

Gender, Justice and Legal Feminism 5

Tameshnie Deane

Gender-Based Violence and Femicide in South Africa



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Gender, Justice and Legal Feminism

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*To
Ryan Deane (KumuranRaja), Aedon Deane
(Chellakuty), Gregory Deane, and
Santhayagie Thirumudu.*

*For being at the root of every blessing in my
life!*

Om Gam Ganapathaye Namaha

Preface

South Africa (SA) is a country that is currently struggling to balance one of the most inclusive and progressive constitutions in the world, with its largely patriarchal and culture driven society. Gender-based violence (GBV), specifically femicide (GBVF) within the South African context is occurring on such a large scale that it appears to be socially normalized, legitimized, and accompanied by a culture of acceptance. Its enormous scale is indicative that society's beliefs of what does and does not constitute violence against women may be legitimizing acts of violence or providing a space for these crimes to occur. Regardless of the increased attention to women's rights in SA, there has been little progress in reducing violence against women. The question therefore remains that despite these gains, why is the rate of violence against women so unacceptably high?

By looking at the current situation and statistics around GBV, the South African government's responses, and the conditions that exacerbate GBV leading to femicide, this book adds to the knowledge base and knowledge gap on GBVF in the country. This book is unique as through a focus on real-life cases and a situational analysis of GBVF in South Africa, it highlights the failings of the government and its branches in its response efforts. This is done with the aim of using evidence for action and providing a solution on how to effectively manage the high rates of GBV leading to femicide.

Despite focusing on GBVF in SA, this book will have a wide appeal and is aimed at researchers, practitioners, students, professionals, and advocates in the field of GBV. Each chapter builds on and contributes to existing global and national concerns about GBV.

Bloemfontein, South Africa

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List of Abbreviations

ACRWC	African Charter on the Rights and Welfare of the Child
AU	African Union
CC	Constitutional Court
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CET	Community Education and Training
CGE	Commission for Gender Equality
CJS	Criminal Justice System
CPA	Criminal Procedure Act
CRC	Convention on the Rights of the Child
DEVAW	Declaration on the Elimination of Violence against Women
DHET	Department of Higher Education and Training
DVA	Domestic Violence Act
DVAA	Domestic Violence Amendment Act
EEA	Employment Equity Act
FGM	Female Genital Mutilation
GBH	Grievous Bodily Harm
GBV	Gender-Based Violence
GBVCC	Gender-Based Violence Command Centre
GBVF	Gender-Based Violence and Femicide
GDP	Gross Domestic Product
GHRU	Gender & Health Research Unit
HEI	Higher education institution
HSRC	Human Sciences Research Council
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCS	International Classification of Crime for Statistical Purposes
IACtHR	Inter-American Court of Human Rights
IPID	Independent Police Investigative Directorate
ISS	Institute for Security Studies

KPMG	Klynveld Peat Marwick Goerdeler
LGBTQ+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer/Questioning, Asexual and Many Other Terms (Such as Non-Binary and Pansexual)
MATTSO	Ministerial Advisory Task Team on the Adjudication of Sexual Offences Matters
MDGs	Millenium Development Goals
MRC	Medical Research Council
NDP	National Development Plan
NPA	National Prosecuting Authority
NSP	National Strategic Plan
PEP	Post Exposure Prophylaxis
PEPUDA	Promotion of Equality and Prevention of Unfair Discrimination Act
PSET	Post School Education and Training System
RCMA	Recognition of Customary Marriages Act
RISDP	Regional Indicative Strategic Development Plan
SA	South Africa
SADC	Southern African Development Community
SAHRC	South African Human Rights Commission
SAPS	South African Police Service
SC	Supreme Court
SCA	Supreme Court of Appeal
SDGs	Sustainable Development Goals
SOA	Sexual Offences Act
SOCA	Sexual Offences and Community Affairs Unit
SRHR	Strategy for Sexual and Reproductive Health and Rights
Stats SA	Statistics South Africa
TCC	Thuthuzela Care Centers
TVET	Technical and Vocational Educational Training
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNGA	United Nations General Assembly
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
US	United States
VoCS	Victims of Crime Survey
WCDCS	Western Cape Department of Community Safety
WHO	World Health Organization
ZAR	South African Rand

