

Gender-Based Violence and Legal Reforms: A Comprehensive Analysis

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Abstract:

Gender equality is a cornerstone of democratic governance and sustainable development. Yet, despite constitutional guarantees and international commitments, gender-based violence continues to undermine the dignity, safety, and autonomy of millions of individuals worldwide. The recognition of Gender-Based Violence (GBV) as a public law and human rights issue represents a significant transformation in legal and political discourse. What was once dismissed as a private matter—particularly domestic violence—has now become a central concern of international law, constitutional governance, and criminal justice systems. The international community has increasingly recognized GBV as not merely a social problem but a violation of fundamental human rights. Over the past few decades, legal reforms across jurisdictions have attempted to criminalize gendered violence, expand definitions of abuse, strengthen victim protection, and improve access to justice. However, the persistence of GBV indicates that reform only in legal aspects alone is not enough to resort this serious concern, because the reform will not yield results unless it is implemented properly. Along with this, it is hardly possible to start a fight against this kind of violence until we rise above the patriarchal thinking in the society and move towards social transformation.

Keywords: Gender Based Violence, Gender Equality, Human Rights, International Law, Judicial Interpretation, Criminal Laws.

Introduction:

If we assess the social and behavioural conditions, it can certainly be determined that it would neither be appropriate nor possible to depend on any one gender for the existence and development of a good society. But in the current context, this argument is no longer as relevant as it should be. The dominance of one gender over the other indicates that circumstances have changed in such a way that it may not be possible to maintain them in their normal form. This kind of dominance increases over time to such an extent that committing crimes or violence against the other gender becomes a normal scenario. And this is where such kind of violence begins, which is committed just on the basis of being of a particular gender. This kind of violence has been named as “gender-based violence.” If we go to the root of the causes of such violence, one fact will definitely emerge that it is happening somewhere due to unequal power between two different genders. This power is not dependent on any particular type of aspect because this includes physical, mental, spiritual, psychological and metaphysical forms of power. Such

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violence manifests in both private and public spheres which undermine dignity, equality, and social justice.

If we analyse the data it can be asserted that although men may also experience gendered harm, global data consistently demonstrate that women disproportionately suffer severe forms of violence, particularly sexual and domestic violence. Although violence can affect persons of any gender, women and girls are disproportionately impacted due to systemic inequality and entrenched social norms. The global recognition of GBV as a human rights violation marks a significant shift in legal thinking. Historically, domestic violence, marital rape, and sexual harassment were often dismissed as private matters. Contemporary legal reforms, however, acknowledge the state's obligation to prevent, investigate, punish, and redress acts of violence, whether committed by state actors or private individuals.

Concept and Nature of Gender-Based Violence

Definition and Scope

The concept of gender-based violence gained prominence through international human rights discourse, especially through the work of the United Nations. “The Declaration on the Elimination of Violence against Women defines violence against women as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering.”³

GBV includes:

- Physical violence (assault, battery, acid attacks)
- Sexual violence (rape, sexual assault, harassment)
- Psychological abuse (intimidation, threats, coercion)
- Economic violence (control of financial resources)
- Structural violence (institutional discrimination)

Unlike general violence, GBV is distinguished by its basis in gender inequality. It reflects and reinforces systemic discrimination embedded in social, political, and economic structures. Historically, many societies treated violence within families as a private matter beyond state intervention. Marital rape, domestic abuse, and honour-based violence were normalized or legally justified. Feminist legal scholarship in the twentieth century challenged these assumptions, arguing that the personal is political and that the state has a positive obligation to protect individuals from private violence.⁴ Since the issues of violence based on the ground of gender have been considered as one of the vital human rights issue, it marked a significant shift in international law and domestic jurisprudence.

Causes and Structural Foundations

If we talk about gender based discrimination, the patriarchal structure, which has already been spread all around in the society since long, emerges as its biggest reason. It is the biggest evil present in the contemporary society. Cultural beliefs that normalize male dominance, economic dependency, lack of access to education, and discriminatory laws perpetuate vulnerability.

