

WFWPI Human Rights Journal

2nd Edition

UN Office, Geneva

Women's Federation for World Peace International



Authors :

Meroyi Adebawale Kemi

Fumiyo Vanalderwelt

Nancy Yazbik

Lydia Wood

Heather Rainey

This publication is brought to you by WFWPI UN Office Geneva

ALL COPYRIGHTS BELONG TO THE ABOVE CREATORS OF THIS MATERIAL

About Women's Federation for World Peace International :

Mission - Empowering women as peacebuilders and leaders in the family to transform the community, nation and world. Through education, advocacy, partnership, reconciliation and humanitarian service, WFWPI aims to create an environment of peace and well-being for future generations and people of all races, cultures and religious creeds.

Vision - Women working together to realize one global family rooted in a culture of sustainable peace.

WFWPI UN Office Geneva :

Director, UN Offices : Mrs. Carolyn Handschin

Assistant to the Director of UN Offices : Ms. Srruthi Lekha Raaja Elango

Content

1. Gender Inequality and its Impact on Women Empowerment in Nigeria.....2
2. The abuse of the elderly in the care facilities and human rights in France.....11
3. The Gender Based Violence faced by Indigenous Women in Canada and Australia...38
4. How India's Justice System has Failed Dalit Women and What Needs to Change....61
5. Women in Jordan: Detention, Ownership, and Honor crimes.....85
6. Winter Human Rights Forum 2022 report.....105

Gender Inequality and its Impact on Women Empowerment in Nigeria

Meroyi Adebawale Kemi

Abstract

Gender equality was declared as human right by the United Nations. The United Nations Human Rights Council (UNHRC) clearly condemns gender inequality. Advocates of gender equality strongly make moves to enact policies to favour women empowerment so as to give more women access to political, economic, educational equilibrium as the male. This research paper examined gender inequality and its impacts on women empowerment in Nigeria. It express the how and why gender inequality is still prevailing in Nigeria as one of the developing countries major dilemma. It examines the limiting factors that inhibits gender equality and why gender gap is getting wider. It highlighted the extent of the mediating impact of governmental policy towards closing the gender-gap on women empowerment in Nigeria, with special focus on what legal, political enabling environment has been created for women empowerment in all ramifications in Nigeria. This research work advocated for need to empower women so as to overrule the negative impacts of gender inequality on women economic, political, psychological and educational advancement in the Nigerian society. Significantly this work proffer solutions to serve as recommendations to mitigate gender inequality and its impacts on women empowerment in Nigeria.

Key words: gender inequality, impact, Women empowerment, gender gap, policy.

Introduction

One of the major challenges most developing countries are battling today and which is globally been advocated against is gender inequality. It is widely asserted that women and girls make up half the world's population, yet women and girls are undervalued and discriminated against especially in developing nations. They were not given the same terrain to flourish on as the men in terms of access to empowerment and development. This trend has negative impacts on women empowerment. The millennium Development Goals listed gender equality and women's empowerment as the third of the eight of its goals (Kabeer, 2005) Equally gender equality is the fifth goal of the sustainable development goals. According to history, it was widely accepted that the word, gender emanated since the 1970's as a term to distinguish between a man and a woman roles and responsibilities. (Owolabi, 2021) affirmed that in Nigeria men receive more preferential treatment over the issues of economic empowerment and inheritance than women.

This is largely due to norms, institutional factors and many undocumented laws guiding each tribes in Nigeria.

Even though there were many advocacy by governmental and non-governmental groups for equality between men and women or boys and girls to education, technology, access to funds, vocational training for empowerment, yet, the gender inequality rate is still highly voluminous in Nigeria. The gap is still quite wide. In my recent interview of some girls and women in a rural area majorly a slum, the women have been mentally grilled to believe that men are more superior to them, and so they must accept their fate to labour for men and that, they must remain quiet when opportunities arise for both genders, so that the men or boys can have the benefits. In some cases, extreme violence is melted to any woman/girl that tries to question this norms (Women, 2017)

Over the years, gender equality clearly became a human right especially as advocated for by the United Nations so as to bridge the wide gap that existed between the male folk and the female folk, in terms of access to get empowered economically, politically and educational rights. Though women constitute 50% of the world population, yet it has been asserted that women have less opportunities than men in terms of empowerment. Women are underrepresented, less empowered than men especially in developing countries of which Nigeria is one. (Jenyo, 2016) inferred that most Nigerian women are subject to domination and series of discrimination as a result of privilege given to men over them.

In most scenario men are given more access to economic empowerment programs than women. While in every case women are stereotyped to the believe, that the place of the woman or girl is the home front. The believe or doctrine passed down is that, a woman place is to serve as the house keeper and nothing more. It was reported but not published that a President of a popular African Country even publicly declared to a famous broadcasting station that his first lady place is the kitchen and nothing more. This confirmed the fact that most Nigerian women/girls are undermined economically, socially, politically and are not empowered as a result of gender inequality. The result is the negative impact it has on Nigerian women psychologically, emotionally and mentally. The end result is lack of self-confident, sicknesses, gender violence against women and intimidation that were not reported and in some circumstances this leads to death. (Anyalebechi, 2016), opines that certain underlying factors are still inhibiting women empowerment in Nigeria which ranges from inclusion to stigmatization and discrimination arising from norms and cultural beliefs. According to a United Nations paper (divided, 2013), confirmed that all in all gender disparities favours men as gender stereotypes and cultural norms reinforce gender identities and leads further to wider gap of gender inequality as all conditions favours men over women.

In all its session, though the United Nations is dedicated to proceeding on its various policy for gender equality and the empowerment of women and girls, yet much is needed for these gender inequality to be eradicated especially in developing nations. One of the solution is for creation of awareness to educate women and girls more, on their human rights and to emotionally divorce their mindset from the stereotype of second class fiddle that they have been bullied to believe.

While effort should be made to work on how women can have access to empowerment trainings to better their lives and make use of their potentials, it is important for the United Nations to enact policies that will enforce compliance from developing countries through their parliaments to support the policies implementation. In Nigeria more than 90% of the women and girls are already emotionally demarcated religiously to believe that men are more superior to women/girls and as a result more opportunities for empowerment is willingly seceded to men. In some tribes in Nigeria for instance girls are raised as early as five years (5) to be betrothed) and they are been brainwashed that all opportunities for development is the sole rights of their husband or the men. This is why the launch against gender inequality must be tactically and psychologically managed to achieve results in Nigeria.

Research Question:

1. How does gender inequality impact women empowerment in Nigeria ?
2. What factors inhibits women empowerment as a result of gender inequality in Nigeria?

Issues of Women Empowerment and Concept of Gender Equality

Globally, empowered people rise to become intrapreneurs and entrepreneurs who navigate the world economies through their contributions in diverse forms. In recent times, issues bothering on women empowerment have been addressed in different context globally, indicating the significance of having women as viable economic contributors to their nations. In Nigeria women constitute 50% of the entire population, as a result of this, more attention needed to be paid to women empowerment.

Gender is a term introduced by Feminist scholars in the 70's to distinguish between biological sex of men and women as well as roles and tasks the society consider as suitable for men and women. On the other hand gender equality referred to men and women been given equal power and opportunities to education, technology, financial independence and development in all ramifications. Women empowerment then can be asserted as the dire module to achieve gender equality so as to overrule the magnanimous issues of gender inequality bedeviling the development of women in Nigeria and Africa continent as a whole. Drawing from the foregoing yardsticks, it shows therefore that, there is need to focus on the underlining issues that have

excluded and marginalized women empowerment and agitate for removal of all gender inequality factors to achieve gender equality. From the foregoing, there is need for evaluation of governmental policies that will serve as the measuring modalities to assess the impacts of gender inequality on women empowerment and development in Nigeria. Through this can the issues facing women empowerment be settled.

How and Why Institutional Factors Inhibits Gender Equality in Nigeria

Generally most society have various socio-cultural and institutional factors that guides it. In Nigeria and most African communities there are various norms that have been enshrined and mostly instituted as yard stick for ruling and already accepted as the right way of living. However, these institutional factors have their roots in religious beliefs, fundamental rules and laws put in place by founding fathers of society that have psychologically affected the way issues relating to empowerment of women are inhibited. The biblical myth that regards women as weaker vessels has been misinterpreted to regard women as incapable of been given power or giving opportunities to explore (1 Peter 3:7). Other inhibiting factors are the believe that supporting or empowering a woman is a useless venture especially in some Northern communities in Nigeria. The girl child has been brain washed to accept that she is not and will never enjoy same equality with the boy or man. In Eastern Nigeria the girl or woman is not given the same right to inherit property as the male. In Western Nigeria the girl or woman is seen as incapable to totally be in charge or control of power, the belief is that, she needed a man to support her. Difficult as this beliefs are, yet there were instances of some brave women that have risen above this status quo and stereotype, examples are Mrs. Ngozi Okonjo-Iweala- Current President of World Trade Organization. Also legal and regulatory issues are other major constraints to women empowerment. Though policies are enacted and some laws are designed in the name of fighting gender inequality and empowerment of women, the outcome is low with less success stories. This constraints are the most difficult to overcome, yet they are majorly inhibiting women empowerment. Most violence committed against women are under reported and this have negative impacts on women and girls. In the Political climate of Nigeria, women occupy only 6% of seats compared to men. The order of discrimination against women empowerment cannot be hidden as obvious in the number of seats women occupy in the Nigerian national Assembly. The discrimination simply spell the inequality culture already synced into Nigerian mindset by both the female and male, but which the male majorly make best use of to achieve their selfish goal. Recently the bill to give more special seats to women in the national Assembly was blatantly rejected by the law makers in Nigeria . Majority of them are men, no wonder it was easy to reject the bill.

Why does the Gender Gap Persist in Nigeria

Nigeria is Africa largest nation with over 200 million people. However despite government policies put in place to mitigate gender inequality, yet it seems like an elephant projects, due to many underlining factors. The convention on the elimination of all forms of discrimination against women (CEDAW) adopted in 1979 by the UN General Assembly and accepted by 180 states, clearly outlines the rights and equality of women, their freedom from discrimination and equality under the law. Consequently because of mix-up of priority, the gap between the Millennium Development Goal of promoting Gender Equality and its actualization in Nigeria was getting wider, however, the dilemma faced by Nigerian government that is typified by misgovernance, lack of political will, the prevailing patriarchal culture, false public investment and the absence of adequate productive capacity always marred the opportunities for women empowerment and development. This problem explains the inevitability and imperative of a pragmatic action-based approach that will translate one of such factors is welfare issue of women. In Nigeria most women basically use their income for the welfare of their families more than men. A woman will go extra mile to fend for her children. In most cases women lack access to same opportunities as the male counterpart because of the institutional factors that have been embedded in our society.

Other factors are Natural Partnership. This is usually prominent as most men will naturally want to partner with a man than a woman. This has effect on women managed businesses. The most obvious factor that has really enlarged the gender gap, as well as pronounce the low level of women empowerment in Nigeria, is Ownership ratio of businesses.

Most successful businesses in Nigeria are owned by Men. Men have more access to business space than women and access to funds and more business information than women. Networking channels are more easily accessed by men than women. The list of inhibiting factors is endless. The rhetoric question of why the gender inequality is still persisting is because, the mindset of women is dangerously caged by psychological imprisonment of male headship and religious and institutional norms. Thus, the gender gap will continue to prevail in Nigeria as long as the psychological believe is still very much in the mindset of Nigerian women. Secondly the gender gap will continue to get wider and wider in Nigeria if more awareness forum is not created to explain that women empowerment is critical to national development. I believe that if we train a woman we train a nation. The gender gap which is the core reason for gender inequality will continue to persist if men do not cease to see women as competitors but as forces needed to cement and complement growth and development of any nation. This bring the need for more awareness to be created to lecture both men and women on the need to collaborate to make gender equality to work in Nigeria.

Specifically there is need to build vocational training Centre's that will focus more on informal way of training to integrate the very low and vulnerable women for empowerment. This is what an NGO SABMER Charity and Empowerment Foundation is agitating for. The NGO is seeking

assistance from both private, public and United Nations to support her project so that help can reach women who are uneducated to get vocational training in an informal setting so as to remove the shame of not been educated formally, which is deterring most women from registering to get empowered.

Source: Women Business and the Law article 2012 on Removing barriers to economic inclusion

Impacts of Gender inequality on Women Empowerment in Nigeria

Among the Prevailing negative impact challenging women empowerment and gender equality is the traditional way of raising of both genders, religious tenets and threatening of gender equality with kid glove by the government. The impact resulting from these factors are negative to national growth. Clifford Sibani a feminist writer clearly cited that gender inequality is at the apex level due to high bias between men and women in all ramifications. Superiority of the male over the female is elaborately spelt out in Nigeria political, economic, social, religious and even within the family home front. The society norms have more of negative impact on women empowerment, because more norms promote gender inequality in Nigeria. The Patriarchical practice in Nigeria has more implications of negative impact on women in Nigeria and this norm is anchored against gender equality. The patriarchal practice promotes more of gender inequality from all angle as were exacerbated in various journals on women issues across board in Nigeria specifically and Africa at large. Other scholars who wrote on impacts of gender inequality on women empowerment and development in the literature, have cited violence as another killer dose, that is affecting women in Nigeria due to gender inequality. Most women were violently violated and were threatened from reporting the assault. Other implication of this vices against women is depression, low self-esteem and psychological torture and mental health which most women do not survive.

Comparison of Gender Equality in Nigeria to Rwanda Society

In 81 percent of the world's legislature, it is recorded that women occupy less than a third seats. Women representation in Nigeria at top levels leadership and political position is quite low. This for instance is evidence in political positions in Nigeria, where women representation at both the senate and House of representative is 29 which stands at 6% out of the 469 seats. This is very infinitesimal to men representation in the senate and house of representative at 440 which stands at 93.8%

Nigeria table of representation of Women to Men representation in Political seats

Characteristics	Men	Women	% of representation in Political seats in Nigeria	Women	% of representation in Political seats in Nigeria	Men
2019	440	29	6%		93.8	

2015-2019	438	31	6.6	93.4
2011-2015	438	31	6.6	93.4
2007-2011	435	34	7.2	92.8
2003-2007	445	24	5.1	94.9

Source:

Statistica

<https://www.statista.com/statistics/1261110/gender-representation-in-national-parliament-in-nigeria/>

Total number of seats in Nigeria senate and house of representative is 469, from the table above it is quite clear that the political gap between men and women is quite wide and this is an evidence of gender bias, gender inequality and low empowerment of women which result to the figure above in Nigeria's political table.

On the other hand Rwanda a country in East Africa, has women occupying 64% of the Rwanda national legislature, which is the highest globally. The genocide of 1994 paved the way for this high level of women representation because of the vision of the President of Rwanda Paul Kagame.

The representation in both countries clearly shows that Gender inequality is still very high in Nigeria due to biases against women leadership acumen. However real as women occupy 64% of parliament, yet in the real home front, gender inequality is still very high in the Rwanda society. The local women see's agitation for women liberation, gender equality as the westerners idea. The real Rwandan woman totally see the men as the main leaders and thus, should be worshiped. This is a clear case of oxymoron and paradoxical position which is difficult to uncover as trying to uncover a black box.

Some Facts about issues on Women Empowerment and suggested solutions

s/n	Challenges	Solutions
1	Few female role Models	Need for women/girls to network and get role model that promote women course
2	Lack of awareness on skill acquisition	More governmental and non-governmental policy should create more awareness on skill acquisition Centre's for women to gain vocational knowledge informally/formally

3	Barriers to access funds	Barriers/bias in granting funds to women should be removed and more grants should be given to women enterprise to use
4	Limited vocational Centre's	Creation of vocational centre's that is informal in it teaching module, will greatly increase women/girls participation in having interest to register for the program
5	Regimented Mindset	Need for women/girls to get out of the mindset of the men must have it all, should change to 'we can do it'

Summary, Conclusions and Recommendation

This research paper examined gender inequality and its impacts on women empowerment in Nigeria. It highlighted concepts of Gender equality and women empowerment and issues affecting women across Nigeria. The institutional factors that limited and inhibited gender equality were discussed. The how and why gender inequality is still prevailing and persisting in Nigeria were pointed as the various monstrous quagmire affecting women empowerment and liberation. Effort were made to see the extent of the mediating impact of government policy towards closing gender-gap, which yielded no great result as most law makers in Nigeria are against giving more women more seats in parliaments. This has a spill over on the entire system and a multiplier effect on issue of gender equality acceptance and positive effect in Nigeria. The result of which is a negative impact on women empowerment and gender equality. The extent government campaign against gender inequality shows no positive impact, as most policies are toothless in addressing gender inequality in Nigeria. This research paper advocated for awareness to heal women of the psychological brainwash they were brought up to accept as well as need to help women to gain self-confidence by overcoming the dependence on men mindset through awareness creation on the 'we can do it' campaign. The research paper advocated for creation of informal vocational centre's to train women in an informal way through teaching using the language the women were more comfortable with to achieve a good proportion of liberated women ready to be empowered.

Expected Impact if Gender inequality is removed and women empowerment encouraged

- Economic empowerment will be boosted
- Poverty reduction /Job Creation will be higher
- Employment growth will slant forward positively
- Decent working environment will be created to include women

- Political rights and inclusion of women in office will be increased
- Access to funds, good health care and education will be the fundamental rights of women
- Mental empowerment will increase, while freedom from male dominance that leads to Psychological syndrome will gradually disappear

Conclusion

This research paper has focused on Gender Inequality and its Impact on Women Empowerment in Nigeria and has cited how gender inequality impact women empowerment in Nigeria as well as what factors inhibits women empowerment as a result of gender inequality in Nigeria. It highlighted problems created by institutional and religious and social norms that inhibits gender equality in Nigeria. It showcase reasons why the gender gap is still persisting and why enabling environment for women emancipation is still a quagmire. In conclusion government is advised to create an enabling environment that will embrace women empowerment, remove the status quo and create a free room for both women and men to thrive in. More advocacy for gender equality by Civil Society Organization should be more improved on. This is the only way the negative impact can be eradicated and gender equality can be achieved in Nigeria and developing nations.

Recommendation

Based on the findings and elaboration on the research paper, the following recommendation have been enumerated;

- Government, NGO's and other concerned institutions should spend more resources and time to put in place stricter policies to embrace women empowerment from the grassroots level to the highest cadre of society to give women a room to thrive in.
- More flexible policies to grant access to funds should be put in place in favour of women.
- Institutional, religious and socio-cultural norms that is clearly against gender equality should be removed to allow gender equality to be achieved.
- The issue of stereotyping and gender-gap should be removed through enactment of laws prohibiting stereotyping of women and biases against women should be overruled.
- Bill of gender equality should be passed into law, to allow equal seats in Parliament for both women and men.
- Vocational centre's that will encourage informal module for training should be encouraged to allow for inclusiveness for empowerment of illiterate women in having access to vocational trainings.
- Awareness campaign for women to rise up to build their potential with the we can do it mindset is very essential to achieve our goal of achieving gender equality and increase women empowerment in our society.

The abuse of the elderly in the care facilities and human rights in France

Fumiyo Vanalderwelt

Abstract

The Universal Declaration of Human Rights states that "all human beings are born freely and are equal in dignity and rights." This equality does not change with age. Older men and women have the same rights as those younger than themselves. Elderly rights are incorporated into international human rights treaties on economic, social, civil and political rights, but are not specifically defined.

According to Global Alliance for the Rights of Older People¹The elderly's rights do not change as they grow older. What changes is that older women and men are inherently considered less valuable to society. At the same time, as people grow older, they become more barriers to participation, more dependent on others, and lose some or all of their autonomy. These threats to their dignity can make them more sensitive to negligence, abuse, and infringement of their rights. Age discrimination is tolerated around the world. Older women and men are experiencing infringement of rights at the family, community, and institutional levels. Elderly people face very specific threats related to age discrimination, such as access to health care, employment, property and inheritance rights, access to information and education, and humanitarian response. Older people also face certain forms of violence and abuse. They face certain threats to their rights in care facilities and as caregivers themselves. Aging demographics creates new challenges, such as protecting the rights of people with dementia and older detainees, and the equitable allocation of resources in health care. Access to justice, equality before the law, housing, privacy, and the elderly 'rights over their own life, all require greater attention.

¹ Global Alliance for the Rights of Older People

Established in 2011, the Global Alliance for the Rights of Older People was born out of the need to strengthen the rights and voice of older people globally. Today, GAROP is a network of over 380 members in around 80 countries worldwide, united in our work to strengthen and promote the rights of older persons. GAROP is governed by a global Steering Group elected by our members and its work is supported by a Secretariat Coordinator.

Introduction

The article posted by L'OBS², violence at the retirement home: "My mother was screaming 'pity!'"

Scenes of abuse on a 98-year-old lady were filmed in an Ehpad³ in Arcueil, France.

In France, the accommodation establishment for dependent elderly people (Ehpad) is the most widespread form of institution for the elderly. It is a medicalized retirement home, equipped with all the related services such as catering, medical care and assistance subject to authorization, allowing its operation. An Ehpad is a medico-social facility.

Eh pads can accommodate autonomous to very dependent people (chronic illnesses); they must provide evidence of appropriate equipment and medical (coordinating doctor) and paramedical (coordinating nurse, nurses, nursing assistants, life auxiliaries) personnel, the number of which is fixed according to the reception capacity of the facility and by negotiation in tripartite agreement (Ehpad – departmental council – regional health agency) after calculation of the average coverage per resident.

February 2019, the orderly enters the room and yells, "Shut the fuck up!" Then he kicks the boarder who is on the ground, he pulls her by the legs, he grabs her by the hair... Yet we are in a reputable retirement home. The Maison du Grand Cèdre, in Arcueil (Val-de-Marne), charges the room 3,000€ per month.

The scene is told by the family of the 98-year-old lady. Suspecting violence, she placed cameras, explains France 3⁴ which reveals the drama:

"My mother was screaming 'pity me'," says a relative of 98-years-old lady live in this facility.

² By L'OBS

Posted on February 14, 2019 at 3:32 p.m. Updated on February 14, 2019 at 3:41 p.m.

<https://www.nouvelobs.com/faits-divers/20190214.OBS0207/violences-a-la-maison-de-retraite-ma-mere-hurlait-pitie.html>

³ EHPAD Établissement d'hébergement pour personnes âgées dépendantes

⁴ France 3 is a general-interest French public service television channel with a regional vocation, which succeeded France Région 3 (FR3) on September 7, 1992 and is part of the France Televisions' group. Its identification color within the public television group is blue and is found on all its antenna dressing.

As soon as the facts were known, Adef Résidence laid off the employee. "This is serious abuse committed against a resident", recognizes the management of the Ehpad.

The attacker was placed in police custody, according to France 3, and an investigation is open to find out if other abuses took place in the facility.

In 2022, a scandal of a company that was considered to be a good company is making a fuss in France.

The French National Financial Prosecutor's Office⁵ it had been directed by Jean-François Bohnert⁶, has filed a preliminary hearing on suspicion of insider trading for the former general manager of Orpea⁷, who was shaken by a scandal about abuse in elderly care facilities, reselling its shares before the company's stock price plunged. It started. Suspicions of abuse of residents and inadequate hygiene management have surfaced in the facilities of Orpea, which operates high-end facilities for the elderly, mainly in France, and it has become a big fuss in France every day. The subject of the investigation is Yves Le Masne⁸, who was dismissed as chairman and CEO of the operating company at the end of January. It has been accused of selling Orpea's holdings.

1. Elderly person's Rights

According to Global Alliance for the Rights of Older People⁹, 'Our Voices, Our Rights – What older people say about the normative elements of their right to independence and autonomy'.

⁵The Parquet national financier (PNF) is a French judicial institution proposed in late 2013 that is responsible for tracking down serious economic and financial crime. Since its installation on 1 March 2014, the financial public prosecutor has dealt with highly complex cases for which he has jurisdiction throughout France. Since 2019, it had been directed by Jean-François Bohnert

⁶ Jean-François Bohnert is a French magistrate. He was appointed as director of the Parquet national financier on 7 October 2019

⁷ <https://fr.wikipedia.org/wiki/Orpea>

⁸ Yves Le Masne has been CEO of Orpea since 2010 and member of the Board of Directors since 2006.

<https://fr.linkedin.com/in/yveslemasne> in French

⁹ Global Alliance for the Rights of Older People

Established in 2011, the Global Alliance for the Rights of Older People was born out of the need to strengthen the rights and voice of older people globally. Today, GAROP is a network of over 380 members in around 80 countries worldwide, united in our work to strengthen and promote the rights of older persons. GAROP is governed by a global Steering Group elected by our members and its work is supported by a Secretariat Coordinator.

Older people value different aspects of their autonomy and independence highly. The vast majority of older people want to see their right to autonomy and independence officially recognized by their governments or the United Nations. This is the key finding in a report by the Global Alliance that was published just ahead of the 10th session of the UN Open-Ended Working Group on Aging (OEWG) in New York in April 2019. The report is based on a consultation with 1,063 older people from ten countries in Africa and Asia. The participants were asked about six aspects of autonomy and independence that were discussed previously at the 9th session of the OEWG. The report presents recommendations for normative elements of autonomy and independence based on the participants' views.

