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GENDER SENSITISATION IN THE JUSTICE DELIVERY SYSTEM

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Abstract

The notion behind the administration of justice is not only intended to create awareness in society but also to bring meaningful change by addressing inequalities embedded within the existing patriarchal structure, which has persisted since ancient times. This paper examines the significant role of gender awareness in transforming the legal system from a traditionally male-dominated framework into a more inclusive and integrated system aimed at ensuring equality and justice.

The study highlights instances of gender bias and analyses key judicial precedents that have contributed to the process of gender sensitisation within the legal framework. Although the rights enshrined under the Indian Constitution and international covenants guarantee equality and justice, but however persistent patriarchal norms and rigid gender stereotypes continue to influence judicial system, affecting both victims and decision-making by law enforcement authorities.

Further, the paper explores gender sensitisation through multiple dimensions, including the protection of the rights of women, men, and third-gender individuals, as well as persons with disabilities, against discrimination and unfair treatment based on gender identity.

In addition, the research identifies a critical gap between the formal recognition of equality in legal provisions and its effective implementation in practice, particularly in cases influenced by deep-rooted societal biases. To address this, the study adopts a doctrinal and analytical research methodology, relying on case laws, statutory provisions, and secondary sources such as scholarly articles, reports, and legal commentaries.

The paper argues that by strengthening the framework of gender sensitisation, the judicial

system can play a pivotal role in reducing structural barriers and fostering an environment that promotes social equity, fairness, and justice in contemporary society.

Key Words

Indian Constitution, human rights, judicial system, Gender Stereotypes, justice, equality

1. Introduction

In a democratic polity, administration of justice is guided by ideals such as equality, fairness and transparency. In the context of India, the authority to deliver justice is emanated from the Indian Constitution, which guarantees right to Equality before the Law, prohibition of any kind of discrimination and protection of individual's personal life and liberty irrespective of gender, caste, religion, sex, or place of birth. Despite, the constitutional guarantees, the practical functioning of legal institutions or judicial panels has not always been free from the influence of longstanding patriarchal values and gender-based stereotypes, thereby at-times leading to instances of differential and often unequal treatment of individuals on the basis of gender.

Within this context, gender sensitisation may be understood as an ongoing process which is aimed at identifying and addressing the social, cultural and structural factors that perpetuate gender inequality. Various enactments have been formulated which aims at creating awareness among institutional actors and to reform existing patriarchal practices so that legal procedures and outcomes become more inclusive, impartial and responsive across different gender identities.

The incorporation of gender sensitive approaches within judicial and administrative processes becomes essential to ensure that constitutional guarantees of equality and personal liberty are realised not merely in theory, but in their actual application.

In the Context of International Law, particularly the committee on the Elimination of Discrimination against Women, has stressed that access to justice requires gender- sensitive procedures, trained judicial officers and removal of structural barriers that discourage victims from seeking legal remedies.

From this standpoint, gender sensitisation forms an intrinsic part of the justice delivery framework, and is not an auxiliary reform; for the effective functioning of the justice delivery.

2. Conceptual Framework of Gender Sensitisation

2.1 Meaning of Gender sensitisation

In order to understand the term 'Gender Sensitisation', it is important to understand the meaning of Men and Women; Masculine and Feminine. The terms Men and Women are considered as the categories of sex i.e these are the biological attributes of an individual along with the third genders such as reproductive organs , whereas masculine and Feminine are categories of gender i.e the Gender Expressions , to understand it in a better way lets consider an example : Shaila took birth in the year 2005 and her physical appearance is that of a women, and the expectations that she should display traits such as her behaviour or role in the society associates with individuals on the basis of their sex is termed as masculine or feminine. Now understanding the concept of Gender sensitisation in simple words:

It is a process which teaches the need to understand every gender in the society, and respecting the rights of the individual and treating each person equally. This process helps to create awareness regarding gender equality in the country which is also enshrined in the Indian Constitution as a Fundamental right. It says that every person be treated fairly, each one should have equal opportunity, no discrimination or segregation should exist on the basis that an individual is Men or an Individual is Women, Both genders should be educated and have awareness about each other rights and should mutually respect the feelings of the other.

2.2 Scope of Gender Sensitisation

Gender Sensitisation covers the following listed concepts under it:

- a.) Constitutional Framework
 - b.) Role played by Judiciary
 - c.) Legislations dealing with the Gender Sensitisation
 - d.) Inclusion of LGBTQ rights and the Trans Bill
- The above stated concepts are discussed in detail under different sub-heads below.

