

A Review of “The Gender of Canadian Legal and Policy Gender-Based Violence and Immigration Frameworks”

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Contemporary globalization intensifies poverty and inequality internationally, “pushing” more and more individuals from the Southern Hemisphere to the North for better opportunities or safer living environments. Alongside today’s escalated cross-border movement intertwined with forms of tangible and symbolic conflict against (im)migrants and refugees, scholarly discussions of the existence and detrimental impact of gender-based violence (GBV) within this context have been reinvigorated. Beyond the literature on forced migration and GBV, which has extensively studied migrant and refugee women’s experiences before and during their transnational journeys, Evangelia Tastsoglou, Chantelle Falconer, Mia Sisic, Myrna Dawson, and Lori Wilkinson’s *The Gender of Canadian Legal and Policy Gender-Based Violence and Immigration Frameworks* (2022) makes a contribution to this field by exploring how Canada’s legal and policy frameworks that are enacted recently protect this vulnerable demographic from GBV. This book chapter in the edited collection by Freedman, Sahraoui and Tastsoglou, entitled *Gender-Based Violence in Migration: Interdisciplinary, Feminist and Intersectional Approaches*, illustrates the experiences of key professionals who interact with immigrant and refugee women and highlights major gaps in legal discourse. The authors offer a meaningful opportunity to showcase how policies aiming to combat GBV against immigrant and refugee women before and after they enter Canada are applied in practice and in what ways could the “fault lines” between the existing legal frameworks be improved. Note that this book chapter emerged from their larger research project, the *Gender-Based Violence in Migration Canada Research Program* (GBV-MIG Canada)ⁱⁱ, which investigates how forms of violence against women migrants and refugees can be effectively addressed in the country.

Drawing on a wide range of academic literature on gender-based violence and migration studies, the book chapter begins with a comprehensive review of the concept of GBV, demonstrating its core definition through the perspectives of some influential historians, feminists, and sociologists in contemporary scholarship. As is accepted in the field, Tastsoglou and her colleagues regard gender as a non-binary, essential aspect in forming complex social relationships based on individuals’ perceived differences between sexes, which is fundamental to “how the social world is hierarchically ordered” (2022:88). Hence, GBV extends beyond the interpersonal level, where its harmful impact also occurs in policies and legal frameworks that are rooted in “underlying and intersecting structural inequalities” (Tastsoglou et al. 2022:89). In Canada, the federal government recognizes it as a significant issue that affects many women, including immigrant and refugee women and girls. While the current administration has implemented policies to tackle this problem, challenges remain. To examine them, the authors evaluate the effectiveness of Canada’s practices and legal frameworks that protect those vulnerable individuals, supplemented by narrative accounts collected from interviews with informants who have worked with immigrant and refugee women.

The remainder of the chapter is structured into four main parts: 1) articulating Canada’s leadership in global refugee protection; 2) synthesizing the legal frameworks in place for protection from GBV and for immigrant and refugee protection, aiming at identifying how the Acts in place at the cross-section of these frameworks may protect migrant and refugee GBV survivors (e.g., the *Criminal Code of Canada (CCC)*, the *Immigration and Refugee Protection Act*, the *Canadian Human Rights Act*, and *It’s Time: Canada’s Strategy to Address and Prevent GBV*); 3) identifying the critical gaps and weaknesses between and among the aforementioned legal and policy frameworks, as a result of which certain groups of women and girls are marginalized and vulnerable before and/or after entering Canada, and 4) presenting policy recommendations to enhance those GBV protections at the institutional level.

The Government of Canada has enacted specific laws and policies that address GBV and human rights as well as laws and policies that aim at protecting immigrants and refugees. It is this cross-section of the GBV protection legal and policy framework and immigrant and refugee protection legal and policy framework that this chapter focuses on. This cross-section is defined by such laws and policies as the Criminal Code of Canada (CCC), the *Immigration and Refugee Protection Act*, the *Canadian Human Rights Act*, and *It's Time: Canada's Strategy to Address and Prevent GBV*. The authors' findings suggest that this cross-section of legal and policy protection frameworks is especially vulnerable to GBV immigrant and refugee women and girls. Overall, the absence of a national strategy to tackle GBV especially exacerbates the plight of immigrant and refugee women and girls. More specifically, the "fault lines" of the *Criminal Code of Canada* (CCC) lie in that it does not capture GBV in any direct manner and that it overlaps with other legal jurisdictions across the country, while relevant legislation falls under the umbrella of family law, child and family Act, victims of crime Act, and/or domestic violence Act. This results in geographic variations in identifying, documenting, and charging GBV, thus making it challenging for victims to seek justice, understand their rights and access the social and legal support they need. Tastsoglou and her colleagues depict this as a *patchwork* system that "shows no national GBV strategy" (2022:105) for Canadian-born individuals in general. How this patchwork system of protection plays out in the experiences of migrants and refugees in particular is narrated in the specific omissions and weaknesses of the CCC that the key informants, interviewed for this study identified: 1) the ambiguous definition of GBV-related charges generally conflates them with domestic violence and interpersonal assault, revealing an absence of more specific criminal code categories to prosecute GBV cases when it comes to immigrant and refugee women and girls; 2) an overemphasis on incarcerating/punishing perpetrators rather than looking at the harsh consequences of criminalizing the male partners of immigrant and refugee women (e.g., refugee women who leave abusive relationships tend to face difficulties in finding affordable housing independently); 3) an inadequate consideration of how intersecting factors (e.g., language barriers, fear of the Canadian legal system and deportation) and identities (e.g., race, immigration status, culture) can result in discrimination, stereotypes, and racism, influencing how GBV-related prosecutions are handled. Further "fault lines" of the GBV protection framework consist that the existing laws and policies are not well-coordinated, lack cultural sensitivity, intersectional understanding of problems in accessing services, as well as coherent and holistic enforcement to handle GBV or sexual and gender-based violence (SGBV) against this demographic across provinces and territories.

