

Neutral Doctrine, Unequal Outcomes: Courts and the Reproduction of Gender Norms

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ABSTRACT

This article examines how judicial reasoning across jurisdictions, including India and the United States, evaluated against CEDAW Committee jurisprudence and the international adjudicatory bodies, may reproduce gender hierarchies despite formal commitments to equality. Using a case-cluster methodology, it analyses groups of decisions rather than isolated judgments to identify recurring patterns in judicial interpretation. Through comparative analysis, the study traces how similar patriarchal assumptions surface transnationally in the definition of harm, evidentiary evaluation, procedural thresholds, and remedial choices. The findings demonstrate that gender stereotyping is rarely explicit; instead, it operates through apparently neutral doctrines that narrow statutory protections, scrutinise survivor conduct, fragment patterns of violence, and prioritise social harmony or institutional caution over substantive equality. These practices collectively normalise endurance, minimise gender-based violence, and erode a survivor's access to justice. The article argues that such outcomes reflect structural judicial blind spots rather than exceptional error. It concludes that advancing gender justice requires courts to move beyond formal equality and adopt a consciously anti-stereotyping, context-sensitive approach to adjudication. Key recommendations include strengthening judicial reasoning obligations, institutionalising anti-stereotyping analysis, enhancing gender-sensitive judicial training, prioritising survivor-centred remedies, and developing accountability mechanisms focused on reasoning quality rather than outcome control.

KEYWORDS

Judicial stereotyping, Judicial reasoning, Gender equality, Gender-based violence, Access to justice, Substantive equality

1. INTRODUCTION

The Courts are the sole saviours of the aggrieved, the guardians of rights, and the engines of progressive social transformation. Yet, across the globe, trickling down to the grassroots level, we find an ominous trend of judicial reasoning that seems to be shaping a stereotypical and unjust society for women.

Multiple courts have explicitly or implicitly played a role in reinforcing traditional gender norms through interpretive choices and evidentiary thresholds. A range of judicial bodies have issued rulings that reflect the persistence of patriarchal norms which minimise assaults, condition relief on marriage or base rulings on stereotypes about women's clothing, behaviour, or credibility. Parallel to these, courts in other jurisdictions have rendered decisions that restrict reproductive autonomy.

This article examines this wider pattern of judicial reasoning that has the potential to reinforce historically produced unequal power relations and limited autonomy for women.

The aim is not to fault the courts. It is to identify interpretive practices and recurring patterns, and systemic blind spots that shape access to justice. The analysis draws on case clusters from multiple jurisdictions and civil-society studies. It argues that advancing gender justice requires courts to move beyond formal equality and rigid procedure. Courts must embrace substantive equality, reject stereotypes, and pay attention to context.

2. CONCEPTUAL AND DOCTRINAL FRAMEWORK

2.1 Gender Norms and Judicial Stereotyping

Gender norms are socially constructed expectations regarding attributes, behaviours, and roles deemed appropriate for women, men, and gender-diverse persons (Chief Justice of India et al., n.d., p. 10). These norms operate prescriptively, allocating power and moral worth (Chief Justice of India et al., n.d., pp. 10–11). Gender stereotypes stem from preconceived beliefs that reduce individuals to group-based assumptions instead of their reality (Cusack & OHCHR, 2014, p. 22).

Such conditioned norms shape how individuals are perceived and treated within legal systems, including courts (Cusack & OHCHR, 2014, pp. 19–22). International human rights law recognises gender stereotyping as both a cause and consequence of discrimination (Cusack & OHCHR, 2014, p. 11).

2.2 Judicial Reinforcement of Gender Norms

Judicial reinforcement of gender norms occurs when courts fail to challenge stereotypes that influence legal outcomes (Chief Justice of India et al., n.d., p. 6). Reinforcement may be explicit, through stereotypical language or moral judgments, or implicit, operating through omission, or ‘neutral’ legal standards (Chief Justice of India et al., n.d., pp. 4, 9).

Judicial decisions carrying the authority of law result in stereotypes acquiring legal legitimacy if unexamined (Cusack & OHCHR, 2014, p. 3). Such reasoning not only distorts individual outcomes but also undermines the law’s transformative commitment to gender equality.

General Recommendation No. 33 of CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women) identifies stereotyping and gender bias as impediments in the justice system to women’s access to justice and to the full enjoyment of their human rights. Such stereotyping distorts credibility assessments by diminishing the weight given to women’s voices, arguments, and testimony. (CEDAW Committee, General Recommendation No. 33 on Women's Access to Justice, UN Doc CEDAW/C/GC/33 (2015)) Across all areas of law, it compromises judicial impartiality and integrity, leading to miscarriages of justice.

