

## **Conference on Gender, Equality & Law (P-1437)**

### **08<sup>th</sup> & 09<sup>th</sup> February, 2025**

The National Judicial Academy organized a “Conference on Gender Equality & law” on 08<sup>th</sup> and 09<sup>th</sup> February, 2025, 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 courts to test the inter-faith marriages & Anti-conversions laws on the constitutional foundations of secularism.

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 District Judges 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 - Emerging Horizons of Gender-centric Jurisprudence in India**

**Speakers - Justice D.K Upadhyaya & Justice Atul Sreedharan**

The session underscored the judicial system as a fundamental institution in society, entrusted with the crucial responsibility of ensuring justice for all. However, various factors—such as upbringing, socio-cultural influences, and denial of the existence of gender justice—can hinder the realization of true equality. To awaken a deeper understanding, it is essential to engage in discussions on gender justice. Gender-related issues stem from broader concerns of gender equality. Amartya Sen identified six key dimensions of gender inequality:

- **Mortality Inequality** – Differences in life expectancy and health outcomes between genders.

- Natality Inequality – Gender-based preferences leading to imbalances at birth.
- Basic Facility Inequality – Unequal access to essential services like education and healthcare.
- Special Opportunity Inequality – Disparities in higher education and career advancements.
- Professional Inequality – Workplace discrimination and unequal pay.
- Ownership Inequality – Differences in property and financial ownership.
- Household Inequality – Gender imbalances in domestic responsibilities and decision-making.

Gender jurisprudence is fundamentally a tool for social transformation. It examines how existing laws operate within the judicial system to address gender disparities and ensure equitable outcomes. The effectiveness of these laws in practice remains a crucial point of discussion in shaping a more just society.

It was mentioned that women are a source of strength, resilience, and empowerment. However, their status varies across states, cultures, and even within families. Disparities in education for girls contribute to their marginalization, limiting opportunities and reinforcing inequality. Language plays a crucial role in addressing injustice—it serves as a tool for awareness, advocacy, and empowerment, paving the way toward justice and equality. It was emphasized that intersectionality is influenced by various social factors. Religion plays a significant role in contributing to discrimination. The concepts of victimization and re-victimization were highlighted using examples of rape victims in India. The concept of rehabilitation was also discussed. The participating judges were advised that, while cross-examination is important, they should take a broader perspective. It was emphasized that males can also be victims and that, during court proceedings, there should be a clear separation between the victim and the accused. A more gender-neutral approach was recommended to ensure fairness and inclusivity. Furthermore, it was emphasized that victimization can occur in the digital world, as everything in the digital space exists in the form of 0s and 1s. In today's evolving world, a person can face harassment online even without the presence of a photograph. It was also elaborated that sensitization cannot be taught solely through academics; rather, it develops through practice. Lastly, the session concluded by distinguishing between the concepts of judging and justicising

## **Session 2 - Gender Sensitivity in Courtroom & Judgment Writing**

**Speakers - Justice D.K Upadhyaya & Justice Swarana Kanta Sharma**

The session commenced with thought-provoking questions for trial court judges: How does one write sensitive judgments? How can biases be overcome to ensure a balanced judgment? It was emphasized that to write neutral, balanced, and unbiased judgments, judges must first recognize their own hidden biases. Sensitivity stems from impartiality, and neutrality is achieved through self-awareness. The discussion highlighted that personal experiences often contribute to better judgment writing. However, it was noted that justice itself has no gender. While certain stereotypes—such as the belief that women are nurturing and emotional while men are aggressive and rational—may have some basis in societal perceptions, they should never overpower rational conclusions when writing judgments. The discussion emphasized that despite the enactment of laws, societal biases continue to influence judicial reasoning, with deep-seated stereotypes impacting judgments. A case law from a trial court was cited as an example, where four women accused of attempted murder using lathis were acquitted based on the perception that women lack the physical strength to commit murder solely with lathis. It was underscored that such stereotypes should be avoided while assessing facts and circumstances in any case.

