

CHAPTER 7

Understanding and protecting the rights of women survivors of violence



Contents

- 7.1 Women, violence and discrimination;
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Outcomes

At the end of this chapter you will be able to:

- Understand how equality for women can be achieved
- Describe the clauses in the Bill of Rights that form the basis of achieving equality for women
- Understand the need for a multidisciplinary approach in supporting the rape survivor
- Describe the nature of domestic violence
- Understand the Domestic Violence Act
- Understand sexual harassment
- Understand the health repercussions experienced by women as a result of sexual violence
- Understand the rights of women in terms of the Termination of Pregnancy Act
- Describe different forms of discrimination exercised against women with HIV/AIDS.

7.1

Women, violence and discrimination

Violence against women is immeasurable and unbounded. It cuts across racial, cultural, class and ethnic borders. Women are the most vulnerable victims of violence because of dominant patriarchal social systems that effectively exclude women from political, social, economic and religious structures of power.

7.1.1

Universal Declaration of Human Rights and other international conventions

The United Nations, established after World War II, horrified at the extermination of Jews, gypsies, the disabled and homosexuals in Nazi Germany, drafted and adopted on 10 December 1948 the Universal Declaration of Human Rights (UDHR). The UDHR recognised that people are entitled to basic rights such as equality, human dignity and freedom simply because they are human. The Bill of Rights in the South African Constitution echoes many of the rights in the UDHR.

Since 1948 the United Nations has continued to draft many international instruments and conventions (agreements) promoting equality and opposing violence and torture. Many countries have adopted and ratified these agreements. Many of these conventions relate specifically to prohibiting discrimination and violence against women. Over the years, numerous conventions, mainly dealing with topics such as eliminating inequality, Political Rights of Women, Nationality of Married Women, Recovery Abroad of Maintenance, Consent to Marriage, were drafted. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was adopted in 1979 but the Committee on the Elimination of Discrimination Against Women only condemned violence against women in 1992 in Recommendation 19.

The South African Government signed CEDAW in 1993. In signing CEDAW the Government accepted the responsibility to eradicate discrimination against women. CEDAW influenced the content of the South African Constitution and also such acts as the Equal Opportunity Act, the Skills Development Act, The Prevention of Family Violence Act (as well as the later Domestic Violence Act) and many amendments to other South African laws.

The South African Constitution acknowledges the important influence of international law on South African Law and states that:

- Customary International Law is law in the Republic (unless it

Note

USE OF PRONOUN 'HE'

The pronoun he is used for the domestic abuser or rapist. The reason for this is that though there are incidents of sexual and domestic violence where the abuser is a woman the reality is that it is women and children who are mostly victims of the domestic abuse or rape.

CONVENTION ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW)

- 1979 – CEDAW adopted
- 1992 – CEDAW Committee condemns violence against women
- 1993 – South Africa becomes a signatory to CEDAW



The UDHR recognised that people are entitled to basic rights such as equality, human dignity and freedom simply because they are human.

is inconsistent with the Constitution or an Act of Parliament)

- When interpreting any legislation (laws), every court must prefer any reasonable interpretation of the legislation that is consistent with international law over any alternative interpretation that is inconsistent with international law.

South Africa, the Constitution, equality and violence against women

South African women endured great suffering and deprivation during the violent years of the colonial and apartheid period. Women lived in abject poverty with little access to the economy and employment. Often they were the family breadwinners, eking out a meagre living from the land or braving the violence of the street shop culture.

Women generally cannot escape from this state and achieve equality unless government empowers and affirms women. Government must support initiatives to open the doors to political, economic and social structures and provide education and the necessary skills to enter the employment market.

Women require the support of government departments such as health, welfare, education, justice – and if they do not receive such support they will not be able to take their rightful place in the new South Africa.

7.1.2



SUPPORT FROM GOVERNMENT

Women require the support of government departments to be able to take their rightful place in the new South Africa.

Definition

SUBSTANTIVE EQUALITY

Substantive equality means that the social and economic disparities between groups and individuals must be taken into account when determining whether equality in fact exists between them.