Autonomy and independence are often used interchangeably and are interdependent.

Autonomy is making choices and decisions, with support if necessary, according to one's will and preferences. Independence is performing activities of daily life and participating in society, with support if necessary, according to one's will and preferences.

Care and support refer to the support a person needs to live a dignified, autonomous and independent life. It is sometimes called 'long-term care'. Support services offer people assistance in carrying out activities of daily life, such as taking medication, washing, eating, dressing, or getting around. Support services can also enable people to participate in their community and in society. For example, they may support people to go shopping, visit friends, go to worship, vote, and take part in groups or other events. Care and support also include support with making decisions. Supported decision-making allows people to maintain their autonomy and independence by choosing different types of support to assist them to make their own decisions and choices.

A trusted person is an individual that an older person chooses to ask for advice or other types of support before making a decision. This could be a friend, family member or someone else the older person trusts. Advance instructions are instructions about the kind of medical treatment or care a person wants to receive in the future. They are often in the form of a written, legal document, for example, a 'living will' or 'advance directive'.

Palliative care is the active holistic care of individuals across all ages with serious health related suffering due to severe illness, and especially of those near the end of life. It aims to improve the quality of life of patients, their families and their caregivers.

Normative elements are the different elements (components) that form the content of a human rights standard (also called a norm). International human rights standards are set out in international human rights treaties. Each standard is the minimum level of how all humans should be treated. If these standards are met, people should be able to live a life of dignity. On an equal basis with others means giving everyone equal opportunities to enjoy their rights. Everyone has the same human rights. Older people should have the same opportunity to enjoy their human rights as everyone else.

Older people have the right to:

1. Deciding where and with whom to live

- Choose where and with whom to live on an equal basis with others
- Access a range of support services which are available on an equal basis in home, community and residential settings in order to support their dignified, autonomous and independent living and inclusion in the community where they choose to live.

2. Making decisions about what matters in life

- Make decisions, to determine their life plans and to lead dignified, autonomous and independent lives in line with their will and preferences and on an equal basis with others
- Have their decisions respected
- Be recognized as individuals under the law and take legal action on an equal basis with others.

3. Autonomy and independence in everyday activities and participation in society

- Access to a range of care and support services to enable them to live dignified, autonomous and independent lives and be fully included in the community
- Full, effective and meaningful participation in family, social, cultural, economic, public and political life and educational and training activities.

4. Deciding about care and support services

- Information about all aspects of their care and support needs and services
- Choice and control over their care and support services, and the right to support to enable them to exercise this right
- Give and withdraw at any time their free, prior, ongoing and informed consent to all aspects of their care and support services
- Control over the planning, delivery and monitoring of their care and support
- Make legally binding documents on the type of care and support they would like and who provides it, should it be required at a future point in time
- Designate one or more trusted persons to assist them to make decisions, based on their instructions, will and preferences, about their care and support services.

5. Supported decision-making

- Support to enable them to make their own decisions and choices in line with their will and preferences
- Designate one or more trusted persons to assist them to make decisions based on their instructions, will and preferences
- Make legally binding documents to express their instructions, will and preferences in advance
- Participate in, and challenge, any decisions that interfere with the exercise of their autonomy and independence.

6. Deciding about palliative care

- Timely access to information about all aspects of their health and palliative care treatment options
- Give and withdraw at any time their free, prior, ongoing and informed consent to their palliative care treatment, and any other health matters

- Access to palliative care in a setting that is consistent with their needs, will and preferences, including, but not limited to, in the home, in hospices, in hospital, and in other care and support settings
- Support with decision-making about their palliative care, including the right to appoint one or more trusted persons to assist them to make decisions based on their instructions, will and preferences
- Make legally binding documents that set out their instructions, will and preferences around medical interventions, palliative care and other support and care at the end of life, including the place where palliative care services are provided. Older people also have the right to safeguards to enable them to exercise all aspects of their right to autonomy and independence. They also have the right to justice including access to complaint or other accountability mechanisms and redress when their right is denied.

2. Discrimination

The Global Alliance for Rights of Older People¹⁰ said, the discrimination that older men and women face is also complex, often based on two or more factors, such as age and gender, ethnic origin, where they live, disability, poverty, sexuality, HIV status or literacy levels. Older women are particularly vulnerable to discrimination based on both age and gender. The impact of gender-based discrimination against girls and younger women is carried into old age and unless addressed continues from one generation to another.

Age Discrimination is when someone is treated differently, with an unreasonable or disproportionate impact, simply because of their age. It is a violation of older people's rights. Age discrimination can be direct, for example, upper age limits on credit or micro-finance that prohibit older people accessing finance, or indirect, such as not collecting data on HIV infection in women and men over 49. This failure to collect data results in the exclusion of older people from HIV and AIDS prevention programs, and, therefore, discriminates against them.

¹⁰ Secretariat Coordinator – Ellen Graham, Email: info@rightsofolderpeople.org
<https://rightsofolderpeople.org/what-are-older-peoples-rights/>

Ageism is the stereotyping and prejudice against older people that can lead to age discrimination. At one end of the scale ageism may seem harmless, for example, when older people are patronized on TV, in films and in advertising. However, research by Yale University showed that negative stereotypes of older people in the US had a harmful impact on older people's memory, balance and even how long they lived for. At the other extreme, older people, especially women, can be accused of witchcraft because of age and gender stereotypes and then forced out of their homes or even murdered.

3. Social insurance system (Assurance social)

Old-age insurance system¹¹ (Assurance vieillesse)¹²

As a statutory basic system equivalent to the Japanese welfare pension, there are many compulsory occupational pensions on one floor. The most representative system among them is the "general system".

In addition to the statutory basic system, there is a supplementary pension system to compensate for the low level of payment. Originally a private system based on collective agreements, it is now compulsorily applied and also plays an important role equivalent to the Japanese welfare pension system. The supplementary pension system includes a system for general workers and a system for administrative staff, and it is stipulated in the collective agreement other than the extension system of the collective agreement¹³. Is widely applied to the general public and it is also widely and compulsorily applied to agricultural workers.

The pension system reform bill aimed at creating a universal pension system, which was a pledge at the time of President Macron¹⁴The election, was approved by the Cabinet on January 24 2020 and submitted to the Diet, but the deliberation has been suspended due to the spread of the new coronavirus' infection.

¹¹ Pension System

¹² <https://www.mhlw.go.jp/wp/hakusyo/kaigai/20/dl/t3-02.pdf>

¹³ Employers and labor unions (and their members) who are the parties to the collective agreement

¹⁴ Emmanuel Macron born on December 21st, 1977, in Amiens (France), has been a high-ranking dignitary and French statesman. He has been president of the French Republic since May 14th 2017.

https://fr.wikipedia.org/wiki/Emmanuel_Macron

Solidarity Allowance for the Elderly¹⁵

Basic allowance for non-contributory old-age benefits¹⁶, and in principle, those who are 65 years old or older. The amount of payment varies depending on the number of household members and income. The monthly fee is 906.81€ for a single person and 1,407.82€ for a married couple, and will be reduced if there is additional income (as of January 2020).

Social welfare measures

Elderly health and welfare measures

A. Home service

Home help service, etc. via the Community Welfare Center (CCAS: Center Communal d'Action Sociale) is being done. There are various financial resources such as social insurance safes and user burdens. Specific services include the leisure club's facility, the restaurants for the elderly, and the provision of home care services. In recent years, the enhancement of home-based long-term care has become an issue, and in each pension fund, prefecture and municipality, meal delivery is centered on housework support services for elderly people who are not covered by the Elderly Self-help Allowance (APA) described later. It provides services, day care centers, rehabilitation senior citizens' clubs, elderly transfer services, etc.

B. Facility service

Autonomous Residence (2,291 installations, 119,831 beds), long-term medical care beds (Unités de soins de longue durée (USLD): 592 facilities, 31,051 beds), Nursing homes for the elderly (EHPAD: 7,519 facilities, 611,673 beds) A total of 10,734 facilities and 769,489 floors have been developed. (December 2019)

C. Self-help allowance for the elderly (APA: Allocation Personnalisée d'Autonomie)

For people aged 60 and over who have difficulty in daily activities, 1,333,541 people are receiving the benefits as of the end of 2019.

¹⁵ ASPA: Allocation de Solidarité aux Personnes Âgées

¹⁶ General system, non-contribution pension for people who are not enrolled in any old-age insurance system

In the case of home-based services, a team consisting of doctors and social workers first visits the applicant's home, creates a support plan through discussions between the applicant and his / her family, and grasps the applicant's long-term care needs. Then, based on the report from the social medical team of the prefecture including doctors, about the certification of the care-requiring condition category¹⁷ consisting of 6 stages. A committee headed by the prefectural council chair examines and proposes, and the prefectural council chairman decides. In the case of facility services, it is the responsibility of the doctor to understand the needs of long-term care by the facility.

Table of Percentage of APA recipients certified as requiring long-term care (%) (December 2016)

	Degree of nursing 1	Degree of nursing 2	Degree of nursing 3	Degree of nursing 4	Total
At Home	2	17	22	59	100
Facility	16	43	18	23	100

Note: INSEE「Tableaux de l'Économie Française — Édition 2019」

In the case of home-based services, the benefit is the service cost minus the user's burden, and the monthly upper limit of the service cost (2021) is 1,747.58€ for the most severe need of care 1 and 2 for the most serious need of care. The level of care required is 1,403.24€, the level of care required 3 is 1,013.89€, and the level of care required 4 is 676.30€. Services covered by the benefits include housework assistance, meal assistance, night patrol services, long-term care equipment purchase costs, and housing renovation costs. In the case of facility services, the amount borne by the user is deducted from the service cost based on the long-term care fee set by the facility according to the degree of long-term care required.

¹⁷ Gir: the care-requiring degree 1 is the most severe, the benefit is only the care-requiring degree 1 to 4 in principle

4. French elderly care system

Mr. Keiichirou HARADA¹⁸ Associate Professor, Komazawa University in Japan analyzed the elderly care system in France and he explained that regarding the benefits of elderly care, Germany and Japan have introduced social insurance systems to cover them, while France provides an income. In 2002, the Individualized Autonomous Allowance (APA) was introduced with the aim of providing a universal and full-fledged guarantee that does not require entry. APA is covered by insurance, and it is a system that provides benefits mainly from taxes and social contributions for the fifth risk ("loss of autonomy"¹⁹) following the disability of old age, illness, work-related accidents, and family members. Recently, the establishment of an autonomous solidarity contribution (CSA) by "Solidarity Day" to finance the benefits for "loss of autonomy (needs long-term care)" and the allocation of financial resources for the elderly and disabled care benefits nationwide. There are new developments in which measures for persons with disabilities and measures for the elderly are now approaching, such as the establishment of the Autonomous Solidarity Safe (CNSA).

In France, the aging of the population is arriving sooner as the birth rate begins to decline earlier than in other developed countries²⁰. By 1865, he had already exceeded 7% of the total population over the age of 65, but he spent 114 years exceeding 14%, and the aging process is progressing. It was extremely gradual. The solution to France's population problem was solely aimed at raising the birth rate, and the development of systematic measures for the elderly was delayed.

The origin of the development of measures for the elderly in France after the war is up to the 1962 report "Measures for the Elderly" (Lalock Report), in which the "Study Committee on the Elderly Problems" summarized the guidelines for the measures for the elderly in the next 20 years. It can be traced back, but it was not until the 1980s that the issue of nursing care began to receive a great deal of social attention in France. Due to the decentralization reform that took place in the 1980s, the authority over the welfare of the elderly in France was transferred from the national government to the prefecture, and the special long-term care benefit (Prestation Spécifique Dépendance: PSD) was abolished in 1997 and the PSD was abolished in 2002. It has

¹⁸ Mr. Keiichiro HARADA, professor of Komazawa University, degree: LL. M., speciality of Social Security Law

¹⁹ Needs nursing care

²⁰ <https://www.britannica.com/place/France/Demographic-trends>

been trying to develop the establishment of a personalized autonomous allowance (Allocation Personnalisée à l'Autonomie: APA) and a series of new elderly care systems.

Development of elderly care system

Decentralization in the fields of social assistance and social welfare services has been promoted since the early 1980s, and in relation to elderly care, the "allocation compensatrice pour tierce personne" was established in 1975 as a national social assistance system. ACTP) was transferred to the prefecture. ACTP provided an allowance to cover the cost of assistance for adults with disabilities who required the assistance of a third party for basic movements, but there was no age requirement in the requirements for receiving the allowance. It was also provided to the elderly in need of care / dependent on older people (personne âgée dépendante). At the same time, local finances were tight as the economic crisis deepened in the 1980s, and the transferred social assistance system, including ACTP, was seen as one of the factors that worsened the prefecture's finances. In order to improve this situation, the ideal way of elderly care has been actively discussed, and in 1991, the government and the National Assembly, which after that, had a great influence on the direction of the elderly care system , have summarized the reports ("Choplan Report", "Blar Report"). These reports recommended the creation of a new systematic system for elderly care under unified financial responsibility. In order to realize these recommendations, several bills have been submitted to the parliament regarding new benefits for the elderly requiring nursing care, but none of them have been materialized due to concerns about the financial resources of the system. Therefore, the Balladur²¹ Cabinet conducted a social experiment of assistance for the elderly requiring long-term care from January 1, 1995, and used it as a stepping stone to the establishment of the system. Then, in 1997, conservative Prime Minister Alain Juppé²² created his PSD, based on the promise made by President Jacques

²¹ Édouard Balladur (2 May 1929) is a French politician who served as Prime Minister of France under François Mitterrand from 29 March 1993 to 17 May 1995. He unsuccessfully ran for president in the 1995 French presidential election, coming in third place. At age 92, Balladur is currently the oldest living former French Prime Minister. https://en.wikipedia.org/wiki/%C3%89douard_Balladur

²² Alain Marie Juppé (born 15 August 1945) is a French politician. A member of The Republicans, he was Prime Minister of France from 1995 to 1997 under President Jacques Chirac, during which period he faced major strikes that paralyzed the country and became very unpopular. He left office after the victory of the left in the snap 1997 elections. He had previously served as Minister of Foreign Affairs from 1993 to 1995, and as Minister of the Budget and Spokesman for the Government from 1986 to 1988. He was President of the political party Union for a Popular Movement (UMP) from 2002 to 2004 and mayor of Bordeaux from 1995 to 2004. https://en.wikipedia.org/wiki/Alain_Jupp%C3%A9

Chirac²³ during the April 1995 presidential election. PSD was a social aid under the jurisdiction of the prefecture, which was positioned as part of the elderly assistance for the elderly aged 60 and over with an asset survey. However, the number of PSD users has been sluggish. The reason is that receiving PSD is limited to the degree of long-term care (groups iso-ressources: GIR) 1 to 3, there is an asset survey when receiving it, and reimbursement based on the obligation to support the family (récupération) does not matter. There is a reimbursement system for inherited property and gifted property over a certain amount, there is a discrepancy between the PSD's need for long-term care and the level of benefits at home with the facility's benefit level in mind, and there are differences in benefits between prefectures. It can be roughly summarized in points. Under these circumstances, there were already calls for reform of PSD.

In 1997, the Conservative Party moved to the Socialist Party, and under the Socialist Party's Prime Minister Lionel Jospin²⁴, PSD reform was considered. In May 2000, a review committee led by the Socialist Party Senator Jean Pierre Sueur compiled a report on reforms (Rapport Sueur).

The pillar of the report was the launch of "Aide Personnalisée à l'Autonomie" (APA) as a new alternative to PSD. After consideration within the government department, the "Bill on Response to Loss of Autonomy of the Elderly and Individualized Autonomy Allowance" was submitted to the Parliament in March 2001, and after deliberation, it was promulgated on July 20, 2001.

Overview of elderly welfare services

Elderly welfare services are broadly divided into home-based services and facility services, and can be further divided into welfare services and health care services according to financial resources and the basic law. In France, the social welfare and family code stipulates the rights

²³ Jacques René Chirac (29 November 1932 – 26 September 2019) was a French politician who served as President of France from 1995 to 2007. Chirac was previously Prime Minister of France from 1974 to 1976 and from 1986 to 1988, as well as Mayor of Paris from 1977 to 1995. https://en.wikipedia.org/wiki/Jacques_Chirac

²⁴ Lionel Robert Jospin (born 12 July 1937) is a French politician who served as Prime Minister of France from 1997 to 2002. Jospin was First Secretary of the Socialist Party from 1995 to 1997 and the party's candidate for President of France in the 1995 and 2002 elections. In 1995, he was narrowly defeated in the second round by Jacques Chirac. In 2002, he was eliminated in the first round after finishing behind both Chirac and far-right candidate Jean-Marie Le Pen, prompting him to announce his retirement from politics. In 2015, he was appointed to the Constitutional Council by National Assembly President Claude Bartolone.

and freedoms of welfare service users, and requires that users be actively positioned in welfare services for the elderly.

(1) Home service

The center of welfare services is the home help service (service d'aide à domicile), which provides housework assistance (aide-ménagère) such as cleaning, shopping, and cooking. The home help service includes statutory benefits (Social Welfare and Family Code (hereinafter referred to as CSAF) L.231-1) provided to people aged 60 and over who are in need of living as part of the prefecture's social assistance, and national old-age insurance. There are voluntary benefits such as safes (CNAV). In either case, the prefecture and his CNAV are not the actual service providers, but only bear the costs. On the other hand, as a main home health care service, there is a home nursing service (service de soins infirmiers à domicile: SSIAD). SSIAD provides nursing services such as bed baths and pressure ulcer treatment and health care at home by practicing nurses within the legal scope of work (CASF D.312-1 and below). The cost of SSIAD comes from medical insurance resources. In France as well, cooperation between health care and welfare in home-based services has long been an issue, and in 2005, his SSIAD revised the cooperation between social workers and nurses.

(2) Facility service

Facilities for the elderly requiring long-term care (établissements d'hébergement pour personnes âgées dépendantes: EHPAD) is a welfare facility that covers all the needs of the elderly, such as logements-foyers, which are housing facilities for the elderly who can lead autonomous lives, and daily life support and meal provision. Elderly housing with care (maison de retraite), a long-term medical facility (unités de soins de) for elderly people who have difficulty in autonomy in their daily lives and need medical care longue durée: USLD) and so on.

5. Three key definitions of abuse used in research on older women²⁵

²⁵ <https://www.un.org/esa/socdev/documents/ageing/neglect-abuse-violence-older-women.pdf>

1. Social Gerontology (Toronto Declaration): Elder abuse is defined as “a single or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person. It can be of various forms: physical, psychological, emotional, sexual, and financial, or simply reflect intentional or unintentional neglect.” (WHO, 2002).
2. Adult Protection (National Research Council - NRC): Abuse of vulnerable older adults refers to “intentional actions that cause harm or create a serious risk of harm (whether or not harm is intended) to a vulnerable elder by a caregiver or other person who stands in a trust relationship to the elder, or failure by a caregiver to satisfy the elder’s basic needs or protect the elder from harm” (NRC, 2003, p. 40).
3. Intimate Partner Violence (CDC): Intimate partner abuse is defined as violence against women that “incorporates intimate partner violence (IPV), sexual violence by any perpetrator, and other forms of violence against women, such as physical violence committed by acquaintances or strangers” (Saltzman and others., 2002).

We also need to be aware of various cases of abuse and assault. Being beaten is not the only abuse. Ignoring or not respecting should also be seen as abuse. The following is a description of possible abuse and violence or neglect.

FORMS OF ABUSE

Neglect, abuse and violence against older adults, also referred to as mistreatment of older adults, or elder abuse, is defined further by different forms of abuse, categorized for research, policy and practice purposes (Sethi and others, 2011). Main forms used to categorize abuse of older women include: neglect, physical abuse, sexual abuse, psychological (also called emotional, verbal and non-physical) abuse, and financial (also called material) abuse or exploitation (Luoma and others, 2011).

Different conceptual frameworks use a combination of different forms to operationalize abuse. The Social Gerontology and Adult Protection frameworks use most of the forms cited above.

The Intimate Partner Violence (IPV) framework uses physical, sexual, and psychological forms of abuse, but not neglect and usually not financial exploitation (unless included in a measure of psychological abuse) (Saltzman, 1992; Stöckl and others, 2012).

A. Neglect

Neglect is defined as the refusal or failure of responsible caregivers to provide a care-dependent older adult with assistance in daily living tasks or essential support such as food, clothing, shelter, health and medical care. This can also include desertion of a care-dependent older adult, also called abandonment (WHO, 2002).

B. Physical abuse

Physical abuse includes actions intended to cause physical pain or injury to an older adult, such as pushing, grabbing, slapping, hitting, or assaulting with a weapon or thrown object. Violation or infringement of personal rights, or social abuse, is used as a distinct category of abuse in some studies (Luoma, 2011; Yan & Tang, 2001). Linked to the concept of individual rights, this form of abuse includes the infringement of personal rights as a form of elder abuse (Luoma and others, 2011). It includes behavior that violates an older person's privacy, autonomy, freedom and access to family and friends. These represent the "control behaviors" cited in the CDC definition of psychological abuse (Saltzman and others, 2002, p. 34). It should be affirmed here that all forms of abuse are violations of personal rights.

C. Sexual abuse

Sexual abuse can include offensive sexual behaviors as well as physical contact of a sexual nature (INPEA/WHO, 2002). Some studies of older women and abuse categorize sexual abuse as a subset of physical abuse.

D. Psychological abuse

This form of abuse includes verbal and non-verbal emotional abuse, which may be defined further as active or passive. This describes actions intended to inflict mental pain, anguish or distress on an older person (Luoma and others, 2011).

E. Financial abuse and exploitation

This form of abuse describes actions of illegal or improper use of an older person's money, property or assets (MetLife, 2011).⁴

F. Self-neglect

This form of abuse does not include a perpetrator, but rather, refers to an older person who—willfully or inadvertently, due to diminished capacity or mental impairment—neglects to meet their own basic needs and often refuses the assistance offered by others

G. Perpetrators of neglect, abuse and violence against older women

Each conceptual framework typically assumes some overlapping, and some specific, categories of perpetrators of neglect, abuse and violence against older women. The Social Gerontology framework assumes a broad array of potential perpetrators of mistreatment. These include spouse/partner, adult children, grandchildren and other family relatives, neighbors and friends, and formal and informal caregivers. The Adult Protection framework assumes many of the same perpetrator categories, while adding an emphasis on institutional caregivers/workers (such as those in care homes and hospitals) and including other residents of care homes and institutions as a category of perpetrator (Teaster & Roberto, 2004). The Intimate Partner Violence (IPV) framework includes spouses and partners, including dating partners, as perpetrators, as well as strangers in the case of stalking and rape. Some scholars and advocates of the IPV framework (Hightower and others, 2006; Brandl, 2000) have argued for expanding the categories of perpetrators in gender-based research on abuse in older women. To date, this recommendation has not been adopted universally by domestic violence researchers (Stöckl & Penhale, 2012; Garcia-Moreno and others, 2005).

Perpetrators of neglect, abuse and violence against older women

PREVALENCE, RESOURCES AND ACCESS TO DATA

A. Definitions of prevalence and incidence

The concept of a prevalence or incidence rate is generally applied to disease. Prevalence refers to the number of cases of a disease in existence at any stage of its development but short of death, during a particular time period in a given population. By comparison, incidence rate is defined as the number of new cases in a given population occurring within a specific time period (Thomas,

2000). Prevalence and incidence rates have long been used in the realm of disease to describe behavioral attributes, such as substance abuse and delinquency. The lack of consensus on what constitutes elder abuse has made its measurement a particular challenge, yet one that is an essential part of acknowledging this phenomenon as a significant social issue for the purposes of problem recognition, policymaking, program development, and practice.

Perpetrators of neglect, abuse and violence against older women

Spouse/ partner: Included in all studies reviewed on neglect and abuse of older women

Adult children: included in studies on abuse and neglect of older women in the Social Gerontology and Adult Protection framework.

Other relatives: included in studies on abuse and neglect of older women in the Social Gerontology and Adult Protection frameworks.

Neighbors and friends: included in studies on abuse and neglect of older women in the Social Gerontology and Adult Protection frameworks.

Formal caregivers: included in studies on abuse and neglect of older women in the Social Gerontology and Adult Protection frameworks.

Care home residents: included in studies on abuse and neglect of older women in the Adult Protection framework.

Strangers: included in studies on abuse and neglect of women in the Intimate Partner Violence framework.

