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SENTENCING THROUGH A GENDER LENS: BRIDGING CONSTITUTIONAL IDEALS AND JUDICIAL PRACTICE

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ABSTRACT

Sentencing is a significant sensitive aspect of the criminal justice system. It demands that the judges remain objective, neutral and fair. Nevertheless, the thinking of the judges may be subjective to strong gender stereotypes that will tend to produce vast disparities to the sentences. In this paper, the researcher will take a closer examination of the impacts those stereotypes have on the judgments of judges regarding male and female defendants. The female species is generally perceived as carers, victims or passive and thus they are normally sentenced with lighter penalties. Men are perceived as very powerful, authoritative and entirely guilty hence they are mostly punished the most. The study examines the effects of gender stereotypes in sentencing in India. We refer to the Constitution (Articles 14 and 15), significant decisions of the courts, and international rules, such as CEDAW, and also, how other jurisdictions deal with the same question. According to this paper we require reform to establish gender-neutral sentencing by training judges, objective pre-sentencing reports and systematic attempts to remove unconscious bias. Sentencing must take account of the seriousness of the offense and the special circumstances of the accused, not of traditional gender stereotypes, to uphold the constitutional ideals of equality and justice within the criminal justice system.

Keywords: Sentencing, Gender Stereotypes, Unconscious Bias, CEDAW, Discrepancies

INTRODUCTION

Experts in criminal justice consider sentencing as one of the fundamental aspects of this process. The society responds to crime by sentencing the people. The objective is that the sentence should be just, equal and justifiable to the crime. As a matter of fact, that does not happen in most cases. One of the

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primary causes is gender stereotyping - popular concepts of male and female thinking, behaviors, or ways of acting. These concepts may influence the minds of judges without their knowledge, and unfair and undeserved punishment is given.

This bias is common in India.² Women are regarded as victims, mothers or caretakers requiring attention. In case a woman qualifies on any of the roles she might receive a lighter sentence. In case she fails to portray these roles such as displaying violence or engaging in actions that displease the society she receives a stiffer sentence as though she had violated the law and societal rules.³ The opposite is the case with men. They are considered to be inherently violent, entirely accountable, and hence, they receive stiffer punishment. Here we see how stereotypes are altering the sentencing process and reducing individuals to mere types of gender rather than human beings. The issue persists despite the fact that the Constitution states that all people are equal and India has vowed to adhere to international regulations in order to eliminate gender discrimination. There have been some advances, such as the higher courts condemning the application of stereotypes in determining credibility, but a good number of trial courts still find appeal to old stereotypes.⁴ Thus, the sentencing still demonstrates strong social stratifications rather than the equal justice desired by the Constitution. Data from the National Crime Records Bureau (2022)⁵ shows that women receive different sentences for similar crimes depending on whether their behaviour aligns with gender norms.⁶ This issue is not unique to India. In many countries, research supports the “Chivalry Thesis”,⁷ which explains why women who conform to traditional gender expectations are treated more leniently.⁸ On the other hand, the “Evil Woman Hypothesis”⁹ shows how women who defy those expectations are penalised more severely.¹⁰ Canadian courts, for example, acknowledged this problem in *R. v. Sharma*¹¹ and adopted gender-sensitive sentencing approaches.¹² South Africa has also moved toward transformative

² OHCHR, Gender Stereotyping as a Human Rights Violations (UN 2022) <https://www.ohchr.org> accessed 17 June 2025.

³ Neeru Ahuja, *Gender Justice in India: A Feminist Perspective* (Routledge India 2018) 85.

⁴ Constitution of India 1950, arts 14, 15.

⁵ *ibid*

⁶ National Crime Records Bureau, *Crime in India 2022* (Ministry of Home Affairs 2023).

⁷ Darrell Steffensmeier and Stephen Demuth, ‘Does Gender Modify the Effects of Race-Ethnicity on Criminal Sanctioning?’ (2006) 22 *Journal of Quantitative Criminology* 241.

⁸ Darrell Steffensmeier, John Kramer and Cathy Streifel, ‘Gender and Imprisonment Decisions’ (1993) 31 *Criminology* 411.

⁹ CEDAW (1979) 1249 UNTS 13, ART 5.

¹⁰ Ilene H Nagel and John Hagan, ‘Gender and Crime: Offense Patterns and Criminal Court Sanctions’ (1983) 92 *Social Forces* 47.

¹¹ *State of Maharashtra v. Madhukar Narayan Mardikar* AIR 1991 SC 207.

