

# **NATIONAL JUDICIAL ACADEMY**



## **TRAINING PROGRAMME ON GENDER VIOLENCE FOR MAGISTRATES & JUDICIAL STAFF OF PERU SE-33**

**06<sup>th</sup> to 09<sup>th</sup> November 2023**

### **Programme Report**

**ACADEMIC COORDINATORS**

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In response to a request from the Superior Court of Justice of Lima to the Government of India, as part of their "Decade of Equity of Opportunities for Women and Men: Year of Unity, Peace, and Development" initiative, the National Judicial Academy (NJA) conducted the Training Programme on Gender Violence for Magistrates and Judicial Staff of Peru. This initiative fostered an exchange of experiences to enhance the quality of judicial services. The primary goal of that exchange was to establish connections for mutual collaboration, with the overarching objective of improving the delivery of justice. The program encompassed various sessions, including Exploring Gender Perspectives: Origins, Dynamics, and Modalities; Implementing International Standards for Combating Gender Violence; Transition toward a Gender-Equitable Society: A Fundamental Shift; Judicial Approaches to Compensatory Jurisprudence in Cases of Gender Violence, and Fostering Gender Sensitivity in the Justice Delivery System. The transition of the Indian Judiciary toward a more gender-equitable society was highlighted. Additionally, the program covered topics such as "Understanding Gender Violence: A Psycho-Social Approach" and "Cultivating an Appropriate Judicial Persona in Adjudicating Cases of Gender Violence." The course was designed to promote a deeper understanding of gender-related issues and improve the handling of gender violence cases within the judicial system.

## **SESSION 1**

### **Gender Perspectives: Genesis, Dynamics and Modalities**

**Speakers:** Justice Ved Prakash & Sharma Prof V.K. Dixit

The session highlighted the imperative of achieving gender equality and justice for societal progress. It addressed pervasive gender disparities, differentiated between sex and gender, explored gender identity, and emphasized the transformative impact of gender mainstreaming and judicial involvement. The discourse detailed the nuanced differences between sex and gender, framing the former as a biological status and the latter as a socio-legal construct intricately woven with societal expectations. Gender identity, explored as an intrinsic sense influencing personal expression and societal opportunities, was discussed for its profound impact on power dynamics and societal structures.

It was stressed that stereotypical gender roles, categorized into personality traits, domestic

behaviors, occupational stereotypes, and physical appearance expectations, persist globally and contribute to discrimination. Recognizing this, the imperative of gender mainstreaming emerged, emphasizing the integration of diverse perspectives in organizational planning and policies. It was underscored that gender mainstreaming is a crucial tool for achieving equitable resource access and gender equality, going beyond representation to systematically address gender inequalities. The discussion highlighted judiciaries as catalysts for societal change, emphasizing the active challenge of stereotypical gender roles and the foundational importance of fostering non-discrimination based on gender for achieving genuine gender justice. Despite progress, concerted efforts at all levels are essential, with gender mainstreaming playing a decisive role in dismantling conventional narratives and promoting a more inclusive and equitable future through its persistent integration into policy-making processes.

## SESSION 2

### **Implementing International Standards on combating Gender Violence**

**Speakers: Justice Ved Prakash & Ms. Geeta Ramseshan**

The session prioritized discussions on sexual and gender-based violence (GBV) as a global concern, highlighted significant international instruments, underscored the importance of fair trial standards, and delved into strategies for enhancing cooperation in addressing transnational crimes related to gender violence. It was emphasised that GBV encompasses various forms of harm, including physical, verbal, psychological, sexual, socio-economic violence, domestic violence within intimate relationships, and instances of harassment, including sexual harassment. This multifaceted range of abuses underscores the need for comprehensive strategies to address and prevent GBV in various societal contexts. The session further explored the distinctions between "*de jure*" and "*de facto*" in the context of Indian rape laws. *De jure*, the legal stance, established gender-specific penalties ranging from seven years to life imprisonment, with graded punishments for distinct categories of offenses. Shifting to *de facto* considerations, the discussion highlighted the impact of court culture on law interpretation and enforcement, emphasizing that the existence of laws does not ensure their effective implementation. Notably, varying punishments for perpetrators in authoritative roles and instances resulting in severe outcomes were discussed.

The session extensively covered various offenses concerning women safety. Sexual harassment, encompassing unwelcome physical contact, explicit advances, demands for sexual

favors, and displaying non-consensual pornography, was highlighted. Workplace sexual harassment, regulated by separate legislation, was addressed, offering distinct remedies. The discussion also touched upon assault, voyeurism, stalking, acid attacks, and cruelty in marital relationships, addressing both mental and physical aspects. The session emphasized the gender-neutral nature of acid attacks and comprehensively examined offenses through the lens of legal frameworks, contributing to a nuanced understanding of women's protection under diverse circumstances. The session delved into the legal landscape of domestic violence under the Protection of Women from Domestic Violence Act. Defining four types of violence – physical, mental, sexual, and economic – the act provides civil remedies, including protection orders, residence orders, and compensation. Trials before magistrates involve special provisions on evidence, particularly regarding consent in sexual offenses. The *de facto* position highlighted societal barriers, such as bias, intimidation, and financial constraints, impacting women seeking recourse. The session underscored the potential of these real-world challenges to either hinder the effectiveness of a good law or moderate the responsiveness of a flawed one.