General Recommendation No. 35 further clarifies that stereotyped notions of what constitutes gender-based violence distort legal understanding and undermine equality before the law, fair trial, and effective remedies. Preconceived expectations about how women should respond to violence impair credibility assessments and access to justice.

2.3 Formal Equality and Substantive Equality

The distinction between formal and substantive equality is central to understanding judicial stereotyping. Formal equality assumes neutrality through identical treatment, ignoring systemic disadvantage rooted in historical and social inequality. Substantive equality, by contrast, requires attention to context, power asymmetries, and lived experience. (CEDAW Committee, General Recommendation No. 25, UN Doc. CEDAW/C/GC/25 (2004).

In *Anuj Garg v. Hotel Association of India*, the Indian Supreme Court recognised that gender-neutral laws can produce discriminatory effects when applied, ignoring structural inequality. Transformative legal practices, such as replacing demeaning statutory language like “pauper” with “indigent” in the Code of Civil Procedure, 1908, demonstrate how law can move beyond formalism to affirm dignity and inclusion (Chief Justice of India et al., n.d., p. 3).

2.4 Courts as Sites of Social Meaning

Courts function not merely as dispute-resolution bodies but as sites of social transformation. Judicial reasoning shapes narratives about credibility, morality, and entitlement to rights (Chief Justice of India et al., n.d., p. 3). This means it reflects how legal power responds to unequal social relations, with the capacity either to expose or indulge inequality.

Thus, judicial silence or uncritical reliance on stereotypes does more than misapply doctrine; it legitimises social hierarchies (Chief Justice of India et al., n.d., p. 10; Cusack & OHCHR, 2014, pp. 12–13). However, reasoned rejection of stereotypes can disrupt entrenched norms and advance constitutional and human-rights values.

2.5 Judicial Levers Reinforcing Gender Norms

Judicial reinforcement of gender norms operates through identifiable levers that shape how law is interpreted and applied.

1. Definitions: Courts often adopt narrow definitions of violence, consent, or harm that exclude lived realities. In *V.K. v. Bulgaria* (*V.K. v. Bulgaria, Communication No. 20/2008, UN Doc.*), domestic courts required extreme or permanent harm before intervention, implicitly sanctioning a threshold of tolerable violence. Such definitions ignore psychological, coercive, or other harms, leaving many survivors without meaningful protection.
2. Statutory Construction: Judicial interpretation can prioritise culture or morality over individual rights. Courts reinforce patriarchal norms when they read protective statutes through these lenses rather than the legislative purpose. Collectively, decisions in *Ajay Diwakar v. State of U.P.* (2023 SCC OnLine All 5412), *Naveen Kumar v. State of Karnataka* (*Naveen Kumar K. v. State of Karnataka, 2024 SCC OnLine Kar 14464*) and *S.N. Vijayalakshmi v. State of Karnataka* (2025 SCC OnLine SC 1575) illustrate a recurring judicial trend to treat marriage or romantic relationships as mitigating factors under “POCSO” (Protection of Children from Sexual Offences Act, 2012).
3. Evidentiary Framing: Courts assess women's credibility via “ideal victim” myths that entail demanding corroboration, penalising delays, deeming absent injuries as consent, or dismissing “non-feminine” conduct (Cusack & OHCHR, 2014, pp. 3.1–3.3, 4.3).
4. Procedural Barriers: Evidentiary thresholds, rigid time limits, and a high standard of proof disproportionately obstruct survivors, particularly in private, as observed in *V.K.*

v. Bulgaria (CEDAW/C/49/D/20/2008). The Committee there urged removing Article 10's limit and easing victim-favouring burdens. CEDAW GR 35 mandates repealing discriminatory rules, ensuring impartial and timely proceedings.

5. Remedies: CEDAW GR 35 rejects moralising remedies like reconciliation or abuser-marriage pressures, mandating immediate protective measures (CEDAW/C/GC/35). Stereotyping impedes relief by prioritising "family unity" over the safety of the women involved in the situation.

3. COMPARATIVE CASE STUDIES

3.1 POCSO And High Court Interpretations Of Sexual Assault

Judicial reasoning in cases arising under the Protection of Children from Sexual Offences Act reveals a pattern in which the statute's objectives have not been reflected in consistent interpretive approaches.

In *Ajay Diwakar v. State of Uttar Pradesh* (2023 SCC OnLine All 5412), the Court decided a batch of ten bail applications under Sections 363, 366, 376 IPC (Indian Penal Code, 1860) and Sections 3/4 of the POCSO Act. All cases involved minor victims. The central issue was whether supplementary material could justify departing from the victim's statements recorded, where allegations of sexual relations were denied or absent. Such material included *mazid bayan*, statements before the Child Welfare Committee, medical evidence, and the fact of cohabitation as husband and wife.