2.3 Relationship of Gender Sensitisation with the Justice Delivery system:

The concept of Gender Sensitisation and Justice delivery system are co-related with each other. Gender sensitisation on the one hand ensures that laws are interpreted in a way that it removes any kind of discrimination, patriarchal and stereotypical thoughts ; and the justice delivery system on the other hand aims at delivering judgments fairly and in reasonable manner, using the ideals of equality and justice Justice delivery system not only includes Judiciary but also

police officials, and prosecutors. Police officials must record complaints and conduct the investigation procedure fairly and in reasonable manner, and the prosecutors must avoid character-based arguments and by upholding the justice delivery system.

3. Role of Constitution in the justice Delivery system

The Preamble in the Indian Constitution, lays down certain ideals. Amongst such ideals one such ideal is - JUSTICE, Justice should exist in social, economic and political context, in order to promote Gender Justice. Some of the Fundamental Rights promoting gender justice are as follows:

Article 14- Right to Equality

Article 15(1)- Prohibition of any kind of discrimination Article 15(3)-Special Provisions for Women and Children Article 16 - Equal Opportunity in public employment Article 21- Right to Life and Personal Liberty.

3.1 Article 14 and Gender Sensitisation

Article 14 which deals with Right to Equality is a fundamental right given under Part III of the Constitution of India. This right is co-related with the gender sensitisation in the justice delivery system. As laid down under article 14, the right aims at gauranting equal treatment to all, by eliminating any form of discrimination based on sex. The idea of 'Equality before Law' eliminates every kind of biasness, favouritism or special privilege and the idea of 'Equal Protection of Laws' aims at treating every person alike i.e. on the basis of differential treatment. Judicial Authorities interpret article 14 in such a way to promote gender justice and avoid any kind of discrimination bases on patriarchal opinions of the society.

In a leading case of Air India services, service rules requiring air hostesses to retire earlier than their male counterparts were declared unconstitutional. The court held that gender-based service conditions violated article 14.

In other leading case related to transgenders, Supreme Court recognised the rights of transgender persons and held that non-recognition of gender identity violates Article 14,15,21.

3.2 Article 15(1) and Gender Sensitisation

Article 15(1) of the Constitution of India provides:

“The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.”

In simple words, this article explains that state while making any statute, policy or regulation be careful, keeping in mind that it does not make any such statute, policy or regulation which is advantageous to a particular class of people and disadvantageous to other class of people, no such provision be made that is discriminatory on grounds of race, religion, caste, sex or place of birth.

In one of the leading case, Supreme Court struck down the provision regarding adultery which punished men for engaging in adultery with a married woman, holding that it violated article 14,15 and 21, as it an outdated notions of women as a property of their husbands and denied them sexual autonomy.

3.3 Article 15(3) and Gender Sensitisation

Article 15(3) of the Constitution of India provides:

Nothing in this article shall prevent the State from making any special provision for women and children.

In simple words, this article explains that state has been empowered to create laws, statutes or policies for both women and children. This power with the state government is a special power for the protection of women and children from the patriarchal thinking of the society. This clause is co-related with the theory of gender sensitisation as well the doctrine of protective discrimination additionally, art.15(3) promotes equitable treatment I.e. 'equals should be treated equally'. This provision was brought in the Indian constitution, keeping in mind the status of the women in the ancient times, for eg. women were denied education, they lacked decision making power, they did not have economic independence alike that of men.

Laws that were made by the Government are as follows:

- A.) Protection of Women from Domestic Violence Act, 2005
- B.) Dowry Prohibition Act,1961
- C.) Sexual Harassment of Women at Workplace Act,1961
- D.) Maternity Benefit Act,1961
- E.) Equal Remuneration Act,1976
- F.) Provision regarding rape in the Bhartiya Nyay Sanhita, 2023

3.4 Article 16(1),(2) and Gender Sensitisation

Article 16 of the Constitution of India provides that:

- 1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State,

- 2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

In simple words Article 16 further broadens the concept of equality by addressing equal opportunity in matters of public employment. Both the provisions collectively ensure that state employment should not be based on gender stereotypes, and patriarchal notions rather skill of each individual be considered as per the work whether the individual is a woman, men or third gender. Gender based promotions at a workplace be high prohibited, work harassment should be prohibited, unequal pay based on gender be avoided, working conditions should be created in a way which is favourable to every person, in order to promote justice and equality at the workplace. This provision helps in removing the age old myth that women are weak both emotionally and physically and should work as a housewife only, judiciary has aimed at making equal laws and equal rules for everyone.

