

# say NO TO VIOLENCE

## The United Nations Declaration on the Elimination of Violence against Women (DEVAW) defines VAW as:

"Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life." (DEVAW, Article 1)

## Why does VAW happen?

### Reasons that sustain and escalate GBV are:

- Cultural
  - Gender-specific socialisation
  - Culturally demarcated roles for men and women
  - Expectations of performing fixed roles in familial relationships
- Economic
  - Women's economic dependence on men
  - Limited rights over land and property
  - Limited employment opportunities and adverse employment conditions
- Legal
  - Discriminatory laws on marriage, divorce, property and violence
  - Low levels of legal literacy
  - Insensitive treatment of women and girls by the police and judiciary
- Political
  - Under-representation of women in positions of power in politics
  - VAW not considered as a serious political issue
  - Notions of the family being private, beyond State intervention

Source: Local Action/Global Change: Learning About the Human Rights of Women and Girls by Julie Mertus with Mallika Dutt and Nancy Flowers. Centre for Women's Global Leadership and the United Nations Development Fund for Women (UNIFEM), 1999

- The UN has identified six underlying causes of VAW:
  - Historically unequal power relations: The political, economic and social processes that have evolved over many centuries have kept men in a position of power over women.
  - Control of women's sexuality: Many societies use violence as a way to control a woman's sexuality, and likewise in many societies violence is used to punish women who exhibit sexual behaviour, preferences and attitudes that violate cultural norms.
  - Cultural ideology: Culture defines gender roles and some customs, traditions and religions are used to justify VAW when women transgress these culturally assigned roles.
  - Doctrines of privacy: The persistent belief in many societies that VAW is a private issue seriously impedes attempts to eradicate this violence.
  - Patterns of conflict resolution: Links have been identified between VAW in the home and community in areas that are in conflict or that are militarised. Often, heightened insecurity means that tensions within the home are more pronounced and can contribute to the perpetuation of VAW in the family. Equally, because eyes tend to be on the conflict, women's suffering is often overshadowed. VAW is also frequently used as a formal military tactic.
  - Government inaction: Government negligence in preventing and ending VAW establishes a tolerance of VAW throughout the community.

### WHAT THE LAW SAYS AND DOES

The Constitution of India guarantees equality and non-discrimination on the basis of gender, and there are several laws that address the issue of VAW. Knowledge of these laws, and their drawbacks, is extremely important for women facing violence, as well as for those who wish to use the law effectively to stop VAW.

### Rape

Sections 375 and 376 of the Indian Penal Code (IPC) define and provide punishment for the crime of rape. The general principle in Section 375 is that if a man has sexual intercourse with a woman below the age of 16, with or without her consent, he is guilty of rape. But if the woman is his wife and above 15 years of age, the act is not rape. This means that marital rape is not a crime in India. A nominal punishment is provided if the wife is between 12 and 15 years of age, or is living separately from him.

The establishment of the crime thus hinges on consent -- did the woman consent or was she forced into having sexual intercourse? The most crucial determinant for the courts is to find out whether there was free and informed consent on the part of the woman who has allegedly been raped. However, establishing legal consent to prove rape has a troubled history in India, where the courts have repeatedly assumed the woman's consent due to lack of or insufficient physical injury, her past moral character and sexual history, thereby acquitting rapists.

Apart from 'consent' the other determinant for rape according to the law is that there must be penetration of the woman's vagina by the penis only. Penetration with any other object, be it life-threatening (a knife, an iron rod, etc), though more physically harmful, is not rape.

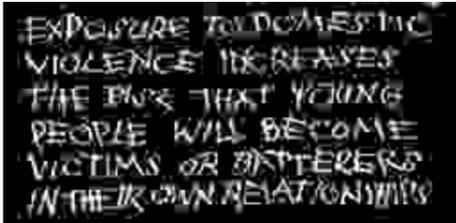
The penetration requirement is linked to notions of chastity and the fear of pregnancy by someone other than the legitimate father. The concept of penis penetration is based on the control men exercise over their women. In other words, the priority given to penetration by the penis over all other forms of penetration is historically based on the need to defend the rights of the legitimate father, rather than the woman's bodily integrity. Rape violates these property rights and may lead to pregnancies by other men and threaten patriarchal power structures.

