

The Justice of Gendered Based Question is Commigrating to Bias: A Critical Analysis

Ms. Srijia Chakraborty

Academic Researcher & Former M.Phil. Scholar, University of Calcutta

Abstract

Gender-based questioning and bias remain significant concerns in the administration of justice. Although legal systems are founded on principles of equality, impartiality, and due process, gender stereotypes may influence how police officers, lawyers, judges, and other decision-makers interpret testimony, assess credibility, and respond to allegations of violence. This paper examines how gendered assumptions become embedded in investigative questioning, courtroom procedures, evidentiary assessment, and judicial decision-making. It draws on feminist legal theory, socio-legal scholarship, and existing empirical research, with particular attention to sexual violence and women's access to justice in India and comparative international contexts. The paper adopts a qualitative, descriptive, and analytical research design based on secondary sources, including peer-reviewed journal articles, legal scholarship, and relevant institutional publications. The analysis suggests that questions concerning a complainant's clothing, sexual history, delayed reporting, emotional response, or relationship with an accused person may reproduce stereotypes rather than clarify legally relevant facts. Research also indicates that gender-related bias can influence credibility assessments and case outcomes, although the strength and form of these effects vary across contexts. The paper argues that gender-sensitive investigative practices, judicial training, accountable questioning procedures, and evidence-based decision-making are necessary to strengthen procedural fairness. It concludes that gender justice requires not preferential treatment for any party, but the consistent application of legal standards without assumptions based on gender.

Keywords: gender bias, gender-based questioning, justice system, feminist legal theory, victim credibility, gender justice, procedural fairness

1. Introduction

The justice system is expected to protect individual rights, determine disputed facts impartially, and ensure that legal remedies are available without discrimination. However, formal equality before the law does not automatically eliminate social inequalities from legal institutions. Police investigations, witness examinations, cross-examinations, prosecutorial decisions, and judicial reasoning are conducted by individuals whose perceptions may be influenced by prevailing cultural expectations. When these expectations shape the interpretation of evidence, gender bias can become a barrier to fair and effective justice.

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Gender-based questioning refers to questions, investigative practices, or courtroom examinations shaped by assumptions about how individuals of a particular gender should behave, speak, respond to violence, or fulfil social roles. Not every question concerning gender is discriminatory. Questions about a person's identity, relationships, conduct, or circumstances may be relevant to a case. The central issue is whether the questioning serves a legitimate evidentiary purpose or relies on stereotypes that unfairly discredit, disadvantage, or silence an individual.

In cases involving sexual violence, domestic abuse, harassment, and family disputes, complainants may be asked to explain why they did not report an incident immediately, why they maintained contact with the accused, or why their behaviour did not conform to conventional expectations of a victim. Such questioning can shift attention away from the alleged conduct and toward the complainant's perceived morality or character. Leverick (2020), in a review of research on rape myths and juror decision-making, found that prejudicial beliefs about sexual violence can influence how evidence is interpreted and how responsibility and credibility are assessed.

The problem extends beyond the courtroom. Jassal (2024), analysing approximately half a million crime reports linked to court records in India, identified gender-related disadvantages at multiple stages of the justice process. The study found that women's complaints were more likely to experience delays and dismissal and that cases involving female complainants were less likely to result in convictions than comparable cases involving male complainants. These findings demonstrate why access to justice must be examined as a process extending from the initial police report to the final judicial outcome. Gender bias can also affect men, transgender people, and gender-diverse individuals, particularly when their experiences conflict with dominant assumptions about masculinity, femininity, sexuality, or victimhood. A comprehensive analysis must therefore consider both the historical disadvantage experienced by women and the broader effects of gender stereotypes on all parties.

This paper examines gender-based questioning as a socio-legal problem, investigating its causes, institutional manifestations, consequences, and possible remedies. Its central argument is that fair questioning must be relevant to the facts, respectful of individual dignity, and independent of stereotypical expectations about gender.

2. Statement of the Problem

The principal problem examined in this research is the gap between the formal promise of equal justice and the possibility that gendered assumptions influence the practical administration of law. Legal institutions depend on questioning to obtain information, test competing accounts, and establish facts. Nevertheless, questioning may become discriminatory when it evaluates a person's credibility according to social expectations rather than the quality and consistency of the available evidence.