### **SESSION 3**

#### **Transition towards a Gender-Just Society: An Axis Shift**

**Speakers: Justice Sanjib Banerjee & Ms. Geeta Ramseshan**

The session delved into the intricate layers of achieving gender justice, critically examining the concepts of formal equality, protectionist equality, and the advanced substantive equality model as advocated by the CEDAW Convention. It highlighted the inadequacies of formal equality, especially within criminal law, where it often fails to account unique circumstances for women, and critiqued protectionist equality for perpetuating gender stereotypes under the pretense of safeguarding women. The session underscored the need for a paradigm shift towards strategies that genuinely address gender-based disparities, moving beyond superficial protective measures to tackle the root causes of gender inequality.

The session also brought to the forefront the significance of addressing gender justice within a broader social context, emphasizing the importance of decisional autonomy, the right to privacy, intersectionality, systemic discrimination, indirect discrimination, and transitional gender justice. These concepts were explored within the framework of constitutional perspectives, highlighting how they intertwine with the quest for gender equity. The role of

courts in securing gender justice was underscored, pointing out how judicial interventions have been pivotal in recognizing and addressing the multifaceted dimensions of gender discrimination. Through landmark rulings, courts have expanded the scope of rights under the Indian Constitution, including the right to life, to encompass a wide array of gender justice issues, thus playing a critical role in shaping a more equitable legal and social landscape.

The discussion further embraced the substantive equality approach as a transformative strategy that transcends formal legal equality, targeting historical, systemic, and structural barriers to true equality. This approach underscores the importance of implementing distinct measures to ensure equality in both outcomes and opportunities, necessitating affirmative action and special interventions to accelerate societal transformation. By examining the Indian Constitution, which embodies the substantive equality approach through provisions like Article 15(3) and expansive interpretations of Article 21, the session showcased India's commitment to dismantling the barriers to an equitable society. Landmark judgments under Article 21 were highlighted, illustrating the pivotal role of judiciary in advancing gender justice through a broad spectrum of rights recognition and enforcement. Furthermore, the session shed light on the challenges faced by marginalized groups, such as sex workers, emphasizing the need for legal and policy reforms that recognize and address the complex dimensions of gender justice, thereby paving the way for a truly inclusive and equitable society.

#### **SESSION 4**

##### **Gender Sensitivity Anchors in Justice Delivery Mechanism**

**Speakers: Justice S. Talapatra & Justice U.C. Dhyani**

**Chair: Justice Indira Banerjee**

The session delved into the intricate framework of gender-sensitive governance and planning, emphasizing the constitutional provisions and laws that have historically shaped and continue to influence gender justice in India. The discussion spanned across a wide array of legislative milestones and judicial pronouncements that have contributed to advancing gender equality and addressing discrimination. From the early legislative interventions like the abolition of Sati and the legal acknowledgment of widow remarriage to more contemporary laws and Supreme Court rulings that challenge gender biases and promote equality, such as the Vishakha guidelines against sexual harassment at the workplace, the session underscored the evolution of legal frameworks in response to changing societal norms and the ongoing struggle for gender

justice.

Moreover, the session highlighted the critical role of feminist jurisprudence in interpreting and expanding the scope of laws to ensure that rights of women are protected and promoted in all spheres of life. The discussion pointed out the constitutional guarantees that provide a solid foundation for gender equality, such as Articles 14, 15, and 16 of the Constitution of India which ensure equality before the law and prohibit discrimination. Special attention was given to Article 15(3) that allows for protective discrimination in favor of women, laying the groundwork for affirmative actions and laws specifically designed to uplift women and address historical injustices. The session also explored how various Acts, like the Maternity Benefit Act and the Equal Remuneration Act, alongside significant case laws, have played pivotal role in pushing the boundaries of gender justice, challenging societal norms, and ensuring that women's rights are recognized and respected in both public and private spheres.

Furthermore, the session reaffirmed the necessity of a gender-sensitive approach in the justice delivery mechanism, emphasizing the importance of continued legal reforms, informed by feminist jurisprudence, to address the complex realities of gender discrimination. It called for a collective effort to ensure that the legal framework not only responds to the current challenges faced by women and other marginalized genders but also anticipates future needs, thereby ensuring that the mechanisms of justice delivery remain robust, dynamic, and inclusive.

