

Bharat H. Desai
Moumita Mandal

Sexual and Gender-Based Violence in International Law

Making International Institutions Work

Foreword by Peter Maurer

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ISBN 978-981-19-0893-4 ISBN 978-981-19-0894-1 (eBook)
<https://doi.org/10.1007/978-981-19-0894-1>

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For

*All the Victims-Survivors of
Sexual and Gender-Based Violence*

Foreword

Sexual and gender-based violence (SGBV) is a heinously prevalent scourge, too common in all societies. It is also exacerbated by conflict, as well as other humanitarian crises and the climate emergency.

Its causes and drivers—gender inequality, abuse of power, social inequality, and impunity—manifest differently depending on the context, meaning that responses must also be tailored to contexts. This publication *Sexual and Gender-Based Violence in International Law: Making International Institutions Work* makes a timely, analytical, and thought-provoking scholarly ideational contribution. It seeks to understand SGBV, contributing factors such as culture and traditions underpinning this violence, the role of international institutions, and the ways in which it can be addressed. It applauds contemporary efforts made to address the impacts of SGBV on survivors, to provide the services needed for recovery, and to address discrimination. It warns that, without sustained commitment and action, gains can quickly be lost.

This kind of tailored and contextual analysis is critical if we are to make progress to globally eliminate SGBV. Addressing SGBV and its root causes sadly remains a crucial element of fostering inclusive and resilient societies in which all are protected and can enjoy their rights in equity. Domestic law and policy change are required as part of this picture—too often, domestic frameworks do not reflect international legal obligations—and these laws and policies should be robust, resourced, and implemented.

From the standpoint of the International Committee of the Red Cross (ICRC), efforts to prevent and address SGBV in armed conflict and other situations of violence, including in places of detention, are an institutional priority. This is because SGBV violates international humanitarian law (IHL) and international human rights law (IHRL) and generates immense humanitarian need and suffering. SGBV, including sexual violence (SV) in conflict, is life-threatening. Its survivors—who are disproportionately female as SGBV is a manifestation of unequal gender norms, but who can also be men, boys, and sexual and gender minorities—often have long-term and complex needs. They need access to health care, including mental health and psychosocial support, and economic and livelihood supports including control over land and resources.

Based on these needs, ICRC delegations work to support community resilience in times of crises. Our work to protect civilians includes engagement and services to support survivors of sexual violence—women, girls, men, boys, and sexual and gender minorities. ICRC also engages with weapon bearers and authorities on the prohibition of sexual violence (whether strategic or opportunistic) as a violation of IHL and the harm it generates for individuals, families, and communities.

Through our work, ICRC is confronted with the daily reality that despite the efforts of women’s groups, international organisations, and government authorities to prevent SGBV, collectively we have much to do to attain its prevention and eradication. As this publication observes, SGBV has historically been rife; and while there is much debate about the cultural factors and dynamics that drive it, it is clear that much more concerted engagement of international institutions on addressing SGBV from all angles, including adequate placement of survivors at the centre of response and of efforts to address power dynamics, is where future endeavours must concentrate. This publication contributes to the wide field of research demonstrating that SGBV is not inevitable. And indeed, if it is predictable, it is preventable.

Peter Maurer
President
International Committee of the Red Cross
Geneva, Switzerland

Preface

Sexual and gender-based violence (SGBV) prevails since time immemorial. SGBV is still a taboo, spoken in whispers and suffered in silence. It takes place during peacetime, conflicts, and post-conflict situations. Though SGBV is perpetrated against men, women, and people of the LGBT community, this study has sought to focus on women and girls as main victims-survivors. SGBV against women and girls is a manifestation of historically unequal power relations between male and female genders rooted in patriarchal systems, stereotyped gender-based norms, and harmful cultural practices (HCPs). In fact, different cultural and social norms support different types of violence. It is one of the crucial social mechanisms by which women and girls are sought to be subjugated to a position subordinate to men. As a corollary, the control over female sexuality remains central to the social, cultural, and State-driven global normative systems. There are many prominent instances of cultural practices that are harmful to women and girls.

The United Nations data shows that more than 200 million girls and women are understood to have been subjected to female genital mutilation (FGM). In 2021 alone, 4.16 million girls around the world are at risk of undergoing FGM. This work has considered culture within the framework of equality. As such the international legal framework for protection for women and girls against SGBV also addresses the organic interlinkages between HCPs and SGBV. In the wake of two year long Covid-19 pandemic during 2020–2022 and the climatic changes, there has been an exacerbation of SGBV against women and girls. This presents a new global regulatory challenge for international law, international institutions, and the scholars.

There is a growing awareness, concern, scholarly works, and multiagency coordinated roles. It indicates a healthy trend in addressing the challenge of SGBV. Ironically, the existing corpus of international law is not adequate in specifically addressing SGBV against women and girls. As explained in a chapter on legal challenges, there is an unequivocal need to a global *lex specialis* on SGBV and an urgent need for bridging the ‘normative gap’ in the field. The absence of specific legally binding instrument has pushed the international humanitarian institutions such as International Committee of the Red Cross (ICRC), UN Women, UN Office of the High Commissioner for Human Rights, and the UN Human Rights Council and

others to push for alternative non-binding instruments to address SGBV against women and girls. These instruments carry good normative value. However, they are not taken seriously by most of the States since they construe them as ‘soft’ and guiding principles.

International institutions (IIs) have been playing a pivotal role in organizing to provide legal and institutional protection to women and girls against SGBV. It is vital in the prevention and elimination of SGBV as a threat and reality against sizeable part of the global population. Most of such international institutions work under the umbrella of the United Nations (UN) as it has become catalytic symbol of multilateralism. The International Committee of the Red Cross, as the global humanitarian sentinel, also has a unique role in addressing the challenge of SGBV. As explained in the foreword of Peter Maurer, President of the ICRC, as the costodian of the 1949 Geneva Conventions, has sought to give priority attention to SGBV by regarding it as a “heinously prevalent scourge” that prevails in all the societies around the world.

Notwithstanding the stated objectives of all the legally binding agreements, soft instruments, and concerted actions of international institutions, women continue to suffer the ordeal of SGBV primarily because of their gender and sex. SGBV is cheap, easily available tool especially in armed conflicts to harm the women and girls as it hurts the targeted communities most. Ironically, SGBV remains globally prevalent with destructive consequences for women and girls due to their unequal and precarious status in most of the societies, its use as a weapon of war, and the perpetrators mostly going scot-free. In view of this sense of impunity and as international law is struggling to address the SGBV challenge, an important ideational question needs to be grappled with. How can we de-fang, de-stigmatize, and de-legitimize SGBV? This crucial question presents a big international law scholarly challenge for the future to eliminate the scourge of SGBV. This work has earnestly sought to sow some modest seeds in the scholarly realm to visualize a process for the beginning of the inevitable end of SGBV in the coming decades of the twenty-first century. Its outcome lies in the womb of the future. Only *Time* will provide an answer.

New Delhi, India
16 April 2022

Bharat H. Desai
Moumita Mandal

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