For example, a woman reporting sexual violence may be judged according to whether she resisted physically, reported the incident immediately, or behaved in a manner considered respectable. Conversely, male survivors may encounter disbelief because victimhood is associated with femininity and vulnerability. Transgender and gender-diverse individuals may

face additional difficulties when institutional procedures presume that gender is binary or treat their identities as inherently questionable.

The research problem is therefore not simply that inappropriate questions may be asked. It is that repeated assumptions can influence the entire process of evidence collection and interpretation, potentially affecting reporting, investigation, prosecution, and adjudication. Understanding this problem requires examining both individual attitudes and institutional practices.

3. Objectives of the Study

The study has the following objectives:

1. To examine the meaning and forms of gender-based questioning within the justice system.
2. To identify the social, cultural, and institutional factors that contribute to gender bias.
3. To analyse how gender stereotypes influence the assessment of witness credibility and evidence.
4. To examine the implications of gender-based questioning for access to justice, procedural fairness, and equality before the law.
5. To consider the Indian context alongside relevant international research.
6. To recommend institutional and procedural measures for reducing gender bias in justice delivery.

4. Research Questions

The study addresses five research questions:

1. How does gender-based questioning manifest itself during police investigations, legal proceedings, and judicial decision-making?
2. In what ways do gender stereotypes influence assessments of credibility and responsibility?
3. What social and institutional conditions allow gender bias to persist within the justice system?
4. How does gender-based questioning affect the willingness and ability of individuals to seek legal remedies?
5. Which reforms can reduce discriminatory questioning while protecting the rights of complainants, witnesses, and accused persons?

5. Research Methodology

5.1 Research design

This study adopts a qualitative, descriptive, and analytical research design. It examines gender-based questioning as a social and legal phenomenon rather than attempting to measure its prevalence through newly collected survey data. The descriptive component identifies common

forms of gendered questioning, while the analytical component interprets their implications for equality, evidence assessment, and procedural fairness.

5.2 Sources of data

The study relies exclusively on secondary data. Its principal sources include peer-reviewed journal articles, socio-legal research, feminist legal scholarship, and relevant institutional and legal materials. Particular attention is given to Leverick's (2020) review of rape myths and jury decision-making, Jassal's (2024) empirical study of gender disparities in India's justice system, and research examining the relationship between stereotypes and evidentiary evaluation. These sources were selected for their relevance to the research questions, their contribution to understanding institutional behaviour, and their use of empirical or theoretical analysis. The study also considers the limitations of existing research rather than treating all findings as universally applicable.

5.3 Method of analysis

The material is examined through thematic analysis. Four principal themes guide the discussion: gender stereotypes in questioning, credibility assessment, institutional discrimination, and procedural reform. Findings from different studies are compared to identify recurring patterns and differences across institutional and national contexts.

5.4 Scope and limitations

The paper focuses primarily on criminal justice, especially investigations and proceedings involving sexual violence, domestic abuse, and gender-related allegations. India provides an important contextual reference, although selected findings from other jurisdictions are used comparatively. Because the study uses secondary sources, it does not establish new causal relationships or generate original fieldwork findings. Research on sexual violence and mock juries also has limitations concerning representativeness and the extent to which simulated decisions reflect actual court proceedings. Furthermore, differences in legal rules and social conditions restrict direct comparisons between jurisdictions. The conclusions should therefore be understood as an evidence-informed socio-legal analysis, not as a universal statistical assessment of every justice system.

6. Review of Literature

6.1 Feminist legal theory and gendered institutions

Feminist legal scholarship challenges the assumption that formally neutral laws necessarily operate neutrally in practice. MacKinnon (1989) argued that legal standards and institutional practices must be examined in relation to existing structures of gender inequality. From this perspective, the administration of justice cannot be understood independently of the social conditions in which legal rules are interpreted and enforced.