Though rape is an extreme form of sexual abuse, sex is not the main issue here. Feminists have for long argued that rape -- indeed, all forms of sexual abuse -- has more to do with an assertion of male power over women than a matter of men having the uncontrolled urge for sex.

In fact, rape has more to do with the notion of chastity, purity, virginity and fertility. In a society where family lineage is passed on through males, where all land and property is passed from father to son, where caste and religious purity are of utmost importance, and where, until recently, paternity could be determined only by a woman's strict faithfulness to her husband, it was critical to have absolute control over a woman's sexuality. So it came about that a woman was expected to be a virgin when she married and thereafter have sexual relations only with her husband. Woman was the reproducer, a part of her husband's property, to be kept safe and protected from other men.

In such a context, to rape a woman is to "loot", "destroy", "defile", "shame" the man to whom she "belongs". Examples of this can be seen in times of war and caste, communal or racial conflict, where the men of one "side" systematically terrorise and humiliate the other "side" by raping women. In such situations, the entire State machinery is behind the "offender": even the women of the dominant community support the "punishment". This is why 'marital rape' is still not a crime in India, because the law cannot even imagine how the husband can violate his own wife, who is his property.

Given the unequal power equations involved in rape, the woman is under tremendous pressure to uphold family honour, and it becomes extremely difficult for her to report the offence and make it public facing a backlash against her own character. Women are trained to be helpless and physically weak, but if a woman is raped she is expected to offer stiff resistance and, as proof of such resistance, show physical injury. Since rape is considered a fate worse than death, she is expected to struggle till she succumbs to death or fights off the rapist.



### Mathura's rape

The infamous rape case of Mathura in the late-1970s was one of the main catalysts for the Indian women's movement campaigns to amend the law on rape. Mathura was a 16-year-old tribal girl from Maharashtra who was raped by a policeman within a police station. When the case went to the lower court, the accused police constable was acquitted on grounds that since Mathura had eloped with her boyfriend she was used to sexual intercourse and hence could not be raped. The court further held that Mathura had consented to sexual intercourse with the policeman because she was of loose moral character. On appeal, the high court convicted the policeman and held that mere passive submission or helpless surrender by threats or fear could not be equated with consent. The Supreme Court acquitted the policeman again. It held that since Mathura had not raised any alarm and there were no visible marks of injury on her body she had indeed consented to having sex.

Women's groups and human rights groups all across India rose in unison to criticise this arbitrary judgment of the Supreme Court, and a sustained campaign for law reform resulted in custodial rape being added to the law on rape in the IPC, and the burden of proof being shifted to the accused in cases of custodial rape occurring within institutions like jails, remand homes, nari niketans, etc.

The agitation which was sparked off by instances of rape in police custody highlighted the extremely unequal power relations involved between the rapist and the victim and the need to alter notions of what constitutes consent. Over the years, though some changes were made, the conviction rate is still very low; hence the need for continuing the campaign to re-frame the law and the attendant procedures of investigation remains imperative.

### Outraging the modesty of a woman

Any form of sexual violation that does not fall within the narrow ambit of the offence of rape falls under Sections 354 and 509 of the IPC. Even though these sections intend to protect women's 'modesty', the IPC nowhere defines what constitutes 'modesty'. Since the understanding of 'modesty' is moralistically constructed, the Section can get subjectively interpreted to apply to only certain kinds of women (chaste, sexually innocent/passive, etc) who can be said to be the sole possessors of 'modesty'.

For example, a woman's mannerisms, walk, make-up, mode of dressing, hour of the day when she is out may be deciding factors when she claims the protection of her 'modesty'! So, in 1967, a two-judge bench of the Supreme Court deliberated on whether a female child of seven-and-a-half years, who was raped, could be said to be possessed of 'modesty', which could be 'outraged'.