6. Geronti innovations and Silver economy

Innovating for elderly people: the development of geront'innovations²⁶ in the French silver economy

Population aging is accelerating. Within OECD countries, the share of the over 65s in the total population rose from 9% to 15% between 1960 and 2010 and in 2050, it should rise to almost 26% of the total population. . The proportion of over 80s, which represented 1% of the population in 1950, to Rich, formerly industrialized countries are particularly affected by the aging of their populations, as shown by the evolution of the proportion of over 65s in the total population. Japan tops the list of countries with an aging population (nearly 40% of its population will be over 65 in 2050). In Europe, Spain will experience the greatest aging by 2050 with almost 36% over 65 years old. It is closely followed by Italy, Greece, Portugal and Germany. This aging can be explained by a range of factors including birth rate and immigration policy, but also social and economic inequalities that influence the mortality rate. The progression of aging on a global scale, if real, is slower and the youngest countries (which have the lowest share of the population aged 65 or over) are countries with higher birth rates. high countries such as Mexico, Iceland and Turkey, or countries attracting large numbers of immigrants such as Australia, Canada and New Zealand. However, all of them will experience a marked aging of their population in the years to come. We can also note the rapid aging of the Chinese population, which will have almost 24% over 65 in 2050 compared to 6.8% in 2000. taled 4% in 2010 and should reach nearly 10% in 2050 (OECD, 2009, 2011). In France, the over 60s represented approximately a quarter of the population in 2015. On January 1, 2015, France had 18.4% of inhabitants aged 65 or over; this is 0.5 points more than on January 1 2014 and 2.1 points more than ten years ago. Between 2005 and 2015, the proportion of people aged 75 or over rose from 8.0% to 9.1% (Insee, 2014). Longer life expectancy and the advancing age of the baby-boom generations are the main factors of this aging. Life expectancy should rise from 81 years today to 86 years by 2050. In 2050, 22.3 million people will be aged 60 or over

²⁶ Growth in the number and proportion of older people is accelerating in industrial countries. The aging of the population is both a source of risks and high costs related to dependency and its management. But it also brings opportunities for innovation and stimulating effects on growth. This is the bet made by the public authorities in France by launching a "new sector" on April 24, 2013, the "Silver economy" with the aim of bringing together the actors concerned and increasing their coordination. In this research, we propose the term *geront'innovations* to group together all the technological, but also organizational and commercial innovations generated by the aging of the population. We focus on a few key technologies (home automation and robotics) and a few application areas (food, mobility, elderly care services). Finally, we discuss the issues associated with the dissemination of these innovations.

compared to 12.6 million in 2005, an 80% increase in 45 years. It is between 2006 and 2035 that this increase should be strongest (from 12.8 to 20.9 million), with the arrival at these ages of many generations from the baby boom, born between 1946 and 1975.

Population aging is accelerating in France and most developed countries²⁷

The United Nations projects that between now and 2050 the number of older persons (65 and over) will double worldwide, from 700 million in 2020 to 1.5 billion, a proportional increase of 9% to 16%. As life expectancy continues to rise and baby boomers reach old age, France is adding 3 older persons to its population every five minutes. Developed countries' populations are aging inexorably, creating new equilibria that societies have to adapt to. Drawing on demographic data from 40 “high longevity” countries*, INED researchers Carole Bonnet, Emmanuelle Cambois, and Roméo Fontaine shed light on current aging dynamics as related to health, changes in family and couple situations, and intergenerational transfers, and identify the challenges involved, such as funding retirement pensions and aid to dependent older persons.

France is not the fastest-aging country

Population aging in developed countries is driven by composite demographic mechanics: baby boomers with longer life expectancies reaching old age, and variable proportions of younger people. Taken together, the 40 countries studied* had nearly four times as many persons aged 65 and over in 2020 as they did in 1950: 222 million now as opposed to 54 million then (Figure 1). France experienced sustained increase in its older population over that period, which sped up considerably from 2011. According to the United Nations' medium-variant projection, this “population graying” process should continue in the 40 countries²⁸, leading to nearly 324 million

²⁷

<https://www.ined.fr/en/news/press/le-vieillissement-de-la-population-sE28099accelere-en-france-et-dans-la-plupart-des-pays-developpes/>

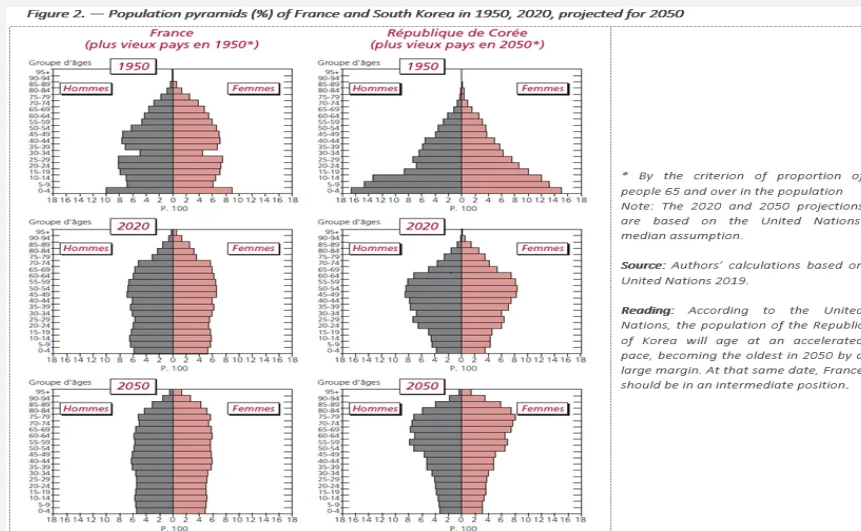
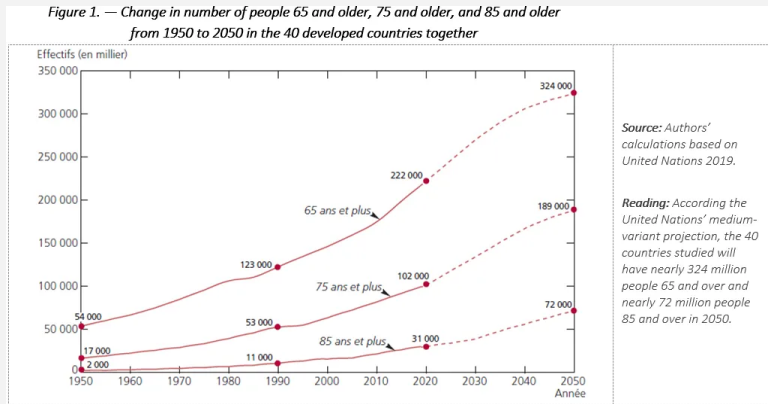
Published on 15 September 2021

²⁸ This article draws on various demographic aging indicators and situations in 40 relatively homogeneous countries in terms of health, social, and economic development—“high-longevity” countries—and projections for them for the coming decades. The analysis uses data from the United Nations' World Population Prospects 2019 and 2050 projections (medium-variant assumption) as well as data from the Human Mortality Database (HMD), which offer greater historical depth and more detailed information (number of deaths by age and birth year) on some sample countries.

* The 40 countries studied (The 40 developed countries of the sample)

— European Union (27 countries): Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands,

older persons (65 and over) (Figure 1). However, because France's composite younger population is larger than that of other countries, France is not expected to figure among countries with spectacular older person numbers. 65-and-overs should account for 28% of its population in 2050, compared to around 36% of Southern European countries' and 38% of Japan's and South Korea's. This last country is likely to be the "oldest" in 2050, whereas in 1950 it belonged to the set of "youngest" countries (Figure 2).



Years lived in a situation of “contained” autonomy loss

Poland, Portugal, Romania, Slovenia, Spain, Sweden. — Non-EU Europe (3 countries): Iceland, Norway, Switzerland, United Kingdom.

— North America (2 countries): Canada, United States.

— Australasia (2 countries): Australia, New Zealand.

— East and Southeast Asia (4 countries): Hong Kong (SAR China), Japan, Republic of Korea, Singapore.

— West Asia (1 country): Israel.

The notion of age evolves along with the aging process. In terms of “years left to live,” people in their 70s now resemble yesterday's 60 to 70-year-olds. For some, the years of life gained over the decades go together with functional disorders due to the fact that medical, health, and social advances have enabled many more people than before—including fragile individuals—to attain great old age, a time in life when health problems are especially common. Such disorders may make it difficult to perform certain activities. However, international studies indicate that particularly complex situations of the kind that lead to severe autonomy loss are usually contained—as life expectancy continues to rise. Preventing functional disorders and accompanying people who have them in order to limit their impact on basic activities are two means of containing dependency situations. And while preventing them is a major issue and objective today, care of already dependent older people is a public policy priority.

The fundamental role of informal aid to dependent older persons

In 2014, France allocated 1.4% of its GDP to aid dependent older persons policies, a figure that falls within the average for OECD countries (1% to 1.5% for most). Some allocate over 2% (the Netherlands, for example) or more (Sweden is at 3%), while others are below 0.5% (Portugal and Hungary). In many countries, the “balance” that aid users have to pay is so high that more than 90% of older persons cannot assume it on their own income alone. Indeed, assistance from older persons’ families is a fundamental pillar of the social protection system: 80% of dependent older persons receive aid from their families. In France as in Germany, nearly 10% of cohabit with one of their children (the figure is 27% in Italy and 35% in Spain, compared to less than 5% in the Netherlands and Sweden). Meanwhile, 40% of older dependent persons in France live alone (63% in Sweden and 58% in the Netherlands; 37% in Italy and 32% in Spain). The rising number of older persons in many countries calls not only for rethinking the principles on which public aid policies are founded but also increasing the resources societies allocate to them. These changes should also take account of aging people’s aspirations for higher quality care for themselves and their family members or professional caretakers at home and in care facilities.

Improved economic situation for retirees but differences in living conditions

Retirees' standard of living has improved overall in the last decades, largely due to the development of comprehensive official retirement systems. While the retiree poverty rate was high in the early 1970s, notably in France, it is now in many cases lower than for the rest of the population in the countries studied. The combination of an improvement in retirees' economic situation, lengthened life expectancy, and high numbers of baby boomers reaching retirement age has raised the question of how to keep retirement systems financially sustainable—systems designed for a very different structural equilibrium. Most of the countries studied have reformed their retirement systems to keep them financially balanced; the main approach is to set higher retirement ages. But the implications of this are not uniform across a heterogeneous population with inequalities in life expectancy, work and working conditions, health, and resources. And moves to act on other components of the equation makes system adaptation quite a difficult exercise.

Diversification of couple and family life

Population aging dynamics have gone together with significant changes in people's life trajectories, namely family life: the number of children households has fallen quite fast in some countries. Longer life expectancy, particularly men's, results in longer conjugal lives at older ages, particularly for women, who used to become widows earlier in life. In parallel, conjugal lives are less linear; separation and repatterning in old age is observed much more frequently now. These developments, which are still operative, bring with them new questions on the living conditions of older persons, the family support available to them, and intergenerational ties, questions that in large part have yet to be explored.

7. Orpea scandal

From the Le Monde newspaper²⁹ very embarrassing misunderstanding surrounding the publication of the IGAS³⁰ and IGF³¹ inspection report. For the past week, the group of private

²⁹

https://www.lemonde.fr/societe/article/2022/03/31/affair-orpea-imbroglio-autour-de-la-publication-du-rapport-d-inspection-de-l-igas-et-de-l-igf_6119922_3224.html

By Beatrice Jerome, posted march 31st 2022 at 10:31 a.m., updated at 1:32 p.m.

³⁰ The General Inspectorate of Social Affairs

³¹ The General Inspectorate of Finance

nursing homes and the government have been passing responsibility, via the media and their hearings before the Senate, for the non-dissemination of the administrative investigation.

On March 11th 2022, Olivier Véran³² undertook to “publish the entirety” of the report, “with the exception of what is covered by business secrecy”, announced the Minister of Solidarity and Health. The objective was to make all the transparency on the cases of mistreatment and financial optimization denounced by Victor Castanet³³ in his book “Les Fossoyeurs”³⁴.

The result of three years of investigation, the book denounces the excesses of the Orpea group³⁵, a private French group active in the field of health and accommodation for the elderly, managing a chain of private nursing homes, retirement homes and care clinics. This book-investigation describes a certain number of ethical and health problems: an obsession with profitability, "negligent" behavior, questionable managerial methods, a troubling proximity to senior officials and elected officials, and the practice of kickbacks and margins. back in this medico-social sector.

Once the report was submitted, on Friday March 25th, it was a turn of events. The office of Brigitte Bourguignon³⁶, Minister Delegate for Autonomy, announces that it will not be made public: “We have asked the legal affairs departments of the ministries on this point. I do not have the right to make it public for reasons of confidentiality and business secrecy,” confirms the minister in “Le Journal du Dimanche”³⁷ on March 27th 2022.

Voices immediately rose on social networks to denounce the sudden omerta. It was then that Philippe Charrier, the CEO of Orpea, in an interview with Figaro³⁸ posted online on Saturday

³² Olivier Véran, born April 22, 1980 in Saint-Martin-d'Hères (Isère), is a neurologist and French politician. He was elected regional councilor for Auvergne-Rhône-Alpes in December 2015, then deputy for the first constituency of Isère in 2017. At the National Assembly, he was general rapporteur for the Social Affairs Commission from 2017 to 2020.

³³ Victor Castanet is French Journalist

³⁴ The Edition Fayard, 13 rue du Montparnasse, 75006 Paris, 400 pages., 22.90€

³⁵ Orpea is a private French group founded in 1989 by neuropsychiatrist Jean-Claude Marian, active in the field of health and accommodation for the elderly. The company manages a chain of private nursing homes, retirement homes, care clinics and personal services in the form of home help. The group controls a network of 1,156 establishments and 116,514 beds in 23 countries, mainly in Europe. It was listed on the stock exchange in 2002. Its management methods are regularly at the heart of scandals.

³⁶ Brigitte Bourguignon, born March 21, 1959 in Boulogne-sur-Mer (Pas-de-Calais), is a French politician

³⁷ Sunday newspaper

³⁸ Le Figaro is a French tabloid daily morning newspaper founded in 1826 and published in Paris. It is the oldest national newspaper in France and one of the three French newspapers of record, along with Le Monde and Liberation. With a Center-right editorial line, Le Figaro is the largest national newspaper in France, ahead of Le Parisien and Le Monde. In 2019, the paper had an average circulation of 321,116 copies per issue. The paper is

evening, surprised by declaring: “We regret that the final report is neither made public nor made available to stakeholders. »

Turnaround, Tuesday, March 29. Before the Senate commission of inquiry into Orpea, Ms. Bourguignon said: “Let’s be clear, the government has never opposed the publication of the inspection report. Having no intention of allowing the slightest ambiguity to settle which would fuel the bad political trials that I see flourishing, I have decided, with Olivier V éran, to publish the report within a few days, taking care of course to conceal the parts that need to be. If Orpea still confirms that it does not want to completely lift business secrecy. »

8. Conclusion

The more I investigated the problem of abuse in nursing homes, the more I was surprised that the elderly were in an era where they could not be respected. Even if there are human rights for the elderly, we cannot hide the surprise that we are a society and a person who does not consider parents as parents and use them as a material for business, instead of a society that emphasizes them. We live in an important relay of life that respects, learns, and conveys the teachings to our children as those who were born into the world before respecting the human rights of the elderly. It needs to be recognized again. Managers and managers who retire from work, squeeze high occupancy fees from people living on pensions every month, and leave employees who are assaulting, neglecting, or abusive without education because they do not like it. I was amazed at the sloppiness of the society. I was also surprised by the society that is trying to build a business by the elderly. If the motive is 100% for the elderly, I think the country should fully support an investigation and service. The home is an important place for learning about life where grandparents, parents and children need each other. In Japan, there was a custom to leave nature in the back mountains. Children put grandparents who could not work in a very poor time. The back mountain was called "Ubasuteyama"³⁹. I heard that the

published in the Berliner format. The newspaper has been owned by Dassault Group since 2004. Other Groupe Figaro publications include TV Magazine and Event.

³⁹ Ubasute (姥捨て, "abandoning an old woman", also called obasute and sometimes oyasute 親捨て "abandoning a parent") is the mythical practice of suicide in Japan, whereby an infirm or elderly relative was carried to a mountain, or some other remote, desolate place, and left there to die. Kunio Yanagita concluded that the ubasute folklore is influenced by Buddhist mythology. According to the Kodansha Illustrated Encyclopedia of Japan, ubasute "is the subject of legend, but... does not seem ever to have been a common custom"

reason for "Ubasuteyama" is that my grandfather worked until his death, but after my grandmother got sick and couldn't work, she became a troublesome person who only got food, so it naturally became a female word. Am I the only one who thinks that "facility for the elderly" is comparable to "Ubasuteyama" in modern times? It is important for her older woman to become a "decision maker"⁴⁰ and to maintain

"Every Woman Has the Right to Live in Dignity"⁴¹ as a woman so that she can decide her own way of life and what she wants to do. The word feminist is not appropriate, but I think there is a problem in leaving "what I can do now" to the children, society, country and government around me as a woman or an elderly person.

A family is a place where parents and children are, but it could be a place where parents, or grandparents for their children, live together for three generations. If that is not possible, when society and the community are united in the bond of family, the elderly living in the nursing home will love the staff who will take care of them like children, and the staff will also I think I can treat the residents as kindly as my parents. When such an ideal society is created, can we think of "what I can do? " To prevent other casualties will the problems of abuse, violence and neglect in elderly care facilities be resolved?

Doctor. Hak Ja Han Moon⁴², co-founder of the Women's Federation for World Peace⁴³, stressed in her autobiography "Mother of Peace"⁴⁴, the importance and well-being of the family. Suggesting then, that "When you feel happy, you are not inclined to be mean to

⁴⁰ Decision-making From Wikipedia

In psychology, decision-making (also spelled decision making and decision-making) is regarded as the cognitive process resulting in the selection of a belief or a course of action among several possible alternative options. It could be either rational or irrational. Decision-making process is a reasoning process based on assumptions of values, preferences and beliefs of the decision-maker. Every decision-making process produces a final choice, which may or may not prompt action.

<https://en.wikipedia.org/wiki/Decision-making>

⁴¹ <https://www.unfpa.org/press/every-woman-has-right-live-dignity>

⁴² Hak Ja Han (born January 6, 1943 lunar calendar, which is February 10, 1943 Gregorian) is a Korean religious leader. Her late husband Sun Myung Moon was the founder of the Unification movement, also known as the Unification Church (UC). Han and Moon were married in April 1960 and have 10 living children and over 30 grandchildren. In 1992, she established the Women's Federation for World Peace, and traveled the world speaking on its behalf. She is the leader of the Family Federation for World Peace and Unification, in which she is called "True Mother" and "Mother of Peace". https://en.wikipedia.org/wiki/Hak_Ja_Han

⁴³ <https://www.wfwp.org/>

⁴⁴ MEMOIR / GLOBAL PEACE The Washington Times Global Media Group 3600 New York Avenue, NE Washington, DC 20002

<https://www.amazon.com/Mother-Peace-Memoir-Hak-Moon/dp/0960103120>



others”. “When we believe in our hearts that we are here for our spouse, children and family, still even beyond for humanity in the entire world, we acquire resilient happiness.”⁴⁵ Elderly care facility staff also care for their own families, still when “Altruist Education” at a larger scale, is provided in education curriculum at school as well as at home it should enhance for those staff and larger society as well as to feel steadfast peace in their heart which eventually would foster a more secure world for us all. Thus, I believe that governments worldwide should encourage such “Altruist Education”.

⁴⁵ MOTHER OF PEACE A memoir by Hak Ja Han Moon, page 280 (English version) “The path of mutual prosperity”

The Gender Based Violence faced by Indigenous Women in Canada and Australia

Lydia Wood

Abstract

Gender-based violence is something experienced by women from various cultural and ethnic backgrounds. In 1993 the UN provided a declaration on the elimination of violence against women; however, many women are still experiencing physical and sexual violence on a systematic level. Devastatingly, Indigenous women are still facing this violence at an alarming rate as a result of the impact of colonialism. In Australia, Indigenous women are 5 times more likely to experience physical violence and 3 times more likely to experience sexual violence than other Australian women. Similarly, Canada has statistics that are close to that of Australia as 6 in 10 indigenous women experience physical or sexual abuse. From these statistics, it is evident that violence against indigenous women is an issue shared and embedded in the cultures of Canada and Australia. Therefore, this paper will explore the factors that are intensifying this violence and why it is still occurring at such an alarming rate. Additionally, some recommendations will be provided to help towards tackling this issue. This is an investigation into gender-based violence that will be written from an external research position by a UK based researcher who is not Indigenous and has not faced racially motivated violence. It must also be noted that 'Indigenous' will be an umbrella term to collectively describe the various social and cultural groups native to both Canada and Australia. Additionally, the term 'First Nation' will be used as it is one used by government officials and various organisations. Finally, something not mentioned within this paper, as violence has been the focus, but can't be forgotten is the activist work done by indigenous women and communities.

1. Introduction

In the present-day, gender-based violence against women has held a problematic position in the world.⁴⁶ The UN in their 1993 declaration on the elimination of violence against women recognised the concern that violence is currently an obstacle to achieve equality for women. Within this declaration violence against women is said to constitute “a violation of the rights and fundamental freedoms of women.”⁴⁷ This violation encompasses gender-based violence that results in the “physical, sexual, or psychological harm” that can be as a result of their family, general community or the state.⁴⁸ There is a particular emphasis that some minority groups of women are especially vulnerable to this gender-based violence, and one group drawn on in this concern is indigenous women.⁴⁹ This observation highlights the current systematic violence that many indigenous women are facing still today. In fact, gender-based violence against indigenous women is deeply ingrained in the colonial cultures of countries such as Australia and Canada, which will be focused on within this paper. To be able to understand the pattern of violence that is occurring against indigenous women in these countries we must use an intersectional approach in the analysis of the issue.⁵⁰ This will provide us with the ability to grasp the interconnections and overlaps between the various forms of marginalisation and subjunction that indigenous women face and enable us to go beyond male-dominated concepts of race and white-dominated conceptions of gender.⁵¹

Racialised and sexualised violence against indigenous women in Canada is a systematic issue and has resulted in indigenous women going missing or being murdered at an alarming rate.⁵² In fact, the problem of missing and murdered indigenous women is the most pressing issue facing indigenous communities across Canada today.⁵³ The issue has become so commonplace in

⁴⁶ C. Enloe, *The Curious Feminist: Searching for Women in a New Age of Empire* (Berkeley: University of California Press, 2004), 80.

⁴⁷ General Assembly Resolution 48/104, “Declaration on the Elimination of Violence against Women,” *Office of the High Commissioner*, December 20, 1993, <https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx>.

⁴⁸ *Ibid.*

⁴⁹ *Ibid.*

⁵⁰ Rauna Kuokkanen, “Globalisation as Racialised, Sexualised Violence,” *International Feminist Journal of Politics* 10, no.2 (2008): 218.

⁵¹ *Ibid.*

⁵² D. M. Lavell-Harvard and Jennifer Brant, *Forever loved: exposing the hidden crisis of missing and murdered indigenous women and girls in Canada*, (Ontario: Demeter Press, 2016), 32.

⁵³ Robyn Bourgeois, “Generations of Genocide: The Historical and Sociological Context of Missing and Murdered Indigenous Women and Girls,” in *Keetsahnak, Our Missing and Murdered Indigenous Sisters*, ed. Kim Anderson, Maria Campbell, and Maria Belcourt (The University of Alberta Press, 2018), 65.

Canadian society, in the present day, that volunteers have organised to dredge the rivers such as in the city of Winnipeg to look for the bodies of missing indigenous women and have often found women's underwear.⁵⁴ Therefore, despite attempts by various organisations and the government, still today indigenous women in Canada are living in fear of and facing incidents of violence exponentially.

Similarly in Australia violence against Indigenous women has become deeply ingrained in Australia's colonial history, which has resulted in the murder, rape and sexual abuse of indigenous women being repeatedly condoned.⁵⁵ This violence is occurring at a systematic rate compared to other Australian women.⁵⁶ In fact, it is only in recent decades that indigenous women have been able to get indigenous men to recognise the extent of the violence.⁵⁷ Like Canada, Australia has a long history of missing indigenous women and of murder cases being ruled as 'not suspicious.'

This paper will explore and compare how this violence has arisen and been maintained in Australia and Canada and thus is to be divided into three sections. The first section will delve into the history of gender-based violence against indigenous women and the factors that have brought this issue about. Additionally, this section will explore the present day and what has been done to tackle this violence and how it is still prevailing. Following on from this, the second section will examine and compare various cases from Canada and Australia of indigenous women experiencing sexual or physical violence. Thirdly, some recommendations on how to work towards solving this problem will be laid out.

2. The causes of the physical and sexual violence of Indigenous women

⁵⁴ Sherene Razack, "Sexualised Violence and Colonialism: Reflections on the Inquiry into Missing and Murdered Indigenous Women," *Canadian Journal of Women and the Law* 28, no.2 (2016): i.

⁵⁵ "No Public Outrage, No Vigils: Australia's Silence at Violence Against Indigenous Women," *The Conversation*, last modified April 16, 2021, <https://theconversation.com/no-public-outrage-no-vigils-australias-silence-at-violence-against-indigenous-women-158875>.

⁵⁶ "Family Violence and Aboriginal and Torres Strait Islander Victim-Survivor," *Better Health*, accessed March 4, 2022, <https://www.betterhealth.vic.gov.au/health/healthyliving/Family-violence-and-aboriginal-and-torres-strait-islander-women>.

