

WORDS & DEEDS

Holding Governments Accountable to the Beijing +30 Review Process



Sex Discrimination in Violence Laws

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About Equality Now

Since 1992, Equality Now has worked to protect and promote the rights of women and girls around the world by combining grassroots activism with international, regional, and national legal advocacy. We campaign to achieve legal and systemic change that benefits all women and girls and work to ensure that governments enact and enforce laws and policies that uphold their rights. Our campaigns center on four program areas: Legal Equality, End Sexual Violence, End Harmful Practices, and End Sex Exploitation, with a cross-cutting focus on the unique needs of adolescent girls.

Our advocacy has resulted in the repeal or amendment of over 50 sex discriminatory laws, including recently in Syria, Switzerland, Lebanon, and Jordan. We have been instrumental in the enactment of laws against all forms of violence against women, including rape, sex trafficking, and harmful practices such as child marriage, “honor” crimes, and female genital mutilation. As a global organization, Equality Now has offices in the USA (New York), Africa (Nairobi), Europe (London), and MENA (Beirut), and partners and members all around the world.

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About Words and Deeds

The 4th UN Conference on Women in 1995 was the birth of The Beijing Platform for Action, the most progressive blueprint ever for advancing women's rights. Governments around the world pledged to change or remove their existing unfair laws and make legal equality a reality. But that goal is far from being realized.

Only 12 out of 190 economies surveyed by the World Bank in 2022 had achieved legal equality and a typical economy only grants women 75% of the same rights as men.

Income inequality and gender inequalities are intimately linked, and it's not an exaggeration to say that inequality kills. During the COVID-19 pandemic, perpetrators, enabled by sexist laws and gender stereotypes, committed even greater physical domestic violence and economic violence against women. To reverse COVID exacerbated inequality, States must put both gender and income equality first and get rid of all discriminatory laws.

Every five years since 1999 Equality Now has highlighted explicitly sex discriminatory laws that need to be reformed in our *Words & Deeds* report. As we approach 30 years since adoption of The Beijing Platform for Action, this is the second in a series of focus briefs and it explores the impact of sex discrimination in laws related to violence and what still needs to change.

VIOLENCE

What is the issue?

Perpetrators, usually men, inflict intimate partner and sexual violence disproportionately upon women and adolescent girls.¹ Discrimination in sexual violence laws, or laws that do not explicitly address sexual violence in a specific context such as rape within marriage, can actually *promote* or perpetuate violence against women and girls. This is because there is little to deter perpetrators from committing crimes, or there is inadequate recourse to justice for victims. Laws specifically allowing marital rape, for example, treat the wife as the property of the husband and render her vulnerable to sexual violence and abuse within marriage.

Violence against women and girls in real life is also being perpetrated against them online and in virtual reality, like the “metaverse”. Online and virtual gender-based violence and other harms committed against women and girls do not occur in a vacuum - this reflects “real life”. The patriarchy and misogyny that flourishes in our physical society are being replicated and exacerbated online and laws need to address this in the digital realm.

What is the impact on women and girls?

Global estimates published by WHO in 2021 indicate that about 1 in 3 (30%) of women worldwide have experienced either physical and/or sexual intimate partner violence or non-partner sexual violence in their lifetime.

According to UNICEF, around 120 million girls worldwide, just over 1 in 10, have experienced rape or other sexual violence at some point in their lives.

*Sexual violence and sexually transmitted diseases, including HIV/AIDS, have a devastating effect on children's health, and girls are more vulnerable than boys to the consequences of unprotected and premature sexual relations. Girls often face pressures to engage in sexual activity. Due to such factors as their youth, social pressures, lack of protective laws, or failure to enforce laws, **girls are more vulnerable to all kinds of violence, particularly sexual violence, including rape, sexual abuse, sexual exploitation....** (BPfA para 269)*

The staggering numbers of women and girls affected may in part be exacerbated by the inequality and discrimination and sanctioned violence in the law itself. This can be seen in “marry your rapist” laws which allow perpetrators to go unpunished if they marry their victim, as well as laws that are silent or make exception for rape within marriage, excusing a rapist simply because he is already married to his victim; laws that allow men to “punish” or “correct” their wives; and laws that punish murder of “adulterous” women less harshly, as seen in the examples below.

Globally, many countries have spearheaded new laws and legal reforms on violence against women and of 193 UN member states at least:

158

States now have legislative provisions that specifically address **domestic violence**.

77

States now explicitly criminalize **marital rape**.

141

States now have laws against **sexual harassment** in employment.

169

States now have legislative provisions broadly criminalizing **trafficking** in human beings.

51 of the **92**

states where female genital mutilation is practiced have specifically prohibited it under their national laws, either through a specific anti-female genital mutilation law or by prohibiting female genital mutilation under a criminal provision in other domestic laws such as the criminal or penal code, child protection laws, violence against women laws or domestic violence laws.