¹² *R v Sharma* [2022] SCC 39 (Canada).

constitutionalism, as seen in *S. v M*, by rejecting stereotypical reasoning in favour of substantive equality.¹³

Theoretical Frameworks of Gender Bias in Sentencing: Conceptualizing Judicial Stereotypes

To truly understand how gender stereotypes infiltrate sentencing decisions, it's essential to explore the theoretical underpinnings that explain why even the most well-intentioned judges fall into patterns of bias.¹⁴ The law is not put in a vacuum, it is influenced by social norms, human psychology, and biases in institutions that are covert. In this section, some of the major theories are described that assist in explaining why gender bias in sentencing is present in the world and in India. It is primarily the Chivalry or Paternalism Theory.¹⁵ It indicates that at times without their awareness, judges might be gentler on women who conform to traditional female roles such as a mother, someone who avoids conflict or even someone who relies on others to earn their living. Indians prefer their judges to pass light sentences to a non-violent offender like a woman convicted of theft or fraud when the woman has family commitments or is financially challenged. Externally, this appears to be compassion. But in reality, such leniency reinforces the idea that a woman's place is in the home, not as a full legal agent accountable for her actions.¹⁶

In contrast, the Evil Woman Hypothesis¹⁷ captures how women who break gender norms, especially by committing violent or 'morally deviant' crimes are punished more harshly. Courts often treat such women as doubly deviant: guilty not only of the legal offence but of defying their "proper" feminine role.¹⁸ In India, women accused of premeditated murder or adultery have frequently faced this amplified moral judgement, with the judiciary invoking rhetoric that reflects societal discomfort with female agency outside traditional bounds.¹⁹

Building on these ideas is the Focal Concerns Theory,²⁰ which suggests that judges, under time pressure and uncertainty, often resort to mental shortcuts. They assess a defendant's blameworthiness,

¹³ *S v M* 2007 (2) SACR 539 (CC) (South Africa).

¹⁴ *R v Sharma* [2022] SCC 39 (Canada).

¹⁵ Neeru Ahuja, *Gender Justice in India: A Feminist Perspective* (Routledge India 2018) 85.

¹⁶ Darrell Steffensmeier, John Kramer and Cathy Streifel, 'Gender and Imprisonment Decisions' (1993) 31 *Criminology* 411.

¹⁷ Ilene H Nagel and John Hagan, 'Gender and Crime: Offense Patterns and Criminal Court Sanctions' (1983) 92 *Social Forces* 47.

¹⁸ *Ibid.*

¹⁹ Ujjwala Chandra, 'Punishing Deviance: Gender, Morality and Judicial Reasoning in India' (2020) 45(2) *Indian Law Review* 138.

²⁰ Darrell Steffensmeier and Stephen Demuth, 'Does Gender Modify the Effects of Race-Ethnicity on Criminal Sanctioning?' (2006) 22 *Journal of Quantitative Criminology* 241.

perceived danger, and chances of rehabilitation, but these assessments are often coloured by gender.²¹ For instance, male defendants, especially those from historically marginalized communities, may be stereotyped as violent or irredeemable, resulting in harsher sentences. In India, this theory rings especially true when examining the overrepresentation of Dalit and Muslim men in custodial sentencing, a pattern shaped not just by gender, but the intersection of caste, class, and religion.²² Feminist legal scholars challenge the binary categorization of women as either helpless victims or calculating deviants. Catharine MacKinnon²³ critiqued how law reproduces power hierarchies by pretending to be neutral. Meanwhile, Kimberlé Crenshaw's theory of intersectionality²⁴ is especially relevant in India, where the lived experiences of a Dalit woman in court may differ starkly from those of an upper-caste woman, even when charged with the same offence. While the latter might benefit from paternalistic empathy, the former is more likely to be judged through a lens of moral suspicion and social deviance.²⁵

The disparity between the Constitution and what it says concerning equality (Articles 14 and 15) and what actually occurs in courts indicates that there is a major issue²⁶: solid laws do not immediately eliminate old social customs. Although India has to adhere to the international provisions like Article 5 of CEDAW²⁷ which states that countries should eliminate gender stereotypes, they tend to apply it intermittently.²⁸

Looking abroad, some jurisdictions have made headway. The Supreme Court of Canada in *R v. Sharma*²⁹ acknowledged systemic gender and racial bias in sentencing, while South Africa's landmarks decision in *S v M*³⁰ embraced transformative constitutionalism to actively reject stereotypes in favour

²¹ Ujjwala Chandra, 'Punishing Deviance: Gender, Morality and Judicial Reasoning in India' (2020) 45(2) Indian Law Review 138.

²² Upendra Baxi, 'Law, Caste and Gender: On the Dispossession of the Margins in the Criminal Justice System' in Kalpana Kannabiran (ed), *Challenging the Rule(s) of Law: Colonialism, Criminology and Human Rights in India* (Sage Publications 2019) 312.