### Child sexual abuse

When Pinki Virani wrote *Bitter Chocolate* in 2000, the book sent shockwaves through the 'Happy Indian Family'. For the first time, popular consciousness started questioning what was understood to be the most secure space for children. We were aware of children's vulnerability to sexual abuse -- but were convinced that it happened to 'bad' children, from 'bad' families, in 'bad' places. In case a 'good' child, from a 'good' family was abused, the abuser would invariably be a 'bad' stranger. Bitter Chocolate shattered this myth and laid bare the fact that sexual abuse of children cuts across class, caste, cultural and economic backgrounds.

Yet, in India there is no separate law on child sexual abuse (CSA). The only legal recourse for the offence of CSA are rape and outraging of modesty, which fail to arrest the unique nature of the sexual abuse of children. As the above provisions only consider peno-vaginal penetration to be rape, they provide for an extremely inadequate and moralistic understanding of other forms of abuse faced by girls who are not 'raped'.

The law on rape in the IPC only covers CSA of girl-children where peno-vaginal penetration has taken place. Most often CSA does not take this form, but ranges from exhibitionism and touching to all forms of penetration (including penile-anal, penile-oral, object-vaginal, and finger-vaginal). In cases of CSA concerning girl-children, where penetration of the vagina has not taken place, Section 354 (outraging of modesty) comes into operation. Another major inadequacy of this provision is the quantum of punishment. For CSA amounting to the gravest forms of molestation just falling short of penetration, it stipulates a maximum of two years imprisonment, as against a minimum of seven years imprisonment for 'rape'. None of the above Sections provide any protection to boy-children who face sexual abuse.

### Sexual harassment in the workplace

Sexual harassment in the workplace is considered a violation of human rights, and an affront to the dignity of the person harassed. It is viewed as a manifestation of violence against women that results in creating an atmosphere of discrimination against her. It is seen as unacceptable conditions of work which have detrimental effects for both female employees and the employer.

Sexual harassment can take the form of 'harmless' banter or unwelcome physical conduct. Sometimes, a boss may use sexually tinged language with a female colleague; demand that she meet him after office hours for a 'relaxed and quiet dinner for two'; or even threaten her career options using sexual harassment to silence her. Sexual harassment at the workplace violates one's freedom and personal dignity, goes against the right to work in a healthy environment free of discrimination, and is unequal and discriminatory behaviour.

A survey conducted for the National Commission for Women (NCW) in July 1998, covering over 1,200 women in both the organised and unorganised sectors, found that nearly 50% had experienced gender discrimination or physical and mental harassment at work. Yet, 85% of them had never heard of the existence of any law against sexual harassment. Only 11% of them were aware that they could seek legal redress in cases of sexual harassment, and that sexual harassment was an offence punishable by law.

The NCW survey found women in the unorganised sector more vulnerable to sexual harassment than women in the organised sector. Apart from sexual harassment, 32% of the women covered in the survey also reported discrimination in salaries, leave, promotions, work distribution and working hours.

## Vishakha case

The horrific story behind the inception of the Supreme Court's Vishakha Guidelines against sexual harassment at the workplace, etched into celluloid in the 2000 film *Bawandar*, is now famous. Bhanwari Devi, a 50-something-year-old social worker in Rajasthan, fought as a saathin against the insidious practice of child marriage. As part of her job in the villages, she tried to stop the wedding of an infant girl, less than a year old. Outraged by the audacity of this woman -- of low caste, no less -- who was challenging tradition, five men from the upper-caste family of the infant gangraped Bhanwari Devi in the presence of her husband.

In the immediate aftermath of the rape, Bhanwari Devi's unthinkable trauma only festered as the village authorities, the police and doctors all dismissed her situation. A trial court acquitted the accused. Appalled at the blatant injustice and inspired by Bhanwari Devi's unrelenting spirit, saathins and women's groups from all over the country launched a concerted campaign to bring her justice. They filed a petition in the Supreme Court of India, under the collective platform of Vishakha, asking the court to take action against sexual harassment faced by women in the workplace. Bhanwari Devi had attracted the wrath of the men solely on the basis of her work. The result was the Supreme Court judgment of 1997, popularly known as the Vishakha Guidelines.