## **SESSION 5**

### **Judicial Approach towards Compensatory Jurisprudence**

**Speakers: Justice S. Talapatra & Dr. Justice S. Vimala**

**Chair: Justice Indira Banerjee**

The session commenced by exploring the intricate nuances of the judicial approach to compensatory jurisprudence, with a specific focus on Victim Compensation Schemes (VCS). A comprehensive exploration unfolded, encompassing elements like final and interim compensation, the imperative of providing reasons for compensation decisions, and the quest for parity in compensating similar losses among crime victims. The session underscored the societal duty to pursue justice, drawing attention to seminal legal cases such as *Dayal Singh v State of Uttaranchal 2012 (8) SCC 263* and *Maru Ram & Ors. Vs Union of India & Ors AIR*

1980 SC 2147. These cases illuminated the delicate balance that the criminal justice system must strike to serve the interests of the accused, society, and the victim concurrently.

The discourse extended to the global perspective, drawing attention to the contrast between the Indian legal definition of victims and the broader standards outlined in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The session further dissected legal provisions, focusing on Section 357 and 357A, the Code of Criminal Procedure (CrPC) of 1973 culminating in insights from the *Ankush Shivaji Gaikwad v. State of Maharashtra AIR 2013 SC 2454*. This case underscored the mandatory duty of the court to apply their minds to compensation, aligning with the legislative intent to reassure victims and bring them under the protective umbrella of the law. The session thereafter discussed various compensation categories, ranging from immediate relief to interim and final compensation. The case of *Nipun Saxena and another vs. Union of India and others, (2019) 2 SCC 703*, that shed light on the compelling need for holistic rehabilitation, especially for minor victims was highlighted. The session also emphasized the constructive role of compensation, as evidenced in *Hari Singh v. Sukhbir Singh, (1988) 4 SCC 551*.

## SESSION 6

### Understanding Gender Violence: A Psycho-Social Approach

**Speaker: Dr. Harish Shetty**

The session provided a profound exploration into the intricate dynamics surrounding victims of gender-based violence. The session commenced with an in-depth analysis of victim behavior in the context of litigation. By delving into the psychological and social dimensions, the discussion unveiled the intricate ways in which survivors of gender violence respond within the legal framework. The significance of a nuanced understanding of victim behavior to ensure that legal proceedings are conducive to survivors, fostering an environment that encourages disclosure and facilitates justice was emphasised. An essential segment of the discussion focused on the identification of underlying causes of gender violence, aiming to unravel the root factors contributing to such discord. The psycho-social lens allowed for a comprehensive examination of societal norms, cultural influences, and power imbalances that perpetuate gender-based violence. The session underscored the need to move beyond the superficial manifestations of violence and address the deep-seated structural inequalities that sustain these

harmful behaviors.

Gender justice and the presence of bias within legal systems took center stage as the session progressed. Participants engaged in a thoughtful exploration of the delicate equilibrium required to ensure fair and unbiased legal proceedings. The discussion critically analyzed instances of gender bias, both overt and subtle, within legal frameworks and highlighted the imperative of maintaining equilibrium to guarantee justice. The session emphasized the role of education, awareness, and legal reforms in addressing gender bias and fostering a system that upholds the principles of equality and fairness.

## **SESSION 7**

### **Cultivating appropriate Judicial Persona**

**Speaker: Dr. Harish Shetty**

The last session on the theme *Cultivating Appropriate Judicial Persona* delved into the essential aspects of judicial conduct and persona, with a specific focus on developing effective communication strategies and addressing attitudinal changes and biases. The session opened with a segment on developing communication strategies for judges. It was emphasized that effective communication is not solely about the verbal exchange but also involves non-verbal cues, active listening, and the ability to convey complex legal principles in an accessible manner. The discussion highlighted the importance of empathy and understanding, enabling judges to interact more effectively with a diverse array of litigants and practitioners. Strategies such as simplifying legal jargon, maintaining open body language, and ensuring clarity and conciseness in verbal communication were discussed as methods to enhance the judicial persona.

Following this, the session moved to a critical examination of attitudinal changes and biases within the judiciary. Recognizing and addressing these biases is pivotal for cultivating a judicial persona that embodies fairness and impartiality. The discussion underscored the inherent challenges in identifying personal and systemic biases, ranging from unconscious biases affecting decision-making to more overt prejudices that might influence judicial conduct. Participants were encouraged to reflect on their own perceptions and attitudes, fostering a self-aware approach to mitigating bias in their judicial roles. The session also



explored the implementation of ongoing education and training programs as tools for judges to continually refine their communication skills and address biases. These programs aim to foster a culture of continuous learning and improvement, ensuring that judges are equipped to meet the evolving demands of their roles with the highest standards of professionalism and ethical conduct.