Chapter 1

An Introduction to Gender-Based Violence and Femicide in South Africa



1.1 Introduction

1.1.1 Background and Rationale

Violence against women is a serious human rights violation and a public health problem of global proportions.¹ For many years, South Africa has been in the midst of a chronic gender-based violence (GBV) crisis arising in part from a dehumanizing and vicious apartheid history, a widespread acceptance of violence as being the norm which is further entrenched by gender and other related social and economic inequalities.² Traditions of gender inequality are built into the history and culture of South Africa, and the inextricable cultural link between power, dominance, and maleness manifests itself in GBV that is highly normalized in South African society.

In 1994, the first democratic elections were conducted. This brought with it an end to the decades-long struggle against the apartheid system, a system that was rooted in the hegemonic European colonization of South Africa. A key element of the new dispensation in South Africa was a formal commitment to gender as well as racial equality. This was primarily because prior to the abolishment of apartheid, violence by the dominant group against the disempowered was legitimized by both cultural and legal practices.³ One of the many injustices of the apartheid regime included racist policies that gave white South Africans rights and status that their Black peers were deliberately deprived of.⁴ These methods of exclusion, discrimination, dominance, and inequalities experienced by the minority⁵ extended

¹Deane (2019), p. 129.

²Deane (2018), p. 84.

³Moffett (2006), p. 129.

⁴Lacey (2020), para 3–4.

⁵For example, Black men were commonly hanged for rapes, but only if the victim was a white woman. See Sigsworth (2009), p. 2. Under apartheid, no white man was sentenced to death for rape.

ubiquitously across all social minorities, including women. Under apartheid, citizenship was granted only to men, and women were classified exclusively as dependents.⁶ Remnants of this standard persisted in the post-apartheid law that restricted protections for women,⁷ particularly in cases of GBV.⁸

Apartheid policies and ideologies have provided men with a “legitimate” foundation for having a higher status in the country.⁹ The legacy of racism and patriarchal indigenous laws interlinked “to spawn a particular kind of South African masculinity, which left women in a particularly vulnerable position.”¹⁰ This has resulted in the persistent belief that it is a cultural entitlement for men to control and own women which justifies their violence against them. This “power” or “authority” consequently alluded to social status and is further determined by position and income. Educational inequalities¹¹ and high unemployment rates among South African women or earning lower salaries than men¹² perpetuate a cycle of subordination and poverty. These factors, along with the traditional/cultural practices of men’s rights over women’s rights, have negated the social status of women in South Africa resulting in them lacking social and economic freedom and authority. This leaves women and girls even more vulnerable to experiencing violence in its various forms.

In addition, to date the male identity is still strongly tied to ownership of or stewardship over a woman and their children. The ideology or belief that without a wife and children, an adult man is still considered a boy is still very much socially engrained today. This cultural prerequisite to manhood conditions men to view women as something to be obtained and controlled rather than autonomous individuals, which emphasizes the idea that women are weaker and should be subordinate. The conflation of power and violence against women exacerbates and normalizes the idea that women are inferior to their male counterparts and that there should be no consequences to men exerting physical, emotional, and mental dominance over women. This is evident in how women especially are experiencing a general lack of safety and respect for their human dignity and autonomy in both their private and public lives. These feelings encompass the extent and brutality of rapes and murders of women and girls and the degree to which there is impunity and a lack of

Both facts reveal the racism of the legal system at the time and that is only crimes committed by Black men or against white women were worthy of legal action. See also Hirschauer (2014), p. 84.

⁶Lalloo (1998), pp. 439–459.

⁷For example, marital rape was not recognized as a criminal offense in South Africa until the creation of the *Prevention of Family Violence Act of 1993*, which stated that “a husband may be convicted of the rape of his wife.” See South African Parliament (1993), pp. 1–4.

⁸Gouws (2016), p. 400.

⁹Jewkes et al. (2005), pp. 1809–1820.

¹⁰Maphosa (2022), pp. 87–106; Deane (2018), p. 88.