The relevance of this approach lies in its distinction between formal equality and substantive equality. Formal equality requires that individuals receive equal treatment under established rules. Substantive equality also considers whether institutional arrangements reproduce disadvantages that prevent particular groups from accessing those rights effectively.

Applied to questioning, this distinction highlights the importance of examining the purpose, wording, and context of questions. A question may appear neutral while carrying an underlying expectation that women should resist sexual advances, men should display strength, or victims should react in a prescribed manner. When such expectations determine how testimony is interpreted, legal neutrality may exist in principle without being fully realised in practice.

6.2 Rape myths and credibility assessment

Rape myths are stereotypical or misleading beliefs about sexual violence, its perpetrators, and those who experience it. Burt (1980) examined the relationship between cultural attitudes toward rape and the acceptance of beliefs that minimise sexual aggression or assign responsibility to victims.

Such beliefs can influence how people interpret behaviour before, during, and after an alleged offence. For instance, a complainant's failure to resist physically may be interpreted as evidence of consent, while continued contact with an accused person may be treated as proof that an allegation is unreliable. These interpretations are problematic because human responses to threatening experiences differ, and individual behaviour cannot be reduced to a single expected pattern.

Leverick (2020) reviewed quantitative and qualitative research and found evidence that rape-myth acceptance can influence mock jurors' assessments of responsibility, blame, and verdicts. The review also noted that prejudicial reasoning may emerge during case-specific deliberation even when individuals do not strongly endorse generalised stereotypical beliefs. Fiona Leverick, 2020

However, research findings must be interpreted critically. Waiton (2024) questioned aspects of rape-myth research, including methodological limitations in mock-jury studies and the construction and interpretation of measurement scales. This debate demonstrates the importance of distinguishing between evidence that stereotypes can influence decisions and the broader claim that every adverse decision in a sexual-offence case is caused by bias.

6.3 Gender and access to justice in India

Jassal (2024) offers an important empirical contribution by examining the progression of crime reports through the Indian criminal justice system. Using a large dataset of crime reports linked to court records, the study identifies disadvantages experienced by women at multiple stages of the process, including delays and dismissals. The findings indicate that inequalities may accumulate rather than arise at only one institutional point. This research is especially relevant because the practical experience of justice begins before a matter reaches court. The way a police officer records a complaint, the questions asked during preliminary inquiries, and the decision to pursue further investigation may shape the evidence available to later decision-makers. A complaint dismissed or inadequately documented at an early stage cannot necessarily be corrected through fair judicial reasoning alone.

Jassal's findings do not establish that every disparity results from discriminatory questioning. Differences in evidence, case circumstances, and other institutional factors also require

consideration. Nevertheless, the study supports examining gender equality across the entire justice process rather than concentrating exclusively on courtroom conduct.

6.4 Gender stereotypes and legal decision-making

Research on jury decision-making suggests that pre-existing attitudes can influence how evidence is evaluated. Parsons and Mojtahedi (2022), for example, studied mock jurors' assessments of third-party evidence in alleged rape cases. Their findings indicated that participants who endorsed rape myths were more likely to favour the defence in particular circumstances, suggesting that prior beliefs may affect the weight assigned to evidence.

The significance of this research is that bias need not appear as an openly discriminatory statement. It may operate through selective attention, assumptions about plausibility, or different standards of scrutiny applied to the parties. Nevertheless, experimental findings must be interpreted in light of the study design and cannot automatically be generalised to all judges, jurors, or real trials.

Taken together, the literature identifies gender-based questioning as part of a broader relationship between social expectations, institutional discretion, and evidentiary judgment. It also highlights the need for careful research that recognises both the existence of potential bias and the evidentiary limits of particular studies.

7. Analysis and Discussion

7.1 Nature and forms of gender-based questioning

Gender-based questioning may occur at several stages of the justice process. Its significance depends not only on the words used but also on the assumptions underlying the questions, the power relationship between the questioner and the respondent, and the consequences for the evidence being considered.

First, victim-blaming questions focus on the complainant's conduct rather than the alleged wrongdoing. Questions about clothing, alcohol consumption, previous relationships, or presence in a particular location may sometimes have a legitimate evidentiary purpose. However, they become problematic when they imply that an individual's behaviour establishes consent, responsibility, or a lack of credibility without a sound evidentiary basis.