In order to protect women from harassment, laws are made for their safety, such as Sexual Harassment of Women at Workplace Act,1961; and in order to provide leave to pregnant women, Maternity Benefit Act,1961 has been enacted.

In the case of C.B. Muthamma v. UOI 1979, C.B. Muthamma who was the first woman to join the Indian Foreign Service, challenged certain service rules that were overtly discriminatory towards women officers. These rules required a woman officer to seek government permission before marriage and even allowed for her resignation after marriage if it was considered to interfere with her duties.

The Supreme Court, while examining these provisions, strongly criticised the underlying mindset that informed such rules, observing that they were not based on any rational or functional requirement of service but rather on entrenched gender stereotypes. The Court emphasised that such provisions reflected a patriarchal assumption that women, upon marriage, would be less committed or capable in their professional roles. It held that these rules were arbitrary and violative of the constitutional guarantees of equality under Articles 14 and 16, as they imposed conditions exclusively on women without any equivalent burden on men.

3.5 Article 21 and Gender Sensitisation

Article 21 of the Constitution of India provides that:

"No person shall be deprived of his life or personal liberty except according to procedure established by law"

Judicial Authorities have interpreted Article 21 multiple times, and has included several rights

every time the interpretation was done in order to widen the aspect of gender sensitisation. Some of the rights that are co-related with the notion of gender sensitisation are given below:

- a) Right to privacy
- b) Right to education
- c) Right to safe working conditions
- d) Right against sexual harassment
- e) Right to maternity benefit
- f) Right to self- identification of gender
- g) Right to live with dignity without discrimination

4. Role of Judiciary in the Justice Delivery system

Judiciary plays a significant role in interpreting the notion of gender sensitisation by introducing different new rights with the changing circumstances in the society. These rights are either introduced by judiciary in the form of amendments in the existing laws or by way of judicial decisions in different legal proceedings. The changes brought by the judiciary help in shaping the old age opinions of patriarchal society and stereotypical thoughts of individuals and by upholding the rights for women and children and third gender by enforcing enactments or by enabling rights in their favour. For example, the Trans bill which is a current ongoing debate is to protect the rights of third gender in the society.

4.1 *Mindset of Judicial Panel and Gender Sensitisation*

Many a times, it is observed that patriarchal norms shape the mindset of judiciary leading to biased judgements and affecting the innocent party's right, judges rely upon stereotypical assumptions and deliver judgements undermining the constitutional guarantee provided under art.14,15,16.

These stereotypical notions act as hurdles in —

- a. questioning the credibility of victims based upon their conduct and character;
- b. understanding the seriousness of violence based on gender
- c. reinforcing gender roles in the society.

It was held that courts must avoid being swayed by myths surrounding sexual assault and instead adopt a sensitive approach toward victims.

In this case Court rejected heteronormative assumptions and upheld dignity and autonomy of individuals irrespective of sexual orientation.

Gender sensitisation directly shapes the mindset of the judiciary by fostering awareness of:

- a. Intersectional discrimination
- b. The lived realities of women and marginalised genders

Judiciary must deliver judgement which are impartial, unbiased and are based upon the principles of natural justice and equality.

4.2 Concept of Judicial Activism

Judicial activism refers to a proactive role of the judiciary in interpreting laws to ensure justice and protect fundamental rights.

The concept of Gender Sensitisation requires that courts must analyse and interpret matter brought before it in a way to avoid any kind of gender-based discrimination and to deliver judgments which are unbiased in nature and are not delivered on based of patriarchal notions. Both the idea of gender sensitisation and judicial activism is co-related, because the purpose of both these notions is to interpret in a way to promote the ideals of justice and equality and to avoid the involvement of stereotypical opinions.

5. Legislative aspects of gender Sensitisation

5.1 The Transgender Persons (Protection of Rights) Act, 2019

The enactment of the Transgender Persons (Protection of Rights) Act, 2019 represented a watershed moment in Indian jurisprudence. Conceived as the legislative operationalisation of the Supreme Court's landmark ruling in National Legal Services Authority (NALSA) v Union of India (2014), the Act sought to dismantle systemic barriers confronting transgender persons and anchor their rights in the constitutional guarantees of Articles 14, 15, 19, and 21.