¹¹Chapin and Warne (2020), p. 14.

¹²Bluedorn et al. (2021), p. 5.

individual, state, and societal accountability for the scourge.¹³ Whilst the various forms and conceptualizations of GBV will be discussed in depth in the next chapters, it suffices to mention herein that violence against women or GBV is wide in scope and pervasive in its multidimensionality, the most brutal of this being femicide, which is the lethal end point of a continuum of multiple, overlapping and interconnected forms of GBV.

The enormous scale of gender-based violence and femicide (GBVF) is indicative that society's beliefs of what does and does not constitute violence against women may be legitimizing acts of violence or providing a space for these crimes to occur. The persistent systemic discrimination against South African women has been addressed by many government and social ventures, but cultural, gender and other inequalities persists, which is evident by the rates of GBV that is prolific throughout South Africa. Furthermore, the lack of effective support offered to survivors of GBV, the inadequate response to this scourge and the subsequent failure to, *inter alia*, integrate the issue into the wider human development agenda, contributes towards an overall lack of understanding of the issue. It also impacts a holistic understanding towards an experience that results in secondary traumatization of survivors, ultimately leading to an inadequate focus on preventing GBV.

In addressing the various concerns mentioned herein, the overall research question guiding this book is why despite the increased attention to women's rights and the significant social progress that has been made in South Africa since 1994, does the country find itself struggling to balance one of the most inclusive and progressive constitutions in the world. To answer this question this book interrogates why GBV persists in South Africa, and what factors need to be considered to effectively address it.

This rationale for this research is founded on South Africa's regional, national, and international obligations to eradicate violence and achieve women's equality. The continued and escalating levels of violence against women in South Africa, goes against well-established national and international principles. South Africa is a signatory to various international human rights instruments which means that the state and all its organs are obliged to respect, protect, promote, and fulfil their obligation to protect women and girls. The universal human rights framework, on which *the South African Constitution, 1996 (Constitution)* is based, regards GBV as one of the most serious crimes that violates the right to life, equality, human dignity, freedom, and security of the person. Based on the principles in the *Constitution*, the government has enacted a fairly progressive legislative framework and has adopted policies, programs and plans of action aimed at ending sexual violence, including various sexual offenses legislation, specialized sexual offenses courts and a comprehensive National Policy Guidelines for Victims of Sexual Offences.

Specifically, South Africa has committed itself to the realization of the 2030 Agenda for Sustainable Development. Adopted by United Nations Member States in

¹³Deane (2018).

2015,¹⁴ the Agenda and its 17 Sustainable Development Goals (SDGs) and 169 targets encompasses a set of hugely ambitious targets that build on the progress of the Millennium Development Goals (MDGs),¹⁵ which concluded in 2015.¹⁶ It calls on the world's countries to achieve peaceful and inclusive societies and to significantly reduce all forms of violence everywhere.

Specifically, and more relevant to this book, SDG 5, which addresses gender equality and the empowerment of women and girls, is comprehensive and equally ambitious. Embedded in SDG 5 is the need to break down barriers to gender equality, including by transforming the underlying norms, structures, and practices that prevent women and girls from enjoying their rights. Recognized as a core tenet of the 2030 Agenda, gender equality is both a stand-alone goal of sustainable development and a cross-cutting priority for achieving all the SDGs. Therefore, whilst women's equality and empowerment are one of the 17 SDGs, it is integral to all dimensions of inclusive and sustainable development. In short, all the SDGs depend on the achievement of Goal 5.¹⁷

The SDGs have highlighted interpersonal violence and violence against women and girls as impediments to development globally. South Africa is particularly and adversely affected by GBV. Achieving gender equality and the empowerment of women and girls will require more vigorous efforts to counter deeply rooted gender-based discrimination.

1.1.2 Aims, Object, and Purpose of the Book

This book is one of those efforts towards raising awareness of GBV and is a call for action towards its elimination. This book presents various new and differing perspectives on GBV in South Africa where the subject remains taboo in everyday discourse. It focuses on understandings of the phenomenon of GBV in South Africa and the reasons for its persistence despite legislative and other efforts to combat it. Since the perceptions and experiences of women in general, and of survivors of GBV particularly, are founded in both the construction and analysis of data, this book incorporates various statistics and findings from fieldwork in South Africa to inform the examination of the present character of violence against women as understood and experienced and of the interventions in South Africa.