Furthermore, the distinction between explicit and implicit bias was explored. It was highlighted that gender bias is not only evident in the interpretation of laws but also in their application. The discussion expanded on how biases manifest in courtrooms, including disparities in evidentiary standards, gendered language in judgments, unequal sentencing, and differential treatment in family law cases. With the advent of digital courtrooms, it was advised that judges must remain conscious of the fact that their words and actions are subject to global scrutiny. The session concluded with references to a series of judgments, including *State of Punjab v. Gurmit Singh* (AIR 1996 SC 1393), *State v. Babita* (2023 SCC OnLine Del 5468), *Sanghmitra v. State* (2024 SCC OnLine Del 2980), and *Rajan Devi v. State* (2023 SCC OnLine Del 5931). Lastly, it was advised that test your conscience to test your judgment.

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

### **Speakers - Justice Swarana Kanta Sharma**

The session began with an explanation of LGBTQIA+ as a diverse community united by shared culture, social movements, and a sense of solidarity. It was emphasized that they celebrate pride, diversity, individuality, and sexuality. The discussion highlighted that this community includes some of the most marginalized and vulnerable groups, historically denied recognition of their fundamental rights. The Transgender Persons (Protection of Rights) Act, 2019, which aims to protect transgender individuals from discrimination in education, employment, and healthcare while ensuring access to welfare schemes and basic rights, was discussed. Although the Act was acknowledged as well-intentioned, it faced significant criticism. One of its most contentious provisions was the requirement for individuals to apply for gender certification.

The concept of "Intersectionality" was elaborated upon, along with its implications. Additionally, a comparative analysis of international jurisprudence related to LGBTQIA+ rights was explored. It was stressed that there is a need to rethink the definitions of "Sex" and "Gender" when addressing identity-related matters before the court of law. The session outlined that "Sex" is traditionally defined based on biological characteristics—chromosomes, hormones, and genitalia—typically classified as male or female. In contrast, "Gender" has long been understood as the social and cultural expression of these biological differences, aligning with societal expectations of men and women. However, gender is now increasingly recognized as a deeply personal identity that may or may not align with the sex assigned at birth. Understanding gender as a spectrum acknowledges that individuals may identify as male, female, both, neither, or anywhere in between.

It was lamented that Gender justice is deeply tied to this principle of autonomy, as it calls for the removal of barriers that prevent individuals from living their lives authentically and with dignity. Courts have a critical role to play in reshaping the legal understanding of sex, gender, and identity and they must be vigilant in ensuring that laws are not interpreted in ways that perpetuate discrimination or limit the autonomy of individuals to express their gender identities. The discussion highlighted that stereotypes are at the root of the problem, they not only misrepresent the diversity of human behavior but also constrain individual freedom, leading to discrimination

and exclusion. The session concluded with an analysis of judicial approaches to stereotypes and inclusivity through key case laws, including *Navtej Singh Johar v. Union of India* (2018) 10 SCC 1, *National Legal Services Authority v. Union of India* (2014) 5 SCC 438 and *Supriyo v. Union of India*, (2023) SCC OnLine SC 1348. Lastly, the role of various media in shaping perceptions of gender was also emphasized.

