

Handbook on

# COMBATING GENDER STEREOTYPES

Supreme Court of India







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## **FOREWORD BY THE CHIEF JUSTICE OF INDIA**

Our oath as judges mandates that we ‘perform the duties of our office without fear or favour, affection or ill-will.’ The oath demands that we discharge our functions with impartiality and objectivity, applying the law to every case before us. A judge’s oath demands rejecting improper attempts to influence their decision-making. The oath also requires a judge to put aside any preconceived notions about the parties before the court. Relying on predetermined stereotypes in judicial decision-making contravenes the duty of judges to decide each case on its merits, independently and impartially. In particular, reliance on stereotypes about women is liable to distort the law’s application to women in harmful ways.

Even when the use of stereotypes does not alter the outcome of a case, stereotypical language may reinforce ideas contrary to our constitutional ethos. Language is critical to the life of the law. Words are the vehicle through which the values of the law are communicated. Words transmit the ultimate intention of the lawmaker or the judge to the nation. However, the language a judge uses reflects not only their interpretation of the law, but their perception of society as well. Where the language of judicial discourse reflects antiquated or incorrect ideas about women, it inhibits the transformative project of the law and the Constitution of India, which seek to secure equal rights to all persons, irrespective of gender.

The Code of Civil Procedure, 1908 previously referred to persons without financial means as ‘paupers.’ In recognition of the fact that language conveys certain ideas about its subject and can either recognise or diminish the dignity of such persons, the statute was amended and the word ‘pauper’ was replaced with the word ‘indigent.’ This amendment to the statute did not have a strictly legal purpose but was meant to recognise the humanity of the people it referred to. Similarly, many words or phrases that are used in legal discourse (both by lawyers and by judges) reflect archaic ideas with patriarchal undertones.

The Handbook on Combating Gender Stereotypes aims to assist judges and the legal community in identifying, understanding and combating stereotypes about women. It

contains a glossary of gender-unjust terms and suggests alternative words or phrases which may be used while drafting pleadings as well as orders and judgments. The Handbook identifies common stereotypes about women, many of which have been utilised by courts in the past and demonstrates why they are inaccurate and how they may distort the application of the law. The intention is not to criticise or cast doubt on past judgements but merely to show how stereotypes may unwittingly be employed. Finally, it encapsulates the current doctrine on key legal issues which may be relevant while adjudicating certain cases, particularly those concerning sexual violence.

I sincerely hope that this Handbook is widely read by all members of the legal profession in India to ensure that legal reasoning and writing is free of harmful notions about women. The Handbook will give a fresh impetus to our quest towards a gender-just legal order and will be a crucial document to ensure that courts can deliver equal and impartial justice to individuals of all genders.

The Handbook was conceptualised during the COVID-19 pandemic and was originally envisaged as a part of the knowledge component of the e-Committee of the Supreme Court of India. It would not have been possible to prepare and release the Handbook without the assistance of many individuals. I thank the Social Justice Sub-Committee of the e-Committee (Justice Moushumi Bhattacharya, Judge, Calcutta High Court; Justice Prathiba Singh, Judge, Delhi High Court; and Professor Jhuma Sen) for their inputs and suggestions. I would like to extend my appreciation of the work of Dr. Sukhda Pritam (Director, Centre for Research and Planning, Supreme Court of India), Mr. Anurag Bhaskar (Deputy-Registrar, Centre for Research and Planning, Supreme Court of India), Mr. Vasudev Devadasan (Research Consultant, Centre for Research and Planning, Supreme Court of India) and the legal researchers at the Centre for Research and Planning, Supreme Court of India for their valuable inputs and editing, as well as for coordinating the publication of the Handbook. Ms. R Arulmozhiselvi, Member (Human Resources, e-Committee, Supreme Court of India) has tirelessly coordinated the preparation of the Handbook from the time of its inception. I also thank my Law Clerks Ms. K. Nivedhitha, Ms. Spoorthi Cotha, and Mr. Pratik Dixit for their invaluable contribution towards researching and preparing the initial draft of the Handbook.

**Dr. Justice Dhananjaya Y Chandrachud**  
**Chief Justice of India**



## **HANDBOOK ON COMBATING GENDER STEREOTYPES**

This Handbook offers guidance on how to avoid utilising harmful gender stereotypes, in particular those about women, in judicial decision making and writing. Each one of us sometimes employ stereotypes in our thoughts, words, and actions. We may rely on stereotypes inadvertently, because stereotypes are often internalised and ingrained in our thinking due to societal, cultural, and environmental conditioning. This can make it difficult to identify and avoid relying on stereotypes. However, challenging and overcoming stereotypes is essential to ensuring an equal, inclusive, and compassionate society.

With respect to the judiciary, it is vital that judges not only avoid relying on stereotypes in their decision making and writing, but also actively challenge and dispel harmful stereotypes. If harmful stereotypes are relied on by judges, it can lead to a distortion of the objective and impartial application of the law. This will perpetuate discrimination and exclusion. To raise awareness against the utilisation of harmful stereotypes, particularly those prejudicial to women, this Handbook aims to explain what stereotypes are, and help judges identify and avoid such stereotypes by:

- (1) identifying language that promotes gender stereotypes and offering alternative words and phrases.
- (2) identifying common reasoning patterns that are based on gender stereotypes (particularly about women) and discussing why they are incorrect; and
- (3) highlighting binding decisions of the Supreme Court of India that have rejected these stereotypes and can be utilised by judges to dispel gender stereotypes.