The Act's principal contributions to gender sensitisation are threefold.

First, it established formal legal recognition of self-determined gender identity, partially dismantling the binary male–female framework that had previously governed civil and political entitlements. Second, it imposed a comprehensive proscription of discrimination across critical domains including education, employment, healthcare, housing, and access to public services. Third, it mandated the constitution of a National Council for Transgender Persons (NCTP) as an institutional oversight body responsible for advising the government on policy, monitoring implementation, and addressing community grievances. The Act also criminalised specific atrocities including physical, sexual, and emotional abuse; forced begging; and restriction of movement acknowledging the acute vulnerability of transgender persons to violence.

However, the Act attracted sustained criticism from the very community it sought to protect. The most significant objection concerned its identity certification process: the requirement that a transgender person petition a District Magistrate often contingent upon medical or psychological evaluation was widely condemned as invasive, dehumanising, and inconsistent with the self-determination principle affirmed in NALSA. Critics further identified a troubling disparity in penal sanctions, whereby offences against transgender victims attracted lighter sentences than equivalent offences under the Indian Penal Code against cisgender individuals, effectively institutionalising a hierarchy of bodily protection. The limited operational effectiveness of the NCTP and the ambiguity of the Act's definitional framework rounded out a comprehensive critique.

5.2 *The Prevention of Sexual Harassment Act, 2013*

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 represents the statutory codification of the Supreme Court's Vishaka guidelines, themselves a product of the landmark judgment in *Vishaka v State of Rajasthan* (1997), arising from the gang rape and murder of a social worker who had challenged child marriage. Anchored in Articles 14, 15, and 21, the Act operationalises the constitutional entitlement of women to equality, non-discrimination, and the right to a dignified professional environment.

The POSH Act's most important structural contribution is its shift from a purely punitive to a preventive orientation. The Act's wide statutory definition of sexual harassment encompassing physical contact, demands for sexual favours, sexually coloured remarks, display of pornographic material, and any conduct creating a hostile work environment is deliberately non-exhaustive, ensuring responsiveness to evolving forms of misconduct. The mandatory constitution of an Internal Complaints Committee (ICC) in every establishment employing ten or more persons institutionalises a dedicated, gender-balanced, and impartial redressal mechanism, vested with quasi-judicial powers. The inclusion of an External Member from a relevant NGO introduces an independent expert perspective, mitigating the risk of institutional capture.

By extending protection through Local Complaints Committees at the district level to domestic workers, informal sector employees, and those in establishments with fewer than ten workers, the Act reaches the most vulnerable segments of the female workforce. The POSH Act's transformative contribution lies in elevating workplace conduct from a matter of internal policy to one of legal compliance and public accountability, compelling organisations to actively

cultivate cultures of mutual respect and dignity.

5.3 *The Maternity Benefit Act, 1961*

The Maternity Benefit Act, 1961, as significantly amended in 2017, addresses a dimension of gender inequality rooted not in prejudice alone but in biological and sociological reality: the disproportionate professional cost borne by women as a consequence of their reproductive roles. The Act embodies the principle of substantive equality, recognising that identical treatment of women and men in the context of childbirth perpetuates rather than remedies disadvantage.

The 2017 amendments extended paid maternity leave from 12 to 26 weeks for the first two children, a provision essential for maternal recovery and neonatal bonding, and extended coverage to commissioning and adoptive mothers, linking the benefit to the caregiving function rather than biological parturition alone. The Act's prohibition on dismissal during the maternity period, requirement for compensated nursing breaks until the child reaches 15 months, mandatory crèche facilities in establishments employing 50 or more workers, and protection from hazardous or arduous work during pregnancy collectively constitute a comprehensive framework for reproductive justice in the workplace. By institutionalising support for maternity and childcare, the Act counteracts the 'motherhood penalty' and validates caregiving as a socially valuable contribution warranting institutional recognition.

6. International Perspective of Gender Sensitisation

6.1 *Human Rights and the Covenants*

The international normative architecture for gender sensitisation is anchored in the Universal Declaration of Human Rights (1948), whose Articles 1, 2, 7, and 23 establish the non-derogable principles of inherent dignity, non-discrimination, equality before the law, and equal remuneration. These provisions constitute the foundational premise upon which all subsequent, more specific instruments are constructed.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979) is the most significant treaty instrument dedicated to gender equality. Frequently described as the international bill of rights for women, CEDAW demands not merely the prohibition of discrimination but proactive state measures to achieve de facto equality. Its Article 5 is particularly critical for gender sensitisation, requiring states to modify social and cultural patterns of conduct to eliminate prejudices based on the inferiority or superiority of

either sex a mandate directed at deep structural transformation rather than surface-level legal reform. CEDAW institutionalises gender mainstreaming by requiring the integration of a gender perspective into all national policies, the reform of discriminatory laws, the promotion of gender-sensitive education, and the training of public institutions.