⁵⁷ Melissa Lucashenko, "Violence Against Indigenous Women: Public and Private Dimensions," *Violence Against Women* 2, no. 4 (December 1996): 380. <https://doi.org/10.1177/1077801296002004003>.

2.1. Colonialism

In both Canada and Australia there is a long-standing history of colonialism being intrinsically intertwined within their culture. This has resulted in the physical and sexual violence of indigenous women to almost be socially acceptable. In Canada this attitude is evident in the fact that from 1990-2005 over 500 indigenous women have gone missing or discovered to have been murdered, and this has occurred with little police investigation.⁵⁸ Additionally, this mind-set is clear in Australia as Indigenous women are 5 times more likely to die from homicide than non-indigenous women. The attitudes that have been developed by colonialism are key in the analysis of violence against indigenous women. Essentially violence against Indigenous women's bodies is an integral part of settler colonialism.⁵⁹ Therefore, we must understand how these colonial attitudes arose.

In Canada, physical and sexual violence has stemmed from the way in which Indigenous women have been constructed in dominant colonial discourse as inherently inferior and violable. As a result, this has placed them in extremely vulnerable positions, and consequently made them prone to violence and excluded from protection by the Canadian state. Traditionally however, indigenous women were the life-givers of their communities and held leadership roles in various areas such as economics, spirituality, and politics.⁶⁰ They existed in all sorts of roles within their communities, such as leadership positions, because indigenous people's responsibility in society stemmed more so from their individual capabilities.⁶¹ In fact some communities such as the Haudenosaunee had a matrilineal system with Women holding powerful political, economic and social positions.⁶² When colonial settlers first arrived in Canada they recognised the strength indigenous women had in comparison to settler women, and thus they represented a threat to the development of a patriarchal society.⁶³ As a consequence, colonising European powers sought to

⁵⁸ A. Smith, *Conquest: Sexual Violence and American Indian Genocide*, (Boston: South End Press, 2005a), 30.

⁵⁹ <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

⁶⁰ Bourgeois, "Generations of Genocide," 66.

⁶¹ J. Armstrong, "The New World Order and Indigenous Women: The Case of the Okanagan People, Canada," in *Indigenous Women: The Right to a Voice*, e.d. D. Vinding (Copenhagen: IWGIA, 1998), 185.

⁶² D. Kahenrakwas Goodleaf, "Under Military Occupation: Indigenous Women, State violence and community Resistance," in *And Still We Rise: Feminist Political Mobilising in Contemporary Canada*, e.d. L. Carty (Toronto: Women's Press, 1997), 227.

⁶³ Lavell-Harvard and Brant, *Forever Loved*, 32.

suppress Indigenous women and erase any form of their political, economic or social power.⁶⁴ This was done through various suppressive measures. Firstly, when colonists came to Canada to take over indigenous lands, they enforced the European norm that women were subservient to men.⁶⁵ This was imposed through military occupation, the forced imposition of Euro-patriarchal political institutions, and the introduction of colonial educational institutions such as residential schools.⁶⁶ This dismantling of the indigenous matriarchal society became one of the first acts of racialised sexualised discrimination against indigenous women.⁶⁷ Secondly, indigenous women's power was removed by colonisers through the sexual image that was placed on them. In colonial imaginations, indigenous women's bodies were viewed to be immanently polluted with sexual sin and marked by their sexual perversity.⁶⁸ As a consequence, indigenous women were viewed by colonisers as sexually violable, and it became almost socially acceptable to commit sexual assault on an indigenous woman.⁶⁹

Violence against indigenous women has also been deeply ingrained in Australia's colonial history, which similarly to Canada has condoned the murder, rape, and sexual abuse indigenous women. The traditional roles of indigenous women in Australia were very alike to indigenous women in Canada. They held important political, social, and economic roles, often being the centre part of an indigenous family, providing shelter, food, and clothing.⁷⁰ In their traditional teachings indigenous men and women were seen to be equal in power. However, when the male colonial settlers arrived, they often did so without and thus acquired indigenous women as mistresses.⁷¹ Ready access to these women was often seen to be an attraction to the outback life and consequently indigenous women were forcibly abducted across Australia.⁷² This behaviour was exceptionally common and thought to be acceptable, stemming from the belief of colonials

⁶⁴ Kelsey Leonard, "The (Un)making of property: Gender Violence and the Legal Status of Long Island Algonquian Women," in *Keetsahnak, Our Missing and Murdered Indigenous Sisters*, ed. Kim Anderson, Maria Campbell, and Maria Belcourt (The University of Alberta Press, 2018), 111.

⁶⁵ Leonard, "The (Un)making of property," 106.

⁶⁶ Goodleaf, "Under Military Occupation," 227.

⁶⁷ Lavell-Harvard and Brant, *Forever Loved*, 33.

⁶⁸ A. Smith, *Conquest: Sexual Violence and American Indian Genocide*, (Boston: South End Press, 2005a), 10.

⁶⁹ Ibid.

⁷⁰ Fay Gale, "The Participation of Australian Aboriginal Women in a Changing Political Environment," *Political Geography Quarterly* 9, no.4 (October, 1990): 381

⁷¹ Gale, "Australian Aboriginal Women," 386.

⁷² Larissa Behrendt, "Consent in a (Neo)Colonial Society: Aboriginal Women as Sexual and Legal 'Other,'" *Australian Feminist Studies* 15, no.33 (2000) 353

that the 'women of the conquered' were the 'property of the conquerors'.⁷³ Sexual violence was rampant and Indigenous women began to be portrayed as 'low-class' prostitutes.⁷⁴ Through this relegation of Indigenous women to an insignificant position in Australian society, it meant that unrealistic views have penetrated all future Indigenous-white relations.⁷⁵ In fact in 1935, detailed police reports from Tennant Creek describe an incident in which two men visited an indigenous camp to try and exchange food for women.⁷⁶ After having their demand refused they laid down poison that killed twenty camp dogs and assaulted various indigenous men who tried to protect indigenous women.⁷⁷ This incident makes it clear of the continued assumption white men have had in their belief of indigenous women as prostitutes.⁷⁸

These colonial attitudes are still prevalent in society today in both Canada and Australia. A 2019 National Inquiry into Murdered Indigenous Women and Girls in Canada found that "state action and inaction rooted in colonialism and colonial ideologies" has caused the disappearance of at least 4,000 Indigenous women.⁷⁹ However, still today many in Canada deny the pattern of colonialism that is existing in the country.⁸⁰ In fact only 18% of Indigenous women homicides have been reported on in the media. Indigenous women in Australia are also still trapped by the frontier constructs and assumptions of the availability of their sexuality.⁸¹ In fact the media often frame indigenous women victim to physical and sexual violence as somehow deserving of it.⁸² Arguably, the media have a role to play in bringing the correct attention to these cases to spread awareness to the Canadian and Australian populations. Several generations of Indigenous people have been and continue to be impacted by colonialism and related policies that eroded their

⁷³ Ibid.

⁷⁴ Behrendt, "Consent in a (Neo)Colonial Society," 354.

⁷⁵ Fay Gale, "The Participation of Australian Aboriginal Women in a Changing Political Environment," *Political Geography Quarterly* 9, no.4 (October, 1990): 382.

⁷⁶ Behrendt, "Consent in a (Neo)Colonial Society," 354

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹

<https://www.humanrightspulse.com/mastercontentblog/genocide-of-indigenous-women-is-a-national-crisis-in-canada#:~:text=A%202019%20National%20Inquiry%20into,at%20least%204%2C000%20Indigenous%20women.>

⁸⁰ Sherene Razack, "Sexualised Violence and Colonialism: Reflections on the Inquiry into Missing and Murdered Indigenous Women," *Canadian Journal of Women and The Law* 28, no.2 (2016): iv.

⁸¹ Behrendt, "Consent in a (Neo)Colonial Society," 360.

⁸²

<https://theconversation.com/no-public-outrage-no-vigils-australias-silence-at-violence-against-indigenous-women-158875>

cultural practices, violently suppressed language and religion, and dismantled indigenous families and communities.

2.2. Economic marginalisation

Indigenous women have continually faced social and economic marginalisation which has resulted in them ending up in dangerous situations of extreme poverty, homelessness, and prostitution.⁸³ They have been put into these financially vulnerable positions as a result of the aftermath of colonialism. Many scholars who have researched the links between economics and indigenous violence have pointed out the link between global economic restructuring and rising levels of violence. Such as the fact that indigenous women have been significantly affected by globalisation, often bearing the brunt of the negative effects of it.⁸⁴ In the Downtown Eastside of Vancouver, Canada, there is a large indigenous community, and it is known to be an exceptionally poor area.⁸⁵ Indigenous women in this poor area are particularly prone to experiencing high rates of violence and thus this area has become an epicentre in the colonial gendered violence of missing or murdered Indigenous women.⁸⁶ Women living in poverty can be particularly vulnerable to domestic violence as their financial instability prevents them from being able to escape violence at home. Indigenous women in Australia are some of the most disadvantaged Australians due to social and economic issues.⁸⁷ Therefore, these appalling socio-economic conditions have exposed indigenous women to various forms of violence.⁸⁸

2.3. Indigenous Communities

The violent affects of colonialism have resulted in sexual and physical violence to be internalised within indigenous communities. Spousal violence is a key element of the violence experienced by indigenous women, which not only affects them but their families and communities. The Native Women's association of Canada have found that nearly six in ten indigenous women

⁸³ Stolen sisters, 2.

⁸⁴ Kuokkanen, "Globalisation," 217.

⁸⁵ Stella August, Debra Leo, and Beatrice Starr, "Voices from the Downtown Eastside," in *Keetsahnak, Our Missing and Murdered Indigenous Sisters*, ed. Kim Anderson, Maria Campbell, and Maria Belcourt (The University of Alberta Press, 2018), 3.

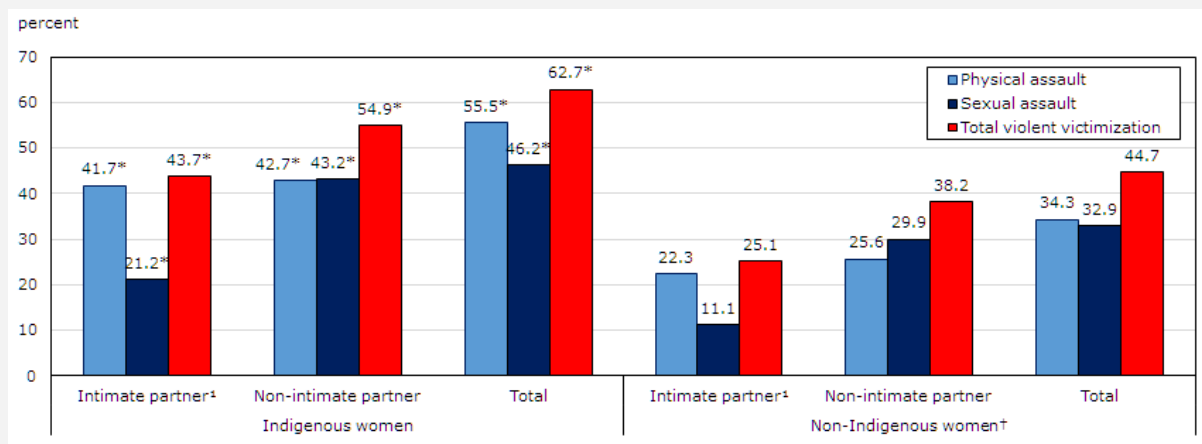
⁸⁶ August, Leo, and Starr, "Downtown Eastside," 4.

⁸⁷ Penelope Andrews, "Violence Against Aboriginal Women in Australia: Possibilities for Redress within the International Human Rights Framework," 918.

⁸⁸ Penelope Andrews, "Violence Against Aboriginal Women in Australia: Possibilities for Redress within the International Human Rights Framework," 928.

experience intimate partner violence in their lifetime.⁸⁹ Also, the Royal Canadian Mounted Police released a report in 2014 which stated that of the 1,200 indigenous women who have gone missing or been murdered between 1980 and 2012 around 60% of the recorded murders were done by family members. Additionally, a self-reported data set from the 2018 Survey of Safety in Public and Private Spaces found that for the past 12 months 17% of indigenous women experienced IPV compared with 12% of non-indigenous women.⁹⁰ Figure 1 shows the extent of physical and sexual abuse that is faced by indigenous women in Canada from this 2018 report.⁹¹

Figure 1: Physical and Sexual assault since age 15 among Indigenous and non-Indigenous women, by relationship to perpetrator, Canada, 2018



It is evident that indigenous women are at a high risk of domestic violence and have one of the highest rates in Canada.⁹² This violence includes homicide, sexual assault, and being beaten or choked. Various studies have shown that many Métis grow up in households where they witness or experience violence. High rates of the domestic violence of Indigenous women in Australia have also been prevalent. A study done by the Australian Institute of Health and Welfare in 2018 explores violence amongst Indigenous families. Within the key findings the study reports various discoveries:

- Indigenous Australians have increased risk factors for family violence, such as social stressors like poor housing and overcrowding, financial difficulties and unemployment.

⁸⁹ <https://www.nwac.ca/policy-brief-violence-covid->

⁹⁰ <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00007-eng.htm>

⁹¹ Australian Institute of Health and Welfare, 2018, 83.

⁹² <https://www150.statcan.gc.ca/n1/pub/85-002-x/2021001/article/00007-eng.htm>

- Indigenous women were 32 times as likely to be hospitalised due to family violence as non-indigenous women.
- 2 in 5 indigenous homicide victims were killed by a current or previous partner, compared with 1 in 5 non-indigenous homicide victims during 2012-14.

To understand the importance of intimate partner violence it must be considered the intergenerational trauma that has occurred as a result of colonisation and the forceful erasure of culture and tradition in indigenous communities.⁹³ Much of this also stems from the effects of the discriminatory acts such as the Indian Act and residential schools that will be explored later in the paper. In the present day, Indigenous women continue to face systemic and structural issues that increase their vulnerability to intimate partner violence.⁹⁴ There are still barriers created by racism that prevents indigenous women from seeking help or support following on from violent or traumatic experiences. These barriers include cultural barriers to accessing resources, inaccessibility of supports and services, the mistrust of the police, criminal justice system, and institutions set up to protect these women.⁹⁵ Again, these will all be explored later on in the research paper. The effect of the pandemic has been significant for violence against indigenous women in indigenous communities. In Canada NWAC have reported an increase in domestic violence that has happened during the pandemic.⁹⁶ In fact, in 2014 10% of indigenous women reported violence from their partner and this rose to 17% in 2020.⁹⁷ In Australia from 2011-2019 Indigenous people made up more than a quarter of all those hospitalised as a consequence of family or domestic violence despite making up only 3.3% of the population.⁹⁸ However, since the pandemic one in three women have experienced emotional or physical abuse and one in ten have experienced sexual abuse from their partners with indigenous women making up a substantial proportion of this data.⁹⁹ It is clear that colonialism has brought about internalised patriarchal and colonial restrictions on gender roles that needs to be tackled within indigenous communities.

3. Contextualising Abuse: Policy, Legal background, and Response

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶

<https://www.nwac.ca/policy-brief-violence-covid-19/#:~:text=Indigenous%20women%20have%20reported%20increased,years%2C%20as%20reported%20in%202014.>

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

3.1 Human Rights Council and CEDAW

In 1979 the UN adopted the Convention on the Elimination of all Forms of Discrimination against Women, which defines what constitutes discrimination against women and has been described to be an international bill of rights for women.¹⁰⁰ This discrimination includes any “distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” An important aspect of CEDAW, that is relevant to this research paper, is the emphasis on the eradication of all forms of racism and colonialism.¹⁰¹ Both Canada and Australia have signed and ratified CEDAW, with Canada doing so in 1981 and Australia in 1983. In 2007 the UN made a Declaration on the Rights of Indigenous Peoples which was then adopted by the General Assembly. Interestingly at the time Canada and Australia were 2 of 4 countries that voted against this declaration, however they have since reversed their position and now support the declaration. Recently in 2015 and 2016 Canada was reviewed by the Human Rights Committee and addressed the issues of the murders and disappearances of indigenous women and girls. They called on Canada to conduct a national inquiry, review its legislation, investigate the perpetrators, and address the root causes of violence.¹⁰²

3.2 The Political and Legal systems of Canada

The Canadian Justice system has a long-standing problem with both societal and institutional racism against indigenous peoples. It has become evident in national inquiries, commissions, and investigations that indigenous women have been failed by every level of the justice system.¹⁰³ Historically, Canada has had a past of legislating policies that have specifically targeted indigenous women and has entrenched racialised and sexualised violence. The Indian Act of 1867 embodies this specific targeting of indigenous women as through this act various restrictions and regulations were implemented against them. This act marked the beginning of

¹⁰⁰ <https://www.un.org/womenwatch/daw/cedaw/>

¹⁰¹ <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf>

¹⁰² <https://fafia-afai.org/wp-content/uploads/2016/10/Native-Womens-Association-of-Canada-and-FAFIA.pdf>

¹⁰³ P, Palmater, “Shining Light on the Dark Places: Addressing Police Racism and Sexualised Violence against Indigenous Women and Girls in the National Inquiry,” *Canadian Journal of Women and the Law* 28, no.2 (2016): 253.

gender-based restrictions for status.¹⁰⁴ Through this act specific communities of indigenous people were labelled as ‘Indians’ by the crown, however specific communities such as the Métis’s and Inuit’s were excluded. The aim of this act was to enforce the removal of women from the centre of their community to lessen the amount of power they held and remove their rights.¹⁰⁵ One way this was done was through the regulation of regulated indigenous women’s access to housing on the reserves.¹⁰⁶ Additionally, through this act indigenous women were able to lose their ‘Indian statuses and their indigenous rights if they married a non-indigenous man or a ‘non-status Indian.’¹⁰⁷ Therefore, excluding women from their indigenous rights.¹⁰⁸ As of 1985, the Canadian government can no longer force people to give up their indigenous status and lose their indigenous rights. However, this act which declares indigenous people as ‘Indian,’ a term that they reject, and one with a history of enabling violence against indigenous women still exists today.¹⁰⁹ This act is one rooted in colonial violence and control’s indigenous identity, with the Canadian state determining who counts as indigenous.

Multiple women’s groups have expressed a concern about the entire Canadian criminal justice system.¹¹⁰ In 2004, Amnesty international presented their concern about the inadequate protection given to indigenous women by the police and the justice system.¹¹¹ There have been frequent cases of Police officers failing to put sufficient effort into finding missing indigenous women. In fact, racism against indigenous women is a prevalent problem in the Canadian police force and is intrinsically intertwined with the colonial history of Canada. Indigenous women and girls bear the brunt of this racism alongside gendered exploitation and consequently they have become the targets of sexualised violence by the police. This is evident in the case of the Saskatchewan Police College who have displayed posters of indigenous women on the shooting targets of their shooting range. Therefore, the police force has been a route issue in relation to the national crisis of thousands of murdered and missing Indigenous women and girls. As recently as 2021 the standing committee on Public Safety and National Security have created a report on the

¹⁰⁴ https://indigenousfoundations.arts.ubc.ca/the_indian_act/

¹⁰⁵ Lavell-Harvard and Brant, *Forever Loved*, 33

¹⁰⁶ August, Leo, and Starr, “Downtown Eastside,” 11.

¹⁰⁷ The Indian Act

¹⁰⁸ https://indigenousfoundations.arts.ubc.ca/the_indian_act/

¹⁰⁹ Ibid.

¹¹⁰ <http://www.ajic.mb.ca/volumel/chapter13.html>

¹¹¹ Kuokkanen, “Globalisation,” 217

‘Systematic Racism in Policing in Canada.’ Within this report there is evidence from First Nations, Inuit and Métis communities which highlight the systematic racism within the police force. Gerri Sharpe, the Vice President of Pauktutit Inuit Women of Canada describes how policing is built on “a culture with deeply held views resulting in failed responses to the violence that Inuit women and girls experience.”¹¹² A similar experience is voiced by the Métis communities with regards to law enforcement. In fact, the President of the women of the Métis Nation explains that “Canada has a long history of policies and practices that have institutionalised racism towards Métis women, girls and gender-diverse people. While the current government is working towards reconciliation, many discriminatory policies and practices still exist today and have not been addressed yet.”¹¹³ Within this report there is a frustration at the fact that whilst many reports have been done since the 1960’s to examine the relationship between the indigenous communities and racism from the police it is evident that not enough has been done.¹¹⁴

Over the last few decades there has been an attempt by various Canadian governments and by various non-profit organisations to tackle this issue. In 2004 Amnesty International published a report called ‘Stolen Sisters’ examining the violence against indigenous women in Canada.¹¹⁵ Within this report they emphasised the utter failure of the police to protect indigenous women.¹¹⁶ Additionally, they reach the conclusion that economic and social marginalisation of indigenous women in Canada has led to them being more vulnerable to violence.¹¹⁷ As a result, the report suggests that it is down to the Canadian government, at all levels, to seek to work with indigenous communities and organisations to stop the violence against indigenous women.¹¹⁸ At the same time as the report was being completed the NWS’s state funded “Sisters in Spirit ” research and education campaign was occurring to raise awareness about the violence against indigenous women.¹¹⁹ However, the introduction of a conservative government in 2006 led to the funding for “Sisters in Spirit ” being cut. Despite this, there seemed to be some positive steps

¹¹² House of Commons Canada, Systematic Racism in Policing in Canada, 35

¹¹³ 36

¹¹⁴ 37

¹¹⁵ Stolen sisters, 4.

¹¹⁶ Palmater, 256

¹¹⁷ Lavell-Harvard and Brant, *Forever Loved*, 20

¹¹⁸ Stolen sisters, 35.

¹¹⁹ Lavell-Harvard and Brant, *Forever Loved*, 20-22

made in 2010 when the federal government allocated 10 million dollars towards combating the violence against indigenous women.¹²⁰ However, the money was given to government organisations such as the police force, who are part of the problem, and thus the funding was not used to target the root issue of the violence.

There has been some significant change made in relation to the violence against indigenous women with the liberal political party of Canada coming to power in 2015.¹²¹ In the years before Prime minister Justin Trudeau repeatedly made campaign promises to hold a national inquiry into the crisis of murdered and missing indigenous women. Upon being voted in he told the Assembly of First Nations Chiefs that the inquiry would be his first order of business, and his ministers of status and justice embarked on a national consultation process to hear from experts and communities.¹²² As a result of Trudeau's leadership the sexualised violence and racism by police against indigenous women has increasingly come to the surface. Despite the inquiries and investigations made, it seems that the liberal government has made little change to the ongoing police racism and violence against indigenous women. Still today, the Prime Minister is making promises to provide resources to tackle violence against indigenous women, however it is clear that more action is needed.

3.3 The Political and Legal systems of Australia

Similarly, to Canada, Australia has an issue of systemic racism across their criminal justice system towards indigenous peoples. Arguably indigenous women have been the 'least well served by the legal system.'¹²³ Historically, with the colonisation of Australia after 1788, it became treated as an English colony with an English law system.¹²⁴ However, no treaties or agreements were made with indigenous communities. Therefore, the application of English law to indigenous people was an uncertain process and created many issues.¹²⁵ This created the environment for, as mentioned previously, a situation in which colonists could sexually and

¹²⁰ Ibid.

¹²¹ Palmater, 257-258.

¹²² Palmater, 259.

¹²³ Penelope Andrews, "Violence Against Aboriginal Women in Australia: Possibilities for Redress within the International Human Rights Framework," 926

¹²⁴

<https://www.alrc.gov.au/publication/recognition-of-aboriginal-customary-laws-alrc-report-31/4-aboriginal-customary-laws-and-anglo-australian-law-after-1788/australian-law-as-applied-to-aborigines/>

¹²⁵ Ibid.

physically abuse indigenous women without fear of interference from the law.¹²⁶ This freedom that colonists had to carry out violence was further supported by the fact that the police not only did not try to stop it but were often part of the problem.¹²⁷ Any allegations made against white men by indigenous men, in regards to sexual assault, were mostly dismissed. The Macquarie Proclamation of 1816 brought about the ability for indigenous peoples to be considered British subjects, subject to British law.¹²⁸ However, this proclamation imposed certain restrictions upon indigenous peoples for those who wished to be considered under the protection of the British government.¹²⁹ Those who were ‘disposed to conduct themselves in a peaceful, inoffensive, and honest manner’ would follow on from an application every month to the secretary’s office be given a signed passport by the Governor which would entitle protection as long as they did not break his regulations.¹³⁰ As a result, essentially indigenous protection under the law became down to the colonial governors.¹³¹ Indigenous women also faced specific colonial legal violence and control by being locked up in disproportionate numbers in women’s ‘factories’ and mental asylums, in which their children were often taken away.¹³² Therefore, it is clear that there has been a history of discrimination towards indigenous people especially women within the legal system.

