

*Gender and Justice: How Fair is the System?*

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## Gender and Justice: How Fair is the System?

### **Introduction**

The U.S justice system is founded on the core promises of providing fairness and equality for all people under the law. This is seen in the Constitution and its amendments. “Equal justice under the law” is a phrase etched above the Supreme Court building. That's why one must uphold this law. Time and time again, unfairness and abuse of power have been seen all across the justice system. Individuals in positions of power tend to use their authority to get what they want, but not in a way that's right. According to (Acts Law Abir Cohen Treyzon Salo, LLP), harassment and sexual assault are huge abuses of power. Due to individuals' positions in the community, they often assume immunity. Still, the individuals who do those things should be held accountable for the harmful actions they take, such as sexual harassment, abuse, and assault. This article also states that the workplace is a common setting for abuse of power. Abuse of power is common and shouldn't happen in the workplace or the court system, but it does. In cases like child custody, domestic violence, and basic criminal cases, we tend to see gender biases happening. These gender biases are also a form of abuse of power.

Gender biases are often assumed to favor one gender, but in reality, it's a lot more complex. Some gender biases favor men, and some favor women; it just depends on the case. For instance, in domestic violence cases, women are often the victims, and courts typically lean towards the accuser, who is often a man. In other cases, such as child custody cases, mothers are typically favored. While in drug/criminal cases, men typically get harsher sentences than women. Every case has a different outcome due to the decision that the judge and jury made.

Gender bias is favoritism towards or prejudice against a particular gender. Courts are particularly vulnerable to gender bias because they are still humans and still have their own

opinions on certain things; their opinions just hold more weight because they are in a position of power. Although the justice system is designed to be impartial, gender bias continues to shape legal outcomes in complex ways, benefiting and harming both men and women depending on the type of case. These biases, rooted in stereotypes, outdated family roles, credibility assumptions, and systemic flaws, are most visible in domestic violence, child custody, and criminal sentencing decisions. *Abuse of power: Seeking Justice for victims - acts law*. acts law abir cohen treyzon salo, llp. (2022, July 22). <https://actslaw.com/abuse-of-power-seeking-justice-for-victims/>

### **Defining Gender Bias in the Justice System**

Gender bias is discrimination, prejudice, or having a preference for a person strictly because of their gender. There are two types of bias: explicit and implicit. Explicit bias is when a person is clear about their feelings, attitudes, and related behaviors, and they act on them with intent. These are processed neurologically at a conscious level. Conscious bias is characterized by negative behavior and may also manifest as verbal or physical harassment. Implicit bias operates outside a person's awareness and can contradict their beliefs and values. *Two types of bias*. NCCC. (n.d.). <https://nccc.georgetown.edu/bias/module-3/1.php> schafraan, lynn hecht. (n.d.). Overwhelming evidence: Reports on gender bias in the ...[https://www.nawj.org/uploads/pdf/conferences/CLE/Overwhelming%20Evidence\\_Reports%20on%20Gender%20Bias%20Courts\\_Lynn%20Schafran.pdf](https://www.nawj.org/uploads/pdf/conferences/CLE/Overwhelming%20Evidence_Reports%20on%20Gender%20Bias%20Courts_Lynn%20Schafran.pdf)

### **Gender bias in domestic violence cases**

There are gender biases in domestic violence cases. Survivors of domestic violence cases are particularly women in the u.s family courts. About 75% of domestic violence survivors are

women. This percentage rose during covid 19 for many reasons. Piquero, A. R., Jennings, W. G., Jemison, E., Kaukinen, C., & Knaul, F. M. (2021). *Domestic violence during the COVID-19 pandemic - evidence from a systematic review and meta-analysis*. Journal of criminal justice. <https://pmc.ncbi.nlm.nih.gov/articles/PMC9582712/#:~:text=In%20short%2C%20the%20evidence%20is,several%20countries%20around%20the%20world>.

One of the issues is a lack of access during the COVID-19 pandemic. People were on lockdown and forced to be in the house more, which was a cause of more domestic violence, because people were forced to spend much more time with their abuser. Gender biases in courts are another reason for domestic violence to rise. *2023 demographic differences in federal sentencing*. United States Sentencing Commission. (2024, August 13).

<https://www.ussc.gov/research/research-reports/2023-demographic-differences-federal-sentencing>

In court, sometimes the judge or jury can be biased against women based on stereotypical views. Traditional female/mother roles expect women to be in the house and take care of the children. These were views that people may choose to abide by, especially many years ago, which is why it's more common to see these stereotypical views among older people. Museum, A. H. (2025, December 19). *The domestic life: Housewives of the nineteenth century*. Alpine Hills Historical Museum.