The Court held that the statements carry greater sanctity. They cannot be diluted by supplementary statements recorded merely to contradict them. At the same time, the Court held that cohabitation could give rise to a presumption of physical relations under Section 114 of the Evidence Act (Indian Evidence Act, 1872), unless expressly denied. The proceedings were quashed following marriage and perceived domestic stability. The Court prioritised future harmony and absence of dispute, reframing prosecution as an avoidable disruption rather than a public obligation. The consent of a minor was held to be immaterial. Applying these principles, the Court granted bail to all applicants. This, however, implicitly legitimised sexual offences against minors through marriage and consent-based reasoning.

A comparable interpretive contraction appears in *Sabari @ Sabarinathan v. Inspector of Police* (MANU/TN/3829/2019.), where the Court while acquitting the accused on the ground that the

prosecution had failed to prove the offence beyond reasonable doubt, the Court went further to characterize many POCSO prosecutions as arising from consensual adolescent relationships and suggested legislative dilution of the Act by lowering the age threshold from eighteen to sixteen. By reframing statutory sexual offences against minors as outcomes of romantic relationships and social realities, the Court displaced the POCSO Act's absolute prohibition with moral and sociological considerations extraneous to the legislative scheme, thereby contracting the statute's protective scope through judicial reinterpretation.

This reasoning departs from *Independent Thought v. Union of India* (2017 (10) SCC 800), where the Supreme Court firmly held that marriage cannot legitimise sexual acts with a minor. By reading down Exception 2 to Section 375 IPC, the Court declared that sexual intercourse with a wife below eighteen years amounts to rape, aligning IPC with the POCSO Act.

Similarly, the Bombay High Court's decision in *Satish v. State of Maharashtra*, later overturned in *Attorney General for India v. Satish* (2021 SCC OnLine SC 42), illustrates how literalism can lead to statutory dilution. By insisting that "skin-to-skin" contact was necessary to constitute sexual assault under Section 7 of the POCSO Act, the High Court reduced the offence to a question of physical proximity, severed from sexual intent. The Supreme Court decisively rejected this narrow reading, holding that Section 7 criminalises any touching of sexual parts or other physical contact done with sexual intent, irrespective of direct skin contact. Emphasising the object of the POCSO Act and invoking purposive interpretation, the Court restored the statute's protective scope and reaffirmed that sexual intent, not formalistic bodily contact, is the core determinant of liability.

Together, these decisions demonstrate that dilution of POCSO protections occurs less through overt defiance than through interpretive control, where courts change the meaning of the law by focusing on technical wording or social compromise instead of what lawmakers intended.

3.2 Victim-Blaming And Ritualistic Conditions

A recurring judicial practice in sexual-violence cases has been the recasting of criminal harm as a rupture of social relations rather than a violation of bodily autonomy. In *Aparna Bhatt v. State of M.P.* (2021) 16 SCC 179), the Supreme Court examined multiple High Court and trial court orders where accused persons were directed, as a condition of bail, to tie a *Rakhi* on the survivor, seek forgiveness, or perform acts of symbolic reconciliation. The Court held that such directions trivialise sexual violence, force survivors into involuntary emotional participation, and substitute criminal accountability with cultural ritual.

Closely associated with ritualised conditions is the continued judicial scrutiny of the survivors' character. In *Vikas Garg v. State of Haryana* (2017 SCC OnLine P&H 2806), in a gang rape conviction, the Court undertook an extensive examination of the survivor's sexual history, lifestyle choices, and conduct on campus. The Court characterized the prosecutrix's testimony as revealing a "promiscuous relationship," "casual sexual escapades," and a "voyeuristic and degenerative mindset," and relied on factors such as her prior acquaintance with the accused, her consumption of alcohol and drugs, her failure to immediately report the incidents, and her continued interaction with the accused to infer an alternative narrative of consent or misadventure. These observations substantially informed the Court's decision to suspend the sentences, notwithstanding the gravity of offences under Sections 376D and 376(2)(n) IPC.

A similar pattern is visible in *State of Kerala v. Civic Chandran @ C.V. Kuttan* (2022 SCC OnLine Ker 5206), where the Special Court, while granting anticipatory bail, undertook an evaluative assessment of the survivor's conduct, delay in reporting, social media activity, and prior interactions with the accused to infer implausibility and ulterior motive. Although the High Court set aside the bail and expressly cautioned against such premature credibility determinations at the pre-trial stage, reaffirming that delay, trauma, and post-incident conduct cannot be judicially reinterpreted to dilute statutory protections or negate consent, the initial bail reasoning in both cases illustrates how survivor conduct continues to be judicially scrutinised.