Other contributing factors include:

1. Social conditioning and gender stereotypes
2. Economic inequality and poverty

³ UN Declaration on the Elimination of Violence against Women, 1993.

⁴ Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (1989).

3. Weak enforcement of protective laws
4. Armed conflict and humanitarian crises
5. Digital technologies enabling harassment and exploitation

Addressing GBV therefore requires not only legal reform but also structural transformation.

Various forms of Gender Based Violence in Society

1. Domestic Violence

Domestic violence remains one of the most widespread forms of GBV. Coercive control in intimate relationships, emotional abuse, marital rape, economic deprivation, and physical assault are all examples of it. One-third women worldwide, according to the World Health Organization, has been the victim of physical or sexual violence at some point in their lives.⁵ Domestic violence laws now exist in most jurisdictions, but enforcement and reporting remain major challenges.

2. Sexual Violence

Sexual violence is purely based on power and patriarchal concerns. It includes rape, sexual assault, sexual harassment, trafficking, and exploitation. Historically, rape laws focused narrowly on penile-vaginal penetration and required proof of resistance. Modern reforms have expanded definitions to include non-consensual acts and recognize marital rape in many countries.⁶

3. Harmful Traditional Practices

Certain practices are deeply embedded in cultural norms:

- Child marriage
- Female genital mutilation
- Honour killings
- Dowry-related violence
- Acid attacks

These practices are often justified through tradition but violate international human rights standards.⁷

4. Workplace Harassment

Gender-based harassment in workplaces undermines economic participation. Legal recognition of hostile work environments and employer liability marks a major development in gender jurisprudence.⁸

5. Digital and Online Violence

The rise of technology has created new avenues for abuse:

- Cyberstalking
- Sharing pics of intimate character without consent
- Online threats
- Gendered hate speech

Legal systems are gradually adapting to address digital GBV, though jurisdictional and evidentiary challenges persist.

⁵ World Health Organization, Global and regional estimates of violence against women (2021).

⁶ Criminal Law (Amendment) Act, 2013 (India).

⁷ UN Women, Ending Harmful Practices (2020).

⁸ Vishaka v. State of Rajasthan, (1997) 6 SCC 241.

International Legal Framework

1. “Convention on the Elimination of All Forms of Discrimination Against Women” (CEDAW)

Adopted in 1979, CEDAW obligates States to eliminate discrimination against women in all forms. Although it does not explicitly mention violence in its original text, General Recommendation No. 19 clarified that gender-based violence constitutes discrimination under the Convention.⁹

2. Istanbul Convention

“The Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence” (Istanbul Convention) is one of the most comprehensive regional instruments. It requires prevention, protection, prosecution, and coordinated policies.¹⁰

3. Inter-American Convention

This convention clearly states that limiting crimes against women to gender-based crimes alone is a grave mistake, as these crimes are crimes against human rights. It mandates state responsibility for prevention and punishment.¹¹

4. Sustainable Development Goals

The United Nations Sustainable Development Goal 5 seeks “to achieve gender equality and eliminate all forms of violence against women and girls by 2030”.

Legal Reforms in India

India presents a significant case study due to its evolving legal framework addressing GBV. Courts play a vital role in interpreting and enforcing GBV laws. Judicial activism has expanded protections through constitutional interpretation and public interest litigation. However, challenges remain:

- Gender stereotyping in judicial reasoning
- Delays in trials
- Insensitive investigation procedures
- Low conviction rates

Capacity-building and gender-sensitization training for police and judges are essential for effective implementation.

1. Protection of Women from Domestic Violence Act, 2005

This Act has set a precedent in itself because this Act does not see domestic violence only as physical violence but various types of violence have been included in this Act. Such violence includes physical, emotional, sexual, and economic abuse. Apart from that, the Act provides different kinds of relief viz. protection orders, residence rights, and monetary relief.¹² The judicial authorities have been granted discretionary powers to provide the relief as per the need of the applicant. Unlike traditional criminal law, the Act provides civil remedies alongside penal consequences.