<b>Stereotype promoting language (INCORRECT)</b>	<b>Alternative language (PREFERRED)</b>
Adulteress	Woman who has engaged in sexual relations outside of marriage
Affair	Relationship outside of marriage
Bastard	Non-marital child or, a child whose parents were not married
Biological sex / biological male / biological female	Sex assigned at birth
Born a girl / boy	Assigned female / male at birth
Career woman	Woman
Carnal intercourse	Sexual intercourse
Chaste woman	Woman
Child prostitute	Child who has been trafficked
Concubine / keep	Woman with whom a man has had romantic or sexual relations outside of marriage
Dutiful wife / Faithful wife / Good wife / Obedient wife	Wife
Easy virtue (e.g., a woman of easy virtue)	Woman
Effeminate (when used pejoratively)	Accurately describe the characteristic using a gender neutral term (e.g., confident or responsible)
Eve teasing	Street sexual harassment
Faggot	Accurately describe the individual's sexual orientation (e.g., homosexual or bisexual)
Fallen woman	Woman
Feminine hygiene products	Menstrual products
Forcible rape	Rape
Harlot	Woman
Hermaphrodite	Intersex
Hooker	Sex worker
Hormonal (to describe a woman's emotional state)	Use a gender neutral term to describe the emotion (e.g., compassionate or enthusiastic)
Housewife	Homemaker
Indian woman / western woman	Woman

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Stereotype promoting language (INCORRECT)	Alternative language (PREFERRED)
Ladylike	Use a gender neutral description of behaviour or characteristics (e.g., amusing or assertive)
Layabout / Shirker	Unemployed
Marriageable age	A woman who has attained the legal age required to marry
Mistress	Woman with whom a man has had romantic or sexual relations outside of marriage
Prostitute*	Sex worker
Provider / Breadwinner	Employed or earning
Provocative clothing / dress	Clothing / dress
Ravished (e.g., she was “ravished” by him)	Sexually harassed / assaulted or raped
Seductress	Woman
Sex change	Sex reassignment or gender transition
Slut	Woman
Spinster	Unmarried woman
<b>Survivor or Victim?</b> An individual who has been affected by sexual violence may identify themselves as either a “survivor” or “victim”. Both terms are applicable unless the individual has expressed a preference, in which case the individual’s preference should be respected.	
Transsexual	Transgender
Transvestite	Cross-dresser
Unwed Mother	Mother
Violated (e.g., he violated her)	Sexually harassed / assaulted or raped
Whore	Woman
Woman of loose morals / easy virtue / promiscuous woman / wanton woman	Woman

\*Unless required in the context of *The Immoral Traffic (Prevention) Act, 1956* or any other legislation. Clarification added on 22 August 2023.



## A. Understanding stereotypes

A stereotype is defined as “a set idea that people have about what someone or something is like, especially an idea that is wrong.” Stereotypes are typically held against individuals by virtue of their membership of a group. They are assumptions or beliefs that individuals belonging to specific social groups have certain characteristics or traits. For example, people in many countries believe that all Indians are good at science and mathematics. Similarly, even within India, people may believe that individuals from certain regions look a particular way or eat a particular type of food. People are constantly subjected to stereotypes based on their nationality, region, caste, gender, disability, sexuality, skin colour, physical appearance, and race.

### (i) How do stereotypes function?

Reliance on stereotypes is often subconscious. In other words, we may rely on stereotypes when interacting with individuals even without intending to do so. Stereotypes influence our thoughts and actions towards other people. They prevent us from viewing the individual before us as a unique person with their own characteristics and lead us into making inaccurate assumptions about them. Stereotypes can prevent us from understanding the reality of a situation and can cloud our judgment.

On a micro-level, stereotypes lead to exclusion and discrimination in workplaces, educational institutions, and public places. For example, even where male and female employees are of the same designation, a female employee may be tasked with administrative duties such as organising office-events or buying stationery, while male employees are exempted from such tasks. Stereotypes may also have an adverse impact on

**“I do not believe in any stereotypes. Why should I read this glossary?”**

Research has shown that most of us hold some subconscious biases which stem from stereotypes. While we all like to believe that we are unbiased and fair, chances are that each one of us (like most people) rely on stereotypes in some form or the other in our professional and personal life. Take the test at:

<https://implicit.harvard.edu/implicit/takeatest.html>

to discover whether you have any implicit biases. The results may surprise you!

the mental health or professional performance of the members of the stereotyped group because they are aware that they are being viewed in a particular manner. For example, there is a stereotype that individuals from oppressed castes are not as accomplished in school or university in comparison to individuals from oppressor castes. This may cause members of oppressed castes to face additional mental pressure when writing an examination. A student from an oppressed caste who is aware of the stereotype about their community will not only have to worry about doing well in the examination, but also be burdened with the additional worry that if they perform badly in the examination, it will reinforce the stereotype concerning their community. This added pressure may have an adverse impact on their performance in the examination.

### **(ii) Impact of stereotypes on judicial decision making**

Like any person, a judge may also unconsciously hold or rely on stereotypes. If a judge relies on preconceived assumptions about people or groups when deciding cases or writing judgements, the harm caused can be enormous. Stereotypes impact the impartiality and the intellectual rigour of judicial decisions where they cause judges to ignore or bypass the requirements of law or distort the application of the law vis-à-vis specific persons or groups. Even when judges reach legally correct outcomes, the use of reasoning or language that promotes gender stereotypes undermines the unique characteristics, autonomy, and dignity of the individuals before the court. Using stereotypes, instead of objectively evaluating the situation, goes against the constitutional principle of 'equal protection of laws', which posits that the law should apply uniformly and impartially to every individual, irrespective of their membership to a group or category. The use of stereotypes by judges also has the effect of entrenching and perpetuating stereotypes, creating a vicious cycle of injustice.

For example, a common stereotype is that individuals from low-income backgrounds are less trustworthy and more likely to commit crimes. This is a harmful stereotype, as it may lead to the social exclusion of individuals from low-income backgrounds. However, if a judge relies on this stereotype in decision making, the harm may be magnified. Consider a judge who has to decide the bail application of two individuals charged with the same offence, the first individual is from a low-income background and the second from an

affluent background. The judge may set a higher bail amount, or more stringent bail conditions on the first individual from a low-income background than the second individual from an affluent background, purely because the judge holds the mistaken belief that the individual from a low-income background is more susceptible to flee or commit further crimes. This is an example of how stereotypes in judicial reasoning can prejudice a person's individual rights and be discriminatory. Further, if the individual cannot afford the bail amount, and is jailed, the stereotype is effectively reinforced and perpetuated. This is why judicial reasoning must be based on the individual merits of every case and not on stereotypes. This glossary aims to help the Indian judiciary identify and mitigate the use of stereotypes and stereotype-enforcing language against women in their decision

### **Can stereotypes be overcome?**

Yes, stereotypes can be overcome. Research has shown that we can avoid much of the negative impact of stereotyping by: (i) recognising that we hold certain implicit biases or rely on certain stereotypes; and (ii) making a conscious and deliberate effort to overcome or resist the implicit bias or stereotype.