An important legal milestone for indigenous peoples came about with the referendum of 27th May 1967.¹³³ This successful referendum made changes to the constitution to remove certain discriminatory words, thus allowing the federal government to make laws for indigenous people and include them in the national census.¹³⁴ However, many indigenous people call for the establishment of a first nation voice to be enshrined in the constitution and this was echoed in the 2017 Uluru statement.¹³⁵

¹²⁶ Behrendt, “Consent in a (Neo)Colonial Society,” 353.

¹²⁷ Behrendt, “Consent in a (Neo)Colonial Society,” 353-354.

¹²⁸ <https://www.alrc.gov.au/publication/recognition-of-aboriginal-customary-laws-alrc-report-31/4-aboriginal-customary-laws-and-anglo-australian-law-after-1788/australian-law-as-applied-to-aborigines/>

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

¹³³ <https://www.naa.gov.au/blog/equal-rights-aborigines-indigenous-activism-and-constitutional-reform>

¹³⁴ <https://www.naa.gov.au/blog/equal-rights-aborigines-indigenous-activism-and-constitutional-reform>

¹³⁵ <https://ulurustatement.org/the-statement/view-the-statement/>

Another pattern of violence in which we can draw a connection between Canada and Australia is the treatment of indigenous women by the police force in Australia. Indigenous women in Australia have also been systematically targeted and criminalised from birth which has resulted in them having been met with extreme violence. Rather disturbingly indigenous women face high rates of harassment and abuse while in police custody.¹³⁶ Additionally, there is a widespread issue of indigenous women experiencing sexual abuse at the hands of police officers.¹³⁷ Research done back in 1991 found instances in which the police practice of a town was to detain young indigenous women patrons at a bar to then offer them to white male patrons for sex.¹³⁸ Interestingly in 2017, almost half of the indigenous women murdered by an intimate partner in Queensland were previously identified by police as the perpetrator of domestic violence.¹³⁹ Recently, it has been found that almost ninety percent of Indigenous women in prison have experienced some form of sexual abuse by non-indigenous and indigenous men. As a result, from 2021 in Queensland a state task force headed by the former count of appeals president Margaret McMurdo is seeking to tackle the continued escalation of domestic violence.¹⁴⁰ However, concerns have been raised by the advocacy group Sisters Inside and the Institute for Collaborative Race Research that the focus of the taskforce is further empowering a criminal justice system that is already failing indigenous women.¹⁴¹ It has been highlighted by various academics that it seems as though the taskforce has essentially excluded indigenous women and only refers to them in terms of as a potential offender.¹⁴²

While arguably Canada is seeking to investigate the issue of violence against indigenous women professor Hannah McGlad who is a Noongar woman has argued that “Australia is deeply in denial about this issue.” Some work has been done by various NGOs, the government and Indigenous women themselves. They have sought to support indigenous women in leaving violent situations or empowering them to change their lives. In the case of the government an

¹³⁶ Penelope Andrews, “Violence Against Aboriginal Women in Australia: Possibilities for Redress within the International Human Rights Framework,” 926

¹³⁷ *Ibid.*

¹³⁸ *Ibid.*

¹³⁹ <https://www.theguardian.com/australia-news/2021/may/18/racist-coercive-control-laws-could-harm-indigenous-women-in-queensland-advocates-warn>

¹⁴⁰ <https://www.theguardian.com/australia-news/2021/may/18/racist-coercive-control-laws-could-harm-indigenous-women-in-queensland-advocates-warn>

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

inquiry began in 2021 which is to be discussed more later on in the paper. Arguably, Australia are still yet to acknowledge the extent of the issue of missing and murdered indigenous women in the same way that Canada does.¹⁴³ Still families and communities are speaking out and mobilising around the disappearances of their loved ones, however many remain unsolved and the details unknown to the public. Therefore, this is seemingly the beginning of Australia's steps into recognising and researching the colonial creation of violence towards indigenous women in their country.¹⁴⁴

4. The Experiences of violence by Indigenous women

The colonial attitudes in both Canada and Australia alongside the legal and political situations of these countries has created the environment for violence against indigenous women to occur. As Beverley Jacobs from the Kanienkehake Nation has argued “direct attacks against Indigenous women are attempts to erase them from existence so that there will be no future generations.”¹⁴⁵ Indigenous women in Canada and Australia have been targets of lethal violence since colonialism as was explored earlier in the paper. Whilst the list of indigenous women and girls who have experience physical and sexual violence or are labelled as missing or murdered is horrifically a long one not all can be covered within this short research paper. Therefore, for the purpose of this next section some specific cases are to be covered to highlight various forms of violence and the effect that this has had.

4.1 Canada

There have been decades of cases of missing and murdered indigenous women in Canada, which has been argued by some as “Canadian genocide.”¹⁴⁶ Indigenous women and girls currently only make up 2 percent of the population of Canada but represent 16 percent of the women who are murdered or go missing.¹⁴⁷ In 2004 a report called ‘Stolen Sisters,’ which was carried out by Amnesty International and the Native Women’s Association of Canada, nine cases of missing or

¹⁴³<https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/#parallaxcategory4>

¹⁴⁴ Ibid

¹⁴⁵ <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

¹⁴⁶<https://www.google.co.uk/amp/s/amp.theguardian.com/world/2019/may/13/canada-missing-indigenous-women-cultural-genocide-government-report>

¹⁴⁷ Palmater, 255

murder indigenous women were explored to highlight the common themes of violence.¹⁴⁸ This was one of the first reports to really highlight the extent of the issue and use interviews from Indigenous communities themselves.

A significant example of the Canadian system failing indigenous women and leading to them going missing or being murdered is the shocking case of the murder of 15 year old indigenous schoolgirl Tina Fontaine in 2014. The day of her disappearance she was found by the police in the car with an intoxicated man, however she was still sent on her way with this man.¹⁴⁹ Later on she was found unconscious by paramedics and then placed in the foster home that she disappeared from.¹⁵⁰ Following on from this, sadly eight days later her body was pulled out of the Red River in Winnipeg.¹⁵¹ This case is a clear example of a vulnerable Indigenous girl being failed by both the police and social services. However, as a result of Tina's case a National inquiry was done into missing and murdered Indigenous Women and Girls.¹⁵² This report examines the underlying social, economic, cultural, institutional, and historical causes that contribute to the ongoing violence experienced by Indigenous women and girls in Canada. Additionally, there are reports on existing issues within policies and practices. This inquiry also uses the testimony and experiences from various experts and survivors of this violence. However, the first few months of hearings in the missing and murdered inquiry was met with delays, firings and resignations with some family members to victims calling it a "traumatising experience."¹⁵³ Additionally, justice has not been brought for Tina Fontaine herself. In 2015 Raymond Cormier was charged with second-degree murder however in 2018 he was found not guilty which sent shockwaves of disappointment, grief and anger across Canada.¹⁵⁴ Assembly of First Nations National Chief Perry Bellegarde said "With this Verdict we see yet another young First Nations woman failed by the system, failed by the police, and failed by the courts."¹⁵⁵

¹⁴⁸ Stolen sisters, 21.

¹⁴⁹ Palmater, 254-261

¹⁵⁰ Ibid.

¹⁵¹ Ibid.

¹⁵² <https://www.mmiwg-ffada.ca/mandate/>

¹⁵³ <https://www.cbc.ca/radio/thecurrent/the-current-for-november-24-2017-1.4416453/traumatizing-experience-families-of-mmiw-call-for-more-support-after-inquiry-testimony-1.4416507>

¹⁵⁴ <https://www.manitoulin.com/walking-solidarity-tina-fontaine/>

¹⁵⁵ <https://www.manitoulin.com/walking-solidarity-tina-fontaine/>

Therefore, First nations are now calling for more significant changes to a system that continues to fail Indigenous women in Canada.

Recently in 2021 the Royal Canadian Mounted Police launched an initiative which shares various unsolved cases in the hopes that the public will provide vital information to help bring closure to these cases. Whilst more of the cases are from decades earlier, disturbingly there are various cases of Indigenous women disappearing in the last few years.¹⁵⁶ Some Indigenous women who are on this missing persons database are Roxanna Isadore who went missing in 2013 and Samantha Hiebert who went missing in 2019. However, there is minimal information regarding the cases themselves. Additionally, on the database there has been a case as recently as 10th July 2021 with the disappearance of indigenous woman Nicole Frenchman.¹⁵⁷ This is a case that in October became an investigation that was taken over by the homicide unit due to the belief that something may have happened to her, however what happened to her is still yet to be solved.¹⁵⁸ Therefore, it is clear that the disappearances of Indigenous women is still prevalent in today's Canadian society. As a consequence, It is evident from these various cases that a culture of racism and misogyny in Canadian society, combined with the authorities turning a blind eye to violence against indigenous women and girls which has resulted in these murders and disappearances.¹⁵⁹

4.2 Australia

Likewise there has been a high proportion of cases of Indigenous women and girls who have gone missing in Australia, with no justice or resolution. A case which reflects this is the Bowraville murders in which three indigenous children were murdered including four year old Evelyn Greenup and sixteen year old Colleen Walker.¹⁶⁰ The man initially charged for the murders was acquitted in 2018 after the government unsuccessfully argued that there was to be fresh and compelling evidence in the NSW court of criminal appeal that justified a new trial.¹⁶¹

¹⁵⁶ <https://www.rcmp-grc.gc.ca/en/rcmp-seeks-your-help-bring-our-indigenous-women-and-girls-home>

¹⁵⁷ <https://www.services.rcmp-grc.gc.ca/missing-disparus/case-dossier.jsf?case=2021035166&id=0&lang=en>

¹⁵⁸ <https://globalnews.ca/news/8268681/edmonton-missing-woman-nicole-frenchman-homicide-investigation/>

¹⁵⁹ Palmater, 262

¹⁶⁰ <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

¹⁶¹ <https://www.theguardian.com/australia-news/2022/feb/11/bowraville-murders-reward-for-information-on-three-aboriginal-children-triples-to-3m>

However, almost 30 years later the murders remain unsolved. This case is an infamous one that shows the continual effort of the Australian justice system to evade justice for the families and how the lives of indigenous girls are considered to be disposable.¹⁶² Another example of this is the disappearance of sixteen year old indigenous girl Karen Williams in 1990.¹⁶³ Initially, a man named Nikola Novakovich was accused of murder as he had been the last person to see her after offering her a lift home from a disco at a local hotel. However, in 2016 he was found not guilty of the murder, leaving Karen's family distraught and seeking answers.¹⁶⁴ To this day her remains have never been found and no one has been held accountable for her death, with her father passing away without answers.¹⁶⁵ A further example of how white men can sexually exploit and kill indigenous women and girls without consequence is the deaths of Cindy and Mona Smith. In December 1987, the two cousins at ages fifteen and sixteen accepted a lift from a middle aged white man. A matter of hours later, their bodies were then found laying in the wreckage of his vehicle north of the small town of Bourke. The man was found highly intoxicated and with his arm over the near naked body of Cindy Smith. Despite this, he managed to walk away free from charge after the one of sexual misconduct was withdrawn by the police.¹⁶⁶ All of these cases present the ease in which men can avoid the consequences of the legal system when being sexually violent towards indigenous girls.

Additionally, there have been various cases of the gender-based violence of indigenous women by the police. It's been suggested in a statement by the Red Nation that "police kill native women at higher rates than other groups of women."¹⁶⁷ Often this is through the failure to protect indigenous women when in police custody. This was the case with Aunty Tanya Day, a Yorta Yorta grandmother who was arrested for public drunkenness and died in custody soon after.¹⁶⁸ Despite the fact that she was to be observed frequently, the police did not and thus she sustained a head injury that became fatal.¹⁶⁹ Also, in the Northern Territory Ms Lakuwanga was supposed

¹⁶² <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

¹⁶³ <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

¹⁶⁴ <https://www.abc.net.au/news/2016-08-18/karen-williams-accused-nikola-novakovich-not-guilty-murder/7761940>

¹⁶⁵ <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

¹⁶⁶ <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/#parallaxcategory4>

¹⁶⁷ <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

¹⁶⁸ <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

¹⁶⁹ <https://www.theage.com.au/national/victoria/coroner-to-hear-victorian-death-in-custody-should-never-have-happened-20181205-p50kgy.html>

to be taken into protective custody by the police after the report of a domestic violence incident.¹⁷⁰ Despite this report the police decided to leave her with her violence and intoxicated partner and she was soon after found unconscious and lying naked on the floor. She later on died from a ruptured spleen caused by the violence.¹⁷¹ This case shows a clear example of the authorities failing to protect an indigenous woman. A Human Rights Watch report ‘Those Who Take Us Away’ documents the ongoing failures of the police to protect Indigenous women and girls from violence as well as violence perpetrated by police against them.

The systematic violence of Indigenous girls and women has not just been an issue in the Australian police system but also the child protective services. For example the case of Savannah Hall who died at only the age of three in the care of a foster family with the cause ruled as ‘undetermined’.¹⁷² Before her death occurred her biological mother repeatedly raised concerns about the cruel treatment that her daughter was experiencing in foster care.¹⁷³ Additionally the case of Madeline Downman illustrates the intersecting traumas of the child protective services after she was found hanging in a residential facility operated by the department of children and families in the Northern territory.¹⁷⁴ Prior to her death she had repeatedly asked to leave state care and suffered greatly from depression.¹⁷⁵

In November of 2021 the Australian Senate voted to start an inquiry into missing and murdered Indigenous women and children. This inquiry was called for initially in October by Yamatji Noongar women and Greens Senator for Western Australia Dorinda Cox. She argued that “This is necessary because we have a justice system that does not take seriously the issues of missing and murdered First Nations women and Children in this country, so this inquiry will ask those question for those families.” The aim is for this report to be released by the 30th June 2022.

5. Recommendations

¹⁷⁰ <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

¹⁷¹ <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

¹⁷² <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

¹⁷³ <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

¹⁷⁴ <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

¹⁷⁵ <https://www.abc.net.au/news/2014-06-30/maddy-downman-suicide-family-demand-answers-730/5559544>

Through the analysis of the violence against indigenous women, it is evident that there are still issues within multiple areas of society. Therefore, in order to help in tackling the gender-based violence against indigenous women some recommendations are to be made for both countries. Whilst some differences can be made between Canada and Australia many of the themes of violence overlap to some general recommendations will be made for various areas such as: legal, societal and economic, and international and NGO.

5.1 Legal Recommendations

It is evident that within the police systems of Canada and Australia there are long standing colonial attitudes towards indigenous women and a failure to protect them from harm. Also, in both the past and present day the legal system has not done enough to protect these women. Therefore, some recommendations are:

- A team to be provided to do an investigation into the claims of physical and sexual assaults made by indigenous communities in regards to the police force. Following on from this, for amendments to be made to the police systems to prevent future assaults.
- A team to be provided to do an investigation into the various cases in which police were thought to have failed the indigenous victim and for recommendations on how to improve for the future to be derived.
- A reopening of the cases of missing and murdered indigenous women to try to find out what happened to the victims and bring some answers to their families
- More legal protection to be provided by both the Canadian and Australian governments. Such as for the Indian Act of 1867 to be revisited and amended by the Canadian government to instil safeguarding measures to protect indigenous women more in terms of legally
- Higher levels of prosecution of those who cause this violence to be ensured to help protect these victims.

5.2 Societal and economic recommendations

Whilst there are issues of violence in specific areas of society in Canada and Australia, in both countries there seems to be a general issue with the attitudes of the population. Additionally,

there are economic barriers preventing indigenous women from financially prospering. Therefore, some recommendations are:

- Funding to be provided to create a scheme and support network to help empower indigenous women to become financially independent through work or business owners to help enable them to escape poverty
- Educational materials, lectures, and workshops to be created to educate the Canadian and Australian people on the pattern of systematic violence that indigenous peoples, specifically indigenous women have faced.
- More research to be carried out on the effect colonialism has had in creating and maintaining violence against women in all areas of society

5.3 International and NGO Recommendations

Through this paper it is clear that much has been done in working towards ending this systemic violence of indigenous women by various NGOs and the UN itself. However, as this issue is still prevalent in both Canada and Australia more action needs to be taken. Therefore, some recommendations are:

- A UN led research project to be carried out by various Indigenous women involved in organisations that tackle how to end this violence, so they can provide a voice to the issue and give recommendations of their own.
- More facilitation by the UN and NGOs for indigenous women as agents of change
- More data and research to be carried out to monitor the extent of these issues and use any new findings to pressurise the Canadian and Australian governments into action.

These recommendations will hopefully provide the basis of ways to help stop the gender-based violence of indigenous women in Canada and Australia. However, simple changes will not stop decades of attitudes intrinsically intertwined within both cultures. The most important thing to take away from this paper is that indigenous women need a much larger voice on this issue on the national and international stage. It is them who need to help guide governments and organisations on how to prevent this problem.

6. Conclusion

This paper has sought to explore the systemic gender-based violence that indigenous women have faced in both Canada and Australia. In both countries, centuries of colonialism have resulted in Indigenous women being the targets of sexual and physical violence.¹⁷⁶ These colonial attitudes are deeply ingrained in the cultural, legal, and political systems of both countries and are still prevalent today. From this, their image and bodies have been shaped in colonial imaginations and through the media as only existing for the pleasure of men. As a consequence, indigenous women are facing violence from within their indigenous communities, the police, and other non-indigenous men. In fact spousal violence is a key element of the violence experienced by indigenous women, which not only affects them but their families and communities. This study has explored the various forms of violence that indigenous have and still do face, whilst also presenting various cases of sexual or physical violence. Additionally, it has been uncovered how this issue has been approached in the political and legal systems of both Canada and Australia, plus what actions have been taken. Finally, there is an attempt to provide some recommendations on how to tackle this issue.

¹⁷⁶ <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/>

How India's Justice System has Failed Dalit Women and What Needs to Change

Heather Rainey

Abstract

Following the recent rise in gender-based violence (GBV) attacks against Dalit women in India, combined with the harsh discriminatory practices derived from ideas of purity, this paper shall assess recommendations for the Indian judicial system regarding the most effective way to combat this inequality. Many scholars have addressed this issue in terms of the hardship faced by Dalit women, notably framing it from a 'double Dalit' position without offering much recommendation for reform. There are over 100 million Dalit women in India, making up around 16.3% of the female population, and considered much more vulnerable to sexual violence due to the combination of gender, caste and class discrimination¹⁷⁷. This paper shall first identify unique discriminatory challenges facing Dalit women, before moving on to how the current judicial system, including slow police responses, low report and prosecution rates as well as bias within the courts, all contribute to this dire situation. Furthermore, this paper shall analyse the British influence, not only in the creation of an inherently discriminatory caste system, but also how the current judicial system is a British legacy, thus perpetuating any existing inequalities previously implemented by imperial powers. Following this, significant recommendations shall be made on how India can combat the ever-growing caste inequalities, and how these inequalities can also be minimised in the justice system. It shall address domestic changes including cultural shifts via a top-down approach. Recommendations directly to the government shall be made, including specialised training for all official government and judicial figures and the prioritising of measures to remove caste-specific barriers to Sustainable Development Goals.

¹⁷⁷ Kumar, Ajay. 2021. "Sexual Violence against Dalit Women: An Analytical Study of Intersectionality of Gender, Caste, and Class in India." *Journal of International Women's Studies* 22 (11): 123-134. Page 123.

1.0 Introduction

A caste system refers to “an artificial construction, a fixed and embedded ranking of human value that sets the presumed supremacy of one group against the presumed inferiority of others, on the basis of ancestry and often of immutable traits”¹⁷⁸. Dalits belong to the lowest caste in India and are often referred to as ‘untouchables’, experiencing significant caste-based exclusion from society, infringing on both civil and personal rights¹⁷⁹. Furthermore, Dalit women, are often referred to as ‘Double Dalits’ to capture the intersectional discrimination of caste and gender that deprives them of their human rights. Gender-based violence (GBV) attacks against Dalit women are on the rise in India. The recent Hathras attacks in 2020 resulted in the death of a Dalit woman who was brutally gang raped by four higher caste men. Due to their low social standing, Dalit women are often not taken seriously in the judicial system when they choose to report incidences of GBV¹⁸⁰. This is shown clearly in the potter community’s Bhanwari Devi Case of 1992 which shall be discussed later in further detail. This paper shall begin by identifying the unique challenges that Dalit women face, and how the barriers of the judicial system prevent them from achieving equality and enjoying their human rights. This paper shall then discuss how the current judicial system is an Imperial legacy, rather than an Indian one, and how British colonialism has perpetuated caste inequality and allowed this discrimination to translate into the Indian legal system and become an obstacle for Dalit women when accessing constitutional rights. Following this, significant judicial reforms shall be proposed. These shall target slow police responses, bias within the courts and how to implement cultural shifts to change the status quo view on Dalit women. Recommendations on seven areas shall be made: law reform, domestic / cultural reforms, structural reforms in the judicial system, recommendations towards NGOs, recommendations to the Indian government and finally recommendations to the international community. These focus on which include specialised training for all public servants and

¹⁷⁸ Wilkerson, Isabel. 2020. "Chapter 2 An Old House and an Infrared Light." In *Caste The Origins of Our Discontents*. Random House. Page 60.

¹⁷⁹ Centre for Human Rights and Global Justice and Human Rights Watch. “Caste Discrimination Against So-Called Untouchables in India” information for the consideration of the in reviewing India’s Fifteenth to Nineteenth period Reports February 2007.

¹⁸⁰ Mondal, Amrapali. 2021. “The Constitution of The Hathras Victim’s Body” In *Body Studies Journal*. 3(1) 42-58

government and judicial officials as well as the prioritising of measures to remove caste-specific barriers to the Sustainable Development Goals as well as prioritising education of Dalit women and meaningful implementation of existing laws to serve as a deterrent. It must be noted this research is being conducted from an external position as a white, British, female and does not translate into a sound understanding of the lived experience of a Dalit woman thus any statements regarding Dalit women's experience is based solely on academic research, and not first-hand experience.

2.0 Current Inequalities Facing Dalit Women:

There is an abundance of literature on the hardships that Dalit women experience so this section aims to unpack the reoccurring themes in this area of study. Whilst this shall not be the main section of the paper, it is important to have a clear understanding of the vulnerability of Dalit women's position in the caste system, in order to fully comprehend the extent to which the justice system has failed them, and to identify the elements that require change. In 1984 bell hooks identified the exclusion of multiple operational identities as the key factor in the lack of success for the feminist movement, this is still true for Dalit women in India today. This double bind includes the interrelations of both identities "which reinforce each other" but is addressed by neither feminist literature nor Dalit literature (which remains highly patriarchal)¹⁸¹. The axis of patriarchal oppression can be explained in two ways: the first element of oppression for Dalit women originates from men within their own caste, the intrinsic patriarchal norms within the Dalit community mean that these women are often abused by the men *within* their family. The second is the extrinsic patriarchy from upper caste men who, as shown, can sexually assault Dalit women, with little or no repercussion from their communities¹⁸². The masculinisation of the Dalit movement in combination with the upper-caste focus of the feminist movement has resulted in

¹⁸¹ Sharma, Bhushan. 2021. "Casteing Gender: Intersectional Oppression of Dalit women." *Journal of International Women's Studies* 22 (10): 1-7.

¹⁸² Sharma, Bhushan. 2021. "Casteing Gender: Intersectional Oppression of Dalit women." *Journal of International Women's Studies* 22 (10): 1-7.

the exclusion of Dalit women from any social recognition of their unique plight¹⁸³. Indian feminist discourse has, until recently, not fully recognised caste difference as to some extent it undermines the political unity that is central to the feminist movement. Furthermore, Dalit women continue to be subject to religious practices such as *devadasi/jogini* (temple prostitution) meaning their sexual exploitation is justified by religion¹⁸⁴. This plays into the intrinsic and extrinsic notions of the patriarchy, since officials find this practice hard to prosecute as it is often the families of Dalit girls who are responsible for their dedication¹⁸⁵. Equally, continued ideas of purity (that operate more stringently in rural areas) continue to contribute to the GBV faced by Dalit women. Not only was it used as a justification in the 1995 court ruling of the Bhanwari Devi Case, to allow the assailants to walk free, but it is also used in ritualistic practices to maintain the caste system that oppresses these women¹⁸⁶. Such rituals include tying a broom to their back to clean their polluted footprints or having Dalit children provide their own utensils for school meals (a demand not extended to those of higher caste)¹⁸⁷. The inhumane rituals used by the upper caste dehumanise Dalit people, thus making them vulnerable to exploitation – and as discussed, with the added factor of gender playing into the status of ‘double Dalits’, sexual assault is a common occurrence¹⁸⁸. Kumkum Sangari suggests that these rituals should be viewed through ‘multiple patriarchies’ whereby emphasis is placed on a woman’s sexual purity, thus if

¹⁸³ Sharma, Bhushan. 2021. "Casteing Gender: Intersectional Oppression of Dalit women." *Journal of International Women's Studies* 22 (10): 1-7.