However, implementation of these laws remains challenging on many levels. In addition, there is **no universal standard yet for ending online sexual exploitation and abuse of women and girls in the digital realm**, which is increasingly becoming a concern as people spend more of their lives online.

¹ “Sex” is the term used in the Beijing Platform for Action and most other international law. Equality Now aims to be inclusive in its legal analysis and advocacy to address sex discriminatory laws and uses the term broadly. We recognise that people may be discriminated against because of both their sex and gender identity, including in laws related to violence. All people, regardless of their sex or gender identity, deserve equality and the right to live free from violence.

A Comprehensive Approach

Beijing +5 Political Declaration Chapter IV Actions and initiatives

● **69(a)** - *As a matter of priority, review and revise legislation, where appropriate, with a view to introducing effective legislation, including on violence against women, and take other necessary measures to ensure that all women and girls are protected against all forms of physical, psychological and sexual violence, and are provided recourse to justice;*

The UN Committee on the Elimination of Discrimination against Women's General Recommendation 35 further elaborates on the right to be free from gender-based violence under the Convention on the Elimination of All Forms of Discrimination against Women and what States must do.

To prevent violence against women and girls, a strong legal and policy framework and environment is essential.

The UN Trust Fund to End Violence against Women and Girls *Learning from Practice: Strengthening A Legal and Policy*

Environment to Prevent Violence Against Women and Girls identifies 5 key areas to building the right environment:

1. Advocating and evidence-building for law and policy reforms.

Strong laws and government policies for VAWG prevention that offer a comprehensive framework, harmonize civil and criminal laws, and are proactive and binding on policy actors and statutory duty bearers are essential. CSOs play important roles in advocacy and evidence-building that are community driven. They often involve CSOs partnering for a shared advocacy agenda that centralizes the voices and participation of women.

2. Building the capacity of judicial, law enforcement and government institutions.

Formal duty bearers such as the police and judicial and government ministry personnel need to be equipped to effectively implement new laws and policies around VAWG prevention. CSOs play important roles in building the capacity and shifting the mindsets of these institutions to address VAWG in a less reactive and more proactive, preventative way, including through multisectoral partnerships with civil society.

3. Bridging gaps between formal laws/policies and informal systems at community level.

Informal and customary systems often play roles in adjudicating legal and policy issues at community level and reinforcing social norms, both positive and negative, in ways that shape many women's lives. CSOs play important roles in making these systems more women centred and survivor friendly, reshaping the community level understanding of women's and girls' rights and bridging gaps with formal systems, enabling more women to participate in informal and formal systems.

4. Improving access to justice for VAWG survivors and mechanisms for holding perpetrators accountable.

Women face both individual and structural barriers to accessing justice, and this creates a risk of further VAWG. Systems-level VAWG prevention seeks to address patterns that result in continual cycles of VAWG in the lives of women and societies. CSOs play important roles in supporting survivors to access justice and in strengthening systems to hold perpetrators accountable, especially in transitional justice or conflict affected settings.

5. Reforming and implementing laws and policies during the COVID-19 pandemic.

The COVID-19 pandemic created many new challenges in relation to preventing VAWG. New legal and policy restrictions imposed as a result of the pandemic, overloaded legal and government systems, and the shifting of resources from VAWG prevention to other areas all helped to create the shadow pandemic of VAWG. CSOs working with these systems play a role in ensuring that laws and policies take into account VAWG prevention and integrate it into wider national COVID-19 responses and plans.

Rape is a grave and systematic human rights violation and an ongoing shameful epidemic. Sexual violence laws must treat rape as a serious crime, free from gender stereotypes and be drafted from a universal, intersectional feminist understanding of the power dynamics and inequality which leads to rape and lack of access to justice experienced by many women and girls when it occurs. Rape laws are discriminatory when they deliberately make exceptions for certain kinds of rape, i.e. in marriage, or when they offer impunity to rapists when they marry their victims, as noted above. Gaps in the legal definitions of rape can also lead to impunity as clearly seen in the Americas, Eurasia and South Asia and around the world.

Consent

Consent should be understood as agreement to sex which is given voluntarily as the result of the person's free will and assessed in the context of the surrounding circumstances. Definitions of rape need to be based on the idea of bodily autonomy and real choice, as supported by international law and jurisprudence.

Concerningly, however, many countries around the world still have definitions of rape which are based on force or the threat of force, as opposed to lack of consent. Such definitions are often interpreted to mean that those threatened with rape need to show, commonly through additional injuries they receive at the hands of the rapist, that they physically resisted the attack. This approach reflects negative stereotypes about sexuality and fails to understand the many and varied legitimate responses to rape by the victim. It also means that very many cases of rape go unpunished, which in turn bolsters perpetrators sense of entitlement and effective impunity. In Equality Now's recent advocacy report on sexual violence laws in the Americas, 23 of the 43 jurisdictions surveyed, for example, require the use of additional violence, threat, or using the victim's physical helplessness, mental incapacity, or inability to resist as elements of rape.