## **B. Understanding Gender Stereotypes**

As the name suggests, gender stereotypes are assumptions about the characteristics that individuals of a particular a gender have, or the roles that they should perform.<sup>1</sup> This is often seen in assumptions about the different characteristics men and women are believed to possess, and the roles they are expected to perform. For example, one of the most common stereotypes about girls or women is that they like the colour pink. While this stereotype may not have an impact on judicial decision-making, other stereotypes may influence the outcome of a case. For instance, some people believe that women lie about men having sexually assaulted or raped them. If a judge were to utilise such a stereotype when deciding a case, it may cause them to unfairly discard or discount the testimony of a survivor or victim of sexual assault, leading to grave injustice. This is why it is vital that judges impartially decide each case on its individual merits rather than relying on pre-conceived notions about men or women.

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<sup>1</sup> 'Gender Stereotyping' (*Office of the United Nations High Commissioner for Human Rights*) <<https://www.ohchr.org/en/women/gender-stereotyping>> accessed 04 July 2023.

### What do we mean when we say “gender”?

While “sex” refers to the biological attributes of individuals, “gender” refers to socially constructed roles, behaviours, expressions, and identities of girls, women, boys, men, and gender diverse individuals. Gender identity is not limited to a binary (girl/woman and boy/man) but rather exists on a spectrum and can evolve over time. Further, gender is a *social* construct, and includes the norms, behaviours, and roles associated with a particular gender identity. An individual’s gender identity profoundly influences self-perception, interpersonal dynamics, and the distribution of power and resources in society. While this glossary primarily deals with stereotypes concerning men and women, it is important to recognise that harmful stereotypes can exist with respect to any gender identity.

*Source:* Canadian Institute of Health Research, ‘*What is gender? What is sex?*’ <https://cihr-irsc.gc.ca/e/48642.html> (accessed 19 July 2023); World Health Organisation, ‘*Gender and health*’ [https://www.who.int/health-topics/gender#tab=tab\\_1](https://www.who.int/health-topics/gender#tab=tab_1) (accessed 19 July 2023).

### What are the different types of gender stereotypes?

The most common kinds of gender stereotypes that concern women are: (i) stereotypes based on the so-called ‘inherent characteristics’ of women; (ii) stereotypes based on the gender roles of women; and (iii) stereotypes related to sex, sexuality, and sexual violence. Each of these three types of stereotypes are discussed below.

#### **(i) Stereotypes based on the so-called “inherent characteristics” of women.**

Assumptions are held about the characteristics of men and women which are believed to be “inherent” to each group. These assumptions extend to their emotional, physical, and cognitive capabilities. The table lists a few assumptions about the traits of women and explains why such notions are incorrect.

Stereotype	Reality
Women are overly emotional, illogical, and cannot take decisions.	A person's gender does not determine or influence their capacity for rational thought.
All women are physically weaker than all men.	While men and women are physiologically different, it is not true that all women are physically weaker than all men. A person's strength does not depend solely on their gender but also on factors such as their profession, genetics, nutrition, and physical activity.
Women are more passive.	People display a wide range of personality traits. Both men and women can be (or may not be) passive. Women are not more passive than men as a rule.
Women are warm, kind, and compassionate.	Compassion is an acquired characteristic that is unique to every individual. Individuals of all genders can possess (or not possess) compassion.
Unmarried women (or young women) are incapable of taking important decisions about their lives. <sup>2</sup>	Marriage has no bearing on an individual's ability to take decisions. The law defines specific ages for persons to consent to certain activities, e.g., marriage or consuming alcohol, and all individuals of or above this age are deemed to be capable of taking such decisions irrespective of marriage.
Women of oppressed or marginalised communities have diminished cognitive capabilities or a limited understanding of the world. <sup>3</sup>	The community an individual belongs to is not determinative of their cognitive capabilities or their understanding of the world.
All women want to have children. <sup>4</sup>	All women do not want to have children. Deciding to become a parent is an individual choice that every person takes based on a variety of circumstances.

<sup>2</sup> Writ Petition (Cri.) 297 of 2016, 24 May 2017, Kerala High Court “A girl aged 24 years is weak and vulnerable, capable of being exploited in many ways.”

<sup>3</sup> Criminal Revision 316 of 1981 (Orissa High Court, 15 February 1985) “Both these witnesses however are ignorant and illiterate woman belonging to Schedule Tribe and it is extremely doubtful if they could speak of age with precision.”

<sup>4</sup> Civil Misc. Writ Petition 26909 of 1996 (High Court of Allahabad, 9 January 1997) “It may be remembered that motherhood is the precious possession of a woman and if per chance she is made to sacrifice motherhood which is yet to enter upon, it is no less than suicidal death for a young woman.”