Second, questions based on stereotypical emotional responses assume that a genuine victim must react in a particular way. A complainant who appears distressed may be considered credible, while one who appears calm may be viewed with suspicion. Similarly, delayed reporting or incomplete recollection may be treated as proof of dishonesty. Such conclusions risk replacing careful assessment with assumptions about how people should respond to distressing experiences.

Third, questions concerning sexual history and personal morality may shift attention from the alleged incident to the complainant's perceived character. Prior consensual relationships do not, by themselves, establish consent to a particular sexual act. The relevance and admissibility of such evidence must be determined according to applicable law, not general assumptions about sexual behaviour.

Fourth, gendered assumptions may also affect the treatment of accused persons and witnesses. Men may be presumed more aggressive or physically threatening in some contexts, while male survivors may be expected to demonstrate strength rather than vulnerability. Women accused of offences may be judged against expectations of femininity or caregiving. Transgender and gender-diverse people may experience questioning that challenges their identity rather than clarifying relevant facts.

These examples demonstrate that gender bias is not defined merely by whether a question mentions gender. The decisive consideration is whether the question has a legitimate connection to the case and is evaluated under a fair and consistent evidentiary standard.

7.2 Gender stereotypes and the assessment of credibility

Credibility assessment is central to justice because legal decisions often depend on testimony, especially when independent corroborating evidence is limited. Decision-makers must consider consistency, reliability, opportunity to observe, corroborating material, and the circumstances in which a statement was made. However, these factors can be distorted when social stereotypes become informal criteria for judging truthfulness.

A common problem is the assumption that a credible complainant must behave in a socially recognisable manner. In sexual-offence cases, for example, the absence of physical resistance, delayed reporting, or continued communication with the accused may be interpreted negatively without sufficient consideration of context. Leverick's (2020) review indicates that rape-related stereotypes can influence judgments about complainants and decisions in simulated jury settings.

The underlying mechanism can be explained through confirmation bias. Once a decision-maker forms an initial impression of a person, information consistent with that impression may receive greater attention, while contradictory information is discounted. If a complainant is initially perceived as unreliable because of a gender stereotype, subsequent evidence may be interpreted through that assumption.

This does not mean that inconsistencies should be ignored or that testimony must be accepted without scrutiny. A fair justice system must evaluate both supporting and contradictory evidence. The problem arises when the same conduct is interpreted differently according to gender, or when an expectation unsupported by law is treated as a test of credibility.

Accordingly, credibility assessment should be evidence-centred rather than personality-centred. The relevant question is not whether a complainant behaves like an idealised victim, but whether the testimony and other available evidence withstand fair, reasoned examination.

7.3 Institutional bias and the cumulative disadvantage of women

Gender-based questioning should be examined within the wider institutional environment. Individual prejudice is one possible source of discrimination, but institutional outcomes may also be shaped by established procedures, resource constraints, professional culture, and patterns of discretionary decision-making.

At the police station, a complaint may be inadequately recorded if an officer regards a dispute as a private family matter or assumes that a complainant is exaggerating. During investigation, repeated questioning may focus on personal behaviour while insufficient attention is paid to collecting relevant evidence. During prosecution, decisions about whether a case is sufficiently strong may be affected by expectations about how a victim should behave. At trial, the same assumptions may influence the presentation and interpretation of testimony.

Jassal's (2024) study of India's justice system is significant because it identifies disadvantages across multiple stages rather than treating the outcome of a case as the product of a single decision. The study suggests that gender-related disparities can persist as complaints move through police and judicial institutions.

This cumulative perspective helps explain why formal legal reform alone may be insufficient. Even when legislation recognises an offence and establishes a remedy, individuals may encounter practical barriers in reporting, evidence collection, legal representation, and adjudication. A failure at an early stage can limit the opportunities available at later stages.

Institutional accountability therefore requires examining both individual conduct and aggregate patterns. Complaint-processing times, reasons for dismissal, the quality of investigation, and disparities in case outcomes can help identify where further scrutiny is necessary. Such indicators should not automatically be treated as proof of discrimination, but they can reveal patterns that warrant investigation.