¹⁸⁴ Sabharwal, Nidhi Sadana. 2015. "Dalit Women in India: At the Crossroads of Gender, Class, and Caste." *Women's Bodies and Global Poverty Education* 8 (1): 44-73. (Page 47)

¹⁸⁵ Black, Maggie. 2007. *women in ritual slavery*. Andhra Pradesh: anti-slavery international 2007.

¹⁸⁶ Pandey, Geeta. 2017. *Bhanwari Devi: The rape that led to India's sexual harassment law*. Jaipur: BBC News.

¹⁸⁷ Ahammed, Shaima. 2019. "Caste-based Oppression, Trauma and Collective Victimhood in Erstwhile South India: The Collective Therapeutic Potential of Theyyam." *Psychology and Developing Societies* 31 (1): 88-105. Page 95

¹⁸⁸ Diwakar, Shailesh Kumar. 2014. "Theories and Practices of Atrocity Against Dalits in India." *Indian Journal of Dalit and Tribal Studies* 2 (2): 1-17. Page 10.

Dalit women are already 'impure' upper-caste men can have 'unrestricted access' to lower caste women¹⁸⁹.

2.1 Prominent Cases of GBV Against Dalit Women:

The issue of GBV attacks against Dalit women has re-entered the political sphere following the gang rape and murder of a Dalit woman by upper caste men in Hathras, Uttar Pradesh¹⁹⁰. Whilst this is yet another incident in a growing trend of sexual assaults against Dalit women, one of the issues sparking further anger throughout India was the withholding of evidence and the burning of the victim's body, despite the wishes of her parents. This appears to have been supported by the state government, which is run by an upper caste leader from the same community as the assailant¹⁹¹. This clear conspiracy against Dalit women by upper caste members, including those in the government, has spurred on the need for reform, not only in society but in the Indian judicial system, to allow Dalit women and their families to have equal legal rights. Whilst changing the attitudes of society towards the caste system, one of the initial steps necessary to minimise these brutal attacks must be to allow the assailants to feel the full force of the justice system, rather than affording the protection of upper caste individuals. The justice system must be reformed to act as a deterrent and fulfil its initial purpose, regardless of one's position in the caste system. In 2018, 33,000 rape cases were recorded across the country, with 10% of the victims being Dalit or tribal and in 2020 the number of rapes of Dalit women rose to 6 per day¹⁹². However, the issues this paper aims to address focus on the *barriers* Dalit women face when reporting, meaning this figure is likely to be significantly higher. Furthermore, a study conducted by Yogendra Musahar concluded that women from rural areas were more prone to sexual assaults than those in urban ones. There was a correlation between fewer school years completed and a

¹⁸⁹ Sangari, Kumkum. 1995. "Politics of Diversity: Religious Communities and Multiple Patriarchies." *Economic and Political Weekly* 30 (52): 3381-3389. Page 3385.

¹⁹⁰ Rajgopal, Shoba Sharad. 2021. "Dalit/black solidarity: Comrades in the struggle for racial/caste justice." *South Asian Popular Culture* 19 (1): 81-86. Page 82.

¹⁹¹ Rajgopal, Shoba Sharad. 2021. "Dalit/black solidarity: Comrades in the struggle for racial/caste justice." *South Asian Popular Culture* 19 (1): 81-86.

¹⁹² Rathore, H. 2020. *Rape, Caste, Double Standards, and India's Middle Class*. The Diplomat.

sharp rise in sexual violence, furthermore, poorer women, and women from marginalised populations were also more likely to be subject to sexual abuse¹⁹³. Therefore, as Dalit women are more likely to reside in rural areas, be economically disadvantaged and have fewer years in education (on average), the data used in this study found that there is a strong link between sexual violence and caste¹⁹⁴.

Another prominent incident highlighting the plight of Dalit women is the Bhanwari Devi Case of 1992. Devi was attacked and raped by five Gujjars (the higher caste in the village) for trying to prevent a nine-month-old Gujjar girl's wedding¹⁹⁵. Whilst the five were initially charged (over a year later) with harassment, assault and gang rape, this was overturned in 1995 when their charges were minimised to assault and conspiracy, resulting in nine months jail sentence¹⁹⁶. Some of the justifications given by the judge included:

- The head of the village cannot rape
- Men of different castes cannot participate in gang rape
- Elder men of 60-70 years cannot rape
- A member of a higher caste cannot rape a lower caste woman because of reasons of purity¹⁹⁷

Whilst this ruling may have occurred in the last century, only one further hearing has been held in twenty-two years, thus the attackers are still free from conviction¹⁹⁸. This outlines the deeply entrenched patriarchal attitudes in rural areas. The outcry from this case led to the 1997

¹⁹³ Musahar, Yogendra. "Deciphering Links Between Sexual Violence and Castes in India." *Contemporary Voice of Dalit*, (October 2021). <https://doi.org/10.1177/2455328X211032509>. Page 5

¹⁹⁴ Musahar, Yogendra. "Deciphering Links Between Sexual Violence and Castes in India." *Contemporary Voice of Dalit*, (October 2021). <https://doi.org/10.1177/2455328X211032509>. Page 5

¹⁹⁵ MURTHY, LAXMI. "From Mathura to Bhanwari." *Economic and Political Weekly* 48, no. 23 (2013): 16–18. <http://www.jstor.org/stable/23527202>.

¹⁹⁶ Pandey, Geeta. 2017. *Bhanwari Devi: The rape that led to India's sexual harassment law*. Jaipur: BBCNews.

¹⁹⁷ Pandey, Geeta. 2017. *Bhanwari Devi: The rape that led to India's sexual harassment law*. Jaipur: BBC News.

¹⁹⁸ Pandey, Geeta. 2017. *Bhanwari Devi: The rape that led to India's sexual harassment law*. Jaipur: BBC News.

Vishakha Guidelines, aiming to protect women from sexual harassment in workplaces, later being replaced with the Sexual Harassment of women at the workplace (prevention, prohibition and redressal) Act, 2013¹⁹⁹. Whilst this is a positive addition to the legal system, sexual harassment in rural areas (where most Dalit women reside) is still rife due to the more stringent traditional and patriarchal norms, combined with the reluctance from the justice system to intervene.

3.0 British Colonialism: The Legacy Left Behind

This section of the paper shall be split into two parts: first, the colonial influence on the caste system, and how that has translated into the restrictive stratification evident today and second, the fact that the current legal system is a product of British colonialism, thus cannot be wholly considered an 'Indian' invention.

3.1 The Caste System as a Product of Colonialism

Categorising and delineating castes into a set hierarchy that had previously not existed in a formal manner, was a key aim of the British during the colonial period. Their continued politicisation of caste is often cited as one of the "direct causes" of the harrowing and frequently lethal caste system²⁰⁰. Warren Hastings was the first Governor General of India employed by the British East India Company in 1772 and instructed the courts to formulate their judgements where possible on the *Law Code of Manu*²⁰¹. Manu's code is arguably the most influential of the Hindu dharmasastras with guidance on how to live purely – with all laws being caste based, with the harshest disciplines given to Shudras and the least harsh sentences awarded to Brahmins, this

¹⁹⁹ Murthy, Laxmi. 2013. "From Mathura to Bhanwari." *Economic & Political Weekly* 48 (23): 16-18. Page 18.

²⁰⁰ Riser-Kositsky, Sasha (2009) "The Political Intensification of Caste: India Under the Raj," *Penn History Review*: Vol. 17 : Iss. 1 , Article 3. Available at: <https://repository.upenn.edu/phr/vol17/iss1/3>

²⁰¹ Riser-Kositsky, Sasha (2009) "The Political Intensification of Caste: India Under the Raj," *Penn History Review*: Vol. 17 : Iss. 1 , Article 3. Available at: <https://repository.upenn.edu/phr/vol17/iss1/3>

is heavily linked into the concept of pollution²⁰². It is important to note this code does not formally mention untouchables or outcastes, highlighting how this discrimination is a construct of colonialism²⁰³. It is presumed that the court interpretations of the Law Code of Manu formalised caste law, implementing it far more literally than initially intended. Many scholars during colonialism believed India would fall apart without caste, thus little effort was made to dismantle the intrinsic link between Hinduism and caste, until Gandhi's attempts in the 1930s²⁰⁴. The British implementation of the 1901 census, conducted by H.H Risley furthered this stringent and static division of caste by creating an index of "ritual distance" between castes and sub-castes and subsequently ranking them²⁰⁵.

3.2 *The Legal System as a Product of Colonialism*

It is understood that the judicial system in pre-independence India symbolised imperial power, with colonial powers aiming to mould the existing system into somewhat of a parallel to the British administration.²⁰⁶ The charter awarded to the East India Company (EIC) by Queen Elizabeth I of England in 1600 laid the foundations for British rule in India²⁰⁷. Whilst Hastings requested younger members of the EIC to study the 'classical' languages of India, to utilise effective control of Indian society and incorporate indigenous Indian traditions, the system was still ruled by Englishmen who thought it necessary to "mark the relations between the rulers and

²⁰² Orenstein, Henry. "The Structure of Hindu Caste Values: A Preliminary Study of Hierarchy and Ritual Defilement." *Ethnology* 4, no. 1 (1965): 1–15. <https://doi.org/10.2307/3772995>.

²⁰³ Britannica, The Editors of Encyclopedia. 2021. "*Religion*". Encyclopedia Britannica.

²⁰⁴ Riser-Kositsky, Sasha. 2009. "The Political Intensification of Caste: India Under the Raj." *Penn History Review* 17 (1): 31-53. Page 36.

²⁰⁵ Sharma, Kanhaya L. 2012. "Is there Today Caste System or there is only Caste in India?" *Polish Sociological Review* 178 (2): 246-262.

²⁰⁶ SHUKLA, R.L. "Presidential Address: British Colonialism at Work in India and Egypt a Comparative View." *Proceedings of the Indian History Congress* 48 (1987): 603–19. <http://www.jstor.org/stable/44141769>

²⁰⁷ Lawson, P. (1993). *East India Company, The: A History* (1st ed.). Routledge. <https://doi.org/10.4324/9781315845364>

the ruled”²⁰⁸. William Jones, in addition to Hastings, failed to understand the complexity and flexibility of Hindu laws, thus codified them into law and reflected a highly ‘Brahminical’ view of society. However, in modern India the legacy left behind from such Orientalist interpretations has had a significantly negative impact on equality in the legal system. The displacement of traditional Indian law continued in post-independence India²⁰⁹. The implementation of the Indian Penal Code in 1862, established by Thomas Macaulay, is one of the lasting legacies of the colonial period. Whilst Maculay adhered to the Betham principles of consciousness and simplicity, it was imposed on a diverse population with little consideration of democracy or consent²¹⁰. Whilst some provisions have been made to the IPC in order to mitigate the patriarchal outcomes, the provisions have failed to adapt sufficiently to offer protection to Dalit women who still face discrimination as a result of the justice system. This can be clearly seen in the case of Suman Rani where the Supreme Court refused to implement Section 376(2) of the IPC, which mandates a minimum sentence of ten years for state agents that rape women in their custody. In this situation, the Supreme Court did not pass this minimum sentence due to the girls ‘questionable character’, ruling that her ‘easy virtue’ meant that it could not be classified as rape²¹¹.

As mentioned, the British interpretation of the caste system as static and stringent persists today and contributes significantly to the plight of Dalit women. The ‘ruler and the ruled’ approach from colonial powers created a Brahmin-centric society that has led to a patriarchal, hierarchal and wholly unequal legal system. Therefore, despite the positives that can be derived from the IPC, the steadfast commitment of the Indian courts to refuse acknowledgment that sexual

²⁰⁸ Gir, Ananta Kumar. 2014. "The rule of Law and The Colonial Encounter." In *Knowledge and Human Liberation: Towards Planetary Realizations*, 139-165. Anthem Press. Page 145.

²⁰⁹ Gir, Ananta Kumar. 2014. "The rule of Law and The Colonial Encounter." In *Knowledge and Human Liberation: Towards Planetary Realizations*, 139-165. Anthem Press. Page 145.

²¹⁰ Phillips, Edward. 2018. "THE CODIFICATION ENTERPRISE: PRINCIPLED LAW REFORM AND THE INDIAN PENAL CODE." *Jersey and Guernsey Law Review*. July 01. Accessed March 11, 2022. https://www.jerseylaw.je/publications/jglr/PDF%20Documents/JLR1702_Phillips.pdf

²¹¹ Vyas, Kritika. 2021. "Dalit Women: Atrocities and Justice System." *International Journal of Advanced Legal Research*.

violence is perpetuated due to a woman's caste, ultimately means Dalit women continue to lack protection in both the court setting and the reporting process²¹².

4.0 Failures in the Current Judicial System

It must be noted that protection for Dalit women under the Indian constitution is well documented. The Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989 (PoA Act) aims to condemn all cruelty from upper caste people towards a lower caste person²¹³. However, the lack of law enforcement often means cases are not properly reported thus rape becomes a tool used to silence Dalit women, as the prosecution rate is so low. Furthermore, even for those cases that are reported, the slow police reporting as well as the caste or gender bias of the judge mean that the accused are too often acquitted, despite the availability of evidence. In combination with this, the lack of legal awareness from Dalit women regarding these laws means their ignorance is often exploited by the judicial system²¹⁴.

The legal protection guaranteed in the constitution includes:

- o non-discrimination on the basis of caste and gender (Article 15(1))
- o The right to life and security (Article 21)
- o The constitutional directive designed to specifically to protect Dalits from social injustice and exploitation (Article 46)²¹⁵

Clearly, these provisions are inadequate as there is no concerted effort to eradicate the entrenched gender-caste notions. The Indian government has acknowledged the institutional forces that

²¹² Vyas, Kritika. 2021. "Dalit Women: Atrocities and Justice System." *International Journal of Advanced Legal Research*.

²¹³ Acharya, Pranabindu and Acharya, Prachi, An Analysis of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (November 18, 2020). Available at SSRN: <https://ssrn.com/abstract=3732709> or <http://dx.doi.org/10.2139/ssrn.3732709>

²¹⁴ Centre for Human Rights and Global Justice and Human Rights Watch. "Caste Discrimination Against So-Called Untouchables in India" information for the consideration of the in reviewing India's Fifteenth to Nineteenth period Reports February 2007.

²¹⁵ Aloysius Irudayam s.j., Jayshree P. Mangubhai, Joel G. Lee. 2006. *Dalit Women Speak Out Dalit Women Speak Out Violence against Dalit Women in India*. Overview Report, New Delhi: National Campaign on Dalit Human Rights.

shape people's mindsets and continue the 'double Dalit' bind, however, still fail to prioritise this as an area for intervention²¹⁶. This type of violence against Dalit women with impunity for the assailant is directly as a result of failing state institutions, CEDAW identifies at least four key areas that mean Dalit women face discrimination in accessing justice:

- o Fear of social isolation
- o Personal safety and security threats
- o Complicated, time consuming and expensive legal proceedings
- o Delays and irregularities in Criminal Procedures

And, in cases of rape or sexual assault, the victim is often made by her family to drop the charges, as it may tarnish her reputation; this links back to the concept that patriarchal pressures are both internal and external²¹⁷.

4.1 Inconsistencies in laws

The IPC fails to define phrases like 'outrage to women's modesty' or 'insult' in section 509 and 354 respectively²¹⁸. The implication of women as symbols of honour as argued by Burgess and Holmstrom, undermine 'criminal liability' as if it is the responsibility of the women to maintain 'modesty' and that any violation makes *her* a shame to her family, thus reducing the blame of the assailant²¹⁹. The lack of clarification ultimately results in room for stereotypical, patriarchal judgements about sexual violence survivors, intersected heavily with pre-existing, bias views on caste. This is shown clearly in the Bhanwari Devi Case. As a result of this, the experience of

²¹⁶ Aloysius Irudayam s.j., Jayshree P. Mangubhai, Joel G. Lee. 2006. *Dalit Women Speak Out Dalit Women Speak Out Violence against Dalit Women in India*. Overview Report, New Delhi: National Campaign on Dalit Human Rights. Page 2.

²¹⁷ Navsarjan Trust, AIDMAM, IDSN. 2014. *Alternative report to the UN Committee on the Elimination of all forms of Discrimination Against Women (CEDAW) for the examination of the 4th and 5th periodic reports of India at the 58th CEDAW session in July 2014*. NGO Report for CEDAW Session, CEDAW.

²¹⁸ Navsarjan Trust, AIDMAM, IDSN. 2014. *Alternative report to the UN Committee on the Elimination of all forms of Discrimination Against Women (CEDAW) for the examination of the 4th and 5th periodic reports of India at the 58th CEDAW session in July 2014*. NGO Report for CEDAW Session, CEDAW.

²¹⁹ Saini, S. 2016. "Position of Women in India: A Special Reference to Domestic Violence." *International Journal of Applied Research* 2: 436-440

going to court is often just as distressing as the incident itself, due to the societal implications of shame, stemming from ideas of purity²²⁰.

4.2 The patriarchal justice system and accessibility issues

As we have identified, there is often high levels of illiteracy among Dalit women in rural areas (44% of Dalit Women were illiterate in the population as a whole), thus cementing the failure of the justice system in protecting these women²²¹. This is because they are often unable to comprehend what constitutes the law, solidifying the accusation that the current legal system only protects women who are urban, upper caste, educated and economically stable²²². India has implemented a quota system, meaning Dalit women must have a seat in the local panchayat, but are met with caste backlash if they try to exercise this power. This highlights further how the Dalit women's struggle is overlooked due to the discrepancy between the legal process and how the reality of how this unfolds. A 2004 study highlighted accessibility issues by raising awareness that Dalit women who sought justice and protection of the law, or aimed to exercise their legal rights were met with violence under the following circumstances²²³:

- o Women filing or attempting to file a police complaint
- o Women trying to bring occurrences of violence to the traditional village panchayat for arbitration
- o Women refusing to accept compromises after acts of violence
- o Women canvassing for votes in the dominant caste section of a village
- o Women attempting to exercise an independent vote in elections

²²⁰ Aboh, Augustine Betialikong. 2018. "Between Limited Laws and Conservative Patriarchal System: Why the Indian Security and Justice System is Less Effective to Prevent Gender-Based Violence against Women and Girls." *Global Media Journal* 16 (31).

²²¹ N.R, Dr Nithya. 2016. "68 YEARS OF INDIAN DEMOCRACY: HOW INCLUSIVE IS IT TO DALIT WOMEN." *INTERNATIONAL JOURNAL OF MULTIDISCIPLINARY EDUCATIONAL RESEARCH* 5 (2). Page 115

²²² Verma A, Quershi H, Kim JY. 2016. "exploring the Trend of Violence against Women in India." *International Journal of Comparative and Applied Criminal Justice* 1-16.

²²³ National Human Rights Commission, 2004. Report on Trafficking in Women and Children in India 2002-03 . New Delhi: NHRC: <http://nhrc.nic.in/Documents/ReportonTrafficking.pdf>

- o Women attempting to contest panchayat elections ²²⁴

Violence is used in these scenarios to prevent women from reporting the violence and to stop them being witnesses against the perpetrators in a court case. As this study was undertaken in the rural areas of 32 panchayat unions throughout Andhra Pradesh, Biohar, Tamil Nadu/ Pondicherry and Uttar Pradesh, this violent can be linked heavily to caste, as mentioned, rural areas often have more stringent caste systems. Furthermore, as shall be discussed, legal provisions for Dalit protection including those outlined in the constitution are often overlooked in rural areas as the reporting process is often kept within the village²²⁵.

Furthermore, in a submission to the UN CEDAW (Commission on the Status of Women) committee, it was stated that the conviction rate for rapes against women in India is around 25%, but only 2% for Dalit women ²²⁶.

²²⁴ Aloysius Irudayam s.j., Jayshree P. Mangubhai, Joel G. Lee. 2006. *Dalit Women Speak Out Dalit Women Speak Out Violence against Dalit Women in India*. Overview Report, New Delhi: National Campaign on Dalit Human Rights. Page 14.

²²⁵ Aloysius Irudayam s.j., Jayshree P. Mangubhai, Joel G. Lee. 2006. *Dalit Women Speak Out Dalit Women Speak Out Violence against Dalit Women in India*. Overview Report, New Delhi: National Campaign on Dalit Human Rights.

²²⁶ Navsarjan Trust, AIDMAM, IDSN. 2014. *Alternative report to the UN Committee on the Elimination of all forms of Discrimination Against Women (CEDAW) for the examination of the 4th and 5th periodic reports of India at the 58th CEDAW session in July 2014*. NGO Report for CEDAW Session, CEDAW.

4.3 Inefficiency of Justice System

Table 1: Non-Dalit on Dalit Crime Case Delays²²⁷

	Bhavnagar District 62 registered cases		Kutch District 72 registered cases		Rajkot District 51 registered cases		Total delays in 3 Districts 185 registered cases		Total delays over 30 days in 3 Districts	
	Delays	Over 30 days	Delays	Over 30 days	Delays	Over 30 days	Total Delays	%	Total Delays	%
F.I.R. filing	38 cases (61%)	3 cases (5%)	35 cases (49%)	4 cases (6%)	27 cases (53%)	2 cases (4%)	100	54%	9	5%
Arrest of accused	43 cases (69%)	2 cases (3%)	60 cases (83%)	5 cases (7%)	40 cases (78%)	3 cases (6%)	143	77%	10	5%
Charge Sheet or Summary filing	14 cases (23%)	4 cases* (7%)	26 cases (36%)	8 cases * (11%)	8 cases (16%)	1 cases (2%)	48	26%	13*	7%

* Delay of 30 days or more from Charge Sheet or Summary deadline, due one month from F.I.R. filing in Atrocities Act cases and due 90 days from F.I.R. filing in all other cases.

Table 2: Dalit on Dalit Crime Case Delays²²⁸

	Bhavnagar District 176 registered cases		Kutch District 267 registered cases		Rajkot District 261 registered cases		Total delays in 3 Districts 704 registered cases		Total delays over 30 days in 3 Districts	
	Delays	Over 30 days	Delays	Over 30 days	Delays	Over 30 days	Total Delays	%	Total Delays	%
F.I.R. filing	71 cases (40%)	12 cases (7%)	203 cases (76%)	109 cases (41%)	163 cases (62%)	34 cases (13%)	437	62%	155	22%
Arrest of accused	161 cases (91%)	17 cases (10%)	241 cases (90%)	39 cases (16%)	225 cases (86%)	30 cases (11%)	627	89%	86	12%
Charge Sheet or Summary filing	42 cases (24%)	16 cases* (9%)	48 cases (18%)	19 cases * (7%)	28 cases (11%)	11cases (4%)	118	17%	46*	7%

The 2004 study, mentioned previously, concluded that in 40.2% of instances of violence against Dalit women, the victim has been “unable to obtain legal or community remedies for the violence”²²⁹. Furthermore, the UN Special Rapporteur on Violence Against Women in 2014 found that allegations of de facto caste-based discrimination and violence against women were committed by public officials and police officers, and highlighted that nearly all Dalit women

²²⁷ Navsarjan Trust. 2011. *Gender-Violence and Access to Justice for the Dalit Woman*. Final Report, Ahmedabad: Navsarjan Trust.

²²⁸ Navsarjan Trust. 2011. *Gender-Violence and Access to Justice for the Dalit Woman*. Final Report, Ahmedabad: Navsarjan Trust.

²²⁹ Aloysius Irudayam s.j., Jayshree P. Mangubhai, Joel G. Lee. 2006. *Dalit Women Speak Out Dalit Women Speak Out Violence against Dalit Women in India*. Overview Report, New Delhi: National Campaign on Dalit Human Rights. Page 16.

were threatened or punished by means of physical and / or sexual assault when trying to file a complaint²³⁰. This is a key issue that must be addressed in the justice system. As table 1 and 2 show, the crime case delay is a significant issue, however, as discussed, these are nowhere near the official figures for the actual figure for crimes committed against Dalit women. The barriers in accessing the legal system initially must be addressed, followed by reform within the police department to prioritise the crime cases of violence against Dalit women.

5.0 Inconsistencies with International Law

Article 2 of the CEDAW convention asserts “State Parties condemn discrimination against women in all forms... and to this end undertake:”

- a) “To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;”
- b) “To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;”
- c) “To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;”
- d) “To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;”
- e) “To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;”
- f) “To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;”

²³⁰ Navsarjan Trust, AIDMAM, IDSN. 2014. *Alternative report to the UN Committee on the Elimination of all forms of Discrimination Against Women (CEDAW) for the examination of the 4th and 5th periodic reports of India at the 58th CEDAW session in July 2014*. NGO Report for CEDAW Session, CEDAW.

- g) “To repeal all national penal provisions which constitute discrimination against” women.”²³¹

India ratified this treaty in 1994, but as the paper was not legally implemented, the CEDAW convention does not fulfil its intended purpose. India’s reservation to Article 29(1) allows it to be excluded from the jurisdiction of the International Court of Justice, which ultimately undermines multiple international conventions as individuals are unable to take grievances to higher courts.

6.0 Recommendations:

This paper shall now offer recommendations in seven areas: law reform, domestic and cultural reforms, structural reforms in the judicial system, recommendations for the Indian Government, recommendations for NGOs operating in the area and recommendations for the international community. These shall be based on the issues raised in this paper and shall focus specifically on reducing gender-based violence against Dalit women.