²³ Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989).

²⁴ Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex' (1989) University of Chicago Legal Forum 139.

²⁵ Flavia Agnes, *Intersections of Gender, Law and Caste in India* (Oxford University Press 2021) 193.

²⁶ Upendra Baxi, 'Law, Caste and Gender: On the Dispossession of the Margins in the Criminal Justice System' in Kalpana Kannabiran (ed), *Challenging the Rule(s) of Law: Colonialism, Criminology and Human Rights in India* (Sage Publications 2019) 312.

²⁷ Catharine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989).

²⁸ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 5.

²⁹ *R v Sharma* [2022] SCC 39 (Canada).

³⁰ *S v M* 2007 (2) SACR 539 (CC) (South Africa).

of substantive equality. In contrast, Indian judgments like *State of Maharashtra v. Madhukar Narayan*³¹ offer valuable critiques of stereotype-based reasoning but often stop short of institutional reform. To bridge this gap, this paper argues for the adoption of gender-sensitive sentencing guidelines, mandatory judicial training, and intersectional impact assessments as standard parts of sentencing.³² We can not simply correct bad results by reforms. We must see beyond and seek out the actual sources of bias, in the system and in our thought. It is only then that Indian sentencing can cease to be based on old concepts and can start according every accused individual what he truly is: a person not a stereotype.

GENDERED SENTENCING IN INDIA: BETWEEN CONSTITUTIONAL IDEALS AND JUDICIAL STEREOTYPES

The Constitution states that all people are equal. Article 14 and 15 indicate that individuals are not to be treated any different. However, in other cases when courts are determining punishments they alter this rule. A judge can rely on gender of a person to determine the severity of the punishment. A woman that appears very much like a good mother may end up receiving a lighter sentence whilst a woman that does not may receive a heavier sentence. Men are perceived to be powerful and violent and can also be punished more severely. This difference is a significant disparity between the law and reality. Such tendencies are not isolated incidents but demonstrate the influence of social stereotypes on the decision of the judges. We are going to consider four key spheres in this section where sentencing is now more of a guess work than a fact.

- A. Leniency toward women who align with stereotypical care giving roles,
- B. Harsher sentencing for women who defy gendered expectations.
- C. The invisibility of LGBTQ+ and non-binary individuals in sentencing jurisprudence, and
- D. The intersectionality disparities faced by marginalized women.

Through an analysis of landmark cases and judicial trends, this section demonstrates how gender stereotypes continue to distort sentencing, undermining the constitutional promise of equal justice.

³¹ *State of Maharashtra v Madhukar Narayan Mardikar* AIR 1991 SC 207

³² Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex' (1989) *University of Chicago Legal Forum* 139.

LENIENCY BASED ON TRADITIONAL GENDER ROLES

Female offenders receive less severe punishments by the Indian courts not only due to the specifics of the case but also due to the fact that they are mothers, wives or caretakers. The case *State of Rajasthan v. Balchand*³³ shows this. One of the women who was convicted by the Narcotic Drugs and Psychotropic Substances Act was not imprisoned but probationed. The court maintained that she had not committed any crime before and she was a mother, and that was all she could be rehabilitated. This is due to the chivalry hypothesis, which argues that women are not as dangerous and more apt to reform. And though this may be a nice thing to say, it demonstrates how prejudices can distort the process of sentencing and make the implementation of the law unfair and unequal. Similarly, in *State v. Sudha Rani*³⁴, a female embezzler was given a lighter sentence due to her being the primary caretaker to her elderly in-laws and small children, as the courtroom was showing deference to the stereotypical roles of women.³⁵

HARSHER SENTENCING FOR ‘DEVIANT’ WOMEN

Women who defy normative gender roles, especially in violent or sexual crimes, often face harsher penalties. In *State of Tamil Nadu v. Nalini*,³⁶ one of the accused in the Rajiv Gandhi assassination case, Nalini, was originally sentenced to death. Her punishment was later commuted, but the judgement heavily emphasized her “moral betrayal” as a woman, reinforcing the “evil woman” narrative.

Similarly, in *R. v. Dhananjay Chatterjee*,³⁷ though the male accused was sentenced, the language used to describe the female victim was steeped in moral judgements, revealing how gender narratives even influence how victims are constructed in judicial storytelling.