Substantive equality

Substantive equality for women can be achieved by giving women:

- Protection from violence in the community, home and the workplace
- Education and skills to enter and develop in the labour market
- Health support – particularly in relation to reproductive rights, protection against the spread of STDs such as HIV/AIDS
- Justice support in the collection, preservation, presentation and interpretation of medico-legal evidence to ensure convictions against perpetrators of violent crimes
- Welfare and Education support for women and children
- Support to enter and participate in political structures on a local, provincial and national level.

Definition

AFFIRMATIVE ACTION

Affirmative Action is action taken by government and the private sector to make up for past discrimination.

The ANC Constitutional Guidelines tabled during the drafting of the South African Constitution stated that women were to have equal rights in all spheres of life and the State must implement an affirmative action policy to eliminate discrimination between sexes. Even though few women participated in the negotiations on the Interim and Final Constitution 'equality' is now enshrined in the Constitution and many sections in the Constitution will significantly improve access to equality by women.

There is a recent realisation that achievement of equality in law will not necessarily establish women's equal participation in the political, economic and social structures. Programmes and projects need to be established to create an environment for women to reach substantive equality.

7.1.2.1

Affirmative action and discrimination

Affirmative Action is action taken by government and the private sector to make up for past discrimination in education, employment and promotion against people discriminated against in the past such as women, specific race groups, religious groups or the disabled. Equal pay for equal work may be the rule, but if women are not given the training to ensure that they can enter certain categories of employment they will remain in areas where they receive poor salaries.

Direct discrimination occurs when laws and rules openly discriminate against women: for example, when a law says that women cannot sign contracts or obtain housing subsidies or engage in combat operations in the military.

Indirect discrimination occurs when laws and rules appear to apply equally to men and women but in fact do not. An example of this is requiring traffic police officers to be a certain height which is more likely to apply to male rather than female recruits.

There are many important clauses in the South African Bill of

Definition

DIRECT DISCRIMINATION

Direct discrimination occurs when laws and rules openly discriminate against women.

Rights which form a basis for achieving equality and protection from Violence. [See Bill of Rights, pg 35]

Definition

Bill of Rights: clauses relating to women

- The right to be treated equally and to be free from discrimination
- The right to life
- The right to respect and protection of dignity
- The right to freedom and security of the person
- The right to freedom from servitude and forced labour
- The right to privacy
- The right to be treated fairly and to be given reasons by administrative bodies
- The right to freely engage in economic activity
- The right to fair labour practices
- The right to buy, hold and sell rights in property
- The right to a healthy environment
- The right of children to security, basic nutrition and basic health and social services
- The right to basic education and access to educational institutions.

INDIRECT DISCRIMINATION

Indirect discrimination occurs when laws and rules appear to apply equally to men and women but in fact do not.

7.2

Patriarchy, gender, sex and sexual orientation

It is important to understand these concepts especially in terms of human rights as framed in the Bill of Rights.

Patriarchy

Most societies are patriarchal in character. In patriarchal societies women and children are defined in terms of men. Men control women's labour, bodies and identity. In patriarchal society most laws and customs favour men.

Power groups tend to develop ways and means to enforce and protect their dominance. In the apartheid era the white ruling political party did this and so do men in the patriarchal system.

7.2.1

Definition

PATRIARCHY

Patriarchy means a society in which males exercise control over the lives of its members.

Traditionally men have control in almost every area of society from government to religion, from the home to the workplace. There are very few matriarchal societies in the world where these roles are reversed, where women dominate and men are subservient.

Potential discrimination against groups is legislated against by the equality clause in the South African Constitution. The clause clearly states that 'the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth'.

7.2.2

Gender

Gender demonstrates the way in which communities believe women and men, girls and boys should behave. Gender behaviour is learnt and absorbed from everyday living. Girls are encouraged to nurture, to do domestic work and be nurses and teachers. Boys learn not to cry, to be aggressive and control the world around them. Men are expected to be sexually powerful and women submissive. These concepts of how women and men must behave change from community to community and from generation to generation.

Definition

GENDER

Gender behaviour is learnt and absorbed from everyday living.

