

Judicial Gender Stereotyping and Women's Access to Justice

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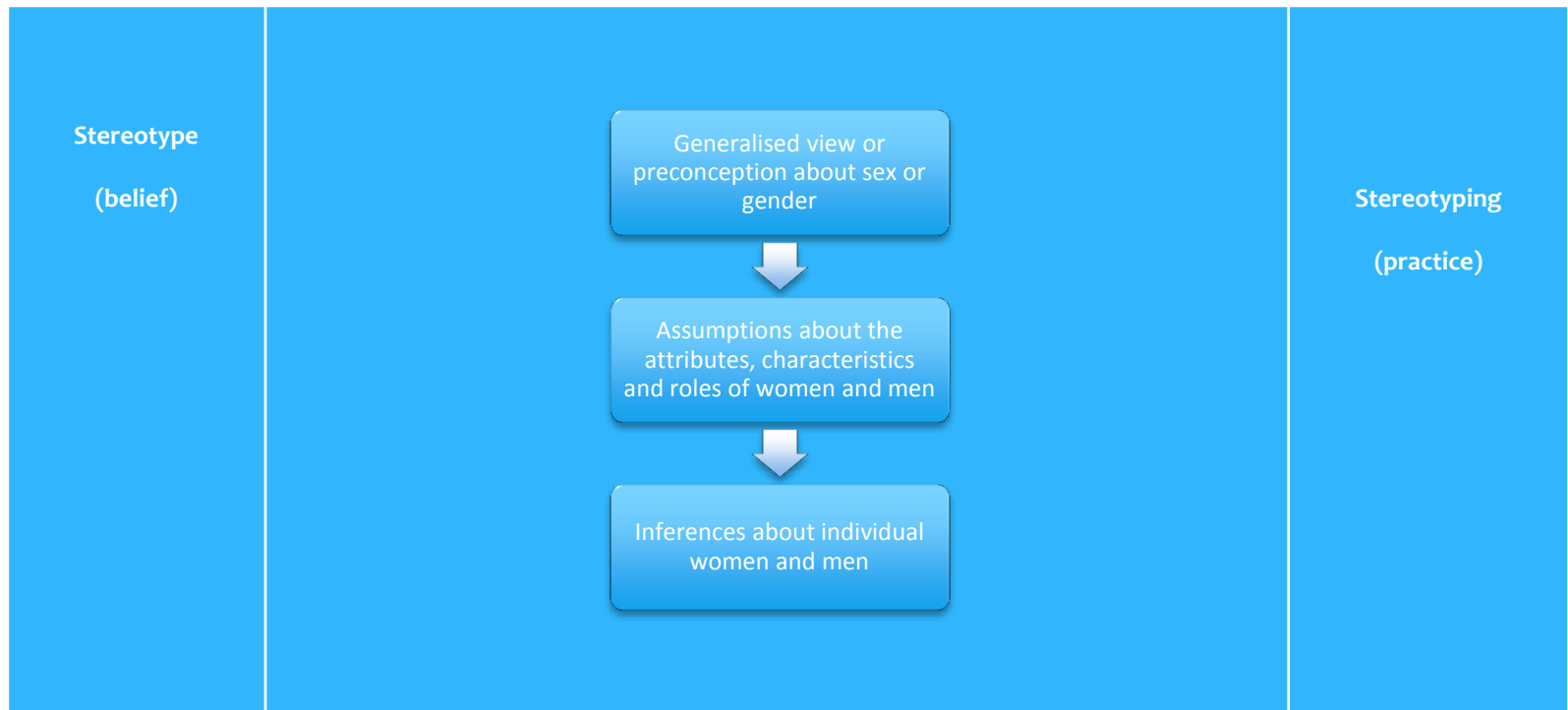
What is a stereotype?

A stereotype is ‘a generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular group

- * a **preconceived belief** formed before full knowledge or evidence is available
- * about the **attributes, characteristics or roles** (eg nurturing, breadwinner)
- * of a social **group** or **subgroup** (eg lesbians, girl child, men).

What is «stereotyping»?

Refers to the practice of applying a stereotypical belief to an individual member of the subject group.



Effect of stereotyping

Gender stereotyping in cases of SGBV regularly tend to undermine the claims of the victim/survivor and support the defences advanced by the alleged perpetrator.

Stereotype	Men have/should have strong libidos	Women with mental disabilities are hypersexual	Women are/should be housewives/ caregivers
(Group) assumption	Men will/should regularly initiate sexual activities	Women with mental disabilities are sexually voracious and indiscriminate in their choice of sexual partners	Women are heterosexual and their paramount duty is to fulfil the roles of wife and mother/caregiver
Inferences (about an individual)	A man is unable to control his hormonal urges and can't be held responsible for his own sexual 'misconduct', especially if 'provoked' (eg by a woman's clothing or behaviour).	A woman with a mental disability could not have been assaulted because she must have consented to sex or she may require more corroborating evidence than in cases involving a woman without such a disability.	It is 'permissible' for a man to use violence to control a woman who is not heterosexual or does not perform these roles (eg lesbians, bisexual women, women who pursues roles other than or in addition to the roles identified).

Effects of Stereotyping II

A single stereotype can lead to multiple inferences, some or all of which a judge may infer in a particular case

Stereotype	Women should be chaste	Women should dress and behave modestly	Men are/should be heads of households
(Group) assumption	Women should abstain from extramarital sex	Women should dress and behave to avoid impropriety and indecency, especially to avoid sexual attention	Men hold ultimate power in interpersonal and family relations and women are subordinate in those same relations
Inferences (about an individual)	<p>Possible inferences include:</p> <ul style="list-style-type: none"> ✦ an unchaste woman has a propensity to consent to sex and must have consented ✦ a woman who has had prior sexual relations is a less credible witness ✦ an unchaste woman 'deserved' raped and is not 'worthy' of criminal justice system intervention ✦ violence is justified to curtail sexual promiscuity or regain sexual control. 	<p>Possible inferences include that:</p> <ul style="list-style-type: none"> ✦ an immodest woman 'provoked' sexual assault and must accept blame ✦ an immodest woman is a less credible witness. 	<p>Possible inferences include that:</p> <ul style="list-style-type: none"> ✦ a man may use violence to discipline his wife if she does not obey him ✦ a man may use violence or the threat of violence to maintain power in marriage and family relations ✦ the wishes and desires of a (violent) man should be prioritised over those of his wife and their children, including in legal proceedings (eg child custody proceedings).

How stereotyping undermines justice

1. Stereotyping can compromise the impartiality of judges' decisions
2. Stereotyping can influence judges' understanding of the nature of the criminal offence
3. Stereotyping can affect judges' views about witness credibility and legal capacity
4. Stereotyping can stop judges holding offenders legally accountable
5. Stereotyping can impede access to legal rights and protections

Human Rights Standards

- * women's rights to non-discrimination and equality
- * right to equality before the courts and to a fair trial
- * to the right to an effective remedy.

Addressing Judicial Stereotyping

- 1. Highlight the harms of judicial stereotyping through evidence-based research**
- 2. Advocate legal and policy reforms that prohibit judicial stereotyping**
- 3. Monitor and analyse judicial reasoning for evidence of stereotyping**
- 4. Challenge judicial stereotyping through petitions and expert evidence**
- 5. Highlight good practice examples of judges challenging stereotyping**
- 6. Improve judicial capacity to address stereotyping**