### Age of majority and autonomy

A 24 year old woman's parents initiated habeas corpus proceedings seeking the production of their daughter who had married and moved away from them. In allowing the petition, the Kerala High Court observed, "*A girl aged 24 years is weak and vulnerable, capable of being exploited in many ways. The Court, exercising parens patriae jurisdiction is concerned with the welfare of a girl of her age. [...] Her marriage being the most important decision in her life, can also be taken only with the involvement of her parents.*" (W.P. Cri 297 of 2016 (24 May 2017, Kerala High Court)

The Supreme Court reversed this decision in *Shafin Jahan v. Asokan K.M.* (2018:INSC:222), noting that: "*The High Court was of the view that at twenty-four, [she] is weak" and vulnerable capable of being exploited in many ways". The High Court has lost sight of the fact that she is a major, capable of her own decisions and is entitled to the right recognised by the Constitution to lead her life exactly as she pleases.*"

The Supreme Court further ruled that, "*The superior courts, when they exercise their jurisdiction parens patriae do so in the case of persons who are incapable of asserting a free will such as minors or persons of unsound mind. The exercise of that jurisdiction should not transgress into the area of determining the suitability of partners to a marital tie.*"

## (ii) Stereotypes based on gender roles

Society ascribes specific roles to specific genders, most often seen in the context of men and women. These gender roles are products of social construction and social understandings. For example, men are often believed to be more suited to professional jobs whereas women are believed to be more suited to care for their families. Even when women pursue professional careers, the social behaviour and characteristics expected of them in the private sphere (e.g., performing domestic tasks such as cooking or cleaning) continues to be expected of them. Women are also often expected to behave, dress, and speak in a manner that is compliant with the so-called 'inherent characteristics' of women and the corresponding gender roles. Any deviation from these gendered roles leads to social stigmatisation.

### Judicial reasoning and language based on gender roles

In an appeal against a decree for restitution of conjugal rights, it was admitted that the husband regularly beat the wife. The husband’s justification for this conduct was that: (i) the husband wanted his breakfast at 6 AM but the wife only woke up at 7 AM; and (ii) the wife did not dress according to the husband’s wishes.

While the High Court set aside the decree for restitution of conjugal rights, it observed, “*As a devoted wife, it was no doubt [the wife’s] duty to get up before her husband was to leave for his work, but if she did not, the husband was not entitled to beat her. Likewise, as the dutiful wife, she should have respected the wishes of her husband as to the particular clothes to be put on a particular occasion. But if she did not, again, the husband had no right to beat her.*” (AIR 1963 MP 5)

This example demonstrates how even when arriving at a legally correct outcome, judicial reasoning can reinforce harmful stereotypes about the roles of women. The judicial reasoning reinforces the stereotype that it is a woman’s exclusive responsibility to perform household chores and dress according to her husband’s expectations. Further the use of language such as “*dutiful wife*” only accentuates these harms.

The table below outlines some common stereotypes about the gender roles ascribed to men and women, and why they are incorrect.

Stereotype	Reality
Women are more nurturing and better suited to care for others.	People of all genders are equally suited to the task of caring for others. Women are often socially conditioned to care for others from a young age. Many women are also forced to abandon their careers to care for children and the elderly.
Women should do all the household chores.	People of all genders are equally capable of doing house chores. Men are often conditioned to believe that only women do household chores.
Wives should take care of their husband’s parents.	The responsibility of taking care of elderly individuals in the family falls equally on individuals of all genders. This is not the sole remit of women.
Women who work outside of the home do not care about their children.	Working outside of the home has no correlation with a woman’s love or concern for her children. Parents of all genders may work outside of the home while also caring for their children.

Women who are also mothers are less competent in the office because they are distracted by childcare.	Women who have “double duty”, i.e., work outside the home and raise children are not less competent in the workplace.
Women who do not work outside the home do not contribute to the household or contribute very little in comparison to their husbands.	Women who are homemakers perform unpaid domestic labour (such as cooking, cleaning, washing, household management and accounts) and care work (such as caring for the elderly and for children, helping children with their homework and extracurriculars). The unpaid labour performed by women not only contributes to the household’s quality of life but also results in monetary savings. Women who are homemakers contribute to the household to an equal (or greater) extent. Their contributions are often overlooked because men are conditioned to believe that such work is of limited value.

**“These stereotypes are often accurate, why not rely on them?”**

While some women may conform to a particular stereotype or assumption in certain situations, this is not a reason to extend this assumption to all women. Examining the merits of every case on its own is at the heart of impartial decision making. It is also important to recognise that the very existence of a pervasive stereotype in society can itself socially condition women to conform to the stereotype.

For example, the table above discusses the stereotype that women ought to perform houseful tasks such as cooking and cleaning. It is crucial to acknowledge that women may be conditioned to undertake these tasks precisely *because of the stereotype*, which has led to: (i) societal expectations that women will perform these tasks; (ii) limited career options for women; (iii) the portrayal of women in media as performing these tasks; and (iv) stigmatisation of women who pursue professional careers. Thus, even where the facts in a case may support a stereotype, the case requires careful examination.

Women should be submissive or subordinate to men.	The Constitution of India guarantees equal rights to individuals of all genders. Women are neither subordinate to men nor do they need to be submissive to anybody.
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It must be remembered that every individual has a unique set of characteristics. Women and gender justice movements across the world have worked hard to fight these stereotypes and secure justice for themselves, in the courtroom as well as outside of it. It is important to dispel these stereotypes and foster an environment that cultivates equal respect for individuals of all genders.



### (iii) Stereotypes concerning sex and sexual violence

Assumptions are often made about a woman's character based on her expressive choices (e.g., the clothes she wears) and sexual history. These assumptions may also impact how her actions and statements are assessed in judicial proceedings. Assumptions based on a woman's character or the clothes she wears diminish the importance of consent in sexual relationships as well as the agency and personhood of women.

#### The Supreme Court's ruling on the "loose character" of a woman

*In State of Punjab v. Gurmit Singh, the Supreme Court observed "Even in cases, unlike the present case, where there is some acceptable material on the record to show that the victim was habituated to sexual intercourse, no such inference like the victim being a girl of "loose moral character" is permissible to be drawn from that circumstance alone. Even if the prosecutrix [...] has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone [...] No stigma, like the one as cast in the present case should be cast against such a witness by the courts, for after all it is the accused and not the victim of sex crime who is on trial..." (1996 (2) SCC 384).*

The table below provides an illustrative list of stereotypes that are often applied to men and women in the context of sex and sexual violence and explains why such assumptions are wrong.