7.2.3

Sex

Sex refers to the physical and biological differences between men and women and which cannot be influenced and developed by the culture in which they live. People are born male or female and this cannot change (with the exception of sex change operations, but these are rare). Women give birth to and breastfeed children.

Definition

SEX

Sex is the physical and biological differences between men and women.

7.2.4

Sexual orientation

Sexual orientation is the right of men and women to choose partners according to their sexual preference or practice. Each person has a right to decide with whom they wish to be sexually active, with men or women. Lesbians are women who are sexually attracted to women, and gays are men who are sexually attracted to men. Heterosexuals choose to be sexually active with the opposite sex.

The South African Constitution respects and protects the right of each person to make these choices.

Definition

SEXUAL ORIENTATION

Sexual orientation is the right of men and women to choose partners according to their sexual preference.



Women's main problem areas

Main problem areas for women can be divided into *practical gender needs* and *strategic gender needs*.

1. *Practical gender needs* require an immediate response to a concrete problem. This response will address concrete problems and does not address the subordinate position of women.
2. *Strategic gender needs* are based on trying to change women's subordinate position in society.



1. What are examples of these concrete needs?
2. What are examples of these strategic needs?
3. What problems relate to each of these issues?
4. What can women do to resolve these issues?
5. What can government do to resolve these issues?



She didn't hug me so I cut her throat

When Steven Scholl's wife rejected his attempt to hug her, he cut her throat and stabbed her 16 times. He claimed to have acted in a fit of rage and argued in court that he had acted with 'diminished criminal capacity' because he was under severe stress. Cape High Court Judge Roger Cleaver sentenced Scholl to six years in jail saying that although he had acted with diminished responsibility he had been aware of his actions and had intended to kill his wife.

[*Sunday Times*: 17 June 2001]



- If you were the judge in this case what sentence would you have given? Explain why?



Wife gets 25 years for killing spouse

Greytown schoolteacher Nelisiswe Ngubane has been jailed for 25 years by a Pietermaritzburg high court judge for the murder of her husband, a policeman, on April 5. Ngubane pleaded guilty to hiring two killers to murder her husband who she claimed had abused her. She testified that she had sought help from a social worker concerning her marital problems. She alleged her husband had threatened to kill her, that he abused alcohol and conducted a number of extra-marital affairs. Judge Tshabalala accepted that the abuse suffered by Ngubane amounted to compelling

CONTINUED

and substantial circumstances which gave him a discretion to deviate from the minimum prescribed sentence of life imprisonment for premeditated murder. [The Mercury: 13 June 2001]



- If you were the judge in this case what sentence would you have given? Explain why?



TALKING POINT

Women seek pardon for killing partners

The Justice for Women Campaign is seeking a presidential pardon or early release for five women jailed for killing their abusive partners.

One of the arguments for the presidents pardon is based on the fact that current law doesn't consider the differences in strength between men and women: for a self defence argument to succeed it must be shown that the attack occurred immediately after provocation or threat to life. Because women are less strong physically than men, the murder is often premeditated and often includes a third party. For this, women get steep sentences because the justice system views the act as premeditated, which allows little possibility to claim 'the heat of the moment'.

[Mail and Guardian: 18 May 2001; Sunday Tribune: 17 June 2001]



1. Do you think women are discriminated against in the criminal justice system? If so, why? If not, why not?
2. Do you think women and men should be treated differently in the criminal justice system. If so, why? If not, why not?
3. Draft what you consider to be an appropriate definition for self-defence.

7.3

Violence against women

7.3.1

Economic, political and social inequality make women vulnerable to male violence

Women are threatened continually in their everyday surroundings. They face violence in their communities, in their homes and in the workplace. This continuous threat dominates the core of their exis-

tence affecting the way women think and behave. Violence destroys and erodes the quality of everyday life for women.