¹⁴United Nations (2015).

¹⁵World Health Organization (2018, February 19).

¹⁶The SDGs build on the Millennium Development Goals (MDGs) that were in place during 2000–2015.

¹⁷Goal 5 of the SDG addresses gender equality, as one of its targets, the elimination of all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation.

Additionally, this book makes a valuable contribution towards explaining the high prevalence of violence against women in South Africa. It presents an opportunity to develop a broader understanding of the causes of GBVF and does this by highlighting how the various forms of violence against women acts as barriers to inequalities, informing interventions by all stakeholders including men, women, government departments, and wider society to address this scourge.

The book is a domestic rather than comparative evaluation of GBV in South Africa which assesses the status of women in South Africa and considers the importance of effective data in the elimination of all forms of violence against women. Despite only focusing on South Africa, this book nevertheless provides insight for comparative scholars considering the value of different constitutional articulations of human rights and how these support (or fail to support) efforts to address GBVF. By assessing recent incidences and responses to GBVF, the book also provides a view of not only the societal but jurisprudential opportunities and pitfalls in this area that may be applicable elsewhere. Gender equality and central to this, the right of women to live lives free of violence, is a precondition for full democratic participation and is a universal goal. The South African experience contributes to a wider understanding of the possibilities, societal limitations, and laws in challenging the ubiquity of violence against women. It is aimed at researchers, practitioners, students, professionals, and advocates in the field of GBVF. Each chapter builds on and contributes to existing global and national concerns about GBVF.

1.1.3 Hypothesis and Structure

The main hypothesis guiding this book's research question is that GBV is a manifestation of unequal gender relations and harmful manifestations of hegemonic masculinity governed by patriarchal beliefs, institutions, and systems, adversely impacting ones' mental health, damaging one's sense of self-worth, leads to lower educational attainment and reduced economic opportunities.

In addressing the research questions the structure of this book contains ten chapters of quantitative research. The various chapters assess not only the levels and determinants of violence against women, but it also examines, amongst others, men's attitudes toward GBV, perceptions of violence, the legislative and other frameworks governing violence against women, and the current cases and jurisprudence relating to this scourge. This chapter starts by providing a brief introduction and background into an understanding of GBVF in South Africa. It paves the way for an in-depth understanding into the rationale for the book and delves into what the research questions are.

Chapter 2 starts by providing the reader with the definitions of GBVF as well as pursuing an analysis around the conceptualizations of GBVF in the country. By defining various terminologies associated with this phenomenon, the aim is to provide a solid foundation towards a more in-depth understanding and

conceptualization of GBVF. The chapter concludes by looking at some of the most prevalent forms of GBVF specific to the South African context.

Chapter 3 is important as it provides the reader with reasons why it is important for a country like South Africa to focus on the elimination of GBVF. By specifically referring to the 2030 SDG Agenda, it highlights how the Agenda presents a potentially transformative framework for urgent change, not only in South Africa, but throughout the world. It also highlights the economic costs associated with GBV thereby providing strong arguments for why preventing and responding to such violence should be a priority for governments, donors, and the private sector.

This is followed by Chap. 4 which includes a situational analysis of GBVF. It presents data that examines the nature, scope, and extent of GBVF in South Africa. This chapter also presents statistics for some types of crimes perpetrated against women in South Africa to provide an assessment of the trends, extent, and prevalence of victimization of women. This evidence is an important aspect to work towards achieving the SDGs target of eliminating all forms of violence against women. In addition, an understanding of what crime statistics reveal remains a vital starting point towards any protection and prevention measures. Statistics are therefore valuable tools for developing evidence-based policies and interventions to end violence against women and girls.

Chapter 5 presents a theoretical framework for understanding the high rates of GBVF in the country. By analyzing some feminist and alternative theories, the aim is to explore and provide a better understanding of the context of GBVF in the country. This chapter seeks to address a fraction of the many complex questions that arise when studying an issue like GBVF.

