

# LEGALFOXES LAW TIMES

## OFFENCES AGAINST WOMEN AND INTERNATIONAL LAW

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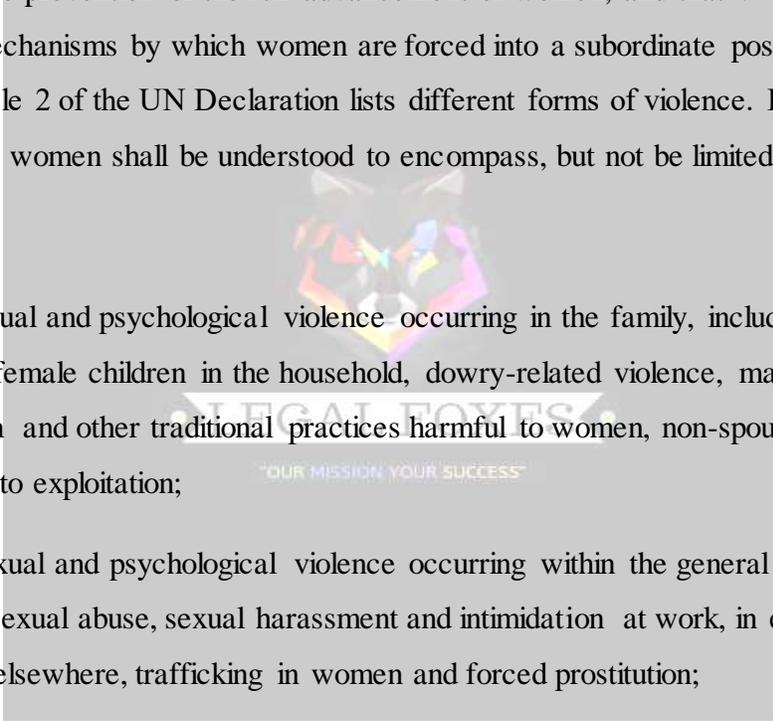
### ABSTRACT

Women have always been the recipients of violence. Over the last couple of years, we as people and society have changed but violence against women continues to persevere. What first started in the form of slavery and prostitution has now turned into more gruesome offences such as rape, acid attacks and sexual harassment etc. Violence against women exists everywhere; cutting across boundaries of caste, culture, education and ethnicity. According to United Nations, approximately 15 million adolescent girls worldwide have experienced forced sex at some point in their life. World Health Organization (2018) indicated that about 35% of women globally have experienced either physical and/or sexual violence in their lifetime. The data depicts the percentage of crimes that were reported by women, but there still are obnoxiously high numbers of crimes that go un-noticed and un-documented and thus unresolved. The International Conference on Population and Development (ICPD), Cairo, 1994 has also emphasized the need for all the countries to take measures to eliminate all forms of violence against women. In this chapter, we will talk about violence against women and Indian and international laws enforced by various countries to overcome it.

Key Words: Violence against women, Domestic Laws, International Laws, Legal Reforms

## DEFINITION OF VIOLENCE AGAINST WOMEN

The Semantic meaning of “violence against women” is abuse, either physical or mental, which leads to physical, sexual or psychological suffering to a woman. One of the most widely accepted definition of violence against women was framed by the United Nations. Article 1 of the United Nations Declaration on the Elimination of Violence against women (1993) states that “Violence against women (VAW) is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women, and that VAW is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men.” Article 2 of the UN Declaration lists different forms of violence. It states that, Violence against women shall be understood to encompass, but not be limited to, the following:

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- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;
  - (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;
  - (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

We will now discuss the various kinds of violence that women across countries experience.

## FORMS OF VIOLENCE AGAINST WOMEN

Violence against women occurs in different forms all around the globe.

The table given here shows the types of violence faced by women from infancy to old age.

Infancy	Female infanticide; emotional, sexual and physical abuse; differential access to food and medical care.
Girlhood	Child marriage; female genital mutilation; sexual and psychological abuse by relatives or strangers; differential access to food and medical care; child prostitution and pornography.
Adolescence	Dating and courtship violence; economically coerced sex; incest; sexual abuse in the workplace; sexual harassment; rape, marital rape; forced prostitution and pornography; trafficking; forced pregnancy.
Reproductive age	Abuse by intimate male partners, marital rape; dowry abuse and murder; partner homicide; psychological abuse; sexual abuse in the workplace; sexual harassment; rape; forced prostitution and pornography; trafficking; abuse of women with disabilities.
Elderly	Sexual, psychological and physical abuse.

Source: Adapted from Heise, Pitangui and Germain (1994).

Violence against women crosses all cultural, social, economic, religious and regional boundaries.