Telltale headlines

The following headlines appeared in local newspapers recently:

‘Durban’s wife killers’; ‘Safe haven to be set up in Durban’; ‘Sexual abuse kept silent in churches says CGE’; ‘Policeman raped me’; ‘Girl raped at school, pupils held’; ‘Women seek pardon for killing partners’; ‘Man hired to kill husband’; ‘Female candidate dog handlers have allegedly been physically abused and sexual favours demanded by their instructors’; ‘Man in pub crawl with body (of girlfriend) in bakkie’; ‘Search for hockey stick used in killing (woman)’; ‘Father in jail as girl lies in coma’.



TALKING POINT

- What do each of these headlines tell us about violence against women?



Violence against women takes numerous forms and each form is approached differently by South African law. It can be categorised into:

- Criminal violence
- Domestic violence
- Sexual harassment.

These categories are not exclusive and overlap. They may also give rise to both civil and criminal actions.

VIOLENCE AGAINST WOMEN		
<p>CRIMINAL VIOLENCE (Civil and criminal)</p> <p>Rape Gang rape Indecent assault Incest Murder</p>	<p>DOMESTIC VIOLENCE (Civil and criminal and special orders in terms of the Domestic Violence Act)</p>	<p>SEXUAL HARASSMENT (Civil and criminal claims (also Labour Court and CCMA))</p>

Criminal violence

A crime [See pg 40] is a wrongful act against the state (government or country). The state punishes anyone who commits a crime through prison sentences, fines or both depending on the seriousness of the crime, or community service. Rape, attempted rape, incest, assault and indecent assault are examples of crimes.

7.3.2

Definition

CRIME

A crime is a wrongful act against the state (government or country).

Rape

Definitions

RAPE

Rape is defined as intentional, unlawful sexual intercourse with a woman without her consent.

INDECENT ASSAULT

Indecent assault is the intentional and unlawful assault of a person with the intention of committing an indecent act.

Rape is defined as intentional, unlawful sexual intercourse with a woman without her consent. This means that unless there is penetration of the women's vagina by the man's penis the act will not amount to rape. Rape is not a crime of passion or of uncontrollable sexual urges but is aggressive action to assert power and control over the victim and in most cases is planned or premeditated.

Studies show that there is a lower incidence of rape in countries where there are low levels of general violence, where men and women share a more equal status in society, and where the criminal justice system harshly condemns and vigorously prosecutes rape.

The present definition of rape does not take into account forced anal or oral sex or the penetration of the body by other objects. This is considered 'indecent assault' which carries a lower criminal penalty than rape. The definition of rape also does not include violent sex between same sex partners. There can also be a charge of attempted rape (or attempted assault). Attempted rape is when in an attempt to rape a woman or girl the rapist fails to penetrate the vagina with his penis. Attempted rape can be as violent and traumatic to the victim as rape. Legislation may be passed to broaden the definition of rape to include gender neutral language and penetration by objects other than a penis.

Indecent assault

Indecent assault is the intentional and unlawful assault of a person with the intention of committing an indecent act such as touching or fondling a woman's breasts or her private parts.

Incest

Incest is intentional and unlawful intercourse with a close relative such as brothers and sisters or fathers and daughters.

Different forms of rape

It is a myth [See Myths and misconceptions, pg 163] that rape is an act committed only by or mostly by strangers.

Rape takes place under many circumstances – there is rape by a stranger, date rape, attempted rape, statutory rape, gang rape, marital rape and incest. More women and children are raped, battered, assaulted and sexually molested in their homes by people they know and trust than by strangers.

Statutory rape

Statutory rape is when a man has sexual intercourse with a girl less than 16 years. He will be found guilty of rape whether the girl has consented or not.

Definition

INCEST

Incest is intentional and unlawful intercourse with a close relative.

Date rape

Date rape takes place when the people know each other and are in a dating relationship and the male has sexual intercourse with the female without her consent.

Gang rape

Gang rape is when more than one rapist rapes a woman. There is not a separate crime of gang rape. Each rapist is charged with rape.

Rape of a mentally incapacitated person

A person who is mentally incapacitated (e.g. insane or heavily under the influence of drugs or alcohol) cannot give consent to sexual intercourse. A man who has sex with such a person will be found guilty of rape whether there is consent or not.