The International Covenant on Civil and Political Rights (ICCPR, 1966) reinforces these obligations through its non-discrimination provisions (Articles 2, 3, and 26) and has been interpreted by the Human Rights Committee to require substantive rather than merely formal equality. The Committee has elaborated state obligations to eliminate systemic impediments to women's access to justice, protect women from all manifestations of violence, and promote their equal participation in public and political life. The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) complements the ICCPR by mandating non-discriminatory access to employment, education, health, social security, and maternity protection, thereby addressing the economic and social dimensions of gender inequality.

6.2 *Laws in Other Countries*

United States

The Civil Rights Act of 1964 (Title VII) establishes the foundational federal framework against employment-based sex discrimination. The Supreme Court's 2020 decision in *Bostock v Clayton County* significantly extended this protection to discrimination based on gender identity and sexual orientation, reflecting the Yogyakarta Principles' framework in domestic law. Gender sensitisation is primarily implemented through mandatory workplace compliance training, robust anti-harassment protocols, and Diversity, Equity, and Inclusion (DEI) programmes. The Violence Against Women Act (VAWA) supplements the framework by addressing gender-based violence as a structural impediment to equality.

United Kingdom

The Equality Act 2010 consolidates fragmented anti-discrimination legislation into a unified statutory framework, protecting nine 'characteristics' including sex, gender reassignment, and pregnancy and maternity. The Public Sector Equality Duty (PSED) distinguishes the UK model: it compels public bodies to proactively consider the need to eliminate discrimination, advance equality of opportunity, and foster good relations, effectively mandating gender mainstreaming in public governance. Gender pay gap reporting requirements force private sector transparency, creating accountability pressure beyond legal compliance.

Canada

Canada's dual federal-provincial framework, anchored by the Canadian Human Rights Act, was significantly strengthened by Bill C-16 (2017), which explicitly added gender identity and gender expression as prohibited grounds of discrimination under federal law. Canada's Gender-Based Analysis Plus (GBA Plus) framework a systematic tool requiring policymakers to assess the differential impact of policies on diverse groups represents one of the most institutionally developed examples of gender mainstreaming in practice. Federal and provincial pay equity legislation mandates proactive, rather than complaint-driven, measures to address the gender pay gap.

South Africa

South Africa's legal framework derives exceptional strength from Section 9 of its post-apartheid Constitution (1996), which explicitly prohibits discrimination on the grounds of sex, gender, pregnancy, and sexual orientation. The Promotion of Equality and Prevention of Unfair Discrimination Act (PEPUDA) operationalises this constitutional guarantee through accessible Equality Courts, providing a decentralised and efficient mechanism for victims of gender-based discrimination. The constitutional model demands proactive transformation rather than mere tolerance of diversity.

Sweden

Sweden's model is defined by the systematic institutionalisation of gender mainstreaming as a legal governance principle. The Discrimination Act 2008 prohibits discrimination based on sex and transgender identity or expression, while employers are legally required to conduct annual pay audits and formulate active measures to advance equality. Sweden's internationally renowned gender-neutral parental leave system including a 'father's quota' forfeited if unused directly challenges conventional gender roles and incentivises equitable distribution of caregiving. A dedicated Ombudsman against Discrimination monitors compliance and promotes equality across society.

7. Conclusion

The legislative framework and judicial precedents made regarding gender sensitisation help in understanding the need to create awareness in the society that patriarchal norms regarding gender must be changed and gender justice be promoted in the society. Every gender however plays a different role in the society, but it must be understood that no individual or organ has

the right to differentiate anybody on the sole basis of gender. The Indian Constitution as well as International Covenants guarantees Equality and Justice, therefore it must uphold these ideals.

However, despite these advancements, a gap still continues to exist between laws, judiciary and the society. The persistence of social prejudice, gender biases and patriarchal notions limits the effectiveness of progressive laws, thus it requires consistent awareness and engagement of implementation of the ideals of gender justice in the society.