The Supreme Court in *Aparna Bhat v. State of Madhya Pradesh* (2021) 16 SCC 179 reaffirmed that observations concerning a survivor's clothing, behaviour, prior sexual history, or supposed "provocation" are legally irrelevant and constitutionally impermissible, as they reintroduce gender stereotypes and rape myths into judicial adjudication. The Court categorically held that reasoning which trivialises sexual offences, imputes consent from post-incident conduct, delay in reporting, or lifestyle choices, or evaluates the survivor against notions of chastity or ideal victimhood, can never form the basis of bail or other judicial relief. The corrective framework articulated in *Aparna Bhat* thus rejects victim-blaming, ritual substitution, and stereotypical adjudication.

3.3 Sexual Violence And Judicial Minimisation

Judicial minimisation of sexual violence rarely manifests explicitly within a judgement. Instead, it is minimised by demanding excessive proof, treating complainants' credibility more

sceptically than defendants’, and placing institutional authority over individual testimonial accounts.

Evaluators often rely on entrenched stereotypes that overestimate false rape allegations, with recurring tropes of disbelief portraying complainants as malicious, regretful after consensual sex, or incapable of judging consent due to intoxication, resulting in the dismissal of truthful complaints and denial of legal protection. (Tuerkheimer, D. (2017)).

The judicial handling of the *Kerala sexual assault case* (State of Kerala v. Sunil N. S. @ Pulsar Suni & Ors., Sessions Case No. 118 of 2018, District & Sessions Court, Ernakulam (Dec. 12, 2025)) illustrates how minimisation can occur without overt breach. The trial court accepted the survivor’s testimony as sufficient to establish the occurrence of abduction and gang rape, leading to the conviction of six accused, while acquitting a prominent actor-producer charged with conspiracy on the ground that the prosecution failed to prove his involvement beyond a reasonable doubt. There is no indication that the court relied on impermissible evidence, such as the survivor’s prior sexual history, nor did it reject that a survivor’s testimony can sustain a conviction.

However, several editorials and legal commentators have explicitly criticised what they described as a disproportionate scepticism applied to the survivor’s account once it implicated a socially powerful accused (NL Team. (2025, December 10). *Dileep verdict: Editorials question ‘patriarchal elements’, decision to welcome back actor*. Newslaundry. <https://www.newslaundry.com/2025/12/10/dileep-verdict-editorials-question-patriarchal-elements-decision-to-welcome-back-actor>). The *Times of India*, in its editorial “Plight, Camera, Inaction” (The Times of India. (2025, December 8). *Plight, camera, inaction* [Editorial]. *The Times of India*. <https://timesofindia.indiatimes.com/blogs/toi-edit-page/plight-camera-inaction/>), questioned the trial court’s readiness to overlook the “to-and-fro” in the case since 2017, arguing that the acquittal did not pass the “smell test” and pointing to how delays, contradictions and alleged implausibility were foregrounded despite the complex realities of sexual violence cases.

The *Deccan Herald* (Deccan Herald. (2025, December). *Survivor stands tall, system falls short* [Editorial]. *Deccan Herald*. <https://www.deccanherald.com/opinion/editorial/survivor-stands-tall-system-falls-short-3825806>) similarly observed that the verdict reflected deeper judicial and social attitudes towards women, noting that doubts cast on the survivor’s credibility,

including emphasis on delayed reporting and hostile witnesses, failed to satisfactorily address concerns around justice and women's safety.

This pattern aligns with concerns articulated by the Supreme Court in *Aparna Bhat v State of Madhya Pradesh* (2021) 16 SCC 179), which cautioned that credibility assessments grounded in expectations of "reasonable" victim behaviour risk reproducing gender stereotypes even where courts formally adhere to evidentiary rules.

International human rights law has consistently rejected such practices, noting that requirements of corroboration, behavioral conformity, or narrative consistency impose discriminatory burdens on women and reinforce stereotypes about how "genuine" victims ought to behave (CEDAW Committee, 2017, paras. 26(c), 31(b), 33; CEDAW Committee, 2015, paras. 26, 29; *Vertido v. Philippines*, 2010). The persistence of these thresholds demonstrates how evidentiary evaluation itself can function as a site of minimisation.

Such reasoning is the result of the unconscious reliance by judicial actors on socially ingrained stereotypes, which can distort evidentiary assessment and the application of law (Handbook, pp. 9–11). Such reasoning corresponds with what the Supreme Court of India's Handbook on Combating Gender Stereotypes identifies as judicial reliance on preconceived assumptions about women's conduct or credibility, which distorts the application of law and undermines impartial adjudication and constitutional equality, even where the formal legal outcome appears correct (Handbook, pp. 9–11; see also pp. 17–19).

Sexual violence is acknowledged in abstract terms, yet its gravity is reduced through procedural deference, credibility dilution, and evidentiary gatekeeping.