Marital rape

South African law has recognised only as recently as 1993 that men can be criminally convicted for raping their wives if they have sexual intercourse with them without their consent. [See Prevention of Family Violence Act, 1993, pg 170 para 7.4.7].

Rape myths and misconceptions

A 'Myth' is a commonly held belief, idea or explanation that is not true. Myths arise from people's need to make sense of acts that are senseless, violent or disturbing. There are many myths and misconceptions about rape.

7.3.6.2

7.3.6.3

7.3.6.4

7.3.6.5

7.3.7

Myths & misconceptions about rape

Tick the true or false boxes regarding the following myths.

MYTHS	TRUE	FALSE
Nice girls don't get raped	<input type="checkbox"/>	<input type="checkbox"/>
Prostitutes cannot be raped	<input type="checkbox"/>	<input type="checkbox"/>
Women enjoy being raped	<input type="checkbox"/>	<input type="checkbox"/>
Women ask for it because of the way they act or dress	<input type="checkbox"/>	<input type="checkbox"/>
Men cannot control their sexual urges	<input type="checkbox"/>	<input type="checkbox"/>
Women say they have been raped to seek revenge	<input type="checkbox"/>	<input type="checkbox"/>
Women, if they try hard enough, can prevent being raped	<input type="checkbox"/>	<input type="checkbox"/>
Men only abuse women when they have taken alcohol or drugs	<input type="checkbox"/>	<input type="checkbox"/>
There is a right way to react to being raped	<input type="checkbox"/>	<input type="checkbox"/>
Equality for women leads to rape	<input type="checkbox"/>	<input type="checkbox"/>
When women say 'no' to sex they mean 'yes'	<input type="checkbox"/>	<input type="checkbox"/>
Rape is a crime of passion	<input type="checkbox"/>	<input type="checkbox"/>

Definitions

STATUTORY RAPE

Statutory rape is when a man has sexual intercourse with a girl less than 16 years.

DATE RAPE

Date rape takes place when the people know each other and are in a dating relationship.

GANG RAPE

Gang rape is when more than one rapist rapes a woman.

MYTH

A 'Myth' is a commonly held belief, idea or explanation that is not true.

7.3.8

Rape Trauma Syndrome

Rape Trauma Syndrome is a form of Post Traumatic Stress Disorder. This describes the physical, behavioural and psychological symptoms the complainant may suffer as a result of the rape. Evidence showing that the complainant is suffering from this syndrome can be led in a trial against the rapist and may lead to his conviction.

7.3.9

Multidisciplinary approach to the rape (or sexual assault) survivor

The rape survivor, whether or not she decides to pursue legal action, will need to relate to and work with numerous support groups. These groups will change or have different support roles over many years after the traumatic attack.

The main concern for all support groups, whether family, religious, government or non-government, is for the well-being of the survivor and for her individual concerns and needs.



SUPPORT GROUPS

The main concern for all support groups is for the well-being of the survivor and for their individual concerns and needs.



The rape survivor

The rape survivor will feel:

- Violently abused and shocked
- Numbed, disorientated, ashamed, fearful and deeply violated.

All the survivor's responses will be intense and overwhelming. These are normal reactions to a traumatic experience and it can take a long time to recover from the incident.

Remember: It is not her fault.

7.3.9.1

The rape survivor

Immediately after the rape (or other sexually violent incidents) the survivor should:

- Take good care of herself and be supported by family members and friends
- Be encouraged to talk about the rape
- Not wash or bath in case vital medical evidence is destroyed
- Preserve any evidence such as clothing, bag or weapons in a paper bag (a plastic bag will destroy evidence) or wrap them in paper
- If the survivor has wiped any fluids off herself she should take the cloth, tissue or paper with her to the medical facility or police station for testing

- Obtain medical assistance as soon as possible because even though there may not be physical injuries the rapist may have passed on a sexually transmitted disease (including HIV/AIDS) or the survivor may become pregnant
- Lay a charge at the police station
- Seek counselling. It is important for the survivor to talk about what has happened, again and again, to release the anguish. Counselling will assist the survivor to gain control over her life by finding her own solutions.