## **Session 4 - Women in the Workplace: Remedies under POSH Act, 2013**

**Speakers - Mr. Vijay Chandra & Dr Sonam Jain**

The session began with a comparative analysis of the past and present, highlighting how, in earlier times, men were traditionally the sole breadwinners of the family. However, over time, this dynamic has evolved, with women actively participating in the workforce. This shift, however, did not come without challenges, as women had to endure a long struggle to secure their rightful place in professional. Globalization has brought a radical change in the status of women. With the increasing presence of women in various professions, they often encounter greater challenges and difficulties in adapting and thriving in their respective fields. It was highlighted that Workplace harassment is a form a gender discrimination which violets women's fundamental right to equality and right to life. It not only creates an insecure or hostile environment for women but also impedes their ability to deliver in today's competing world. Also, workplace harassment affects their social and economic growth and puts them through physical and emotional suffering. The origins and rationale behind the enactment of the POSH Act were emphasized. It was mentioned that before the enactment of specific legislation on this issue, women had to seek recourse under the IPC (pertaining to outraging the modesty of a woman), which was broad in scope, or the Industrial Disputes Act, which was limited to the industrial sector. However, none of these laws addressed sexual harassment in a comprehensive and uncompromising manner. The landmark case of *Rupan Deol Bajaj v. K.P.S. Gill* (1995) was discussed, highlighting concerns over judicial leniency toward high-ranking officials. Additionally, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which India ratified in 1973, was examined in the context of its role in addressing gender-based discrimination.

The session delved into defining sexual harassment, providing examples and discussing various situations that constitute such misconduct. Different forms of sexual harassment—physical, mental, emotional, and verbal—were emphasized. The definition of "workplace" under the Act was also highlighted. It was noted that any unwelcome situation where a female employee feels uncomfortable due to an employer's actions falls within the scope of the POSH Act. The principle of *Impact, Not Intent* in the context of sexual harassment was underscored, emphasizing that the key factor in determining harassment is the effect on the recipient rather than the harasser's intent. If the behavior is perceived as unwelcome and harmful, it qualifies as harassment, regardless of whether the perpetrator intended to cause offense. Additionally, during the discussion, participants shared their experiences and clarified whether certain actions fell under the POSH Act. They were advised to be courteous to their female colleagues and treat them with the utmost respect and dignity. The session concluded with extensive discussions.

## **Session 5 - Intersection of Anti-Conversion Legislations and Laws relating to Marriage**

**Speakers - Justice Meenakshi Madan Rai & Justice Ajay Bhanot**

The session commenced with a discussion on the rationale behind the implementation of Anti-conversion laws in India. These laws, known as the Anti-conversion or Freedom of Religion Acts, have been enacted in eighteen Indian states. It was highlighted that these laws are complex and have a contentious issue, rooted in historical, legal, and constitutional perspectives. Their primary objective is to regulate religious conversions, particularly those perceived as forced, fraudulent, or induced by allurement. The discourse delved into the historical and constitutional aspects of Anti-conversion laws. It was elaborated that the Special Marriage Act of 1872 was introduced by the British Government to address the barriers preventing two consenting, eligible adults from marrying while upholding the principle of secularism. This was later superseded by the Special Marriage Act of 1954, whose key provisions were discussed in detail.

The concept of ‘Honor Killing’ and its victims was also underscored. An international perspective was provided by referring to the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). It was emphasized that the Indian Constitution establishes a secular state, signifying that the state has no official religion. Secularism, in this context, entails maintaining a clear distinction between the state and religious institutions, ensuring that the government neither endorses nor discriminates in favor of any particular religion, thereby guaranteeing equal treatment for all faiths.

Several case laws related to interfaith marriages were discussed, including *Lata Singh v. State of U.P.* (2006) 5 SCC 475, *Justice K. S. Puttaswamy (Retd.) & Anr. vs Union of India & Ors.* (2017) 10 SCC 1, and *Shafin Jahan v. Ashokan K.M.* (2018) 16 SCC 408. Additionally, significant judicial interpretations concerning secularism were examined, including *Sardar Taheruddin Syedna Saheb v. State of Bombay* [1962 SCC OnLine SC 143], *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225, *Indra Sawhney v. Union of India* AIR 1993 SC 477, *S. R. Bommai v. Union of India* AIR 1994 SC 1918, and *I. R. Coelho v. State of T.N.* AIR 2007 SC 861. These cases were referenced to illustrate the evolution of the concept of secularism over the years. The session concluded with a reminder that the Constitution guarantees the freedom of conscience and the right to profess, practice, and propagate one’s religion. The secular framework becomes particularly relevant when an individual seeks to convert from one religion to another.