In countries like Yemen and Egypt, 19% and 87% of the women respectively are forced to undergo genital mutilation. Statics also show that 97% of the rape cases go unreported.

With an estimate of 5,00,000 rape cases every year, South Africa has the highest number of rape victims in the world followed by Sweden and United States. In case of domestic violence, surveys also show that 50-60 percent women who experience physical abuse by their partners are also sexually abused by them.

Such forms of violence have a lasting impact on the person experiencing it and may also have a long lasting impact on the women that predispose them to secondary health risks.

## **VIOLENCE AGAINST WOMEN IN INDIA**

The level of violence against women has increased in India. National level data on crimes against women provided by the National Crime Record Bureau (NCRB) indicates that in many parts of India levels of violence against women are very high. These include rape, kidnapping, molestation, dowry deaths, sexual harassment and trafficking. However, it is important to note that official statistics reflect a small percentage of the actual magnitude of the violence that women face. A research study by Special Cell for Women and Children in Mumbai (2000) showed that only 33% of the victims of violence approached the police for help. According to NCRB, a total of 7,621 cases of dowry deaths were reported in India. Uttar Pradesh reported a maximum of 2473 number of cases of dowry deaths with 2.38 cases of dowry deaths reported per lakh female population in the year 2016. Even today, most of the victims of violence do not inform the police about the same. According to India's National Commission for Women (NCW) there has been a twofold rise in gender-based violence during the lockdown in India. Many of which goes unreported because of the societal stigma.

Due to the exorbitantly high number of crimes that are committed against women, it is important that women are aware about the laws that are in place to protect them. Indian Penal Code, 1860 has provisions to address and punish the people who are accused of assault and criminal force, sexual harassment, voyeurism, stalking, human trafficking, dowry death, cruelty towards married woman (domestic violence), rape and aggravated rape. Provisions have also been made in the Criminal Procedure Code (CrPc), 1973 regarding crimes against women which include First Information Reports (FIR) to be completed by women officers; recording of statement before magistrate; outline of duties and responsibilities of medical practitioners and the medical examination procedure and provisions relating to investigations and trials. The crimes which are administered through these procedures include acid attacks, rape and other sexual offences.

Through the years, we have also seen that various other statutes have come into force to eliminate violence against women. For example, in 2013, The Sexual Harassment of Women at Work Place (Prevention, Prohibition and Redressal) Act came into force. The act was based on Vishakha Guidelines which were laid down by the Hon'ble Supreme Court of India in the case of *Vishakha v State of Rajasthan*. In this case Vishakha and other women groups filed PIL against State of Rajasthan and Union of India to enforce fundamental rights of working women under Article-14, 19 and 21 of the Constitution of India. The petition was filed after Bhanwari Devi, a social worker in Rajasthan, under women's development project was brutally raped by 5 men of Gujjar community for stopping a child marriage. The

Supreme Court laid down the following guidelines-

- 1) Express prohibition of sexual harassment should be noticed, published and circulated in an appropriate manner.
- 2) Rules and regulations formulated by the government and public sector bodies should include rules prohibiting sexual harassment.
- 3) Appropriate work conditions should be provided to women.
- 4) Where such conduct amounts to specific offences under the IPC or any other law, the employer shall initiate appropriate action in accordance with the law.
- 5) Victims of sexual harassment should have an option to seek transfer of the perpetrator or their own transfer

Sexual harassment of women at workplace not only violates the women's right to equality, life and liberty but also creates a hostile and insecure work environment. In some cases, women get so traumatized by the harassment that it leads to physical and emotional consequences and quite often results in women leaving their job. This also discourages women from participating in work and hampers the goal of growth of women.

The on-going societal changes and rise in the number of cases of violence against women have led to various changes in laws. For example, acid attacks in India were not recognized as a separate crime until 2013. It was after the case of *Laxmi v. Union of India* that the Indian laws on acid attacks were rectified. The petitioner had refused the marriage proposal of a 32 year old man for which she was made to suffer throughout her life and the remedy she got under IPC was comparatively less than her medical expense. Rape laws were also amended in the same year after the case of *Mukesh & Anr. V. State (NCT of Delhi)*, infamously known as the Nirbhaya Case. The incident involved the brutal act of gang rape and fatal assault that occurred on 16 December, 2012 in Munirka when a 23-year-old female physiotherapy intern, Jyoti Singh, was gang raped, and tortured in a private bus in which she was traveling with her friend, Awindra Pratap Pandey. There were six others in the bus, including the driver, all of whom raped the woman and beat her friend and then threw them out of the bus and fled away. Eleven days after the assault, she was transferred to a hospital in Singapore for emergency treatment, but unfortunately, she succumbed to her injuries two days later. The Criminal Law (Amendment) Act, 2013 is also popularly known as the Anti-rape Act, it amended the following-

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- 1) The Indian Penal Code, 1860
  - 2) Code of Criminal Procedure, 1973
  - 3) The Indian Evidence Act, 1872
  - 4) Protection of Children from Sexual Offences Act, 2012

Section 375 of IPC was rectified. Section 376 (2) (c) was inserted to the IPC. Along with it Sections 376A, B, C, D and E were also added to the IPC. Section 197 and 309 of CrPC were amended and section 309 was added to it. The latest amended to criminal law was made in the year 2018.