Stereotype	Reality
<p>Women who dress in clothes that are not considered to be traditional want to engage in sexual relations with men.<sup>5</sup> If a man touches such a woman without her consent, it is her fault.</p>	<p>The clothing or attire of a woman neither indicate that she wishes to engage in sexual relations nor is it an invitation to touch her. Women are capable of verbally communicating with others and their choice of clothing represents a form of self-expression that is independent of questions of sexual relations. A man who touches a woman without her consent must not be permitted to take the defence that the woman invited his touch by dressing in a particular way.</p>

<sup>5</sup> Criminal Misc. Case 1303 of 2022 (Sessions Court, Kozhikode 12 August 2022), "*The photographs produced along with the bail application by the accused would reveal that the de facto complainant herself is exposing to dresses which are having some sexual provocative one. So Section 354A [IPC] will not prima facie stand against the accused.*"

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<p>Women who consume alcohol or smoke cigarettes want to engage in sexual relations with men. If a man touches such a woman without her consent, it is her fault.</p>	<p>Women, like all people, may consume alcohol or smoke cigarettes for a variety of reasons including for recreation. The consumption of alcohol or use of tobacco is not an indication of their desire for sexual relations with a man. A man who touches a woman without her consent must not be permitted to take the defence that the woman invited his touch by drinking or smoking.</p>
<p>Men who sexually assault or rape women are typically strangers and are not known to the woman.</p>	<p>Very often men sexually assault or rape a woman known to them in some capacity. The woman may be a colleague, employer, employee, neighbour, family member, friend, former or present partner, teacher, or acquaintance.</p>
<p>Women who are sexually assaulted or raped by men cry incessantly and are depressed or suicidal. If a woman's behaviour does not conform to this mould, she is lying about having been raped.<sup>6</sup></p>	<p>Different people react differently to traumatic events. For example, the death of a parent may cause one person to cry publicly whereas another person in a similar situation may not exhibit any emotion in public. Similarly, a woman's reaction to being sexually assaulted or raped by a man may vary based on her individual characteristics. There is no "correct" or "appropriate" way in which a survivor or victim behaves.</p>
<p>Women do not speak to the man who has sexually assaulted or raped them after the incident of sexual assault or rape. If a woman speaks or interacts 'normally' with the accused, her complaint of sexual assault or rape is false.</p>	<p>Women are often forced to interact with the men who have sexually assaulted or raped them. This may be because the perpetrator is a family member, an employer, or some other person in a position of authority over the woman. Social circumstances may therefore force the survivor / victim to interact with the perpetrator. Further, survivors / victims of sexual abuse often find it difficult to report the said abuse immediately due to a variety of factors, including a lack of familial support and a fear of repercussions. Thus, interaction with the accused should not lead to a presumption that the complaint is false.</p>

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<sup>6</sup> 2016:INSC:946 *"From the nature of the exchanges between her and the accused persons as narrated by her, the same are not at all consistent with those of an unwilling, terrified and anguished victim of forcible intercourse, if judged by the normal human conduct."*

<p>Women who are sexually assaulted or raped by men complain about the injustice immediately. If they complain after a time, they are lying.<sup>7</sup></p>	<p>It takes courage and strength to report a sexual offence because of the stigma attached to them. The stigma attached to sexual violence makes it difficult for women to disclose the incident to others. Women may therefore register a complaint after a lapse of some time, when she thinks she is able to. Further, as noted above, several other factors such as lack of familial support or fear of repercussions may cause a survivor / victim to delay their reporting.</p>
<p>Dominant caste men do not want to engage in sexual relations with women from oppressed castes. Therefore, any allegation of sexual assault or rape by an oppressed caste woman against a dominant caste man is false.</p>	<p>Rape and sexual violence have long been used as a tool of social control. Dominant caste men have historically used sexual violence as a tool to reinforce and maintain caste hierarchies.</p>

### Bhanwari Devi's Case and the Vishaka Guidelines

Bhanwari Devi was a government social worker from an oppressed caste who intervened to prevent a child marriage. In 1992, she filed an FIR and testified that multiple dominant caste men violently assaulted and raped her as a retaliatory measure. In 1995, the trial court acquitted the accused, observing *inter alia*: (i) members of a dominant caste would not rape a woman from an oppressed caste; (ii) men of different castes would not participate in a gang rape; (iii) older men aged 60-70 cannot participate in a gang rape; and (iv) it was improbable that a woman could be raped in the presence of her husband.

The acquittal caused national outrage, particularly because of the nexus with Bhanwari Devi's work as a government social worker. Members of civil society filed a public interest petition in the Supreme Court of India seeking that "*workplaces must be made safe for women and that it should be the responsibility of the employer to protect women employee at every step.*" In 1997, the Supreme Court in *Vishaka v. State of Rajasthan* laid down guidelines to protect women in the workplace.

Sources: (1997) 6 SCC 241; Saini S, 'Bhanwari Devi: Justice Eluded Her, but She Stands Resolute for Others' *Hindustan Times* (16 September 2021) <<https://www.hindustantimes.com/india-news/bhanwari-devi-justice-eluded-her-but-she-stands-resolute-for-others-101631811309362.html>> accessed 1 August 2023; Pandey G, 'Bhanwari Devi: The Rape That Led to India's Sexual Harassment Law' *BBC News* (17 March 2017) <<https://www.bbc.com/news/world-asia-india-39265653>> accessed 1 August 2023.