6.1 Recommendations: Law Reform

The state must intervene in a more meaningful and active way than previously to reform personal and family laws that place women, notably Dalit women, on an unequal footing, specifically in areas of inheritance, property rights, matters of divorce and marriage and custody of children. Stricter law enforcement is also needed to minimise the sexual violence against Dalit women. This includes revising the declarations India made when signing and ratifying the CEDAW Convention. The declarations to Article 5(a) and Article 16(1), focus on the Government’s obligations to eliminate discriminatory practices that disproportionately affect women; however, the Indian Government has said it is unable to do so without the consent of individual communities. Furthermore, another declaration was made to Article 16(2) stating the Indian Government was unable to conform to the mandatory requirement of compulsory registrations

²³¹ United Nations Human Rights Office of the High Commission Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 Entry into force: 3 September 1981, in accordance with article 27(1). Article 3.

for marriages, due to the size of the country and the high levels of illiteracy²³². The issue with Article 5(a) and Article 16(1) of the CEDAW is that the Indian Constitution reserves the right of religious groups to operate under personal laws. Whilst Article 44 of the Indian constitution declares that India is aiming to pass a Uniform Civil Code, the lack of a binding date means this objective is unlikely to be passed in the near future, thus the necessary provisions to protect Dalit women from discriminatory religious practices will not be instated²³³. Furthermore, the pace of law reform has been inadequate and must be prioritised enabling such processes to be sped up to achieve a more equal footing for Dalit women. The National Commission for Women (NCW) aims to oversee the reform of discriminatory laws but must go through a lengthy process in order to implement any meaningful reform. Furthermore, the women placed on these boards are not an accurate representation of Indian women, as the spectrum of communities represented is not broad enough. This is another area that must be targeted to ensure Dalit women have a meaningful voice²³⁴. The government of India should also be expected to commit to a time-sensitive obligation to ensure CEDAW recommendations are met. Equally, the Government should sign the Optional Protocol to CEDAW, so individuals are able to bring issues relating to discrimination based on sex before the CEDAW committee.

6.2 Recommendations: Domestic / cultural reforms

Women's rights movements in India have been criticised previously for not taking enough of an intersectional approach, thus overlooking the unique plight of Dalit women. It must also be noted that these movements focus specifically on lobbying the Indian Government for policy change. Whilst this policy change is a positive element, as discussed, there are many reservations already implemented in the Indian legal system that serve to protect and promote the upward mobility of Dalit women. These include:

²³² IWRAW Asia Pacific Occasional Papers Series No 5. "The Validity of Reservations and Declarations to CEDAW: The Indian Experience" 2003 1-23 (Page 12)

²³³ Menon, N., 2014. A Uniform Civil Code in India: the state of the debate in 2014. *Feminist Studies*, 40(2), pp. 480-486.

²³⁴ IWRAW Asia Pacific Occasional Papers Series No 5. "The Validity of Reservations and Declarations to CEDAW: The Indian Experience" 2003 1-23 (Page 26)



- o Recognising Scheduled Castes and Scheduled Tribes as 'historically deprived'
- o Safeguarding measures in Article 341 of the Constitution ensuring basic human rights are met
- o The Directive Principles of State Policy order the state to protect these groups from further discrimination based on caste
- o Further laws have been passed to remove discriminatory practices against Scheduled Castes
- o The Untouchability Offence Act 1955 (renamed as the Protection of Civil Rights Act PCR in 1976)
- o Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act 1989
- o The Government reserves the right to enact legislation that benefits the 'weaker section' of society
- o Permanent national commissions are operating to protect the rights of Scheduled Castes, Scheduled Tribes and women
- o Reserved seats for Dalit women in Parliament and state legislature ²³⁵

These legal provisions, however, do not go far enough to tackle the 'double Dalit' burden and still do not acknowledge the individual plight of Dalit women. One of the initial steps in creating a cultural shift to achieve equality for Dalit women is for women's movements to wholeheartedly adopt issues of caste into their movements. Upper-caste feminists often refuse to acknowledge caste as a factor of social oppression; many feminists merge caste and class into one sub-section and view it more as a socioeconomic issue rather than a religious based problem that reproduces structural inequalities²³⁶. These groups of feminists often focus on marriage, inheritance and economic empowerment laws, with little concern for the discrimination Dalit women face in the context of violence ²³⁷. This observation was the foundation for recommending that the struggles of Dalit women be placed at the forefront of feminist movements.

²³⁵ Sabharwal, Nidhi Sadana. 2015. "Dalit Women in India: At the Crossroads of Gender, Class, and Caste." *Women's Bodies and Global Poverty Education* 8 (1): 44-73. (Page 49)

²³⁶ Sabharwal, Nidhi Sadana. 2015. "Dalit Women in India: At the Crossroads of Gender, Class, and Caste." *Women's Bodies and Global Poverty Education* 8 (1): 44-73. (Page 49)

²³⁷ Nidhi S. Sabharwal, Wandana Sonalkar et al., *Dalit Women's Rights and Citizenship in India*, IIDS-IDRC Report Series No. 40 (New Delhi: Indian Institute of Dalit Studies, 2010).

Equally, it must be noted that cultural shifts, especially towards issues as ingrained as caste, often will only succeed when implemented in a top-down manner. Therefore, whilst areas of law reform have been identified, the recommendations for minimising the sexual violence against Dalit women focus around law enforcement and changing the approach and mindset of influential individuals operating in power, and other state officials including police, judges and politicians. Theoretically, if issues of GBV are more widely prosecuted, this should act as a deterrent for future heinous acts against Dalit women.

6.3 Recommendations: Structural reforms in judicial system

A key aspect that has been reiterated throughout this paper is the identification of Government and state officials as perpetrators of violence. Dalit women in police custody have reported further violence from police officers, as well as discriminatory rulings from judges. The paradoxical situation sees the perpetuation of violence from within the structure meant to protect Dalit women, is a central area that must be reformed.

- o Police and the judiciary must consider the link between delays and lack of evidence and consider, if delays were minimised, whether the conviction rates would increase. This would also challenge the widely held belief that there will be no repercussions for violent acts against Dalit women.
- o Target the corruption and caste-based discrimination that operates within these systems by providing meaningful intersectional training for police, government officials and those who work in the judicial system, on the unique plight Dalit women.
- o Implement a stronger vetting process in appointing judges and law enforcers.
- o Mandate a timetable for a case to reach judgement in a court. A study found that 50.5% of cases relating to violence against Dalit women lingered in the judicial system for 2 to 7 years with no resolution. It is recommended that an independent inquiry by a non-governmental organisation should be conducted and ensure that recommendations arising as a result are taken seriously and implemented at an acceptable pace ²³⁸.

²³⁸ Aloysius Irudayam s.j., Jayshree P. Mangubhai, Joel G. Lee. 2006. *Dalit Women Speak Out Dalit Women Speak Out Violence against Dalit Women in India*. Overview Report, New Delhi: National Campaign on Dalit Human Rights.

- o Ensure higher levels of prosecution so the justice system can fulfil its purpose of acting as a deterrent. All areas of the justice system must rethink their position in denying victims a resolution²³⁹.
- o Deliver campaigns that question discriminatory social norms and highlight the issues among public and government officials on the discrimination faced by Dalit women, drawing attention to the intersect of caste poverty and gender .
- o Tougher sentences for perpetrators to act as a deterrent against future violence towards Dalit women.
- o Specific policies targeting corruption amongst government officials and those employed in the justice system.

6.4 Recommendations for NGOs:

One of the hurdles at the heart of this discrimination is the inability of Dalit women to be able to access the justice system and influence policy, as despite reserved seats in the Panchayat and in Parliament, the overwhelmingly stringent aspects of the caste system often intimidate Dalit women into remaining silent. Therefore, NGOs play a vital role in bridging the gap between policy makers at local and state levels. Thus, recommendations for NGOs on how to be more inclusive of Dalit women and their opinions shall be made to ensure their voices are given a platform to be heard:

- o Allow Dalits to be involved in both the implementation and programme design of NGO operations. This can also be achieved by prioritising the addressing of caste in context analysis.
- o Training for NGO staff regarding the unique position of Dalit women, and educating them fully in issues of caste-discrimination.
- o Providing a platform for Dalit women to voice their issues and concerns in meeting the SDGs and implementing their opinions on what must change.

²³⁹ Aloysius Irudayam s.j., Jayshree P. Mangubhai, Joel G. Lee. 2006. *Dalit Women Speak Out Dalit Women Speak Out Violence against Dalit Women in India*. Overview Report, New Delhi: National Campaign on Dalit Human Rights.

- o Facilitating and recognising Dalit women's role as agents of change and including them in the process of change.
- o Aiding the India government in collecting caste-disaggregated data via inclusive and appropriate methods
- o Lobby for appropriate domestic policies which champion the protection of Dalit women's rights
- o Ensure that humanitarian responses are delivered considering the caste-based context, working alongside Dalit women to ensure NGOs can target this unique discrimination ²⁴⁰

6.5 Recommendations for the government:

As mentioned, the study recommends a top-down approach to challenge the rural social norms of Dalit women, to allow prosecution and meaningful implementation of laws. Therefore, the recommendations for the government include:

- o Altering the mindsets of rural communities by highlighting the damaging social norms. This can be done by facilitating educational programmes and open discussions and hosting meetings and open conversations between communities to champion diversity.
- o Involving Dalit rights organisations when working towards instituting UN Principles and SDGs into the Indian legal system, including at local government level. This includes operations led by Dalit women to allow them a platform to draw attention to unique hurdles they face and provide space to allow them to advise on the appropriateness of specific policies in the context of the SDGs.
- o Ensure a significant budget is allocated to education programmes as well as diversity training for government officials. Equally, using these funds to prioritise removing caste-specific barriers.

²⁴⁰ Nadia Saracini and Murali Shanmugavelan “Caste and Development: Tackling work and descent-based discrimination to achieve the SDGs for all” Bond, Society Building, 8 All Saints Street (2019)

- o These funds should also be delegated to Dalit women's rights NGOs, allowing them to effectively gather data so the Indian government can have a clear overview of the situation. This was also a recommendation from the Special Rapporteur on Violence Against Women in 2014 ²⁴¹.
- o Increase funding for Dalit women to provide resources to educate them on their legal rights and provide support when they choose to report crimes of violence against them. This includes emotional and legal support and protection.
- o Investing in education and making teaching a safe experience for Dalit children, to empower the next generation of Dalit girls in understand their legal rights and use education to their benefit and contribute to breaking the cycle of poverty.
- o Projects in Rajasthan found "the single most effective change is the creation of Self-Help Groups (SHGs) for women, in order to build confidence, teach income-generation and leadership amongst rural women, and is central to overcoming caste hurdles"²⁴².

6.6 Recommendations for international community:

It has been noted by multiple scholars that the policies of global capitalism are negatively affecting Dalit women. The rise of right-wing nationalism both globally and in India contributes to a more patriarchal global society that further stigmatises these women. In combination, the lack of enforcement of internationally signed and ratified agreements further undermine the legitimacy of international bodies, meaning India is increasingly justified in not enforcing areas of the CEDAW convention and other SDGs ²⁴³. Therefore, recommendations to the international community include:

²⁴¹ Nadia Saracini and Murali Shanmugavelan "Caste and Development: Tackling work and descent-based discrimination to achieve the SDGs for all" Bond, Society Building, 8 All Saints Street (2019)

²⁴² Mary Grey "Dalit Women and the Struggle for Justice in a World of Global Capitalism" *Feminist Theology* 14(1) 127-149 (p147)

²⁴³ Mary Grey "Dalit Women and the Struggle for Justice in a World of Global Capitalism" *Feminist Theology* 14(1) 127-149 (p147)

- o United Nations member states must urgently take action to improve conditions by Dalit women
- o Keep Dalit women at the forefront of the agenda at CEDAW conventions and other international events
- o Question the attitude of Indian government officials who take the view that caste discrimination is an internal issue or a family matter. States must continue to pressure the Indian government to focus on law enforcement to protect Dalit women.
- o Continue to meet with the Indian Government, persuading them to reconsider their declarations and reservations of the CEDAW convention.
- o UN member states must take tougher stances including sanctions against India if they do not comply with international standards of various agreements and continue to violate the human rights of Dalit women.
- o UN member states should increase FDI, focusing specifically on setting up funds for legal advice for Dalit women and offer financial support for education programmes.
- o Global NGOs and international organisations must continue to advocate and raise awareness of the discrimination that Dalit women face.

7.0 Conclusion:

To conclude, this paper has identified the intersectional ‘double Dalit’ dilemma that Dalit women find themselves in, being targeted by both the caste system and the patriarchy. The rise of sexual violence against Dalit women has been severely perpetuated by the judicial system in the context of case delays, bias judgements or fear of violence from within their community if they choose to report crimes against them. The low rates of prosecution for violence against Dalit women creates a culture of acceptability and encourages further discriminatory practices against Dalit women. This paper also identified the intrinsic and extrinsic sources of patriarchy, stemming not only from upper caste men, but also from within the Dalit community towards Dalit women. The practice of temple prostitution using Dalit women is facilitated by both sources. Furthermore, the absence of acknowledgement from the Indian feminist narrative has alienated Dalit women, allowing them to be overlooked, which further perpetuates the likelihood of violence towards them. This study has also recognised the role colonialism has played in perpetuating violence towards Dalit women by creating a more stringent caste system that is still evident today.

Equally, the inconsistencies in Indian law, and the accessibility issues to the legal system for Dalit women have been highlighted. Finally, this paper has proposed changes in seven areas: law reform, domestic / cultural changes, structural adjustment in the justice system, recommendations to NGOs, recommendations to the Indian Government and finally recommendations for the international community. The struggle for equality for Dalit women is far from over, due to the intersectional nature of their position in society. However, this paper aims to advise on possible ways forward to begin targeting the violence that Dalit women experience. Most of these recommendations focus on meaningful implementations of the law, harsher punishments for perpetrators, training for state officials, more accountability for police and judges, as well as a more rigorous vetting process. Furthermore, these recommendations propose significant inclusion of Dalit women in the decision-making process, as well as using funds to gather accurate data to understand more clearly how widespread this issue truly is.

Women in Jordan: Detention, Ownership, and Honor crimes.

Nancy Yazbick

I. Abstract:

This Article addresses the issue of domestic violence against women, highlighting the violations of women's rights in the Jordanian Law compared to international conventions. It does so by listing some discrimination practices and its various causes. This report aims to address how the government plays a role in combating these practices and understand how it contributes to these forms of discrimination by comparing it to other global standards, and how does it allow these discrimination forms to increase, by comparing it to other global standards. The Article also deals with the reality of conflict amongst women in addition to how the mentality of the society is actually against its own self. As for the solution side, this Article highlights the importance of engaging men, who make up around fifty per cent of the population to reach a solution where we raise awareness of the importance of the women, the family and civil society's role. The Law, regarding protection from domestic violence and gender inequality, contains protective means to reduce this phenomenon, but it fails to apply it in reality by providing protection for women.

In conclusion, this Article provides recommendations on how to efficiently reduce this phenomenon and how to improve law enforcement in practice, leading by example from other countries that have achieved a high percentage of success in this field, so that Jordan conforms to international standards.

II. Introduction

Domestic violence can be defined as a pattern of abusive behavior, in any relationship, used by one partner to gain or maintain power and control over another. "It can be physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person, including any behaviour that intimidates, manipulates, humiliates, isolates, frightens, terrorizes, coerces, threatens, blames, hurts, injures or wounds someone. The term 'domestic violence' was first used in studies during the 1970s to refer to acts of violence and abuse against wives.

However, the concept has been expanded through the 1990s to include all acts of violence between members of one family.” [1](#). It is one of the predominant barriers to the promotion and safety of human rights within the Middle East and the world, especially given its nature and the problems it poses, as well as the difficulty of disclosure and the multitude of legal, social, economical and religious reasons that prevent it from being prosecuted in some cases. “Violence against women, which already affected about 243 million women and girls worldwide in the 12 months before the COVID-19 crisis, according to figures from U.N. Women have skyrocketed during lockdown [2](#)..

United Nations officials call it a “shadow pandemic. “The phenomenon of domestic violence is not the result of time, a particular circumstance or a specific cultural or civilizational, economic or political situation; it has accumulated over the centuries and is the product of a shared cultural heritage, especially in the frame of norms and traditions that typically gives preference to men. This justifies and normalizes the power men yield over women. In Jordan, domestic violence is widely recognized as a family problem affecting large numbers of women, children and adults throughout their lives.

The behavior of men and women is strictly defined and shaped by the social and political system where the state has failed women in implementing laws that give them their right to protection and freedom on all levels. For instance, men are somewhat excluded from prosecution because committing violence against any woman is previously justified by the society as long as it is listed under the title of honor, allowing them to face reduction of penalty. Indeed, a 2002 United Nations Development [3](#). The Fund for Women report found that women in Jordan who experienced intimate partner violence were often reluctant to report the violence to the police or authorities for fear of capacity and unacceptable social participation, this is due to the lack of credibility from the government as they have no dedicated specialized authorities to aid the protection of women. The widely adopted male mindset subscribes to the idea that women should not have the right to stand up for anything, if not approved by their male-guardian. Battered women can also be pressured by their families to drop the charges.

In Jordanian culture, violence against women is considered private and sensitive family matter.

Unfortunately, very little is known about violence against women in Arab society, including Jordan. For instance, a large number of people do not know that the idea of owning a woman, either the sister, wife or daughter, is normalized in most Arab countries and in Jordan. Here is where we can elaborate more about “Women in Detention” where men literally call the police and put a woman he is a guardian of “if she is “absent” from home without permission, or he may end her life with minimum charges if it is called an “ honor crime.” This is where we can start a debate about the unsuccessful measures and procedure of the states law in the regard of women protection.”

However, national, regional and international efforts must continue to eradicate the scourge of domestic violence in all its forms and manifestations, based on the fundamental understanding that violence can never be justified under any circumstances. Since the beginning of the last century, a number of international efforts have combated domestic violence. International conventions and declarations have been issued to counter violence against women, such as Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) .

Moreover, we can point out here that Jordan did not abide by what international laws stipulate. For “the right of individuals to enjoy their rights without discrimination” was confirmed by both “International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and Jordan is a signatory to all these instruments and is therefore obliged to enforce these rules in its law and legal system. Adding to that, the Article put forth by the Universal Declaration of Human Rights in 1948 that emphasizes the equality of all family members for the enjoyment of their rights, which is not applied in Jordan.

1. Gender based violence: Definition and reasons:

Gender Based Violence (GBV) is an umbrella term for any harmful act that is perpetrated against “a person’s will and that is based on socially ascribed (gender) differences between females and males. The nature and extent of specific types of GBV vary across cultures, countries and regions. Examples include sexual violence, including sexual exploitation/abuse and

forced prostitution; domestic violence; trafficking; forced/early marriage; harmful traditional practices such as female genital mutilation; honor killings; and widow inheritance”. [4](#).

The reasons for domestic violence in Jordan are various. The first is the structure of the Jordanian family and the distribution of power within it. There is no doubt that, for traditional reasons, Jordanian society is patriarchal, in which men are granted power, privileges and control over women and children. Men have ultimate power and exercise complete authority over all family matters because they have access to material and social resources. They take on the role of financial service providers and are seen as the “tasters of the family; while wives assume the role of caregivers who are responsible for children and home care”. Women must fully complete these roles, including loyalty to husbands and maintaining the reputation of their families, or else they are socially condemned and risk physical punishment. An abused woman cannot ask for a divorce because she will be socially marginalized and accused of being rebellious and not caring about her family and children. Additionally, a divorced woman will face an inferior view of society, which will increase her exposure to harassment. To avoid such consequences, women must respect social and cultural rules and must comply with all instructions and orders given by men to avoid punishment. In this regard, women in Jordan still accept that violence against them and being subjected to violence and for that they will justify a man's violence. Women against women is also an issue seen in this community, for women who are brought up in the mindset of obedience, based on social and religious traditions and norms will refuse to see another woman defending herself, as they would consider this a violation of the rules established by their tribes for generations. Women with this mentality are unaware of the meaning and definition of "violence" and its various forms. When analyzing women's attitudes towards battered women, it was reported that a large percentage of women believe that the violence experienced by men was justified and beneficial because men know what is best for them, so women do not seek help from government agencies. A second reason for the high level of domestic violence in Jordan is that a man's honor is measured by his wife's devotion; women can also be seen as a source of shame and dishonor for the family. Restoring family honor once the woman deviates from ethical and social norms is seen as a responsibility not only of the husband but also of male relatives, family, and tribesmen. In this regard, Jordanian laws encourage domestic violence.

2. What challenges do women in Jordan face?

The 18th of July, 1848 marked the first attempt to organize a national movement for women's rights. The fight to obtain women's rights began in New York. Women all over the world face a lot of challenges and are still fighting. A lot of countries have succeeded to implement measures that assure gender equality and combat Gender-Based violence (GBV), and that was with the aid of international efforts that have created laws concerning human and women's rights, actually they have explained that these 2 topics are not to be divided. However, middle eastern women are still struggling to obtain the most basic rights.

In Jordan, women still suffer from various forms of violence, unfortunately some of these forms are justified by society and law. For instance, domestic violence, rape, marital rape that is not criminalized by law, administrative detention and honor killing.

The major barrier of combating these phenomena is law. Under the title of "rape" Article 308 of the Penal Code exonerated a man in cases of rape or sexual assault if he married his victim. Article 308 was removed from the Penal Code in 2017, and marital rape is not criminalized by law [5](#).

In Jordan, women's rights and Gender Based Violence (GBV) is still a serious and dangerous topic that still exists strongly. It is also relevant to note that honour killings occur in Jordan, and, as a result, "women may be killed by a family member for violating sexual norms, or for being victims of rape, incest, sexual abuse or sexual rumour" (Equality Now Nov. 2002). According to Equality Now, "an international human rights organization dedicated to action for the civil, political, economic and social rights of girls and women" (n.d.), Articles 97 and 98 of the Jordanian Penal Code provide for a reduction in penalty when a crime is committed in a "fit of fury" or when it is "provoked" (Equality Now Nov. 2002). Provocation can include a female relative's acts that are thought to bring shame to her family (ibid.) [6](#)

3. Women ownership, Administrative detention and Honor killings

- Women's ownership: Male-guardianship

According to the Jordanian law, each woman has a male-guardian. A male guardian is required for an unmarried woman under the age of 40 (whether divorced, widowed, or single). The guardian's consent to marriage is required for a first marriage. There are weak codified

protections for women under guardianship. A judge can overrule a guardian's objection to a marriage.⁷ By this requirement of the Jordanian law, women are taken as property, their independence about being wherever they want, marriage, travel, is actually not possible. This allows men "own" a woman not share a life with her.

- A administrative detention :

What if I tell you, you might be in administrative detention, or imprisonment without a proper trial, because you have disobeyed your male-guardian. Jordanian authorities have an abusive male guardianship system to control their personal lives and limit their personal freedom. So, women accused of leaving home without permission risk humiliation and detention if a male family member complains to authorities. In fact, and based on personal accounts, women may find themselves in detention without trial for months or years without any trial just because their male guardian filed a complaint and didn't come to bail them out yet, so women stay in custody until they gain the bail. However, the prime minister of Jordan responded to Amnesty International that the women administratively detained because they were accused by "zina" (having sex outside marriage) but denied that they were detained just for absence which is a thing that the Amnesty has assured by meeting with several women in Juweideh.

"The Jordanian government should urgently address these shameful violations that national women's organizations have been battling for decades, starting with the zealous use of detention powers by provincial governors, and the discriminatory male guardianship system that allows adult women to be arrested for leaving home without permission." Said Hiba Morayef, Amnesty International's regional director for the Middle East and North Africa.⁷

In addition to protective custody, which aims to protect women and girls who flee their homes from violence, and whose lives are at risk for reasons related to family honor may be forcibly detained in detention centers for their own protection under the Crime Prevention Law No. 7 of 1954. By-laws have been issued for a new system that will require women and girls who are at risk to be housed in ⁸.

Administrative detention faced by both local Jordanian citizens and foreign nationals is highly prevalent. According to UN Women, Jordan is one of the most affected countries by the ongoing humanitarian crisis happening in Syria, and administrative detention is applied by law on both Jordanian women and foreign nationals.

Legally, the administrative detention period can exceed one year without any trial. Women who do not hold Jordanian nationality face specific challenges within the country's law system and detention processes. Two particularly vulnerable groups are refugee women, mainly from Syria and Palestine, and migrant women who are domestic workers, mainly from Sri Lanka, from Indonesia and the Philippines.

- Honor Killings

“Ahlam dashed out screaming into the street, her father close behind. Bleeding from her neck, she begged her mother, the neighbors — anyone — to intervene. That was when her father picked up a concrete block and smashed his 30-year-old daughter’s skull in. Then he sat down next to her body with a cigarette in one hand and a cup of tea in the other as he calmly waited for authorities to arrive, according to witnesses, police and local media accounts.” [9](#).