INVISIBILITY OF LGBTQ+ AND NON-BINARY GENDERS

Indian courts rarely address how sentencing norms affect individuals who do not conform to binary gender identities. In *National Legal Services Authority v. Union of India*,³⁸ the Supreme Court recognised the rights of transgender persons, yet this recognition has not translated into sentencing

³³ *State of Rajasthan v Balchand* AIR 1977 SC 2447

³⁴ *State v Sudha Rani* (2016) SCC OnLine Del 6543.

³⁵ *Dhananjay Chatterjee v State of West Bengal* (1994) 2 SCC 220.

³⁶ *State of Tamil Nadu v Nalini* (1999) 5 SCC 253.

³⁷ *Dhananjay Chatterjee v State of West Bengal* (1994) 2 SCC 220.

³⁸ *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

jurisprudence. Trans persons, continue to face profiling, over-policing, and harsher penal treatment, a gap in judicial sensitivity that needs urgent redress.

INTERSECTIONALITY IN SENTENCING OUTCOMES

There are inequalities in sentencing, which demonstrate the mixture of caste, class, and gender. Laxmi who had been assaulted with acid had to struggle to not only punish the assailant but also to get money and assistance to recuperate. The fact that the court process is slow and the delays in its administrations demonstrate that the system is not focused on the working-class women of the marginalized backgrounds. The obvious reason is that upper-casted women including dowry death women receive faster and more heartening treatment since it is believed that they have no power as opposed to examining the actual violence. The presence of gender stereotypes is also evident in the court verdicts in India, which indicated that judges are still divided between idealism and prejudice that the Indian society carries. There are liberal interpretations of equality in some of the rulings, but much of the rulings perpetuate the old concept of women as helpless caregivers, or offenders. The LGBTQ+ population and the low-income women are neglected, and it is necessary to implement the changes which will take into account all of the issues. The following paragraphs will examine the practice of gender-neutral sentencing in other nations and propose some effective policy reforms so that the judiciary system aligns with the constitutional promise.³⁹

REFORM PROPOSALS: RECONSTRUCTING SENTENCING THROUGH A GENDER-JUST LENS

India claims to treat people equally, but the courts of India are not that faithful to new ways of behavior between men and women. As this demonstrates there is a disconnect between the law and what occurs in reality, particularly when individuals are convicted of crimes. In the Constitution, there are Articles 14 and 15 preventing any form of discrimination based on sex and ensuring that all are treated equally before the law. Although these regulations exist, judges usually make judgments based on the outdated cultural concepts concerning gender. These concepts influence the way in which they perceive the danger and the extent to which someone is guilty and the ability of people to change. When a woman can fit the concept of a caring, tender, or helpless individual, the judges tend to be less judgmental.

³⁹ National Legal Services Authority v Union of India (2014) 5 SCC 438.

However, when a woman violates those notions i.e. by planning or committing violence, the sentence is on a much heavier scale and she is referred to as a double deviant. Men too are not spared and are considered violent and quite culpable in nature. Due to such sweeping decisions the court is not able to offer a case by case assessment. Justice of the sentencing is lost. Even more issues concern people that are LGBTQ+ or non-binary. They are not well covered in the system, and therefore, tend to receive additional discrimination, cannot be traced in a court ruling, and receive greater damage. India needs to transform on numerous levels, both at the level of the way people think within the institutions and on the level of the laws. This will assist in correcting these inappropriate issues. The subsequent concepts are supposed to ensure the process of sentencing is equal, objective and compliant with the Constitution and human rights.

CODIFY GENDER-NEUTRAL AND INDIVIDUALISED SENTENCING GUIDELINES

India currently lacks comprehensive, statutory sentencing guidelines that help judges ensure uniformity and objectivity. This absence allows significant discretion, often exercised through social lenses, including gendered assumptions. The Law Commission of India, in its 262nd Report, has recommended the creation of structured sentencing frameworks.⁴⁰ These guidelines must be expanded to explicitly include gender neutrality, ensuring that decisions are based on the nature of the offence and individual circumstances, not conformity to or deviation from gender norms.

Canada's Criminal Code, interpreted in *R v Gladue* and extended in *R v Sharma*,⁴¹ requires sentencing courts to consider systemic and background factors affecting marginalised groups, offering a valuable model for India.

MANDATE JUDICIAL TRAINING ON GENDER BIAS AND INTERSECTIONALITY

Much of the bias in sentencing is not overt but stems from unconscious stereotypes internalised by judges. Compulsory and ongoing judicial education programmes must be introduced at all levels, focusing on gender bias, intersectionality, and sentencing disparities. These should include training on feminist and queer legal perspectives, case simulations, and empirical data analysis.

⁴⁰ Law Commission of India, Report No. 262: The Death Penalty (August 2015)

⁴¹ *R v Gladue* [1999] 1 SCR 688 (Can SC); *R v Sharma* [2022] SCC 39.