<https://alpinehillssugarcreek.com/the-alphorn/the-domestic-life-housewives-of-the-nineteenth-century>

Judges and juries in court may also use credibility assumptions in certain cases. Credibility assumptions would be if someone's credibility was discredited due to the assumptions of these stereotypical views.

Systematic flaws are another: they're bad rules or setups that repeatedly cause problems.

Systemic flaw definition and meaning | Collins English dictionary. (n.d.-c).

<https://www.collinsdictionary.com/dictionary/english/systemic-flaw>

Studies show that the courts failed to protect survivors of domestic violence. They would prioritize shared custody and co-parenting rather than safety. FBI releases Domestic Violence Special Report | Federal Bureau of Investigation. (n.d.-a).

<https://www.fbi.gov/news/press-releases/fbi-releases-domestic-violence-special-report>

This is important to my project because it highlights the reasons for the ongoing gender bias in the justice system.

### **Main point C - Gender Stereotypes in Criminal Court and Sentencing**

There are stereotypes everywhere, including in the justice system. Stereotypes are generalized beliefs about a particular category of people (according to Wikipedia). Stereotypes come from different places. One place is from the way we think. The way we think creates stereotypes by categorizing people into groups. Knowing about social groups can lead us to stereotyping others. The things we hear also create stereotypes, because we learn from what we hear from other people, including society. If everyone else believes one thing and they spread that information, others will start to believe and spread it. The way we remember certain things also creates stereotypes. When two distinctive things happen at the same time, we tend to exaggerate the repetition in which they happened. *What are the causes of stereotypes? - getting race right.* blogs.hope.edu. (n.d.).

<https://blogs.hope.edu/getting-race-right/our-context-where-we-are/the-history-we-inhaled/what-are-the-causes-of-stereotypes/>

An example of this is black people doing good things; when they do something bad, the bad behavior draws more attention to it. People will start to pay double attention to black people doing bad things. That connection gets exaggerated in people's minds, making them see it more often than it really happens. The inferences we make create stereotypes. Assuming the person creates the role. When we see someone in a particular role, say, like a woman working as a babysitter, we would start to assume that all women belong in that role. There are many different stereotypes and many different places they come from.

Gender stereotypes can undermine fairness in the legal system. This may affect jury decisions and sentencing in the courts in criminal court cases. According to (Gendercide), Women defendants tend to be judged a lot more harshly when considering traditional gender roles. People expect women to be nurturing and motherly, so when they do something even the slightest bit opposite, a judge may judge them more harshly than they would a man. Men, on the other hand, may face harsh sentencing due to stereotypes about males being aggressive. According to the National Library of Medicine, masculinity includes norms that encourage aggressive behavior. It also states that femininity emphasizes aggression very, very little. If a male has a domestic violence court case against him, and there are many women on the jury, they may believe the stereotypical views about males being aggressive. They may choose to judge them based on the stereotype of males being aggressive.

Female judges and attorneys experience gender bias due to gender expectations and limited career advancements. Back in the day, women were expected to stay home with the children and take care of household chores. So nowadays, even though it's more common to see

women in workplaces, people still act a certain way towards women when they see them in professional roles such as lawyers or judges. These things can make women feel like they don't belong, which is probably why there aren't many women in these roles now.

The Gendercide article on jury bias and sentencing disparities highlights 3 major facts. The first one is that gender bias influences jury decision-making. The second is that sentencing is typically influenced by stereotypical views of men and women. The third is that female legal practitioners face more challenges due to gender-biased assumptions.

Sentencing Disparities are inconsistencies in length or severity of criminal sentences given to people who committed similar crimes. (according to wikipedia). Sentencing disparities occur when similar crimes committed under similar circumstances receive different, unequal consequences. Sentencing disparities are common in the judicial system. Studies show that black and Hispanic people often receive longer and harsher sentences than white people, despite committing similar crimes. Federal sentencing practices were examined to determine whether the differences found in commission reports were alarming. When sentencing disparities were examined, it was found that during the 5-year study period. These disparities were observed in both males and females. It was shown that black and Hispanic males received longer sentencing than white males. Black males receive 13.4 percent longer sentencing, and Hispanic males receive 11.2 percent longer sentencing than white males. For females, Hispanic women receive sentences 27.8 percent longer than white women do. Other women's sentencing is about 10 percent longer. In the data provided by the commission, these disparities are broken down by the actual sentencing decision. They may receive jail time or probation, depending on the judge's decision. The likelihood of getting probation rather than jail time varies by gender and race.

Compared to white men, black males are 23.4 times less likely, and Hispanic males 26.6 times less likely to receive probation.