Think of it this way, if a woman's male relative thinks she did something that would bring “shame” to their family, he will kill her. And guess what, he will have a minimum punishment, and the society not only will not bother to try to help out, but also will justify his inhumane activity because, in their opinion, he preserved the “honor” of his family.

In Jordan, violence against women is regarded as a family matter, yet is a common theme amongst many Jordanian women

Actually, this topic has a great disagreement if it was to be discussed individually and in society. In cultural and religious matters Jordanian society is a conservative society and women’s expected behavior is strictly defined and created accordingly, so this crime is compassionately received by the families and public opinion and how the family, as a whole, generally supports this criminal act perpetrated against women from the same family.

The Jordanian society , however, always finds justifications for such crimes before considering to reject the crime in the first place and this is evident in the reaction of peoples comments on such news , any crime that happens against women and is published on social media always turns into a debate questioning the victim’s behavior rather than the crime itself.

3.1 How are honor killings justified by Law and Society?

Once one understands the law of a state, the individual is free to create an idea of the society. By no further than three Articles in the Jordanian law regarding honor killing, one begins to understand why the society searches for justification before condemning crime. Article 98, Article 99 and Article 340 of Jordanian Penal code, facilitates men's violence against women by justifying the crimes committed against them because of the minimum penalties they get ..

Article 98, mandates a reduction of penalty for a perpetrator (of either gender) who commits a crime in a state of 376 great fury (or “fit of fury”) resulting from an unlawful and dangerous act on the part of the victim. It does not require a flagrante discovery or any other standard of evidence of female indiscretion. If the extenuating excuse is established for a crime punishable by death, such as premeditated murder, the penalty is reduced to a minimum of one year in prison. For other felonies, it can be reduced to a minimum of six months and a maximum of two years [10](#)

Article 99 of the Penal Code also has a negative impact on honor crimes in Jordan. It allows criminal courts to halve the sentence if the victim's family waives its right to file a complaint, which, given its complicity in 'honor crimes. The family nearly always does. Thus, 'honor killers may receive sentences of six months - and often do. If a killer has served that much time awaiting trial, the sentence may be commuted to time served, and he may walk away a free man” [11](#)

Article 340 states that any man who kills or attacks his wife or any of his female relatives while they are in the act of committing adultery or in an 'unlawful bed' benefits from a reduced penalty [12](#) .

These Articles are frequently invoked on behalf of perpetrators of honor killings, in the courts and in society since the society has already formed and aligned the expected behaviors of women. If she acted against what was expected from her, it justifies these honor killings .

The Articles mentioned previously were applied to crimes that were widely spread because of their cruelty and reasons that Jordanian society finds them “taboo” yet , in fact, they are unlogic. For instance, Article 98 was applied, in a 2001 case in which the defendant had killed his sister after seeing a man leave her house. It was also applied in the 2002 case of a man who had killed his sister after seeing her talking to a strange man during a wedding party. In 2003, a man fatally stabbed his daughter twenty-five times because she refused to tell him where she had been, following a three-week absence, and the court, invoking Article 98, reduced his sentence on the basis of the act having been committed in a 'fit of rage'. Court precedents indicate that reacting violently to perceived stains on family honor will generally be found to have occurred in a ‘fit of fury’, even where substantial time passes between knowledge of the alleged bad act and the commission of the crime. In 2020 Ahlam’s case took place, a 30 year old woman, divorced, was physically “punished” by her father because she had been engaged in a love affair, a taboo in her community, fled to a safe house and stayed there for two days before her father found her. The relevant authorities force the father to sign a pledge that he would cause her no harm. Unfortunately , it became apparent that she and her lover would not be allowed to get married, making her affair in the eyes of many, an act that brought shame to the family. Ahlam had an argument with her father and he then killed her. [13](#).



https://english.alaraby.co.uk/sites/default/files/styles/medium_16_9/public/media/images/3C0D41E7-ACAA-463D-A54B-DB659DBE8CB1.JPG?h=098a31d3&itok=GrcWRyh2

- What was the law's punishment?

In a reported case, a man, hearing his sister referred to as a slut, confronted her, she told him to mind his own business, he strangled her the following morning with a phone cord. The High Criminal Court ruled that it does not matter that the defendant killed his sister hours after [learning of her supposed act]. He was still under the influence of extreme anger, which caused him to lose his ability to think clearly because of the unlawful act committed by his sister.

In a 2001 case, a brother had visited his sister in a hospital where she was being treated for burns, and she admitted to him that she had had an affair and was pregnant. He left and bought a gun, returning twenty-four hours later when he shot her seven times at close range. As the court saw it: although there were approximately twenty-four hours between the time the defendant learnt of his sister's illegitimate pregnancy [and the time he killed her], his soul was not at peace.... The irritated soul does not know calm thinking Therefore, he should benefit from a reduction in penalty as stipulated in Article 98 of the Jordanian Penal Code.

In a 2003 case, a thirty-year-old man who had murdered his divorced sister for being absent from the family home for one week, was sentenced to six months for the 'honor crime' due to the mitigation granted under Article 98, and was set free having served the time while awaiting trial, after the father of the victim, who was also the father of the defendant, dropped charges.

4. Government's efforts to curb this scourge by law Internationally

On December 3rd 1980, Jordan signed the Convention of Elimination of all forms of Discrimination Against Women – CEDAW, affirming the importance of gender equality and preventing all forms of discrimination a woman may face, yet women are still suffering from manifestations of discrimination. [14](#)

Jordan gained the ratification of CEDAW on the 1st of July – 1992, but the latter has been applied with selective reservation to key Articles. This includes Article 5 which is “Stereotyping and cultural prejudices” meaning the government should take appropriate measures to eliminate discriminatory cultural practices. In addition, the government should ensure that family education includes awareness of maternity as a social function, and recognise the role of both genders in the upbringing of their children. Article 15 titled “Equality before law” means that the state shall ensure that women, like men, have the right to enter contracts, own property and choose where to live. Finally, Article 16 “Marriage and family life” – “women have equal rights with men in relation to marriage and as parents, as well as in respect of other aspects of family life.” It is evident that these articles are not implemented as multiple inhumane activities still persist. These can be as a result of minor incidents including leaving the house without permission from the male guardian or having a relationship with a man.

“The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the United Nations General Assembly and came into force in 1981. CEDAW is commonly referred to as the international bill of rights for women. It defines what constitutes discrimination against women and girls and sets out a comprehensive framework for tackling gender inequality.” [15](#)

CEDAW's Articles have covered the protection of women in all aspects, starting with defining the term “discrimination against women”, duty of states, equality, appropriate measures that states

should take to ensure development and guarantee women to enjoy equal rights with men, stereotyping and cultural prejudices, women right in political and public life, nationality, education, employment, health, economical and social benefits, and raising the importance of “Equality before Law”. In addition to that, Articles that describe equality with men in marriage and family life are also included.

The effort of the United Nation Assembly has given all states the guidelines that they can follow to assure safety for all women, which allowed them to evolve regarding their laws and human rights implementations. Yet, there are many countries that have failed their citizens to follow or implement these laws.

-Locally : (Government);

In the past few years, the state has adopted several procedures to address gender-based violence. I shall not outline the measures and assess how effective they were.

The Hashemite Kingdom of Jordan passed the Family Protection Law in 2008 to combat violence against women, dedicating government’s resources to prevent violence against women concentrating on protecting women, but at the same time stripped other civil liberties such as freedom of expression and assembly.

“In terms of international non-treaty mechanisms, in 1997 the UNGA issued its Resolution No. 86/52 on crime and criminal justice to eliminate violence against women, offering preventive measures whereby it called on member states to:

- Develop and implement relevant and effective public awareness, public education and school programs that prevent violence against women by promoting equality, cooperation, mutual respect and shared responsibilities between women and men
- Develop multidisciplinary and gender-sensitive approaches withiN public and private entities that participate in the elimination of violence against women, especially through partnerships between law enforcement officials and the services that are specialized in the protection of women victims of violence

- Set up outreach programs for offenders or persons identified as potential offenders in order to promote the peaceful resolution of conflicts, the management and control of anger and attitude modification about gender roles and relations” [16](#)

Moreover, the constitution concerning the punishment and the reduction of punishment shall be reviewed and evaluate their laws and their codes in order to ensure its effectiveness in eliminating violence against women. This evaluation should also include the criminal and civil law in the framework of the national legal system to ensure that all acts of violence against women are prohibited.

Also, it added two new paragraphs to Article 6 of its Constitution. The first states that “The family is the basis of society the core of which shall be religion, morals and patriotism; the law shall preserve its legitimate entity and strengthen its ties and values.” The second states that “the law shall protect motherhood, childhood and the old-aged; and shall avail care for the youngsters and those with disabilities and protect them against abuse and exploitation”. the Jordanian Constitution, in the first paragraph of Article 6, “also guarantees the principle of equality between Jordanians, who are equal before the law without any discrimination between them. Prior to that, Jordan issued the Law Regarding Protection from Domestic Violence (Law No. 6/2008) and ratified CEDAW in 2007. Jordan also continues to provide periodic reports to the CEDAW Committee. In 2012, it presented its fifth periodic report, which pointed to the progress made by the Jordanian state in protecting women from domestic violence, achieving equality between the sexes and improving the status of women.”

“On 20 January 2013 the Council of Ministers approved the National Strategy for Jordanian Women for the years 2013-2017. The Strategy was prepared by the Jordanian National Committee for Women's Affairs in collaboration with all stakeholders in women's rights. It is aimed at strengthening women's role in policymaking and decision-making in the various themes and sectors that qualify for public participation in family, community and nation-building, and sustainable development in society with justice, equality and equal opportunities. It also focused on empowering women politically and economically, and protecting them from violence. However, despite of all of the above, figures indicate that violence against women is still

routinely practiced in Jordanian society, as shown in the reports issued by the national institutions for protection against domestic violence.” [17](#)

“ In 1997, the government created within its police force the Family Protection Department, which is tasked with investigating and addressing domestic violence and sexual assault cases against women and children.

In 2016, the government’s Religious Endowments department issued a fatwa saying honor killings are not compatible with Islam.

And despite opposition from conservatives, rights groups have won numerous amendments to the penal code, including one in 2017 that closed a loophole allowing “severe anger” as a mitigating circumstance for men killing women. That same year brought another change to Article 340, a section taken from the French colonial penal code, which exempted a man from punishment for killing or injuring his wife or a female relative discovered committing adultery or “in an unlawful bed.”” [18](#)

“Civil society groups have taken responsibility to raise awareness and organize protests to stop honor killing and reconsider the law, said Salma Nims, who heads Jordan’s National Commission for Women, a semi-governmental organization that advocates for and promotes women’s issues. But there are too few to meet the scale of the problem, and the government often restricts their funding, even if it isn’t coming from the state.” [19](#)

5. Reasons behind the failure of women protection

In accordance with the universally recognized principle of access to justice of human rights, the Jordanian Constitution states that "the courts are open to all and free from any interference in their affairs" [20](#). Despite this recognition at the highest legislative level, social barriers often prevent women from actively seeking justice. So, what are the reasons behind all the inequality and the gender based violence against women?

5.1 Social reasons:

The lack of awareness and education of the meaning of violence, human rights and women's roles in society have led this community to see the woman in the eye of a burden rather than seeing her as the other important half that establishes society from the base.

As these cases are regarded as family, cultural, and religious matters, in addition to the conservative attitudes towards gender roles, a woman's behavior is strictly defined and formed. These matters limit the knowledge about this phenomena. In this regard honor killings and violence against women are viewed with approval and justification, for tribal codes often take precedence over the official legal system.

The very late interference of the spouse's families is a cause of the spreading of domestic violence. This lack of interference aids violence to extend in the family area, thus depriving the family of the necessary support and negotiation through family dilemmas. Furthermore, cultural reasons evidence how violence and cruelty are seen as a method of preserving traditions and norms and taken to be an influencing act and control where the man is the boss in the family and has control of his wife, daughter and even his son.

5.2 Juridical law:

“Hala Ahed, a lawyer and human rights defender, cited a case in which a father beat his daughter with a stick and poured gasoline on her and burned her to death. Her sin? Being out in public by eating on the roof of the house till sundown. Others recalled a November incident in which a man took a knife to his wife for arguing with him, locking her in a room and gouging out her eyes in front of her children. Or the brother who killed his 14-year-old sister when she created a Facebook account, for what he assumed were for shameful purposes.”

Jordan's judicial system is diverse: in the 19th century, when the country was part of the Ottoman Empire, criminal procedures were adopted in the French Napoleonic Code. When Jordan became a British protectorate, aspects of English common law were also introduced into the judicial system. After gaining independence in 1946, the king and other Jordanian civic leaders decided to incorporate European law into the new constitution, establishing the judicial

system as one of three separate branches of government. Its independence is constitutionally guaranteed by Article 27, which provides: "Judicial power is independent and is exercised by the tribunals in their various kinds and degrees. All judgments are rendered in accordance with the law and in the name of the King." The judiciary is responsible for the interpretation and application of the rule of law nationwide. Article 99 of the Constitution divides the courts into three categories: civil courts, religious courts and educational courts.[21](#)

The Jordanian justice sector is currently facing administrative and financial hardships, especially in the Shari'a court system, which is used more heavily by women than men when considering its 9 million inhabitants. Jordan has only 64 Shari'a courts and 234 Shari'a judges. Increasing demand for Shari'a services has led to a lack of both human and financial resources, and the subsequent overcrowding of the Shari'a system disproportionately affects women.

An analysis of the Chief Justice Department Annual Statistical Report highlights the increasing number of unresolved cases that are dealt with by Shari'a courts in Jordan. Between 2010 and 2016, the number of unresolved cases has doubled in Jordan. The timeliness of deliberation processes has also been impacted: this specifically harms women going through divorce proceedings, as women cannot remarry until the marriage has been formally dissolved by the court, a stipulation that does not apply to Jordanian men

Lack of appropriate legal aid also forms a significant obstacle towards the realization of equal treatment of women under the law in Jordan.

Unfortunately, laws that protect the right to legal assistance are scattered and do not provide a secure framework for equal access to justice: prior inequalities are enhanced by the absence of a comprehensive legislative framework that clearly and explicitly outlines aid procedures.

Moreover, after considering the Articles regarding criminal acts in terms of gender based violence, "the laws reflected that stance, allowing killers to get off scot-free. Judges, officials and police officers, the vast majority of them men, often were sympathetic to the perpetrator's views. Rights groups seeking change were accused of being Western-influenced provocateurs intent on spreading moral degradation". So, the fact that the law gives excuses, reasons and justifications to reduce sentences of honor crimes perpetrators, in addition considering the killer as already

having “ served his punishment” if he was in detention awaiting trial for 6 months, facilitates the idea of killing in the name of honor.

5.3 Political reasons:

As in many Arab countries, we notice that women’s political roles are low to non-existent, which is a major reason for the system's failure concerning women protection and women empowerment systems.

The Jordanian Parliament does not have an overarching Gender Equality Policy and has not devised a strategic plan that includes gender equality outcomes. Some preliminary project-based work has been done by the King Hussein Foundation Information and Research Center (IRCKHF) on gender mainstreaming with the parliament’s Center of Legislative Studies and Research . The family structure and the process of socialization within the family constitute obstacles to the political emancipation of women, as does the system of Islamic values in Jordan. The activities of women's civil society organizations in Jordan hinder women's ability to empower themselves because they do not facilitate women's empowerment by participating in decision-making roles. The quota for women in Parliament facilitates the political emancipation of women, and whilst this is a necessary first step, it is also imperfect. Women are still widely perceived, by both men and women, as incapable of assuming leadership roles. Research analysis indicates that barriers to women's empowerment lie in the social structure and value systems of Jordanian society, particularly patriarchal gender roles.

6. Suggestions and recommendations

It is not unthinkable that Jordan could make progress in reducing violence against women and honor killings in a short time if the Commission of Status of Women recommendations that ensured economic, social, political and civil rights of women were followed.

It all begins when the society accepts that there are two main elements that co-exist and neither peace nor equality can be achieved without learning that each has its important role to play, yet this cannot happen unless the governmental and non-governmental organizations place efforts to combat these scourges.

Families here are victims too, since they are not aware of how to perceive the problem, discuss it, and think about solving it. On the contrary, they only know the restrictions followed in society and they only think about removing the problem.

Starting with the society, creating programs that ensure education and awareness for youth to learn more about human rights and their rights, workshops will enable each woman to be economically supported. Juridical systems also should be reconsidered for all laws concerning violence against women, “Amend the law to ensure the activation of the content and spirit of the constitutional provisions that guarantee non-discrimination between Jordanians, family welfare and young people, and in accordance with the general principles of international standards of human rights in general and women in particular, and include a definition. It should also manage to keep domestic violence under scrutiny and keep its provisions objective, most important of which is to oblige the Judicial Police and public security officers to go to the actual place of the occurrence of domestic violence. In this context, it can be guided by the definition of domestic violence contained in the Declaration on the Elimination of Violence against Women adopted by the UNGA on 20 December 1993”. [22](#).

“Expand the scope of application of the law to include all aspects and forms of violence exercised by the designated members of the family-in-law towards each other, whether this violence occurs inside the family home or outside it, such as at a place of work, or in the house of any other family member. Ensure rapid and secret investigation of the offense of domestic violence. Identify specific tasks and functions of the institutions designated to prosecute this offense, and do not expand the granting of discretionary powers in the event of a crime or to give priority to reconciliation or other forms of mediation.

Recommendations:

1. Creating and implementing sufficient public policies that oppose domestic , and Gender Based Violence
2. Implementing long-term educational programs in schools, colleges and universities
3. Holding workshops and training programs with national and international organizations, to be supported by plans and strategies to make sure that all women, girls, and even men attend , focusing on those who are subject to violence

4. Develop social protection programs that are reachable to whomever needs them, the most important thing
5. Create legislative rules that protect women in the case of domestic violence , and offer the protection of their right to have their children with them

7. Conclusion

There are still many barriers for the world to achieve equality, yet it is not impossible. This is why I contacted Mrs.Reem Najjar , formerly with UNICEF and other UN bodies in Jordan, we have asked her some questions so that we would get a professional point of view, the questions were as followed-

Q1: How did you, as a government, start to combat the phenomenon of violence against women, especially the phenomena of both detention and honor killings?

A: “Training workshops and awareness sessions were conducted in different areas in Jordan. The workshops focused on women's rights, local and international conventions on women's rights, gender equality, child marriage, girl's education. inheritance laws, Muslim and Chritain views on violence againts women,women's health, honour killings and detention. The workshops involved young women. From the workshops several cases of violence against women were identified. The women involved were provided legal support. More training workshops need to be held. Unfortunately the current economic situation after covid and donors channeling funds to other countries is a big challenge. Private sector in Jordan used to fund activities. After covid, funding from the private sector is reduced to a great extent. Unfortunately men rarely attend these workshops as if the violence is carried out by women and men have nothing to do with it.”

Q2: What are the economic, social, political and health implications of limiting these measures in the current circumstances? How do you assess these conditions from your position in the Ministry of Social Development?

A: “Many NGOs held training workshops for youth on the same issues mentioned above in order to bring awareness and knowledge at a young age. The youth showed real understanding of family violence and carried out campaigns in their schools and community on the negative effect of violence and early child marriage.

3, Economic empowerment of women and girls was done through several training workshops. The training included teaching women how to market their products. Once women are in a better economic condition they will be able to stand up for their rights and will not accept more acts of violence.”

Q3: As you are part of this society, and since this society consists of tribes and clans that are keen to preserve traditions and customs and their strong connection with God, what are the strategies, in your opinion, that will help us reduce violence against women in general and honor crimes in particular?

A: “NGOs pressured the government for more strict laws on perpetrators of honor killings.

Our Strategies:

More awareness is still needed.

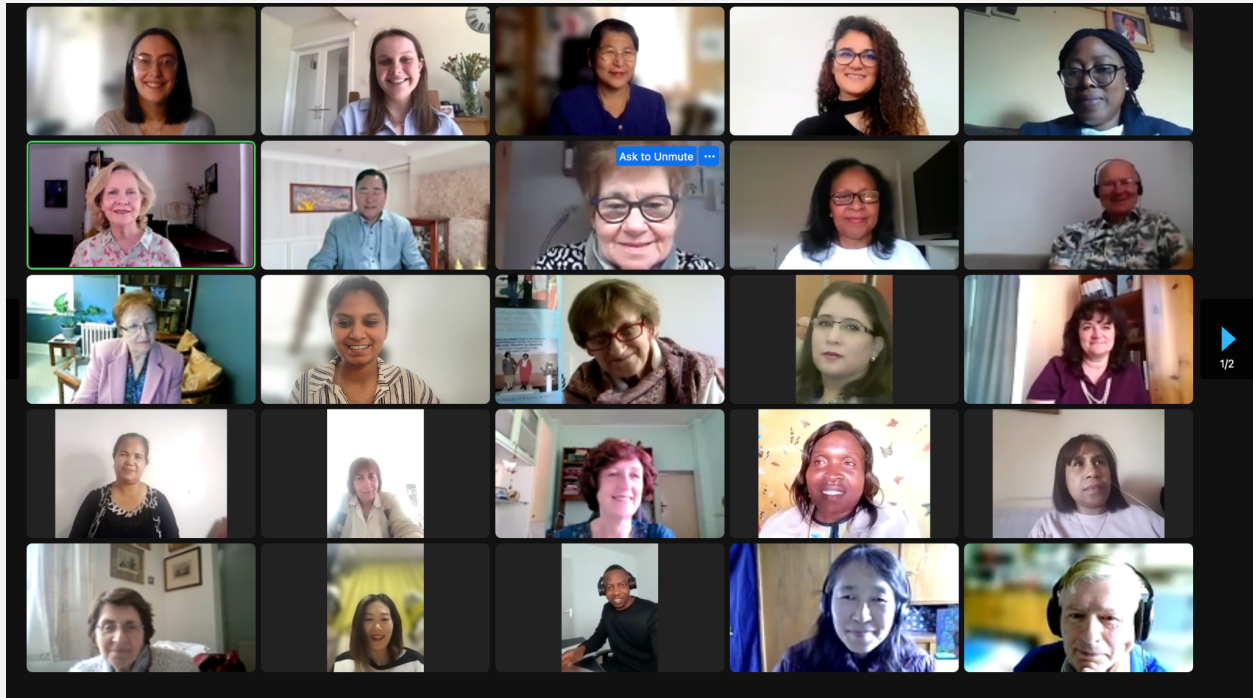
Media should be more involved in women's issues

NGOs should partner on the important issues relating to women. Partnering would create a big network with wider outreach.

Carry out training workshops in less advantaged areas in Jordan, particularly in marginalized poor communities where education for girls is not a priority. Continue to pressure the government to change laws pertaining to women and the family”

Strengthening women's participation in Jordan's political and economic systems will be invaluable in protecting the rights of women and girls. The lack of economic opportunities limits women's ability to demand justice and demand redress. Equal access to justice is the foundation of gender equality, and supporting women's empowerment is the first step towards an increasingly just society.

WFWPI Winter Human Rights forum 2022 Report



WFWPI UN Office Geneva hosted a Human Rights Forum on the 29th of April 2022 online through zoom. This forum was part of the two month long winter human rights internship organized by the Geneva Office. This internship program began from the 20th of February 2022, hosting five international interns who began their journey with WFWPI researching and advocating various human rights issues. The interns were asked to write individual advocacy papers on their choice of interest within the umbrella of human rights and Women's rights. The interns did a remarkable job in completing their papers on different topics in just two months. At the end of this two months period, the Human Rights Forum was hosted, showcasing and presenting their research to global civil society activists.

The event lasted for around 90 minutes hosting our five interns as speakers with experts joining the discussion as commentators. Our speakers from different backgrounds presented their own

research on human rights violations of women and girls in India, Nigeria, Jordan, France and Canada. This includes topics such rights of elderly people, marginalised and indigenous communities and patriarchal abuse against women. Mrs. Carolyn Handschin, Director of UN offices of WFWPI added more light on this from her experiences in several projects globally. Adding to this, we had Dr. Sun Pak, president of UN Association of South Korea respond and appreciate the presentation of the interns with notes from his years of experience. He suggested spaces for development and shared his inspiration to the work of these women.

This discussion was then followed up by a question and answer session, which received a lot of positive and constructive questions on how to further work on the issues our speakers talked about. Their work showcased the importance of youth empowerment, professional advocacy, global cooperation and much more inspiring many to actively engage in such crucial issues.

WFWPI UN Office Geneva thanked everyone's participation in the event and assured that there will be much more internship programs coming, especially the Human Rights internship, which shall be aligned with the Human Rights Council timeline. Youth empowerment is more important than ever before.



WOMEN'S FEDERATION
FOR WORLD PEACE INTERNATIONAL



Contact

Mrs. Carolyn Handschin

Director, UN Offices, WFWPI

c.handschin@wfwpi.org

Ms. Srruthi Lekha Raaja Elango

Assistant to the Director, UN Offices, WFWPI

s.lekha@wfwpi.org