The judgment created mandatory sexual harassment prevention guidelines for the workplace, applicable all over India. All employers or responsible heads of institutions (including schools, colleges, hospitals, etc) must institute certain rules of conduct and take preventive measures to stop sexual harassment in the workplace. The guidelines direct employers and/or authorities to set up complaints committees within the organisation, through which women could make their complaints heard. These complaints committees must be headed by women, and at least half its members should be women. To prevent undue pressure from within the organisation, the committee should include a third-party representative from a non-governmental organisation or any other individual conversant with the issue of sexual harassment.

## Vishakha case contd . . .

According to the Supreme Court, sexual harassment includes any unwelcome:

- physical contact and advances
  - a demand or request for sexual favours
  - sexually coloured remarks
  - showing pornography
  - any other unwelcome physical, verbal or non-verbal conduct of a sexual nature
- The court guidelines took a broad view of the "workplace", which includes educational and other institutions -- any place where working relations exist. Similarly, "employer" is to include all "responsible persons" or "persons-in-charge" in the public or private sector for ensuring a safe and healthy work environment.

What the judgment stresses is the presence of the 'unwelcome' element, in word or action, of a sexual nature. Any form of sexual attention becomes harassment when it is 'unwelcome'. Whether the perpetrator intentionally or unintentionally sexually harasses a person is not the issue. How the person, at whom it is directed, receives that behaviour is crucial because of the subjective nature of sexual harassment.

Along with the above remedial measures, the judgment also suggested certain preventive steps to be taken by employers:

- An express prohibition of sexual harassment as defined above should be notified, published and circulated in appropriate ways.
- Amendment of conduct service rules to include sexual harassment as an offence and provide for appropriate discipline against an offender.
- Providing appropriate work conditions in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplaces, and no employed woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

### Domestic violence

The phenomenon of domestic violence remains one of the most prevalent yet largely 'invisible' forms of violence in the public domain. It is a manifestation of inequality within the home. Contrary to the general belief, violence faced by women in intimate relationships is neither restricted to certain social sections nor is it manifested only in its physical form. Domestic violence occurs in many forms -- physical, emotional, sexual, economic, verbal and others, and a woman may face violence in any one, two or in combination of all of them. A woman may face this cycle of violence as a daughter, a sister, a wife, a mother, a partner, or a single woman in her lifetime.

Domestic violence is not always physical. It can involve behaviour that causes psychological harm or attempts to maintain power and control through coercion or intimidation. Name-calling, humiliation, constant criticism, attempts to isolate a woman from her friends or family, extreme jealousy, restrictions on personal freedom, tight control of family finances, and threats of physical harm are all markers of an abusive relationship. Abuse does not have to happen every day or every week for it to be classified as domestic violence.

According to a study by the International Centre for Research on Women (ICRW) in 2000:

- As many as four out of 10 women in India experienced violence in the home.
- 44% of women interviewed reported at least one incident of physical or psychological violence in their lifetimes.
- Till 2005 there was no single comprehensive law on domestic violence in India. Till then a Section inserted in the IPC in 1983, 498-A, sufficed for protection from domestic violence. This Section deals with cruelty by a husband or his family towards a married woman. Four types of cruelty are dealt with by this law:
  - Conduct that is likely to drive a woman to suicide.
  - Conduct that is likely to cause grave injury to life, limb or health of the woman.
  - Harassment with the purpose of forcing the woman or her relatives to give some property.
  - Harassment because the woman or her relatives is unable to yield to demands for more money or does not give some property.The punishment is imprisonment for up to three years and a fine. The complaint against cruelty need not be lodged by the person herself. Any relative may also make the complaint on her behalf. The following forms of cruelty are recognised by the courts:
  - Persistent denial of food.
  - Insisting on perverse sexual conduct.
  - Constantly locking a woman out of the house.

- Denying the woman access to children, thereby causing mental torture.
- Physical violence.
- Taunting, demoralising and putting the woman down with the intention of causing mental torture.
- Confining the woman in the home and not allowing her normal social intercourse.
- Abusing children in their mother's presence with the intention of causing her mental torture.
- Denying the paternity of the children with the intention of inflicting mental pain on the mother.
- Threatening divorce unless dowry is given.