Chapter 6 looks at the perceptions and fear of crime. This is a crucial analysis as the perceptions and fear of crime is a very important phenomenon. It constrains behavior and lifestyles, increases anxiety, decreases social engagement, and increases the cost of criminal justice and security measures. It consequently impacts the quality of a person's life. The statistical and other evidence provided in this chapter will potentially assist policymakers, law enforcement agencies and civil society to gauge progress and plan interventions for protecting women and girls and end GBVF.

Chapter 7 examines the progressive steps taken to address GBVF in South Africa. This discussion is situated within an aim to explore, specifically, the countries legal and policy responses to GBVF in various sectors. While the law may not be the only panacea for what is now termed "a second pandemic" in the country it is the best place to start. The chapter analyzes and provides a broad understanding of the policy and legislative frameworks regarding GBVF. This chapter also investigates South Africa's human rights obligations towards the elimination of GBVF.

Chapter 8 presents a discussion on practical cases and responses to GBVF. It analyzes and contributes to the understanding of GBVF by looking at the judicial responses to the issue. It does so by providing a survey of the jurisprudence on GBV in assessing the Court's record in this area. Examples of such cases, albeit not an exhaustive list, will provide illustrations of some of the most horrendous crimes that were committed against women in the country.

Chapter 9 specifically analyzes GBVF in institutions of higher learning (HEIs). It looks at how HEIs hold the potential to address societal problems and consequently provides recommendations on how to tackle gender equality whilst at the same time empowering women and reducing GBVF. In addition, this chapter looks at how perceptions of crime, expressions of outrage, and media reporting is impacting the quality of life of women and girls. The consequence of GBV in HEIs translates to lost potential, inequality in education and a failure to achieve a country's development goals. This is especially serious for a developing country like South Africa who has international, national, and regional obligations to eliminate discrimination and violence and commitments towards development goals. This chapter therefore looks at GBV in HEIs as a specific challenge that needs to be addressed.

The concluding chapter provides suggestions for further research, and concludes by advocating for the reframing of conversations and initiatives on GBVF from individual actions to the broader context in which GBVF is allowed to persist.

1.1.4 Methodology and Limitations

The methodology utilized herein includes various meta-analysis literature reviews of relevant accredited articles, books, legal policies, and national strategies/action plans as well as programs and interventions related to GBVF specifically within South Africa. The evidence base around GBVF varies a great deal in terms of design (both qualitative and quantitative) and academic strength. For this study multiple databases were reviewed to identify relevant academic publications (whether published or not), books, journal articles, program evaluations, survey data, and other influential sources, including data from peer-reviewed journals, grey literature, and other sources.¹⁸ Many resources included in this review consist of grey literature publications such as program documents, reports, and evaluations by, inter alia, the World Health Organization (WHO), newspaper reports, Statistics South Africa (Stats SA), Institute for Security Studies (ISS), and Amnesty International. To meet the aims and objectives of this study the main results of the literature reviews will include an analysis of the collected facts, data, and other information, whereafter logical inferences will be drawn. The results from the reviews will then be included to develop a better understanding of and strengthen recommendations toward GBVF prevention in the country.

This book aims to achieve its objectives through a multi-dimensional sociological,¹⁹ and criminological²⁰ approach, which will also involve some international observations. Whilst this may seem somewhat complicated, any solutions towards

¹⁸Deane (2023), p. 2.

¹⁹This approach focuses on the examination of the features specific to the killing of women that make it a phenomenon, per se.

²⁰This approach aims to distinguish femicide as a unique sector in "homicide" studies.

the elimination of GBVF is indeed complex and requires different approaches. To this end this book also, where appropriate, discusses an additional perspective, namely, a feminist²¹ discourse towards a better understanding of GBVF. This discourse is not presented as a matter of methodology, as "... alternatives to ... other methods ..."²² It serves as an instrument for a better understanding of and emphasizing difficulties and disparities in behavior with the aim of incentivizing an effective implementation strategy for more robust interventions towards the elimination of GBVF. Importantly, this book does not seek to replace or apply the feminist discourse as an alternative method to the laws and regulations rather, the aim is to locate interventions within the broader feminist discourse, whilst acknowledging the fundamental importance of rules, regulations, and policies. It is also worth mentioning that the feminist discourse, or theory, is not portrayed as one single entity. Rather, "... feminist explorations can be likened to an archaeological dig"²³ where the outcome is not to homogenize feminist theory, but to utilize the various layers of feminist discourse in ways that render it useful for a particular purpose. Consequently and, albeit aware of the fact that many different forms of feminist theory exist, the approach is to focus on only theories in a manner of engagement deemed useful to this book's research aims and objectives.