7. Criminal Appeal 944 of 2016 (High Court of Delhi, 25 September 2017) "*A day after the occurrence, the prosecutrix cannot be said to be under any fear of reprisal or reaction and her not approaching the issue with the appellant is rather surprising.*"

Stereotype	Reality
It is not possible for a man to rape a sex worker.	It is possible for a man to rape a sex worker. Sex workers do not consent to engage in sexual relations with any or all men by virtue of their profession. The offence of rape may be made out if the sex worker does not consent for any reason, including for the reason that the man was unwilling to pay her. Sex workers are one of the groups which are most vulnerable to sexual violence.
Able-bodied men do not want to engage in sexual relations with women with disabilities. Therefore, any allegation of sexual assault or rape by a woman with a disability against an able-bodied man is false.	Able-bodied men may sexually assault or rape women with disabilities. The presence of a disability does not mean that there is a lower likelihood of sexual violence. Some women with disabilities which impact their ability to communicate effectively are particularly vulnerable to sexual violence by men.
Rape is a crime which taints the honour of the survivor / victim or her family. <sup>8</sup> If the rapist marries the survivor / victim, her honour is restored.	Rape does not taint the honour of the survivor / victim or her family. The marriage of the rapist to the survivor / victim does not restore honour. Rather, it intensifies the trauma faced by the survivor / victim and encourages the rapist to engage in further violence. Marriage is not a remedy to the violence of rape. Rape is a criminal offence, which cannot be undone by marriage.
Women are very likely to make false allegations of sexual assault or rape. <sup>9</sup>	Women find it difficult to report instances of sexual assault or rape due to the stigma associated with such crimes. Women often do not receive familial support in reporting sexual crimes. It can also be traumatizing for a survivor / victim to participate in the criminal justice process, which requires her to repeatedly recount the violence she was subjected to in detail, in the presence of strangers who are often male (police officers, lawyers, judges, etc.). Women are also frequently disbelieved when they report sexual violence. A combination of these factors results in women being very reluctant to report sexual violence. It is therefore untrue that women are very likely to make false allegations. Each case must be judged on its merits and assumptions regarding the (dis)honesty of women as a class must not be made.

8 Criminal Appeal 2322 of 2010 (20 May 2013, Supreme Court of India) “Rape tantamounts to a serious blow to the supreme honour of a woman, and offends both her esteem and dignity.”

9 Criminal Misc. Bail Application 32824 of 2020 (High Court of Allahabad, 16 February 2023) “The Indian society has undergone a complete change during the said period of 40 years and now it is more often

<p>Women who say “no” to sexual advances are shy and they actually mean to say “yes” and welcome the sexual advances.<sup>10</sup></p>	<p>Women who say “no” mean “no” and there exists no further ambiguity. Women who wish to welcome sexual advances will communicate their consent using clear language such as the word “yes.” There cannot be a presumption of consent based on a woman’s broader behavioural characteristics.</p>
<p>Men are unable to control their sexual desires.</p>	<p>Men, like all other humans, are in control of all their actions including their sexual desires. Such reasoning discounts the agency of men and then excuses this purported lack of agency.</p>
<p>A woman who has previously had sexual relations cannot be raped because she has “loose morals” or a “loose character.”<sup>11</sup></p>	<p>A woman who consents to sexual activity with one man does not consent to sexual activity with all men.<sup>12</sup> Similarly, a woman who consents to sexual activity with a man at a particular instance does not ipso facto consent to sexual activity with that same man at all other instances. A woman’s character or morals are unrelated to the number of sexual partners she has had. Her sexual history does not define her and must not influence criminal proceedings. Section 53A of the Indian Evidence Act 1872 attempts to combat this very stereotype by prohibiting lawyers from adducing “evidence of the character of the victim or of such person’s previous sexual experience” where the question of consent is in issue.</p>

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*observed that false implication in sexual offences is on the rise.”*

10 Criminal Appeal 944 of 2016 (High Court of Delhi, 25 September 2017) “*Instances of woman behaviour are not unknown that a feeble ‘no’ may mean a ‘yes’.*”

11 2016:INSC:946 “*The medical opinion that she was accustomed to sexual intercourse when admittedly she was living separately from her husband for one-and-a-half years before the incident also has its own implication.*”

12 Criminal Appeal 1382 of 2004 (1 December 2004, Supreme Court of India) “*Even assuming that the victim was previously accustomed to sexual intercourse, that is not a determinative question. One the contrary, the question which was required to be adjudicated was – did the accused commit rape on the victim on the occasion complained of. Even if it is hypothetically accepted that the victim had lost her virginity earlier, it did not and cannot in law give license to any person to rape her.*”

<p>Young people follow “western” culture and engage in “casual” sexual relations which increases the likelihood of sexual violence and other harms.</p>	<p>A survivor or victim’s reporting of sexual violence cannot be disregarded, nor does the legal significance of the offending conduct change based on the survivor / victim’s reasons for choosing to engage in sexual relations. What matters is that they chose, and that sexual relations were consensual. Focussing on the survivor or victim’s lifestyle or previous motivations for having sex perpetuates the harmful idea that the survivor / victim is somehow to blame for the violence and reinforces the stigma associated with sexual violence.</p>
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### Irrelevant considerations about promiscuity or chastity

When overruling the grant of bail to an accused under Sections 323, 354A, 452, and 506 of the Indian Penal Code, 1860, the Supreme Court of India in *Aparna Bhat v. State of Madhya Pradesh* observed, “...to say that the survivor had in the past consented to such or similar acts or that she behaved promiscuously, or by her acts or clothing, provoked the alleged action of the Accused, that she behaved in a manner unbecoming of a chaste or “Indian” women, or that she had called upon the situation by her behaviour, etc. These instances are only illustrations of an attitude which should never enter judicial verdicts or orders or be considered relevant while making a judicial decision;...” (2021:INSC:192).



Stereotype	Reality
“Good” women prefer death rather than being raped by a man.	It is a patriarchal and harmful belief that women should prefer death rather than being raped by a man. Such beliefs may cause survivors / victims to consider suicide because they have been raped by a man.
Indian women behave differently from Western women or women of other countries after a man has sexually assaulted or raped them.	Each woman reacts to sexual violence based on her personality, social circumstances, upbringing, and other factors. It is not possible to categorise the reactions of women to sexual violence based on the country or region from which they hail. There is no “correct” or “appropriate” reaction to being raped and all reactions are equally valid.
Transgender individuals cannot be raped.	Transgender individuals can be raped. In fact, transgender individuals are one of the groups which are most vulnerable to sexual violence because they are stigmatised and face structural discrimination. It is incorrect to assume that all transgender individuals are sex workers who always consent to sexual relations.
If a woman does not scream for help, attack the rapist or if she does not have any injuries on her body such as cuts and scrapes, she has not been raped. <sup>13</sup>	A woman who is facing sexual violence by a man may not be in the position to attack him. Rapists frequently threaten survivors / victims with death and even threaten to kill their family members if they attempt to resist. Moreover, injuries such as cuts and scrapes may not always result even if the woman attempts to resist as the rapist may overpower her.