Unlike the CCC, the *Canadian Human Rights Act* (CHRA) prohibits discrimination and prevents unfair treatment targeting a specific individual or group. Correspondingly, GBV may "constitute a form of sex or gender-based discrimination with legal consequences" under the Act (Tastsoglou et al. 2022:96). The authors highlight, however, two primary fault lines of the CHRA: 1) an absence of an explicit definition of GBV resulting in direct protection from specific GBV forms identified in CHRA, and 2) limited access for people with precarious legal status. For the former "fault line," the absence allows authorities to conflate GBV *per se*, limiting the scope of protection for female immigrant and refugee survivors. Regarding the latter shortcoming, the Act only protects residents with legal status in Canada (i.e., citizens and permanent residents). It excludes temporary foreign workers and asylum seekers from legal protection, leaving them vulnerable to abuse or exploitation. Overall, the protection CHRA affords against GBV is limited at best, and does not include protection from the broader, more structural forms of GBV produced by social and economic barriers and lack of action to lift them for migrant and refugee GBV survivors.

Lastly, the core of the *Immigration and Refugee Protection Act* (IRPA) is to safeguard "legislation for the governance of immigrants, refugees, and refugee claimants" (Tastsoglou et al. 2022:99). While the IRPA's provisions protect vulnerable migrants and refugees, the authors also point out several fault lines. The key policy gaps can be summarized as follows: 1) Oftentimes,

GBV-related persecutions tend to be seen in gendered, stereotypical and racialized ways (e.g., women survivors from certain oppressive cultures may be seen as more “deserving” of legal protection in Canada, while others may get dismissed); 2) *The Safe Third Country Agreement* between Canada and the U.S. requires asylum seekers to make their claims in the first country they arrive in, but the U.S. does not recognize GBV as a valid ground for asylum, leading to possible deportation and victimization for vulnerable women; 3) Due to legal costs, language barriers, and insufficient pre-arrival services, many newcomers to Canada are unaware of the newly implemented federal framework of protection from GBV; 4) Lastly, the IRPA fails to provide adequate protections for non-citizen victims of GBV within Canada (e.g., women/girl victims of SGBV with precarious immigration status may fear deportation if they report abuse and exploitation, especially if their legal status is tied to their abusive partners).

The authors conclude their analysis by presenting several innovative recommendations for improving Canada’s current legal and policy frameworks to combat forms of GBV. Choosing a few representative suggestions to illustrate, the authors advocate for a holistic national strategy to address geographic variations in GBV-related charges so that GBV against all women, particularly vulnerable immigrant and refugee groups, can be tackled comprehensively. They note that to develop such a strategy, partnerships for policy reconstruction should incorporate intersectional actors like law enforcement and immigration settlement services. Moreover, they call for eliminating the existing narrowed definition of GBV and encourage encompassing broader forms of violence like economic abuse and systemic discrimination into it.

Well-organized and insightful, the book chapter realizes its stated goals by examining Canada’s legal and policy frameworks on GBV, especially for immigrant and refugee women. In addition to elucidating the fault lines, the importance of incorporating intersectionality in policy formation and the pressing need for culturally sensitive and anti-racist approaches to GBV have also been (re)highlighted throughout the analysis. Canada is a global leader in refugee protection. Nonetheless, the authors have showcased that there remains work to be done to guarantee safety in the context of migration and immigration. Their practical recommendations offer a roadmap for how Canada can make such improvements.

References:

Tastsoglou, Evangelia, Chantelle Falconer, Mia Sisic, Myrna Dawson, and Lori Wilkinson. 2022. “The Gender of Canadian Legal and Policy Gender-Based Violence and Immigration Frameworks.” Pp. 85-111, in *Gender-Based Violence in Migration: Interdisciplinary, Feminist and Intersectional Approaches*, edited by Jane Freeman, Nina Sahraoui, and Evangelia Tastsoglou. London, UK: Palgrave-Macmillan.

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ⁱⁱ <https://www.smu.ca/gendernet/welcome.html>