International human rights jurisprudence conceptualises sexual-violence impunity as structural rather than incidental. *González et al. ("Cotton Field") v. Mexico* (*González et al. ("Cotton Field") v. Mexico*, Inter-American Court of Human Rights, 2009), treated investigative failure not as administrative error but as discrimination, identifying gender stereotypes, delay, and evidentiary neglect as elements of state responsibility.

3.4 Domestic Violence And Judicial Inaction

International adjudication under the CEDAW demonstrates that domestic violence is frequently minimised by courts. The CEDAW Committee has consistently held that certain judicial practices amount to a denial of substantive equality and violate States' due diligence obligations

under Articles 2 and 5 of the Convention (CEDAW General Recommendation No. 35, paras 24, 26, 45–46).

In *V.K. v. Bulgaria* (CEDAW/C/49/D/20/2008), the CEDAW Committee found that domestic courts applied an unduly restrictive understanding of violence by prioritising isolated incidents of physical injury while discounting long-term psychological, emotional, and economic abuse. Despite medical certificates corroborating physical injuries and evidence of sustained intimidation, Bulgarian courts characterised the violence as “equal attribution of responsibility” and concluded that both spouses were equally responsible.

Judicial authorities evaluated each episode independently and treated the absence of fresh complaints as evidence that the risk had dissipated. The Committee rejected this approach, holding that domestic violence must be understood as a continuous pattern of coercion and control, and that failure to recognise this continuum constitutes discrimination against women under Article 1 of the Convention.

The refusal to issue a permanent protection order was particularly significant. Courts reasoned that an interim order and the lack of subsequent reports demonstrated adequate state protection. The Committee held that this logic improperly shifted the burden onto the victim to demonstrate renewed harm and effectively normalised endurance as a prerequisite for legal recognition. Such reasoning, the Committee concluded, violates the State’s obligation to provide effective protection without requiring women to expose themselves to further violence.

In *A.T. v. Hungary* (CEDAW/C/32/D/2/2003), at the relevant time, Hungary lacked effective protection orders, and courts failed to provide urgent relief despite credible threats to the author’s life and physical integrity. The CEDAW Committee held that judicial passivity through procedural formalism amounted to state acquiescence in gender-based violence, not mere inefficiency. This puts forth a need for preventive, victim-centred protection and to reject neutral procedural delays, which contribute to a structural bias.

Domestic violence in India is frequently minimised by courts through elevated severity thresholds, fragmented evidentiary analysis, and procedural delay, resulting in a systemic denial of substantive justice. Laws such as Section 498-A IPC and the PWDVA (Protection of Women from Domestic Violence Act, 2005) address domestic cruelty as a structural and continuous manifestation of gender inequality.

Domestic violence in India is widely under-reported, and low conviction rates primarily reflect structural and procedural failures rather than false complaints. NFHS-5 (IIPS & Ministry of Health and Family Welfare. (2022). *NFHS-5, 2019–21: India*. Government of India). estimates that 31.2% of women have experienced domestic violence, higher than NCRB's 2022 (National Crime Records Bureau. (2023). *Crime in India 2022: Volume I*. Ministry of Home Affairs, Government of India.) record of 4.45 lakh police-registered crimes against women, indicating significant under-reporting. NCRB 2020 (National Crime Records Bureau, 2021). *Crime in India 2020: Volume I*. Ministry of Home Affairs, Government of India) data, which shows that only about 5% of cases under Section 498-A IPC were classified as false. Conviction rates in domestic violence cases stay low in India. This is mainly due to weak evidence, hesitant or intimidated witnesses, and poor investigations, which limit the justice system's ability to hold offenders accountable (Shelar, M. M. (2025). *Domestic violence and the criminal justice system. International Journal of Research Publication and Reviews*).

Shivangi Bansal v. Sahib Bansal (2025 SCC OnLine SC 1494) the Supreme Court, exercising powers under Article 142 of the Constitution, dissolved the marriage by mutual settlement, quashed all connected criminal and civil proceedings, and expressly directed the continued implementation of the Allahabad High Court's safeguards against misuse of Section 498A IPC, including pre-arrest scrutiny through Family Welfare Committees, prioritizing misuse prevention over immediate victim safeguards. It represents a deliberate shift away from swift victim protection toward insulating the accused from early coercive action, absent any demonstrated pattern of abuse of the law, and in doing so normalises judicial suspicion of cruelty complaints while eroding the law's capacity to respond effectively to entrenched domestic violence.

Fragmenting abuse into isolated incidents, or collapsing prolonged violence into private settlements, mirrors the very harms condemned by CEDAW in *A.T. v. Hungary*, where delay and state passivity were held to constitute violence in themselves.

Collectively, these trends reflect a retreat from victim-centred justice, where procedural delay, evidentiary fragmentation, and pre-emptive restraint operate as tools of minimisation, undermining India's constitutional commitments and international due diligence obligations to prevent, investigate, and remedy domestic violence.