However, seeing that not all research on femicide refers to a common defining framework, Corradi suggests that future research on femicide should refer to the ecological framework of violence against women, a complex and multilayered interdisciplinary framework that understands and analyses femicide as a social phenomenon and as a "violent act" based on "the micro, meso and macro levels."²⁴ This book accordingly advocates for a similar approach in dealing with GBVF. However, it is acknowledged that this model has its own challenges. For example, it has been suggested that "the inherently functionalist view of society and social relationships embedded within the ecological framework results in a fundamental inability to see power relationships. It cannot 'see' patriarchy, and patriarchal social relationships are central to the work emanating from the feminist movement on femicide."²⁵ What is important to note though is the importance of the contribution of feminist movement actors to defining femicide in specific contexts, as well as to processes of data collection.²⁶

Referring to data, the literature reviews highlight that the lack of data and adequate forms of data collection is a grave concern towards the elimination of GBVF. The concerns around the limitations of data availability and comparability have been attributed to an absence of common definitions, standards, and parameters

²¹This approach confronts patriarchal domination at the same time as it investigates the killing of women.

²²Charlesworth (2005), p. 5.

²³Charlesworth (2002), p. 99.

²⁴Corradi et al. (2016), p. 988.

²⁵The European Institute for Gender Equality (2021), p. 8.

²⁶Sheehy (2017).

to count and document specifically, femicide. In March 2022, the United Nations Statistical Commission at its 53rd session approved a statistical framework that guides countries in the development of such a granular system.²⁷ It stresses the need to improve data on GBV on the characteristics of victims and perpetrators, and to measure and monitor the effectiveness of State responses to this phenomenon.²⁸ However to date, estimating the global number of gender-related killings of women and girls remains challenging. Some challenges can be attributed to a lack of reporting mechanisms between sub-national, national, and international data producers. In other cases, femicides are simply not recorded by or reported to the police or other competent authorities due to strong traditional and religious beliefs and an overall resistance and failure to acknowledge femicides as a criminal offense.²⁹

In addition, whilst there is a plethora of articles on risk assessment of intimate partner femicides for example, many of the articles reviewed are restrictive and do not always contribute to identifying variables to define and distinguish different types of femicide. Consequently, this book refers to various grey literature where appropriate.

1.1.5 Concluding Remarks

This chapter provides a brief background into an understanding of GBVF in South Africa and aims to pave the way for an in-depth understanding to the rationale for the book. The research questions that it aims to answer is why despite the strides made by the country does GBVF remain unacceptably high. This chapter goes on to discuss the book's aims, methodology, and structure. This study remains uniquely positioned to shed light on the complex issues of sex, gender, race, power, politics, and their intersections with GBV. The next chapter will consequently provide a more in-depth analysis on the conceptualization of GBVF and its various forms.

²⁷United Nations Statistical Commission (2022).

²⁸The Statistical Framework aims to assist national statistical offices, institutions within the criminal justice and public health systems, mechanisms for the advancement of women and gender equality, civil society organizations and academia in harmonizing data collection within countries, and across countries and regions. UNODC and UN Women have started working together to support Member States in implementing the Statistical Framework, through outreach and advocacy, supporting the creation of national coordination mechanisms and by providing technical assistance to strengthen national capacities for collecting and integrating harmonized and complete data on gender-related killings. UNODC is expected to report back to the UN Statistical Commission in 2025 on the results of implementing the Statistical Framework. See United Nations Office on Drugs and Crime (2022), p. 14.

²⁹Hamel and Russell (2022), p. 8.

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