2. Criminal Law (Amendment) Act, 2013

Plunging into the 2012 Delhi gang rape incident, the Criminal Law (Amendment) Act, 2013 elucidated the definition of rape, introduced offences such as stalking and voyeurism, and strengthened punishment

⁹ CEDAW, General Recommendation No. 19 (1992).

¹⁰ Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (2011).

¹¹ “Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women”(1994).

¹² Protection of Women from Domestic Violence Act, 2005 (India).

s.¹³ It also mandated time-bound investigations and established fast-track courts.

3. Sexual Harassment of Women at Workplace Act, 2013

“The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” codified the Vishaka Guidelines laid down by the Supreme Court in the case of Vishaka v. State of Rajasthan.¹⁴ It requires Internal Complaints Committees in workplaces.

4. Prohibition of Child Marriage Act, 2006

The primary purpose of this Act is to prevent the widespread practice of child marriage. This Act seeks to punish those responsible for child marriage and protect victims. It also contains the provisions regarding annulment and maintenance.

5. Judicial Activism

The Supreme Court of India has played an active role in expanding gender rights through public interest litigation and constitutional interpretation.

Role played by Judiciary and Law Enforcement

Judicial interpretation significantly influences the effectiveness of GBV laws. Gender-sensitive training for judges and police is essential to prevent victim-blaming and stereotyping. Fast-track courts, witness protection programs, and victim compensation schemes strengthen access to justice. Courts play a vital role in interpreting and enforcing GBV laws. Judicial activism has expanded protections through constitutional interpretation and public interest litigation. However, challenges remain:

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Implementation Challenges

Despite legal reforms:

- Under-reporting remains high.
- Police insensitivity discourages complaints.
- Judicial delays undermine deterrence.
- Social stigma prevents victims from seeking help.

Legal pluralism and customary practices often conflict with statutory protections.

Emerging Issues

1. Marital Rape Exception

Several jurisdictions still retain marital rape exceptions, raising constitutional and human rights concerns.

2. LGBTQ+ and Gender Minorities

GBV also affects transgender and non-binary individuals. Inclusive legal frameworks are necessary.

3. Technology-Facilitated Violence

Artificial intelligence, deepfakes, and surveillance technologies present new threats requiring updated

¹³ Criminal Law (Amendment) Act, 2013 (India).

¹⁴ AIR 1997 SC 3011

legal responses.

4. Intersectionality

GBV disproportionately affects marginalized groups including transgender persons, persons with disabilities, and minority communities. Legal reforms must adopt inclusive approaches.

Recommendations for Effective Legal Reform in Addressing Gender-Based Violence

Effective legal reform to combat Gender-Based Violence (GBV) requires more than enacting new statutes. It demands structural alignment with international norms, victim-centered justice systems, institutional accountability, technological capacity, and sustained social transformation. The following recommendations elaborate key strategies necessary to ensure that legal reforms translate into meaningful protection and justice.

1. Harmonization with International Standards

Legal harmonization involves aligning domestic laws with internationally recognized human rights norms and obligations. States are legally required to eradicate gender-based violence and discrimination if they are signatories to international treaties like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Comparably, extensive guidelines for prevention, protection, prosecution, and integrated policies are offered by regional frameworks as the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

Key Measures:

- Reviewing domestic legislation to remove discriminatory provisions (e.g., marital rape exceptions, unequal inheritance laws).
- Ensuring broad definitions of violence that include physical, sexual, psychological, and economic abuse.
- Incorporating due diligence obligations, requiring the state to prevent, investigate, punish, and compensate acts of violence.
- Establishing monitoring bodies and reporting mechanisms consistent with treaty obligations.

Harmonization ensures that national laws reflect global best practices and strengthens accountability through international oversight mechanisms.

2. Victim-Centric Procedures

Traditional criminal justice systems often prioritize procedural formalities over victim welfare. A victim-centric approach places survivors at the center of the legal process, ensuring dignity, safety, and empowerment.