Source: 'Laws Against Domestic Violence and Abuse', Manushi, issue 137, November 2003



## Protection of Women from Domestic Violence Act, 2005

While Section 498-A is a criminal law, women's groups in India have been campaigning for the passage of a civil law to protect women from domestic violence. Efforts by the women's movement, and particularly Lawyers Collective, an NGO, led to the enactment of the Protection of Women from Domestic Violence Act, 2005. The key features of this law are:

- It gives the right to shared residence for the woman.
  - It recognises multiple forms of domestic violence -- physical, sexual, mental, verbal and economic abuse.
  - It recognises that violence within a domestic relationship need not be habitual to come within the purview of the definition of domestic violence, and that a single act of harm or injury should allow the victim to seek protection under the law.
  - It brings within its fold not only married women but also women related by blood, through a relationship in the nature of marriage (live-in relationships), adoption, or those living in a joint family.
  - Courts have the jurisdiction to pass a wide range of protection orders.
- Society and close friends and relatives often express utmost disbelief when told about domestic violence. It is extremely hard for any of us to believe that the kindly doctor, portly businessman, serious lecturer, or the charming salesman that we know is a wife-beater. Even more difficult to swallow is the fact that a near relative or one's own father could be indulging in such violence. A woman feels further trapped because she has the children to think of (they need a father), and she may not have the means to leave the marital home. Even if women appear to accept the violence they face as justified, it in no way removes the hurt, loneliness and desperation that such violence evokes.
- Earlier, women had no recourse other than to file for divorce or file a criminal complaint under 498 A. However the overwhelming tendency of the police and courts to view all complaints of violence in the context of dowry or as matters easily settled by 'adjustment' deterred many women. Some used dowry harassment as an excuse just to get their petition heard but subsequently failed to prove their claims, thereby giving the media the opportunity to blow up stories about women misusing the law. Besides, all women were not inclined to send their violent husbands to jail; they wanted the violence to stop. The new law on domestic violence is more sensitive to women's reality and offers women protection in the marital home in addition to financial relief required.

## Violence Against Women

It would be extremely naive to say that violence against women does not exist. Despite the ostensible acceptance of women being equal to men, and a plethora of laws and human rights guarantees, violence against women (VAW), which is also referred to as gender-based violence (GBV), is a reality that has assumed huge proportions. Not only does violence against women exist, in our vocabulary of progress it has taken on insidious forms that are justified in the name of faith, community, even development.

A quick look through the daily newspapers will give us an idea of the epic proportions the phenomenon has taken. Sample some of these facts from around the world:

- At least one out of three women has been beaten, forced into sex, or abused during her lifetime, according to a study based on 50 surveys from around the world. On most occasions, the abuser was a member of the woman's family or someone known to her.
- More than 60 million women worldwide are considered 'missing' as a result of sex-selective abortions and female infanticide, according to an estimate by Nobel Laureate Amartya Sen.
- The World Health Organisation has reported that up to 70% of female murder victims are killed by their male partners.
- Interpersonal violence was the 10th leading cause of death among women between the ages of 15 and 44, in 1998.
- Population-based studies report that between 12 and 25% of women have experienced attempted or completed forced sex by an intimate partner or ex-partner at some point in their lives.
- And, in India, according to the National Crime Records Bureau's (NCRB) 2005 Crime Clock, there is:
  - 1 crime committed against women every three minutes
  - 1 molestation case every 15 minutes
  - 1 sexual harassment case every 53 minutes
  - 1 kidnapping and abduction case every 23 minutes
  - 1 rape case every 29 minutes

And those are only the reported and recorded statistics. What's more:

- Four out of 10 women in India have experienced violence in the home.
- 45% of women have suffered at least one incident of physical or psychological violence in their life.
- 26% have experienced at least one moderate form of physical violence.
- More than 50% of pregnant women have experienced severe violent physical injuries.
- According to the NCRB, approximately 6,000 women are killed in India every year because of dowry. Unofficial estimates are as high as 15,000 deaths a year. In other words, between 16 and 40 women die every day because of dowry.

