

**National Conference for High Court Justices on Gender Justice [P- 1409]
07th & 08th September, 2024**

The National Judicial Academy organized a “National Conference for High Court Justices on Gender Justice” on 31st August and 1st September, 2024, at NJA, Bhopal. The conference provided an invaluable opportunity for participating judges to engage in meaningful deliberations on practical approaches to gender justice matters. It covered a range of critical themes, including effective access to justice and challenges posed by systemic barriers, gender sensitivity in courtroom conduct and judgment writing, socio-legal dimensions of LGBTQIA+ and transgender issues, remedies available under the POSH Act, 2013, for women in the workplace, and the role of digital transformation in enhancing access to justice within the Indian judicial system.

The primary objective of the conference was to deepen the understanding and application of gender justice principles within the judiciary. It served as a platform for High Court Justices to discuss challenges, share best practices, and develop strategies aimed at ensuring gender-sensitive adjudication. Through these discussions, the conference aspired to promote equal rights, address gender biases in the legal system, and contribute to the creation of a more equitable and just society.

Session 1 - Effective Access to Justice: Addressing Systemic Barriers & Obstacles

Speakers -Justice Sunita Agarwal & Justice Swarana Kanta Sharma

The session highlighted that the judicial system is a fundamental institution in society, entrusted with the responsibility of ensuring justice for all. In an increasingly digital world, the courts must adapt to improve accessibility, facilitate greater access, and become more litigant-centric. The introduction of e-filing and other digital tools has the potential to remove longstanding barriers, thus enhancing the efficiency and inclusiveness of the judicial process. Further, courts, as institution of justice, must ensure that all litigants, regardless of socioeconomic background, language, or cultural differences, have equal access to the judicial process. This involves not only physical access to court facilities but also ensuring that the legal system is navigable and

understandable for all individuals. It was mentioned that the introduction of e-filing is a critical step in modernizing the court system. By allowing litigants to file documents electronically, courts can streamline operations, reduce paperwork, and provide greater convenience for all parties involved. It was emphasized that the public perception of the court system plays a vital role in the administration of justice. Courts have long been perceived as inaccessible, especially by marginalized communities and there is often a stigma attached to court proceedings. It was advised that the courts must work to alter these perceptions by fostering transparency, simplifying procedures, and promoting a litigant-centric approach. It was suggested that the responsibility to make these changes lies majorly with the courts. In order to fulfill their mission of providing justice for all, courts must shift towards a more litigant-centric model. This means prioritizing the needs and experiences of the individuals seeking justice. The court environment should be welcoming, user-friendly, and focused on reducing the burden on litigants. Ensuring accessibility—both physical and digital—will enhance the legitimacy of the court system and reinforce the public's confidence in its ability to deliver fair and equitable justice.

It was advised that legal decisions are not isolated from the social circumstances and a judgment when delivered should keep in mind the social context adjudication. Empowering individuals to make autonomous decisions without external influence was elaborated. Lastly, intersectionality was discussed in terms of complex interplay of gender, race and class, understanding how these identities intersect to shape experience of discrimination and marginalization. It was mentioned that Indian Judiciary has played a transformative role in interpreting laws and constitutional provisions to secure gender justice, ensuring that no one is disadvantaged due to their gender. It was advised that the legal system does not operate in isolation from the society it serves. Legal decisions, particularly in complex cases, are often influenced by the broader social, cultural, and economic contexts within which they are made. A key recommendation emphasized during the discussion is the need for courts to consider the social context when delivering judgments. The concept of social context adjudication emphasizes that justice is not a one-size-fits-all process; rather, it requires sensitivity to the lived experiences of litigants and the societal conditions that contribute to their situations. It was opined that by integrating social context into legal reasoning, courts can deliver more informed and equitable judgments that reflect the complexities of the real

world. The discussion also elaborated on the need to empower individuals to make autonomous decisions, free from external influence.

Further, a critical component of the discussion centered on intersectionality, which was analyzed in terms of the complex interplay between gender, race, class, and other identities. Intersectionality recognizes that individuals do not experience discrimination and marginalization in a singular way; instead, these experiences are shaped by multiple overlapping identities. Courts must consider how these intersecting factors influence the challenges faced by marginalized individuals. The Indian judiciary has played a transformative role in interpreting laws and constitutional provisions to secure gender justice. Through landmark rulings, the courts have worked to ensure that no individual is disadvantaged on the basis of gender. By embracing a gender-sensitive approach, the judiciary has advanced the rights of women and marginalized communities, promoting equality and challenging entrenched societal norms.