Key elements of a consent-based rape definition, based on international law, can be found [here](#).

Intersectionality

It is important to take an ecosystems approach and look at sexual violence laws in connection with other laws, such as trafficking and domestic violence laws. It is equally important to apply an intersectional and inclusive approach to ensure that all groups are ensured protection and are not being discriminated against on account of their disability, race, caste, religion, age or any other status or socio-economic factor.

Adolescent girls are more vulnerable to being subjected to sexual violence. Gender-based myths around adolescent girls as 'temptresses', combined with loopholes in the law such as the *estupro* provisions in Latin America for example, and specific difficulties faced by adolescents in accessing justice contribute to impunity for rape of adolescents. When girls are married off before the age of 18, often facilitated by sex discriminatory minimum age of marriage laws, they may face a lifetime of rape and sexual abuse. At the same time, they should not be criminalized for engaging in truly consensual sexual activity with peers.



VIOLENCE LAWS - RIPE FOR REFORM

Below are **examples** of laws that must be amended or repealed, as highlighted in our 2020 report, *Words and Deeds: Holding Governments Accountable in the Beijing +25 Review Process*, and limited progress made since 2020.

Rape



BAHAMAS: Section 3 of Bahamas' Sexual Offences and Domestic Violence Act of 1991 explicitly allows marital rape. A new bill to amend this provision and add a definition of consent is now pending. This follows years of advocacy by Equality Bahamas and others through the Stikesive campaign which calls for explicit criminalization of marital rape as soon as possible, as well as recommendations by the Committee on the Elimination of Discrimination against Women (CEDAW) and the Human Rights Council during the Universal Periodic Review (UPR) of The Bahamas.

The failure to criminalize marital rape of wives over 18 is also compounded by section 9 of the Hindu Marriage Act, 1955, which allows for the court to grant the remedy of "restitution of conjugal rights" when either the "husband or the wife has, without reasonable excuse, withdrawn from the society of the other." Allowing the court to enforce "conjugal rights" when the wife does not wish to live with her husband makes the wife vulnerable to sexual violence, particularly since marital rape is not considered a criminal offense under Indian law.



INDIA: Section 375 of the Indian Penal Code of 1860 allows a man to rape his wife, if she is over 18. Note: In 2005, India passed The Protection of Women from Domestic Violence Act No. 43 which provides for women to access various civil remedies for domestic violence including sexual abuse. In *Independent Thought v. Union of India*, the Indian Supreme Court in 2017 held that the part of Exception 2 to section 375 which *excused marital rape of minors between the ages of 15-18, was unconstitutional*. However, there are **no criminal penalties for marital rape when a wife is over 18 years old**.

The Delhi High Court unfortunately issued a split verdict in a case where the marital exception for rape of adult women was challenged as unconstitutional, with one judge ruling to overturn the provision while the other disagreed. The appeal against this decision is currently pending before the Supreme Court. We welcome a recent progressive ruling by India's top court stating "intimate partner violence is a reality and can take the form of rape" and married women can become pregnant as a result of rape by their husbands. We hope this will ultimately lead to marital rape being outlawed.



KUWAIT: Article 182 of Kuwait's Law no. 16 of 1960 promulgating the Penal Code allows an abductor to escape punishment if he marries the person that he abducted.

Laws that allow perpetrators to go unpunished if they marry their victim sanction violence in the law itself and may contribute to perpetuating or promoting violence against women and girls, including by exposing them to a possibility of further violence within marriage.

"Marry Your Rapist" laws - Kuwait - Hana's story

My life stopped when I was raped and abducted. I left school and I do not go outside the house. I do not have a future.

I would encourage the government of Kuwait and Parliament to repeal Article 182 as it discriminates and violates the right of girls and women to live in dignity and not to be forced into marrying their rapists.



LIBYA: Article 424 of Libya's Penal Code provides that if the offender marries the woman against whom the offense is committed, the offense and penalty shall be extinguished and the penal effects thereof shall cease.

Sex discrimination in laws purporting to address violence, or silence on the issue within the law, can actually promote or perpetuate violence against women and girls because there is little to deter perpetrators from committing crimes or inadequate recourse for victims; intimate partner and sexual violence is disproportionately inflicted upon women and adolescent girls.

PARAGUAY: Article 137 of the Paraguay Penal Code provides a lower penalty for sexual offences against adolescent girls between the ages of 14 – 16 than for rape of a child or a woman. This provision is known as an *estupro* provision. Estupro provisions too often result in impunity for rapists when the victim is between 14 and 16 years old.