Subsequent to the year 2013, there have been several other changes in law that have been made for the welfare, security and benefit of women as well as with the aim to eliminate gender-based discrimination. The Supreme Court, has taken several initiatives and in some cases issued directions to the Government as well to ensure protection of women, but it is the practical implementation of these laws that is required for the same.

Apart from the crimes mentioned above, the cases of domestic violence have considerably increased. The Protection of Women from Domestic Violence Act (PWDVA), 2005 defines domestic violence as “any act, omission or commission or conduct of the respondent, which includes threat or actual abuse.” Victims of domestic violence could approach the court under Section- 498 of the Indian Penal Code, 1860 before POSH was enacted. The POSH act is well placed in the Indian context and social scenario, clearly reflective of the mind-sets of Indian men.

## **VIOLENCE AGAINST WOMEN IN DIFFERENT COUNTRIES**

### **CHINA**

Keeping in mind the actual conditions of the country, the laws in China have been formulated to protect rights and interests of women, to promote equality between men and women and to protect women from any kind of violence that they are subjected to. Now, let's take a look into the laws of China and the measures that have been taken to safeguard the interests of the women. According to Article- 236 of Criminal Law of the People's Republic of China the minimum punishment for rape is three years and the maximum punishment for the same is death penalty. In case a person humiliates or molests a woman, the accused will be punished with fixed term imprisonment for a period of not less than 5 years. Article 240 states that if a person is indulged in the trafficking of women, such a person will be punished with imprisonment for not less than 5 years and not more than 10 years and with death penalty, in serious circumstances.

**SAUDI ARABIA**

Saudi Arabia's criminal law cannot be separated from Islam. The Courts here, apply Shariah principles, as derived from Quran and Sunnah. Crimes, under Islam, fall into three categories viz., hudud, tazir and qisas. Under Islamic law, hadud crimes carry penalties that include amputation of feet and hands, flogging and death. Tazir refers to corporal punishment which is administered at the discretion of the judge. Qisas is an Islamic term which basically means an eye for an eye. It provides for a punishment analogous to the crime.

Saudi trial procedure is very informal when compared to that of other countries. The legal action is generally brought by the victim; any other person may also bring the action. Often it is brought by the police. Legal representation is usually discouraged and the defendant is expected to defend himself.

The punishment for rape is public beheading after administering the accused with sedative which is very harsh as compared to that of other countries. Domestic abuse wasn't always given public attention in Saudi Arabia. It was in the year 2004 that it started gaining momentum after a popular television presenter, Rania al-Baz, was severely beaten by her husband after she answered the phone without his permission and photographs of her bruised and swollen face were published in the press. In August 2013, the Saudi cabinet approved a law which thus made domestic violence a criminal offence for the first time in years. The punishment for domestic violence now includes imprisonment up to an year and a fine of up to 50,000 riyals. The punishment can be doubled for repeat offenders.

In Saudi Arabia, countless women are trapped under the abusive male guardianship system. The government hasn't done anything to change the position of women. Human Rights Watch has also described the position of Saudi women as no different from being a minor, with little authority over their own lives. In the year 2019, the guardianship system was removed to some extent allowing women to travel and to own businesses without the guardian's approval. This seems to be a good start for the protection of interests of women but the government should to take harsher step to make sure that women feel safe.

**RUSSIA**

Violence against women is a troubling phenomenon in Russia. Rape is defined under Article 313 of the criminal code of Russia as “sexual intercourse with the use of violence or threat of violence against a female victim or other persons or by taking advantage of the helpless state of a female victim and shall be punished by imprisonment for 3 to 6 years.” The punishment for rape can be 4 to 10 years, depending upon several aggravating factors such as a perpetrator who is a repeat offender; a rape committed by a group of persons; a rape accompanied by death threats, grievous harm or particular cruelty; a rape resulting in venereal disease; or a rape of a woman who is clearly under age. Factors resulting in the maximum punishment for rape (8 to 15 years) include accidental death, accidental infliction of severe harm; infection of the victim with HIV or rape of a girl clearly under the age of 14. When we talk about sexual harassment, we see that sexual harassment of women at workplace is common. But women do not make complaints against their perpetrators because of the fear of losing their jobs.