Shocking as these figures are, they are actually a gross underestimation of the actual situation, because crimes against women are highly under-reported. In India, there are 496,514,346 (2001 Census of India) girls and women. If all of them experience sexual harassment just once a year, and report it, the figure would be staggering.

Among the crimes listed by the NCRB, rape, molestation, sexual harassment, murder and dowry deaths are reported more frequently than dacoity, arson or counterfeiting. The frequency and intensity with which VAW is perpetrated is no less than the 'terrorist' attacks India is experiencing. What makes VAW more dangerous is the fact that the State, on several occasions, chooses to ignore VAW as something that happens within the 'private' sphere of the family, something not of 'public' significance, and thus non-deserving of State intervention.

So what do these figures really tell us? Why is it that so many women and girls are at the receiving end of violence? Is it because women ask for it, when they dress 'provocatively', or if they are out alone at night? In our outrage against VAW do we end up looking for reasons to blame the victim, or do we look for lapses on the part of the State, the police or other authorities that are 'responsible' for the violence?

Even worse, do we say that the scandalous statistics quoted above are things that don't happen to 'our' women -- it only happens to women 'out there'? If VAW is 'out there', how do we explain what happened to the women who were publicly groped and molested on new year's eve at a 5-star hotel in Mumbai in 2007?

That brings us to another pressing question: How do we recognise what constitutes VAW in the first place? Boys tease girls and girls tease boys: men flirt with women and women flirt with men -- isn't it natural? If a man slaps a woman, that's violence for sure. But does it qualify as GBV? Can there be VAW when there are no visible signs of beating/molesting/groping on the woman's body? What is it about VAW that is different from violence in general?

## What is VAW?

An act of violence amounts to GBV/VAW when:

- A woman is violated because of being a woman, which means her gender is the reason why she is being violated. For example, if a woman faces domestic violence because she does not follow the 'traditional' role of a wife.
- A woman is being violated as a woman: It is the form of violation that is sex/gender-specific. For example, being raped is very gender-specific. Although men also get raped, it is primarily women who are at the receiving end of sexually-penetrative violence.
- When gender can be considered to be a risk factor that makes a woman's fear of being violated more acute than that of a man in similar circumstances. For example, being a Muslim woman in Gujarat during the 2002 riots made one more vulnerable to certain kinds of violence. Thus, being both Muslim and a woman heightens the incidence of violence.
- It is necessary to note that not all victims of GBV are female. Men are victims of GBV as well, for example gay men who are harassed, beaten and killed because they do not conform to socially acceptable norms of being a man:
  - VAW includes, but is not limited to:
    - Psychological violence: Encompasses various tactics to undermine a woman's self-confidence such as yelling, insults, mockery, threats, abusive language, humiliation, harassment, contempt and deliberate deprivation of emotional care or isolation.
    - Physical violence: The most obvious ranges from pushing and shoving to hitting, beating, physical abuse with a weapon, torture, mutilation and murder.
    - Sexual violence: Any form of non-consensual sexual activity (ie, forced on a person) ranging from harassment, unwanted sexual touching, to rape. This form of violence also includes incest.
    - Financial violence: Encompasses various tactics for total or partial control of a couple's finances, inheritance or employment income. May also include preventing a partner from taking employment outside the home or engaging in other activities that would lead to financial independence.
    - Spiritual abuse: Works to destroy an individual's cultural or religious beliefs through ridicule or punishment, forbidding practise of a personal religion or forcing women or children to adhere to religious practices that are not their own, etc.
  - All violence does not have to be blood and gore. It can also be very subtle. A person can make a contemptuous gesture, swear or pass a lewd remark, make an obscene gesture with the hands, whistle or leer at another. Even if such exchanges are fleeting, they leave their mark. VAW can take physical, psychological as well as sexual forms -- thus the above categories overlap and are not mutually exclusive. It needn't always take the form of overt acts of bodily violence but can also be manifested through deprivation, neglect or discrimination. For example, physical violence by an intimate partner is often accompanied by sexual violence, deprivation, isolation, neglect as well as psychological abuse.

Open Space is the civil society and youth outreach initiative of the Centre for Communication and Development Studies. Open Space encourages debate and citizens' action on issues related to social justice, human rights and sustainable development.