**Interview:**

An interview was conducted with Clair Cookingham. She was asked if, as a lawyer, she sees gender bias in the court/legal system, “I do, I think the court system and legal system as a whole is still more of a 'boys club”, and gender bias are still more prevalent than one would hope for it to be especially at this point”. Back in the day gender biases were very common. Hence, it was very rare to see women in these “male” fields. Men expected women to be in the house and be mothers. Now that things have changed, at this point, we would expect these gender biases to go away, yet we still see them. These biases can also come from the clients. Male clients may feel more comfortable working with a male lawyer because they relate to or trust them more than they do female lawyers. “Due to it being such a man's world still in the legal community, when you go out to client dinners the main topic of conversation always comes back to sports, or fishing or hunting, so there's more opportunities for men who have similar interest to make better connections with clients and partners than sometimes younger female attorneys may be able to do due to interest. So that's one of the ways that unintentional gender biases can spread in the legal community”. Comfort and interest are also ways in which these gender biases can spread throughout our court system. Granted, when picking a lawyer to solve your case, you should feel comfortable with them so that you trust that they will represent you in the best way possible. Still, it's unfair to pick a male lawyer over a woman simply because you and the male lawyer both fish or hunt or like the same sports team. All lawyers should be evaluated based on the same level of credibility.

Judges also show gender biases in the legal system. Sometimes they don't even realize they are doing it. Using certain terminology can also come off as biased. For example, Mrs. Cookingham said, "I do think men and women are treated differently in the court system, not every day, but I'm called sweetie a lot more than I would like. A man sitting across the table wouldn't be referred to in that way. "Some people may take more of an offense to something like that. Personally, I don't, but I should. It's still heavily involved in legal communities, especially with older attorneys and judges.

These biases can have a significant impact on the legal community. The need for change may be a reason why there are more female lawyers and attorneys nowadays. Mrs. Cookinham was asked if these biases were a part of the reason she decided to become a lawyer. "I thought that when I graduated from law school in 2016, gender bias was pretty much gone. Until my 3rd year of law school, I had a class taught by a female judge, and she was talking about a male judge she knew who was making a big deal about female attorneys wearing skirts in his courtroom, as opposed to pants. I could believe that this still goes on today." "It wasn't something I thought about much when I was choosing to become a lawyer, but certainly as time went on and you see it in the community, you think about it more heavily."

When it comes to family law, gender biases tend to favor the mother. "In family law, it is usually the mother who receives more beneficial treatments". In child custody cases, the question is usually "why shouldn't the mother get custody of the child?" The father usually has to prove why he should also be getting some custody of the child. Mothers are typically seen as the primary parent, and fathers have to prove themselves in child custody cases.

"In a criminal case, it depends on what the crime is, for instinst in child abuse cases if the alleget abuser is a female she will be treated a litle more harshly than a male would if he did the

abusing, due to that inherit bias that while no parent should be abusive to a child suspiciously a mother should not abuse her child". That is a gender bias that is seen more often because women are supposed to be seen as loving and nurturing, so when a woman does something like abuse her child, then society sees that in a harsher way than they would if it were a male doing the abusing.

"I've had experiences where I'll be talking to a plaintiff's counsel that's a man and he will go through all the questions he has on a case and will say, is attorney ... gonna join us and it's always a male". "It's like needing to get the sigh off of a man, it's like no this is my case. I know what I'm doing; we don't need a male. "When I was younger, it was getting less and less as time goes on, but they would assume I'm just helping out, but I'm the attorney." "When I was in law school, there were more men in my class than women, but now I've seen the number of women law students gradually drop, because by the age of 30-35, women start having kids, and it becomes difficult to work when you have children, especially as a mother. It's a hard line. On one hand, you never wanna use the fact that you're a mom as a reason you can't do something, because then people might start to glam off on that and further a bias against women, also sometimes people judge the fact that your choosing to be at work rather than be home with your children it's a hard thing to get through. It can depend on the client you're working with or the generational person you're working with; some clients might be disappointed that you're at work and not home if you're a mother. Men don't have to worry about these things.

## **Conclusion**

Gender biases in the court system exist in the day-to-day lives of lawyers, judges, and clients. Both males and females experience gender bias in different forms. Even though the justice system is designed to be impartial, gender bias continues to shape legal outcomes in complex ways, benefiting and harming both men and women depending on the type of case.

These biases led to stereotypes, outdated family roles, and assumptions about credibility. Systemic flaws are most visible in domestic violence, child custody, and criminal sentencing cases. Although the justice system is designed to be impartial, gender bias continues to shape legal outcomes in complex ways, benefiting and harming both men and women depending on the type of case. Gender biases come from stereotypes; people tend to believe that each gender has its own role. People believe that women should act in certain roles that differ from those of men. Stereotypes are generalized beliefs about a particular category of people (according to the Britannica dictionary). These stereotypes come from a few different places: the way we think, hear, and remember.

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