7.4 Gender, social norms, and unequal access to justice

Gender-based questioning is closely connected to social norms concerning sexuality, family responsibilities, respectability, authority, and appropriate behaviour. In societies where women's conduct is closely monitored, allegations involving sexual violence or domestic abuse may be evaluated through moral judgments rather than legal standards.

For instance, a woman may be expected to preserve family relationships, avoid public controversy, or tolerate certain forms of behaviour to maintain social respectability. When she reports abuse, questions about why she remained in a relationship may suggest that she is responsible for the harm. Such assumptions can obscure economic dependency, family pressure, threats, concerns about children, or limited access to support.

Similar difficulties arise when violence occurs within marriage or between acquaintances. Some people assume that familiarity, a previous relationship, or marriage establishes continuing consent. Yet consent to one act does not automatically establish consent to another. The legal implications of particular circumstances depend on the jurisdiction, but the broader analytical principle remains that social expectations cannot substitute for the applicable legal test.

These norms may also discourage reporting. If complainants anticipate humiliation, disbelief, or exposure of private information, they may avoid approaching authorities. Gender-sensitive questioning is therefore important not only for the treatment of people already involved in proceedings but also for public confidence in the accessibility of justice.

7.5 The Indian legal and social context

India provides an important context for examining the relationship between constitutional equality, criminal procedure, and gendered social expectations. Article 14 of the Constitution guarantees equality before the law and equal protection of the laws, while Article 15 prohibits specified forms of discrimination, including discrimination on grounds of sex. These principles provide a constitutional foundation for examining discriminatory institutional practices.

The Bharatiya Nagarik Suraksha Sanhita, 2023, and the Bharatiya Sakshya Adhiniyam, 2023, form part of the current statutory framework governing criminal procedure and evidence, subject to their commencement provisions and applicable transitional rules. The specific statutory requirements relevant to questioning, admissibility, and protection of parties must be considered in the context of the particular proceeding.

In sexual-offence cases, gender-sensitive procedures are particularly important because invasive or stereotypical questioning may undermine dignity and discourage participation. At the same time, procedural safeguards must preserve the accused person's right to challenge evidence through lawful means. Fairness requires scrutiny of testimony without irrelevant humiliation or assumptions based on gender.

Jassal's (2024) research provides empirical support for investigating how women experience the Indian justice system beyond the formal wording of legislation. It highlights the importance of examining case processing and outcomes at several institutional stages.

The broader implication is that legal equality must be reflected in everyday institutional practice. Training, supervision, accessible complaint mechanisms, reasoned decision-making, and effective review procedures are necessary to translate constitutional principles into practical protection.

7.6 Consequences for complainants, accused persons, and society

Gender-based questioning can produce several interconnected consequences.

For complainants, disrespectful or irrelevant questioning may cause distress, undermine confidence in legal institutions, and discourage continued participation in proceedings. Repeatedly requiring individuals to defend their morality or gender identity can impose an additional burden unrelated to proving the facts of a case.

For accused persons, gender stereotypes can also distort the assessment of evidence. An accused man may be treated as inherently aggressive, or an accused woman may be judged according to assumptions about how women normally behave. Such presumptions are inconsistent with individualised evaluation and the presumption of innocence where it applies.

For witnesses, stereotypes may influence which accounts receive attention or are considered plausible. This can reduce the reliability of fact-finding by allowing social expectations to influence the interpretation of otherwise relevant testimony.

For society, the consequences include diminished trust in institutions, reduced reporting of offences, and weakened confidence that legal remedies are available on equal terms. Where

people believe that their experiences will be evaluated through stereotypes, the formal existence of legal protection may offer limited reassurance.

It is therefore necessary to recognise gender bias as a problem of procedural quality as well as equality. A system that permits irrelevant assumptions to shape evidence assessment risks making less reliable decisions.

7.7 Counterarguments and the importance of procedural balance

A balanced analysis must recognise that rigorous questioning is an essential part of adjudication. Defence lawyers must be able to test the reliability of prosecution evidence, and judges must distinguish substantiated allegations from unsupported claims. Differences in case outcomes do not, by themselves, establish gender discrimination.