Session 2 - Gender Sensitivity in Courtroom & Judgment Writing

Speakers -Justice Sunita Agarwal & Justice Sonia Gokani

The session commenced with a quote by André Gide *“Everything that needs to be said has already been said. But since no one was listening, everything must be said again.”* The session proceeded with a simulation exercise aimed at understanding and reflecting on hidden biases. Through various examples, participants were made aware that there is no implied consent from a woman; a woman's "No" should be respected at any stage of an interaction. Another scenario presented involved a 23-year-old woman who married someone outside her caste against her parents' wishes. She later filed a petition claiming the marriage was forced and alleging sexual assault. Judges were advised that in such cases, whether involving a Habeas Corpus petition or otherwise, the couple should be summoned to court for a hearing, rather than solely relying on recorded statements. The issues and challenges faced by the De-notified Tribes were also addressed during the discussion. It was noted that the entry of women into the system is often not well-received by their male counterparts, with many still harboring the belief that women will take maternity leave, causing

work to be suffered. However, maternity benefits are a fundamental right for all women, yet in many places, this right continues to be questioned. The significance of providing crèche facilities at court premises was emphasized, along with the positive impact of ensuring spouses are posted in the same district. It was also advised that a single judgment can have a profound impact on society, so it's important to take the time to carefully consider each case and strive to be as gender-neutral as possible. Judgment writing is an art that can be developed and refined through daily practice.

Judicial systems worldwide play a crucial role in shaping societies and upholding justice. However, biases and stereotypes particularly those based on gender can compromise the fairness and impartiality of judgments. Overcoming judicial bias and gender stereotypes requires continuous awareness, education, and intentional changes in judicial practices. Bias in the courtroom often reflects deeply rooted social norms that may unconsciously influence judges' perceptions and decisions, especially in cases involving gendered issues like domestic violence or workplace discrimination. Language in legal proceedings carries significant weight, as it reflects and shapes societal attitudes. Using gender-appropriate language helps dismantle stereotypes and fosters an inclusive judicial process. Words chosen in judgments, statements, and court interactions should reflect respect and impartiality, avoiding terms that could reinforce gender biases. Applying a gender perspective in judging has become a recognized best practice in both national and international courts. Global organizations, including the United Nations, have issued guidelines encouraging courts to adopt gender-sensitive approaches.

Session 3 - LGBTQIA + and Transgender – Socio-Legal Dimensions

Speakers - Justice Swarana Kanta Sharma & Justice Sonia G. Gokani

The LGBTQIA+ community, particularly transgender individuals, has long been marginalized and denied basic recognition and rights. Among these individuals, transgender persons face significant social and legal challenges that restrict their access to fundamental rights, opportunities, and social inclusion. Although some progress has been made, continued efforts are required to address the issues of discrimination, exclusion, and intersectionality that transgender persons encounter was highlighted. It was discussed that the Transgender Persons (Protection of Rights) Act, 2019 aims to prevent discrimination against transgender persons in essential areas such as education,

employment, and healthcare. The Act intends to provide transgender persons with access to welfare schemes and basic rights, seeking to improve their overall quality of life. However, this well-intentioned legislation has faced criticism, particularly regarding its requirement for individuals to apply for a gender certificate to legally affirm their gender. Transgender activists argue that the mandatory certification process restricts their autonomy and imposes additional bureaucratic burdens on an already marginalized community.

Further, Legal protections alone are insufficient to safeguard the rights of transgender persons, especially those from marginalized backgrounds who often experience compounded discrimination was elaborated upon. This phenomenon, known as "intersectionality," highlights how multiple aspects of a person's identity (e.g., gender identity, race, socioeconomic status) intersect to create unique forms of discrimination and disadvantage. It was underscored that addressing these complex forms of exclusion requires a comprehensive approach that goes beyond legislative measures. It was emphasized that internationally, countries like Argentina and Denmark offer progressive laws allowing individuals to self-identify their gender without medical or psychological evaluations. Such laws affirm the right to self-determination and respect the autonomy of individuals over their gender identity. Historically, "sex" has been defined by biological characteristics, while "gender" was seen as the social expression of these differences. However, contemporary scholarship and activism have challenged this binary. Gender is increasingly recognized as a personal identity, often independent of the sex assigned at birth. Understanding gender as a spectrum acknowledges that individuals may identify across a diverse range of identities—male, female, both, neither, or anywhere in between. Recognizing this fluidity allows for a more inclusive understanding of human identity. Lastly, it was focused that Stereotypes around gender misrepresent the diversity of human behavior, constraining individual freedom and reinforcing patterns of discrimination. Gender mainstreaming, integrating gender perspectives across societal structures is essential for fostering inclusivity. By challenging restrictive stereotypes, society can make significant strides toward recognizing and respecting the autonomy and identities of all individuals, promoting equal rights and acceptance for the LGBTQIA+ community.

Important Judicial Pronouncement were discussed viz; *National Legal Services Authority v. Union of India (2014) 5 SCC 438* which is related to Right of Transgender Community to seek gender

identity alternate to the one assigned at the time of birth; *K.S. Puttaswamy v. Union of India (2017) 10 SCC 1* which says Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation and sexual orientation; *Navtej Singh Johar v. Union of India (2018) 10 SCC 1* which is related to Section 377 of IPC unconstitutional insofar it penalises Consensual Sexual Acts between Same-Sex Adults in Private; *X v. Health & Family Welfare Department, 2022 SCC OnLine SC 1321* which discusses Unmarried persons cannot be denied rights based on narrow patriarchal principles on “permissible sex.