3.5 Reproductive Autonomy And Constitutional Backsliding

Reproductive autonomy has long been recognised in international human rights law as integral to dignity, equality, and bodily integrity. However, recent judicial trends reveal a pattern of judicial backsliding, wherein courts reframe reproductive decision-making as a matter of moral discretion or state authority rather than individual autonomy.

The decision of the United States Supreme Court in *Dobbs v. Jackson Women's Health Organisation* (142 S. Ct. 2228 (2022)) exemplifies this shift. By overruling *Roe v. Wade* (410 U.S. 113 (1973)) and *Planned Parenthood v. Casey* (505 U.S. 833 (1992)), the Court rejected reproductive choice as a constitutionally protected liberty and confined constitutional interpretation to rights “deeply rooted in history and tradition”. This historical methodology privileges past legal regimes that systematically excluded women from political and civic participation, effectively transforming historical subordination into a constitutional limit on present-day autonomy. The Court’s insistence that abortion presents a “profound moral question” beyond judicial competence masks a substantive moral choice to withdraw constitutional protection from reproductive decision-making.

International human rights law adopts a markedly different approach. The CEDAW Committee has consistently affirmed that reproductive autonomy is inseparable from freedom from gender-based violence and discrimination (CEDAW General Recommendation No. 35). GR 35 further clarifies that state actions or omissions restricting women’s control over their reproductive lives constitute gender-based violence where they cause physical or mental harm or perpetuate structural inequality. Importantly, the Committee warns that erosion of legal protections, often justified through tradition or ideology, directly undermines women’s substantive equality and access to justice.

This understanding is concretely illustrated in *A.S. v. Hungary* (CEDAW/C/36/D/4/2004), where the CEDAW Committee held that coerced sterilisation violated a woman’s rights to health, information, and family life under Articles 10(h), 12, and 16(1)(e) of the Convention. The Committee emphasised that informed consent is a core component of reproductive autonomy and that its absence renders medical interventions discriminatory and violent in nature.

Judicial backsliding in reproductive rights thus reflects a broader pattern of courts invoking neutrality, history, or federalism to legitimise withdrawal from rights protection. Protecting

reproductive autonomy requires recognising it not as a discretionary moral privilege, but as a legally enforceable condition of gender equality and human dignity.

The Indian legal framework offers a meaningful counterpoint to this pattern of judicial backsliding. In *X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi* (2022 SCC OnLine SC 1321), the Supreme Court of India addressed whether unmarried women could access termination of pregnancy between 20–24 weeks under the Medical Termination of Pregnancy framework. The appellant, a 25-year-old unmarried woman, sought termination at 22 weeks after her partner refused to marry her.

The case arose after the Delhi High Court denied relief, holding that Rule 3B of the Medical Termination of Pregnancy Act, 1971, did not extend to unmarried women. On appeal, a three-judge bench of the Supreme Court of India adopted a purposive interpretation of Rule 3B(c), holding that the phrase “change of marital status” must be read as a “change in relationship status,” thereby including unmarried women deserted by partners. The Court relied on the 2021 amendment replacing “married woman or her husband” with “any woman or her partner” to conclude that abortion rights are not contingent on marital status.

The Court further held that “rape” and “sexual assault” under Rule 3B(a) include marital rape for the limited purpose of access to abortion, even though Exception 2 to Section 375 IPC remains formally intact. Anchoring its reasoning in constitutional principles, the Court located reproductive choice within Article 21’s protection of personal liberty, dignity, and decisional autonomy, drawing on precedents such as *Suchita Srivastava v. Chandigarh Administration* (2009) 9 SCC 1 and *K.S. Puttaswamy v. Union of India* (2017) 10 SCC. It emphasised that compelling a woman to continue an unwanted pregnancy violates her right to privacy and bodily integrity, and affirmed that only the woman’s consent is required for termination under the Act.

Addressing systemic barriers, the Court criticised the provider-centric design of the MTP regime and the extra-legal hurdles imposed by Registered Medical Practitioners, such as insisting on spousal consent or court orders. It called on the State to remove structural impediments to safe abortion access, including shortages of providers, stigma, and lack of sexual health awareness. Finally, the Court harmonised the MTP framework with the Protection of Children from Sexual Offences Act, 2012, holding that in cases involving minors, RMPs may withhold the minor’s identity in mandatory reporting to protect her privacy and reproductive autonomy under Article 21.

India's trajectory shows that constitutional courts can safeguard reproductive rights in principle, even as the real-world ability to exercise those rights lags. Despite judicial resistance to the kind of regression witnessed in *Dobbs*, the divide between formal legal recognition and practical access continues to hinder the pursuit of substantive gender equality.