13 2016:INSC:946 “after her abduction and on the way to the garage as narrated by her, she did not scream or cry for help. This is of utmost significance as it is not alleged by her that the abductors had put her under fear on the point of any weapons threatening physical injury thereby. [...] While she was ravished inside the garage and even during the intermittent breaks, she did not shout for any help.”

## C. Current doctrine on key legal issues

The Supreme Court of India has laid down important precedents that categorically reject several of the stereotypes discussed in this Handbook. These precedents are binding on all courts within the territory of India by virtue of Article 141 of the Constitution of India. This section reproduces some of these key precedents for ease of reference.

### (i) The role of law in confronting patriarchy and stereotypes

In *Joseph Shine v. Union of India*,<sup>14</sup> a Constitution Bench of the Supreme Court struck down the offence of “adultery” under Section 497 of the Indian Penal Code, 1860. The provision penalised a man engaging in sexual intercourse with a woman who is “the wife of another man.” The Court observed that the law did not punish a man who had sexual relations outside of marriage with an unmarried woman, but only punished sexual intercourse with “the wife of another man.” Thus, the Court observed that the provision was based on the constitutionally untenable rationale that the woman was the property of the (second) man, and only where this second man’s “rights over his wife” were violated, was the offence of adultery made out. The Court struck down the provision as being arbitrary and discriminatory, and further observed:

“191. The law on adultery is but a codified rule of patriarchy. Patriarchy has permeated the lives of women for centuries. Ostensibly, society has two sets of standards of morality for judging sexual behaviour. One set for its female members and another for males. **Society ascribes impossible virtues to a woman and confines her to a narrow sphere of behaviour by an expectation of conformity.** Raising a woman to a pedestal is one part of the endeavour. The second part is all about confining her to a space. The boundaries of that space are defined by what a woman should or should not be. [...] This is part of the process of **raising women to a pedestal conditioned by male notions of what is right and what is wrong for a woman.** The notion that women, who are equally entitled to the protections of the Constitution as their male counterparts, may be treated as objects capable of being possessed, is an exercise of subjugation and inflicting indignity. **Anachronistic conceptions of “chastity”**

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14 2018:INSC:898



**and “honour” have dictated the social and cultural lives of women, depriving them of the guarantees of dignity and privacy, contained in the Constitution.”**

As guarantors of the dignity and privacy of all individuals, members of the judiciary have a unique duty not only to avoid perpetuating these stereotypes, but also to challenge and rebut such anachronistic conceptions. This Handbook seeks to raise awareness regarding such stereotypes to ensure their avoidance, and empower judges with the reasoning and language to dispel misconceived beliefs about the “inherent characteristics”, gendered roles, and beliefs about what is right and wrong for a woman in the context of sex, sexuality, and sexual violence.

## **(ii) Rejection of pre vaginum test (or “two finger test”) and irrelevance of sexual history**

In *State of Jharkhand v. Shailendra Kumar Rai*,<sup>15</sup> the Supreme Court reiterated its categorical ban on the “two finger test” and observed not only its irrelevance to determinations of rape but also how it violates the dignity of rape survivors or victims. The Court stated,

“64. Whether a woman is “habituated to sexual intercourse” or “habitual to sexual intercourse” is irrelevant for the purposes of determining whether the ingredients of Section 375 of the IPC are present in a particular case. **The so-called test is based on the incorrect assumption that a sexually active woman cannot be raped. Nothing could be further from the truth - a woman’s sexual history is wholly immaterial while adjudicating whether the accused raped her.** Further, the probative value of a woman’s testimony does not depend upon her sexual history. It is patriarchal and sexist to suggest that a woman cannot be believed when she states that she was raped, merely for the reason that she is sexually active.”

The Court in *Shailendra Kumar Rai* also relied on the decision in *Lilu v. State of Haryana*<sup>16</sup> which discussed why this test violates the dignity of rape survivors / victims:

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15 2022:INSC:1137.

16 (2013) 14 SCC 643.

“13. ... rape survivors are entitled to legal recourse that does not re-traumatise them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with their privacy.

14. Thus, in view of the above, undoubtedly, **the two-finger test and its interpretation violates the right of rape survivors to privacy, physical and mental integrity and dignity.**”

Therefore, under no circumstances should this test be conducted, nor should its findings impact judicial determinations of sexual violence and rape.

### **(iii) The testimony of a survivor or victim is inherently credible**

The Supreme Court has reiterated on several occasions that the testimony of a survivor or victim of sexual violence is inherently credible and should not be doubted merely due to incorrect assumptions that women seek to foist false cases against men or that women lie about having been raped. In *State of Punjab v. Gurmit Singh*,<sup>17</sup> the Supreme Court evaluated the testimony of the survivor / victim in a case concerning Sections 376, 363, 366, and 368 of the Indian Penal Code, 1860. The trial court had refused to accept the survivor / victim’s testimony due to certain perceived inconsistencies. The Supreme Court examined and rebutted these perceived inconsistencies and further laid down certain guidelines for appreciating a survivor / victim’s testimony:

“7. ... **It appears that the trial court searched for contradictions and variations in the statement of the prosecutrix microscopically, so as to disbelieve her version.** [...] The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate

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17 (1996) 2 SCC 384.

looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. **Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion?** The Court while appreciating the evidence of a prosecutrix may look for some *assurance* of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. [...] **The evidence of a victim of sexual assault stands almost on par with the evidence of an injured witness and to an extent is even more reliable.**”

Thus, the Supreme Court has clearly laid down that there should be no presumption that the testimony of a survivor or victim of sexual violence is not credible, nor should courts display an inherent suspicion of testimony on the incorrect assumption that women as a class of individuals lie about sexual violence. Rather, the testimony of a survivor / victim must be accorded due weight as the victim of any other crime.