Session 4 - Women in the Workplace: Remedies Under POSH Act, 2013

Speakers - Justice Atul Sreedharan & Justice Anubha Rawat Choudhary

The session commenced with a brief history about the introduction of the POSH Act, 2013. The *Prevention of Sexual Harassment at Workplace (POSH) Act*, formally known as the *Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013*, is an Indian law aimed at creating a safe and respectful work environment for women. This legislation was introduced following the landmark Vishaka Guidelines established by the Supreme Court of India in 1997, which recognized sexual harassment as a violation of fundamental rights. The POSH Act represents a crucial step in ensuring workplace equality and safety for women. By mandating preventive and redressal measures, it encourages a zero-tolerance approach to harassment. Its comprehensive guidelines help foster inclusive, supportive workspaces, empowering women to work without fear of discrimination or harassment.

It was mentioned that Social conditioning has historically reinforced gendered stereotypes, particularly regarding the roles and rights of women. Ascriptive factors such as family, religion, culture, and social norms play significant roles in shaping these perceptions. Traditional views often cast women as objects or possessions to be owned, protected, and controlled by men, rather than as autonomous individuals with independent identities. This perspective reduces women to passive roles, reinforcing a view of them as extensions of men rather than as persons with their own rights, thoughts, and goals. It was stressed that Social conditioning has perpetuated the dangerous notion of women as "agent's provocateurs," subtly suggesting that women are responsible for inciting negative or even violent reactions from men. This concept is often evident in statements like "she asked for it," blaming women for harassment, assault, or violence based on

their behavior, appearance, or dress. Such attitudes not only victim-blame but also normalize and excuse aggression toward women, placing responsibility on the victim rather than the perpetrator.

As more women enter the workforce, workplaces are becoming more diverse, and gender interactions are increasing significantly. While this represents progress, it also brings challenges, particularly regarding safety, equality, and respect. Women often face a range of obstacles in the workplace, including inappropriate behavior from male colleagues and superiors, which can vary from verbal innuendos to more serious cases of harassment and exploitation. Some of the Key Challenges Faced by Women in the Workplace are; Increased Vulnerability to Harassment, Sexual Favoritism and Exploitation. It was advised that the Responses to Workplace Harassment could be; Strengthening Policies and Training, Promoting a Culture of Respect and Accountability and Support Systems and Awareness Programs should be organized. Lastly, it was opined that as more women join the workforce, creating inclusive and respectful workplaces becomes paramount. Addressing harassment through a combination of policy, education, and support mechanisms will pave the way for safer, more equitable work environments, ensuring that women can thrive and contribute fully to their professions.

Session 5 - Digital Transformation in Indian Judicial System: Enhancing Access to Justice

Speakers - Justice Atul Sreedharan & Justice Anubha Rawat Choudhary

In 2003, Information and Communication Technology (ICT) was introduced into the Indian judiciary, with the establishment of the eCommittee to guide and oversee its integration. Initially, the focus was on providing judges with laptops and computers. This was followed by the introduction of systems like Case Information Systems (CIS) and Court Information Management Systems (CIMS). Basic training on computer usage enabled judges to gradually incorporate technology into their daily work. The COVID-19 pandemic disrupted all sectors, including the judiciary, with courts, like other emergency services, being forced to shut down temporarily. Lawyers, litigants, court staff, and judges were profoundly affected. However, the judiciary adapted swiftly, and within a few months, the Supreme Court and High Courts resumed functioning, transitioning to virtual hearings. This shift highlighted the importance of e-courts, with plans to expand their implementation from district courts to higher levels.

Recognizing the country's linguistic diversity, judgments are translated into 18 languages. Other notable eCommittee initiatives include the National Service and Tracking of Electronic Processes (NSTEP), Virtual Courts, live streaming of proceedings, the JustIS Mobile application, and eSewa Kendras. Additionally, the eCommittee and NIC developed a judgment search portal to provide easy access to High Court rulings. Emphasis was placed on simplifying processes to encourage the use of technology by all stakeholders, including courts and litigants. The discussion highlighted the importance of maintaining informative websites and addressed the judiciary's vulnerability to challenges similar to those faced by the general public. Participants were cautioned about the risks of sharing personal details on social media platforms or payment apps, underscoring the need for confidentiality. Courts, as symbols of state authority, are potential targets for cyberattacks, necessitating robust cybersecurity measures.

The session explored the objectives of cybersecurity, emphasizing the protection of assets like hardware, software, and data. Confidentiality, integrity, and availability were identified as essential priorities for cybersecurity. The distinction between cyberattacks and cyber exploitation was also discussed, alongside the importance of maintaining safety and security in the digital realm.