4. MAPPING THE PATTERN: HOW COURTS MAY REPRODUCE GENDER HIERARCHIES

A synthesis of the case clusters examined in the document reveals that the reproduction of gender hierarchies by courts is not accidental or episodic, but structural. Across jurisdictions and subject areas like domestic violence, child sexual abuse, and reproductive autonomy, courts repeatedly use neutral doctrines that, in practice, indulge patriarchal power relations. This occurs through definitional narrowing, evidentiary scepticism, procedural delay, and remedial minimalism, which together normalise unequal expectations of survivors.

One immediate consequence is a chilling effect on reporting. Judicial insistence on “ideal victim” behaviour, corroboration, immediacy, and moral conformity signals to survivors that deviation from scripted responses will be punished rather than understood. The law then communicates that only extreme, uninterrupted violence warrants protection.

Closely linked is the erosion of trust in judicial institutions. When courts prioritise family harmony, marital status, or accused-centric safeguards over survivor safety, the judiciary appears aligned with social control rather than rights protection. This weakens the court's legitimacy as a forum for substantive equality and reinforces perceptions of institutional bias.

Such reasoning normalises control by treating endurance as evidence of tolerability, delay as implausibility, or reconciliation as resolution; courts transform coercion into an expected condition of women's lives. Violence becomes a private inconvenience rather than a public wrong, and autonomy is subordinated to stability and tradition.

These patterns cut across legal systems, and the consistency of outcomes despite doctrinal variation confirms that the problem lies not in isolated errors, but in a shared judicial reluctance to fully embrace substantive equality. Unless courts actively interrogate stereotypes and context, adjudication itself becomes a mechanism through which gender hierarchies are legally reproduced rather than dismantled.

5. REMEDIES AND RECOMMENDATIONS

The patterns identified in this study indicate that gender injustice is reproduced less through overt hostility and more through routine judicial reasoning. Remedies must therefore focus on how courts reason, not merely on outcomes. The objective is corrective transformation without undermining judicial independence.

Judicial reasoning obligations. Courts should be understood as bearing a positive obligation to give reasons that explicitly engage with equality, power asymmetries, and social context in cases involving gendered harm. Reasoned judgments must demonstrate particular evidentiary standards, delays, or procedural choices not disproportionately burden survivors. Silence or formal neutrality, where structural disadvantage is evident, should be treated as a failure of judicial reasoning rather than a neutral choice.

Anti-stereotyping analysis. Courts should institutionalise anti-stereotyping as a distinct analytical step. This requires judges to identify and reject assumptions about “ideal victims,” sexual morality, endurance, family unity, or expected responses to violence before applying doctrine. Such an approach aligns with CEDAW General Recommendations Nos. 33 and 35, and prevents stereotypes from operating invisibly through evidentiary or procedural filters.

Training and sensitisation. Continuous judicial education on gender stereotyping, trauma-informed adjudication, and substantive equality is essential. Training should move beyond awareness to practical reasoning tools and also address how stereotypes distort credibility assessment, how delay and fragmentation function structurally, and how judicial language shapes social meaning. Sensitisation is not a substitute for legal reasoning but a prerequisite for impartiality.

Stronger remedies. Courts must prioritise effective, rights-based remedies over moral or cultural responses. This includes timely protection orders, survivor-centred bail conditions, and refusal to substitute criminal accountability with reconciliation or settlement where coercion is present. Remedies should aim to disrupt ongoing control, not merely acknowledge past harm.

Accountability without compromising independence. Judicial accountability should focus on reasoning quality rather than outcome control. Appellate scrutiny, mandatory reason-giving standards, and the use of judicial handbooks on stereotypes can correct systemic bias while preserving decisional independence. Accountability mechanisms must reinforce, not chill, the judiciary’s constitutional role as an engine of substantive equality.

Collectively, these measures shift the focus from correcting individual errors to dismantling the structural pathways through which courts unintentionally sustain gender hierarchies.

6. CONCLUSION

The law's light has not dimmed; its normative promise of equality, dignity, and justice remains intact. What this study reveals is not darkness, but the persistence of shadows cast by unexamined habits of judicial reasoning. These shadows, stereotypes, formalism, and silence do not arise from the absence of law but from its uncritical application. Justice, therefore, requires courts to turn that light inward. Only when courts consciously examine how their own reasoning shapes power, credibility, and entitlement can law fulfil its transformative role, not merely illuminating injustice, but refusing to reproduce it.