Essential Components:

- Confidential and accessible reporting mechanisms (including online complaint systems).
- Protection orders and emergency relief measures.
- Access to free legal aid, medical assistance, psychological counseling, and shelter services.
- Witness protection programs to prevent retaliation.
- In-camera trials and restrictions on disclosing survivor identities.

Victim-centric justice recognizes that trauma-sensitive procedures reduce secondary victimization. Legal systems must avoid practices that subject survivors to humiliation, invasive questioning, or moral scrutiny. Fast-track courts and time-bound investigations further enhance confidence in the justice system.

3. Mandatory Gender-Sensitization Training

Laws alone cannot eliminate bias if enforcement authorities retain discriminatory attitudes. Mandatory gender-sensitization training for police officers, prosecutors, judges, medical professionals, and forensic experts is essential.

Training Should Cover:

- Understanding gender stereotypes and unconscious bias.
- Trauma-informed interviewing techniques.
- International human rights standards.
- Cultural sensitivity and intersectionality.
- Proper documentation and evidence preservation in sexual violence cases.

Such training improves victim trust in institutions and enhances the quality of investigations and judicial reasoning. Continuous professional development programs should be institutionalized rather than conducted as one-time workshops.

4. Strengthening Forensic and Digital Evidence Mechanisms

Modern gender-based violence cases increasingly involve digital elements, including cyberstalking, non-consensual image sharing, and technology-facilitated abuse. Strengthening forensic capacity is crucial for effective prosecution.

Recommended Measures:

- Establishing well-equipped forensic laboratories with trained personnel.
- Standardizing rape kits and medical examination protocols.
- Digital evidence preservation systems compliant with cyber laws.
- Training police in cybercrime investigation and data recovery.
- Coordinating with technology platforms for timely removal of abusive content.

Improved forensic mechanisms enhance conviction rates and reduce reliance solely on survivor testimony, which often becomes the focal point of cross-examination.

5. Community-Based Awareness Campaigns

Legal reform must be accompanied by social transformation. Laws are ineffective if communities remain unaware of rights or continue to normalize violence.

Strategies Include:

- Public education campaigns through media, schools, and community organizations.
- Gender equality curricula in educational institutions.
- Engagement of men and boys in prevention initiatives.
- Collaboration with religious and community leaders to challenge harmful practices.
- Grassroots mobilization programs in rural and marginalized communities.

Community engagement helps dismantle stigma associated with reporting violence and fosters a culture of accountability and respect.

6. Data Collection and Research

Evidence-based policymaking is critical for effective legal reform. Many countries lack reliable gender-disaggregated data on violence, hindering informed decision-making.

Necessary Steps:

- Establishing national databases on GBV cases.
- Collecting data on reporting rates, conviction rates, and case duration.
- Conducting periodic prevalence surveys.

- Supporting academic and interdisciplinary research.
- Monitoring implementation gaps and evaluating policy impact.

Accurate data enables governments to identify patterns, allocate resources efficiently, and assess whether reforms achieve intended outcomes.

Conclusion

Gender-based violence remains a global crisis undermining equality, dignity, and development. Legal reforms over the past decades demonstrate progress — from domestic violence statutes to comprehensive sexual harassment laws and international conventions. However, the persistence of GBV reveals gaps between law and reality. Effective reform requires holistic strategies integrating legal accountability, institutional reform, education, economic empowerment, and transformation of patriarchal norms. Only through sustained commitment, interdisciplinary collaboration, and global solidarity can societies move toward eliminating gender-based violence and achieving substantive gender justice. Gender-based violence remains one of the most urgent global challenges. Over the past decades, significant legal reforms at both international and domestic levels have expanded recognition of women's rights and state obligations. Yet, the persistence of violence demonstrates that laws alone cannot eradicate deeply rooted social inequalities. A comprehensive response must integrate legal accountability, institutional reform, social awareness, economic empowerment, and cultural transformation. Only through sustained commitment and coordinated efforts can societies move toward genuine gender equality and the elimination of violence in all its forms.