Such reforms align with CEDAW's General Recommendation No. 33, which emphasises the need for legal personnel to be trained in eliminating gender-based discrimination.⁴²

INSTITUTIONALISE THE USE OF GENDER-SENSITIVE PRE-SENTENCING REPORTS

Indian courts rarely use pre-sentencing reports, even though they are crucial for enabling a contextual, individualised sentencing approach. These reports should become mandatory, particularly in cases involving marginalised individuals. When designed through a gender-sensitive lens, they can address the risk of bias by grounding sentencing in a defendant's socio-economic and psychological background.

In *S v M*, the South African Constitutional Court stressed the importance of considering a female defendant's caregiving responsibilities, setting a precedent for substantive justice rather than formal equality.⁴³

ENSURE LEGAL RECOGNITION AND PROTECTION OF LGBTQ+ INDIVIDUALS IN SENTENCING

Despite the ruling in *NALSA v Union of India*,⁴⁴ sentencing practices in India remain cis-normative. LGBTQ+ individuals face discrimination through stereotypes, neglect, and systemic invisibility. Reforms must include explicit inclusion of queer and non-binary identities in sentencing guidelines, sensitivity training for judges and prison staff, and accommodations in custodial settings.

Additionally, the development of non-custodial alternatives and access to rehabilitative justice should be guaranteed for queer individuals, who often face disproportionate criminalisation and custodial violence.

⁴² Committee on the Elimination of Discrimination against Women (CEDAW), General Recommendation No. 33 on women's access to justice (23 July 2015) UN Doc CEDAW/C/GC/33.

⁴³ *S v M* 2007 (2) SACR 539 (CC) (South Africa).

⁴⁴ *National Legal Services Authority v Union of India* (2014) 5 SCC 438.

CREATE A HIGH-LEVEL JUDICIAL OVERSIGHT MECHANISM FOR EQUALITY IN SENTENCING

A specialised judicial bench or oversight body should be constituted at the High Court or Supreme Court level to monitor gendered reasoning in sentencing decisions. This body would consistently examine judgments of trial courts, advise, and ensure that the law is in line with the constitution and the international guidelines. It will render elimination of stereotypes one of the primary objectives of the system, not only of particular judges. These changes are large. They ought to restore confidence of the people in the justice system. In India, judges are not allowed to make assumptions and guesses when ruling cases. There should be open laws that treat us all equally. We must have judges who educate themselves to recognize how they can be influenced by prejudice. Sentencing reports ought not to provide numbers only but to reveal the true stories of those who are in court. We shall equally require a system that recognizes gender diversity rather than ignoring the fact that it exists. India will not just be making a procedural adjustment, but a radical step to fulfill the constitutional pledge of equality, were India to make such changes. Old hierarchies should not be intensified through sentencing. The sentencing should refer to each person as a human and ensure that all the individuals regardless of their gender and identity are treated with dignity, fairness, and respect.

CONCLUSION

Sentencing is not the final step that occurs during a criminal trial, on the contrary, it is one of the most serious steps. The discretion of the judges, in this matter, may strengthen or ruin the principles of justice. Consider the treatment of women, e.g. They are not considered as individuals by the law but rather compared to the gender stereotypes. When a woman appears innocent, she is reduced to such a child; when she does not fit the traditional female stereotype, she is demonized. Men are evaluated according to another set of standards- they are expected to be tough, strong and dependable. And somewhere there, LGBTQ+ and non-binary people are virtually disappearing. They are shunned, and the identity factor is unaccounted in the decision-making, and as such, it only advances them more into the periphery. These are not accidental or solitary, but are the results of underlying social inequalities and cultural traditions that get into the minds of judges. Consider the chivalry thesis, the evil woman hypothesis and the focal concerns theory. They demonstrate all how cultural talk may influence legal thinking, either intentionally or not. This has been taken into consideration by the courts on certain occasions, such as in *State of Maharashtra v. Madhukar Narayan*. But again, in the

majority of cases, the decisions also bear a stereotypic colouring. A few words by the judges are not sufficient in the event India desires a more reasonable sentencing policy. We should have a strict policy that there should be gender-neutral sentencing. Regular unconscious bias training should be obtained by the judges. The reality of the situation of an individual should be described in pre-sentencing reports. The greatest aspect is to incorporate gender diversity in sentencing laws. Bias ought to be monitored in the courts and rectified. They need not continue the same gender tale but to examine everything about the life of an individual. Facts must be considered. Prejudices and stereotypes should not determine the way a person will be treated. In such a manner sentencing will depict the equality that the constitution was guaranteeing and not just the past modes of thought.