumar V. State of Bihar*, (2014) 8 SCC 273; and *Neelu Chopra v. Bharti*, (2009) 10 SCC 184.

SESSION 5

Theme: Emerging Horizons of Women-Centric Jurisprudence in India

Speakers: Justice Atul Sreedharan

The fifth session on “**Emerging Horizons of Women-Centric Jurisprudence in India**” commenced with a discussion of the prevalence of digital and cyber space and the misuse of cyberspace for the commission of crimes. It was stated that cyberspace may serve as the starting point for the commission of a crime and may extend the commission of the offence and the victimization of the woman from physical/geographical plane to a digital plane with cyberspace providing the medium for the victimization of women. The offences of cyberstalking, cyber pornography etc. were highlighted, and the element of visibility in digital space which causes victimization was pointed out. Morphing of images and videos was cited as an example. Cyber blackmail, cyber defamation, cyber fraud, phishing. The emergence of metaverse was dwelt upon, and the use of Artificial Intelligence and the potential misuse for commission of crimes against women was underscored. The recent incident of allegations of molestation and sexual

assault in metaverse was pointed out as a development/ evolution in the modus of commission of crime. The offences of cyberstalking, sexual harassment, voyeurism, cyber defamation were discussed at length. It was opined that cyberspace provides a medium for commission of traditional offences under the Indian Penal Code, 1860 and resultantly the nature of crime and modus would undergo a radical change. Reference was also made to Sections 67, 67A and 67B of the Information Technology Act, 2000. Reference was made to judgments in *State of W.B. v. Animesh Boxi*, CRM No 11806 of 2017 (Calcutta High Court), *Sazzadur Rahman v. The State of Assam*, 2020 SCC OnLine Gau 4886; *Shubham Bansal v. State (NCT of Delhi)*, 2019 SCC OnLine Del 11575; *State of Tamil Nadu v. Suhas Katti*, (Metropolitan Magistrate, Egmore, 2004); and *Jitender Singh Grewal v. The State of West Bengal*, Criminal Miscellaneous Petition No. 7252 of 2018 order dated October 1, 2018 (Calcutta High Court). Discussions were also undertaken on cybervictimisation of children and the provisions of Section 11 and 13 of the Protection of Children from Sexual Offences Act, 2012 were dwelt upon.