Furthermore, research on rape myths and juror decision-making has been debated. Waiton (2024) raised concerns about the methods and assumptions underlying parts of this literature. Such criticism reinforces the need for transparent research design, careful interpretation, and avoidance of conclusions that exceed the evidence.

Nevertheless, the need for rigorous examination does not justify questions that are irrelevant, humiliating, or based on unsupported assumptions. The appropriate response is not to prevent legitimate challenges but to ensure that those challenges are relevant, proportionate, and consistent with the law.

Gender-sensitive justice should therefore protect the dignity of complainants while preserving the rights of accused persons. It should neither presume that allegations are true because they concern gender-based violence nor presume that they are unreliable because the complainant's conduct departs from a stereotype.

7.8 Measures for reducing gender-based bias

Several reforms can help strengthen impartiality and procedural fairness.

First, specialised training should help police officers, prosecutors, lawyers, and judges recognise how stereotypes influence questioning and credibility assessment. Training should use realistic case examples, explain the limits of assumptions about trauma and behaviour, and be evaluated for its effectiveness.

Second, questioning protocols should require a clear connection between questions and relevant facts. Investigators should document the evidentiary purpose of sensitive questions and avoid unnecessary repetition, moral judgments, or irrelevant inquiries into private life.

Third, institutional accountability should include monitoring complaint registration, investigative delays, reasons for case closure, and patterns of judicial outcomes. Reviews should distinguish between justified differences in case circumstances and disparities that require further explanation.

Fourth, access to support and legal assistance should be strengthened. Clear information about procedures, confidential reporting where legally available, interpretation services, and appropriate support during questioning can help individuals participate effectively.

Fifth, evidence-based judicial directions and juror education, where relevant to the jurisdiction, may help counter unsupported assumptions about victim behaviour. Leverick (2020) discusses educational interventions as a possible means of addressing prejudicial beliefs, while also recognising that their effectiveness requires further evaluation.

Finally, reform must be inclusive. Training and protocols should address stereotypes affecting women, men, transgender people, and gender-diverse individuals. They should also protect the rights of all parties and avoid replacing one set of assumptions with another.

These measures should be implemented through clear standards, professional supervision, and regular evaluation. Their success should be assessed by examining the quality of questioning, the relevance of evidence, compliance with procedural safeguards, and public confidence in justice institutions.

8. Conclusion

Gender-based questioning and bias represent significant challenges to the effective administration of justice because they can influence how complaints are recorded, testimony is evaluated, and legal decisions are reached. Although justice systems formally recognise equality and procedural fairness, the practical application of these principles may be affected by social stereotypes and institutional practices.

The literature reviewed in this paper indicates that assumptions about victim behaviour, sexual history, emotional responses, gender roles, and personal relationships can affect credibility assessments. Leverick's (2020) review demonstrates the relevance of rape myths to juror decision-making, while Jassal's (2024) research highlights gender-related disadvantages across stages of justice delivery in India. These findings support a broader understanding of gender bias as a potential institutional problem rather than merely a matter of individual prejudice.

However, gender-sensitive justice must not be confused with preferential treatment. Complainants must be treated with dignity, while accused persons must retain the right to challenge evidence fairly. Neither gender nor conformity to social expectations should determine whether testimony is believed. Decisions should instead rest on relevant evidence, applicable legal standards, and reasoned evaluation.

The study also demonstrates that reform requires action at multiple levels. Professional training, appropriate questioning protocols, institutional monitoring, access to legal assistance, and evidence-based judicial practices can help reduce the influence of stereotypes. These measures should be accompanied by further empirical research examining how questioning practices affect case progression and outcomes across different jurisdictions and social groups.

Ultimately, the legitimacy of the justice system depends not only on the existence of fair laws but also on their impartial application. Gender justice is achieved when every individual can seek legal remedies without being disadvantaged by assumptions about how a person of a particular gender should behave. Ensuring that questioning remains relevant, respectful, and evidence-based is therefore essential to strengthening equality before the law and public confidence in justice institutions.

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