Estupro laws - Ecuador - Paola's story

Paola Guzmán was raped for a period of two years, starting when she was fourteen.

As told by her mother, Doña Petita -

I later found out that it was the Vice Principal who had been standing over her when she was dying, who had impregnated her. Paola was a girl and he was a man in his 60s but people blamed my daughter, saying that she must have seduced him. They didn't understand that he was an old man manipulating her and not the other way around. She was the victim.

Ecuador's *estupro* provision provides a penalty of 1-3 years' imprisonment (far lower than the penalty for rape) for perpetrators who resort to deceit to engage in sexual intercourse with persons between the ages of 14 and 18. Paraguay has a similar law, highlighted above.



SINGAPORE: Article 375 and 376A of Singapore's Penal Code provide marital immunity for sexual activity with minors under the age of 16 who are said to "consent".

These provisions encourage "child marriage" and assume the children, mostly girls, are willingly consenting to sexual activity and not coerced merely because they are married to the offender.

This issue is highlighted in our [joint submission to the UN CEDAW Committee](#) for its List of Issues to be directed at the Government of Singapore in advance of their future dialogue on how Singapore is implementing the Convention on the Elimination of All Forms of Discrimination against Women.



THAILAND: Section 277 of Thailand's Criminal Code, B.E 2499 (1956) provides marital immunity for sexual intercourse with girls under the age of 15 who are said to 'consent', and allows a man who rapes a girl between the ages of 13 to 15 to escape punishment by marrying the victim.

Laws explicitly allowing marital rape treat the wife as the property of the husband, and render her vulnerable to sexual violence and abuse within marriage.

Domestic Violence



IRAQ: Article 41 of the Iraqi Penal Code No. 111 of 1969 gives a husband a legal right to punish his wife within certain limits prescribed by law or custom.

Laws that allow men to “punish” or “correct” their wives sanction violence within the law itself and may be perpetuating or promoting intimate partner violence against women and girls. This issue was highlighted in our 2019 [joint submission to CEDAW](#) in advance of CEDAW’s dialogue with Iraq on how it is implementing the Convention on the Elimination of All Forms of Discrimination against Women. The Committee subsequently [recommended](#) that Iraq:

14. (a) **Repeal article 41 of the Penal Code** which currently states that “Iraqis are free in their commitment to their personal status according to their religions, sects, beliefs, or choices, and this shall be regulated by law” with the aim of guaranteeing equality between women and men, in line with the Convention and article 14 of the Constitution;

(b) **Repeal all sex-discriminatory provisions in the Penal Code, the Code of Criminal Procedure and other legislation, regulations and directives;**

(c) **Review and enact the draft Law on Protection against Domestic Violence with a view to ensuring that adequate penalties are imposed on perpetrators of violence against women.**

22. (b) **Take measures to accelerate the adoption of the draft Law on Protection against Domestic Violence;**



NIGERIA: Section 55(1)(d) of the Penal Code of Northern Nigeria provides that an assault by a man on a woman is not an offense if they are married, if native law or custom recognizes such “correction” as lawful, and if there is no grievous hurt.

“Honor” Killings



EGYPT: Article 237 of Egypt’s Penal Code No. 58 of 1937 allows for a lesser punishment for men who kill their wives on discovering them in an act of adultery than for other forms of murder.



SYRIA: Repealed! – The Permanent Mission of Syria to the United Nations informed Equality Now that the law was repealed in March 2020. Law No. 2 of 2020 repealed Article 548 of the Penal Code which granted a mitigating excuse for crimes of “honor” and thus a much lesser penalty.

In 2009 Syria amended Article 548, which previously completely exempted men who killed their female relatives for “honor” from punishment. This amended law, rather than treating “honor” killings as any other murder, merely imposed a minimum two year prison sentence. In 2011 Syria again amended Article 548, which previously imposed a minimum two year prison sentence, to raise the minimum sentence to five years but placed a ceiling of seven years maximum. The punishment for murder is hard labor for 20 years.

Honor Killings law - Pakistan - Saba's story

At age 19, Saba eloped to marry a young man she loved. When her father called her home, supposedly to reconcile, he and her uncle shot her in the head, put her in a bag and threw her in a river in Pakistan. The reason? She had brought dishonor onto her family. As her father said, “I did the right thing. My honor has been restored.”

Amazingly, Saba survived and her powerful story is told in Sharmeen Obaid-Chinoy’s Academy Award winning film, *A Girl in the River: The Price of Forgiveness*.

Since then, a new anti-honor killings law included harsher punishments and [partially](#) closed a loophole allowing legal heirs to pardon perpetrators who are usually also a relative. More needs to be done to [implement](#) the law.

WORDS & DEEDS

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