REFERENCES

International Treaties, General Recommendations, and UN Materials

1. Committee on the Elimination of Discrimination against Women. (2003). *A.T. v. Hungary*, Communication No. 2/2003, UN Doc. CEDAW/C/32/D/2/2003.
2. Committee on the Elimination of Discrimination against Women. (2004). *General Recommendation No. 25: Temporary special measures*, UN Doc. CEDAW/C/GC/25.
3. Committee on the Elimination of Discrimination against Women. (2008). *V.K. v. Bulgaria*, Communication No. 20/2008, UN Doc. CEDAW/C/49/D/20/2008.
4. Committee on the Elimination of Discrimination against Women. (2010). *Vertido v. Philippines*, Communication No. 18/2008, UN Doc. CEDAW/C/46/D/18/2008.
5. Committee on the Elimination of Discrimination against Women. (2015). *General Recommendation No. 33: Women's access to justice*, UN Doc. CEDAW/C/GC/33.
6. Committee on the Elimination of Discrimination against Women. (2017). *General Recommendation No. 35: Gender-based violence against women*, UN Doc. CEDAW/C/GC/35.
7. Cusack, S. & Office of the High Commissioner for Human Rights. (2014). Eliminating judicial stereotyping. In the *Office of the High Commissioner for Human Rights*.

International and Comparative Jurisprudence

1. *V.K. v. Bulgaria* Communication No. 20/2008, UN Doc. (CEDAW/C/49/D/20/2008)
2. *A.T. v. Hungary* Communication No.: 2/2003, UN Doc. (CEDAW/C/32/D/2/2003)
3. González et al. ("Cotton Field") v. Mexico, Inter-American Court of Human Rights, Judgment of 16 November 2009.
4. *A.S. v. Hungary*, Communication No. 4/2004, UN Doc. CEDAW/C/36/D/4/2004.
5. *Dobbs v. Jackson Women's Health Organisation*, 142 S. Ct. 2228 (2022).
6. *Roe v. Wade*, 410 U.S. 113 (1973).
7. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992).

Indian Constitutional and Criminal Jurisprudence

1. *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.
2. *Independent Thought v. Union of India*, (2017) 10 SCC 800.
3. *Aparna Bhat v. State of Madhya Pradesh*, (2021) 16 SCC 179.
4. *Attorney General for India v. Satish*, 2021 SCC OnLine SC 42.
5. *State of Punjab v. Gurmit Singh*, (1996) 2 SCC 384.

6. Shivangi Bansal v. Sahib Bansal, 2025 SCC OnLine SC 1494.
7. S.N. Vijayalakshmi v. State of Karnataka, 2025 SCC OnLine SC 1575.
8. Ajay Diwakar v. State of Uttar Pradesh, 2023 SCC OnLine All 5412.
9. Naveen Kumar K. v. State of Karnataka, 2024 SCC OnLine Kar 14464.
10. Sabari @ Sabarinathan v. Inspector of Police, MANU/TN/3829/2019.
11. Vikas Garg v. State of Haryana, 2017 SCC OnLine P&H 2806.
12. State of Kerala v. Civic Chandran @ C.V. Kuttan, 2022 SCC OnLine Ker 5206.
13. State of Kerala v. Sunil N.S. @ Pulsar Suni & Ors., Sessions Case No. 118 of 2018 (District & Sessions Court, Ernakulam, 12 December 2025).
14. X v. Principal Secretary, Health and Family Welfare Department, Government of NCT of Delhi, 2022 SCC OnLine SC 1321.
15. K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.
16. Suchita Srivastava v. Chandigarh Administration, (2009) 9 SCC 1.

Statutes

1. Indian Penal Code, 1860.
2. Indian Evidence Act, 1872.
3. Protection of Children from Sexual Offences Act, 2012.
4. Protection of Women from Domestic Violence Act, 2005.
5. Code of Civil Procedure, 1908.

Institutional and Governmental Sources

1. Chief Justice of India et al. (n.d.). *Handbook on Combating Gender Stereotypes*. Supreme Court of India.
2. International Institute for Population Sciences & Ministry of Health and Family Welfare. (2022). *National Family Health Survey (NFHS-5), 2019–21: India*. Government of India.
3. National Crime Records Bureau. (2021). *Crime in India 2020: Volume I*. Ministry of Home Affairs, Government of India.
4. National Crime Records Bureau. (2023). *Crime in India 2022: Volume I*. Ministry of Home Affairs, Government of India.

Secondary Commentary and Editorial Sources

1. Shelar, M. M. (2025). Domestic violence and the criminal justice system. *International Journal of Research Publication and Reviews*.

2. Newslaundry. (2025, December 10). *Dileep verdict: Editorials question patriarchal elements, decision to welcome back actor*.
3. Tuerkheimer, D. (2017). Incredible women: Sexual violence and the credibility discount. University of Pennsylvania Law Review, 166(1). Northwestern Public Law Research Paper No. 17-05.
4. The Times of India. (2025, December 8). *Plight, camera, inaction* [Editorial].
5. Deccan Herald. (2025, December). *Survivor stands tall, system falls short* [Editorial].