There is a Russian proverb which says that a beating man is a loving man and even in 21st century, people believe in it. There is no specific law in Russia to punish a man accused of domestic violence. If a woman files a case for domestic violence, it is generally dealt under general assault provisions. A research also showed that in 1 out of 4 households, a woman is physically abused by her husband. A report also shows that as many as 14,000 women are killed by family members every year. This depicts the seriousness of the situation in Russia and need for new reforms.

**SOUTH AFRICA**

In South Africa violence against women has reached epidemic proportions. Violence exists in millions of households, in every community, in every institution, in both public and private spaces.

President of South Africa, in a parliamentary sitting said that figures for violence against women in the country are similar to those of a country at war. In 2018, approximately 2700 women were murdered by men and 100 women were raped daily.

Some of the cases that caused outrage in the country are as follows-

- 1) School going girl, Janika Mallo, 14 was raped and then raped after her head was hit with a concrete block, no arrests were made
- 2) Student Uyinene Mrwetyana, 19, was lured into a post office's mail room, raped and bludgeoned to death. A post office employ was charged with murder.

A woman being raped over the age of 25 has a 1 in 4 chance that her attacker is HIV positive and more women than men are therefore affected from HIV/AIDS. The people guilty of rape in South Africa tend to be men known to the victim. Many men and women say that rape cannot occur in relationships; however, one in four women reported having been abused by an intimate partner. In 1993 South Africa outlawed marital rape. In September 2019, President Ramaphosa responded to an increase in violence against women by calling for some new laws in order to make rape punishable by death and called an emergency session of the South African Parliament. The high number of cases of violence against women forced the government to take such hasty measures.

Thus, the above mentioned information can be summarised in the following manner.

OFFENCE	COUNTRY	PUNISHMENT
	India	10 year imprisonment which may extend to imprisonment for life
	China	Death sentence or Castration
	South Africa	Life imprisonment
Rape	Russia	Imprisonment which

		ranges from 3-6 years but may go up to more than 10 years
	Saudi Arabia	Public beheading
	Yemen	Public execution
	Pakistan	Rape or imprisonment
Sexual Harassment	India	Imprisonment which ranges from 1 to 3 years and/or fine
	China	-
	South Africa	-
	Russia	-
	Saudi Arabia	Imprisonment for up to 5 years and fine
	Yemen	Imprisonment for up to 6 months or fine
	Pakistan	Imprisonment for up to 3 years or fine or both

	India	Imprisonment for 10
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## INTERNATIONAL LAWS

Indian law has always tried to incorporate the International policies and programs into the domestic laws. For instance, some commonalities can be traced between the Fundamental rights in Part III of the Indian Constitution and Directive Principles in Part IV with *the Universal Declaration of Human Rights* which has also recognized women's rights as a part of the human rights. *UN Declaration on the Elimination of Violence against Women* was also adopted by the UN General Assembly in 1993. As a consequence of the declaration, the Commission on Human Rights adopted Resolution 1994/45 and appointed a *Special Rapporteur* on violence against women. The Special Rapporteur has four mandates, which include seeking information on violence against women, and recommending measures, ways, and means to eliminate VAW.

The *Vienna Declaration*, which came out in the year 1993 calls for action to integrate the equal status human rights of women. It stresses towards complete elimination of violence against women.

The *Beijing conference*, which was adopted in the year 1994, provided a platform for concentration on some of the key issues identified as fundamental obstacles to the advancement of majority of women in the world. It focused on the issues that are observed even today. Such issues include discrimination against women, violence against women, etc.

*The Convention on Elimination of all forms of Discrimination against Women*, 1981, to which 166 countries are members, is a landmark document because it included violence against women within the framework of human rights. The convention requires the member nations sex based discrimination through legislation, education and elimination of prejudices and practices those are based on stereotyped roles. The convention also requires states parties to submit periodic reports, reviewed by the committee on the Elimination of Discrimination against Women.

*The Declaration on the Elimination of Violence against Women* was adopted by UN General Assembly in the year 1993. While the Declaration does not create legally binding obligations for the member nations, it never-the-less represents a clear consensus that "violence against women

constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms .... ". The Declaration emphasises upon the obligation of the nations to ensure prevention, investigation and punishment of all perpetrators.

## CONCLUSION

Violence against women is not a new phenomenon. Various pieces of literature throughout history have shed light on the same. A lot of these cases go unreported because of the societal stigma attached to it. Different countries have different laws to deal with various forms of violence. After reviewing, it seems like Europe and North America have the strongest legislation while Western Asia, which accounts for 21% of the countries worldwide, has the weakest legislation. It is extremely crucial to accept the limitations of law, the gap between law and practice, and the challenge of victim's access to available social services represents an important step in ensuring protection for women.