#### **(iv) Absence of physical injuries must be evaluated contextually**

The absence of physical injuries must be evaluated contextually in the facts of a given case. As noted above, there may be a variety of reasons why there is no evidence of physical injuries. The absence of injuries is not determinative of the absence of sexual violence and must be examined within the facts and circumstances of each case. For example, in *State of Uttar Pradesh v. Chhotey Lal*,<sup>18</sup> the Supreme Court observed that the survivor / victim had been gagged and threatened with a firearm. In this context, the Court observed,

“32. Although the lady doctor, PW 5 did not find any injury on the external or internal part of the body of the prosecutrix and **opined that the prosecutrix was habitual to sexual intercourse, we are afraid that does not make the testimony of the prosecutrix unreliable.** The fact

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18 (2011) 2 SCC 550.

of the matter is that the prosecutrix was recovered almost after three weeks. Obviously the sign of forcible intercourse would not persist for that long a period. **It is wrong to assume that in all cases of intercourse with the women against will or without consent, there would be some injury on the external or internal parts of the victim.** The prosecutrix has clearly deposed that she was not in a position to put up any struggle as she was taken away from her village by two adult males. The absence of injuries on the person of the prosecutrix is not sufficient to discredit her evidence; she was a helpless victim. She did not and could not inform the neighbours where she was kept due to fear.”

The Court noted that in the facts of the case, it was clear that the survivor / victim was unable to physically resist. Individuals perpetrating sexual violence may also make threats against the survivor or victim’s family to instil fear. Thus, courts should be wary of discrediting the testimony of the survivor or victim merely due to the absence of physical injuries against the survivor / survivor. Such situations must be evaluated contextually considering the surrounding circumstances and an absence of injuries does not automatically lead to a presumption that the sexual intercourse was consensual or that the survivor or victim’s testimony is not credible.

### **(v) Delay in filing an FIR or complaint cannot be mechanically used to create doubt**

As discussed in this Handbook, there may be a variety of reasons why a survivor or victim of sexual violence may not immediately report the incident to the police. The offender could be an employer, neighbour, family member, or friend creating several complications in immediately reporting an instance of sexual violence. Even independent of such complications, sexual assault is traumatic and every woman may react differently to being sexually assaulted. Some women may require some time before they file an FIR or make a complaint. Women may also be hesitant to share the fact that they have been assaulted with their families. If and when they do share it with their families, their families may dissuade them from filing a complaint because they are concerned about the “honour” of their family or the survivor or victim’s marriage prospects. Such considerations should be taken seriously by courts considering the facts of the case and the social realities facing women, and delay in reporting should not mechanically be relied on to dismiss allegations

of sexual violence against women. For example, in *State of Punjab v. Gurmit Singh*,<sup>19</sup> the Supreme Court was faced with a contention that there was a delay in filing the FIR. The Court rejected this contention and noted that the limited delay had been adequately explained by the fact that prior to approaching the police authorities, the survivor / victim and her family had first approached the village panchayat. The Supreme Court took note of this and held,

“7. ... In our opinion, there was no delay in the lodging of the FIR either and if at all there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case are also natural. **The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to a variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident...** [...] The prosecution has explained that as soon as Trilok Singh PW 6, father of the prosecutrix came to know from his wife, PW 7 about the incident he went to the village Sarpanch and complained to him. The Sarpanch of the village also got in touch with the Sarpanch of Village Pakhowal, where in the tubewell kotha of Ranjit Singh rape was committed, and an effort was made by the panchayats of the two villages to sit together and settle the matter. It was only when the Panchayats failed to provide any relief or render any justice to the prosecutrix, that she and her family decided to report the matter to the police...”

This line of reasoning has since been repeated in several decisions of the Supreme Court, with the Court in *State of Himachal Pradesh v. Gian Chand*<sup>20</sup> categorically stating,

“12. **Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report.** Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. [...] However, if the delay

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19 (1996) 2 SCC 384.

20 (2001) 6 SCC 71.

is explained to the satisfaction of the court, the delay cannot itself be a ground for disbelieving and discarding the entire prosecution case.”

Thus, courts should be wary of mechanically relying on a delay in reporting an instance of sexual violence to discredit the testimony of the survivor / victim or the case of the prosecution. Rather, a holistic appreciation of the facts following the incident of violence must be conducted and possible explanations for the delay in filing an FIR or complaint must be considered seriously by courts.



## D. Conclusion

This Handbook aims to serve as a guide for judges, raising awareness on the need to avoid stereotypes against women in all facets of their decision making and writing. As guardians of the legal and constitutional system, it is incumbent that members of the judiciary avoid employing stereotypes and dispense justice impartially.

Women have historically faced numerous prejudiced beliefs and stereotypes, impeding their access to fair and equal treatment within society and the justice system. The Indian judiciary must recognise the deep-rooted impact of gender stereotypes and actively work to dismantle them from its thinking, decision-making, and writing. By consciously avoiding the use of stereotypes in decision-making and stereotype promoting language, the judiciary can foster an environment where gender equality is upheld and respected. Words matter, as they shape narratives and influence societal attitudes. The use of more inclusive language can help break harmful patterns of thinking.

While this Handbook has primarily focussed on gender stereotypes that concern women, it is important to realise that stereotypes impact individuals from across the gender spectrum. Judges must be vigilant against all forms of gender biases and ensure that every person, regardless of their gender identity, is treated equally and with dignity before the law.

It is hoped that this Handbook will be a catalyst for change within the legal profession, inspiring the Indian judiciary to discharge its duties impartially with a recognition of the inherent dignity and unique nature of every individual.