The police

The rape survivor when she approaches the police:

- Should not be turned away
- Should be treated with respect, dignity and care and not subjected to insulting or accusing comments by members of the police such as 'she asked for it'
- Should remain and be interviewed in a private room by a police officer, preferably a female police officer
- Should be taken as soon as possible, (within two hours to ensure maximum preservation of evidence), to a medical care facility
- Should receive information from the police relating to support services such as counselling, shelters, medical and legal advice
- If calling from the home, a health care facility or elsewhere, should receive priority treatment from the police.

Health care facility

Medical evidence is essential for a successful prosecution and conviction against a rapist. It is necessary to prove that sexual intercourse, (including penetration of the vagina), took place unlawfully, without consent. It is vital that this evidence is preserved as soon as possible. The rape survivor should go to a medical facility within two hours, if possible. Due to the high incident of HIV/AIDS it is important to receive medical attention immediately after a rape. The KwaZulu-Natal Department of Health is establishing Crises Centres throughout the province. It will be the responsibility of these clinics to treat rape survivors and to collect medico-legal evidence. [See pg 64]

The KwaZulu-Natal Department of Health Protocol for the examination of rape survivors sets out clearly how the rape survivor must be managed. [See pgs 256-257]

Legal remedies and the structure of the courts

[See Chapter 2 for Legal remedies and court structures]

Rights of the perpetrator

An alleged rapist or accused person is presumed innocent until proved guilty of the offence.

7.3.9.2



REJECTION

Rape survivors should never be turned away.

7.3.9.3



MEDICAL ATTENTION

Due to the high incident of HIV/AIDS it is important to receive medical attention after a rape.

7.3.9.4

7.3.9.5



HIV TEST

At present a rapist cannot be forced to have an HIV test without his consent but the law may change.

The magistrate or judge in a criminal trial may acquit or find a person accused of rape not guilty, even though it seems clear he committed the offence, if his constitutional rights are ignored.

At present a rapist cannot be forced to have an HIV test without his consent. The person who has been raped must react as if the rapist is HIV positive and protect herself. If she does get HIV/AIDS from the rapist, and he knew he had HIV/AIDS at the time, he will receive a longer prison sentence and can be sued for damages. There is a strong move to introduce legislation to allow for compulsory HIV/AIDS testing of alleged rapists.



Accused persons have the right to be brought before a court within 48 hours of arrest.

The constitutional rights of arrested or accused persons

- The right to freedom and security of the person
- The right of access to independent and impartial courts
- The right to employ a lawyer and to be provided with a lawyer by the state in certain circumstances
- The right to be informed of reasons for arrest
- The right to remain silent and to be presumed innocent
- The right to be brought before a court within 48 hours of arrest
- The right to bail unless the interests of justice requires otherwise
- The right to a fair trial.



TALKING POINT

Child rape suspect murdered


A man suspected of raping a child at the beginning of the month was beaten to death by members of the community at the weekend. The 57-year-old man was beaten to death after he was released from custody. There was no evidence that penetration had taken place.

[*The Mercury*: 7 June 2001]

Witchcraft task team

A special police project team has been tasked to investigate witchcraft-related murders in the northern areas of KwaZulu-Natal. In the latest attack, a woman and her daughter were killed in upper Tongaat after being accused of witchcraft. Petrol was poured over them and they were set alight.

[*The Daily News*: 7 June 2001]

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1. What human rights have been violated in the above two scenarios?
 2. Do individuals and communities have the right to take the law into their own hands? If so, why? If not, why not?
 3. Are there any circumstances you can think of when an individual or community has a right to dispense justice in place of a court or law?

Enforcing and protecting the survivor's rights

7.3.10

The victim/survivor can initiate a criminal charge or civil claim (for sentimental damages for hurt and humiliation as well as financial damages such as medical expenses or loss of earnings) against the alleged rapist.

7.4

Domestic violence

Domestic violence, hidden in the domestic realm of the home, has only recently been recognised as a public and community concern. Domestic violence is violence between two people involved in an intimate relationship whether they are married or not. It includes children, the elderly and anyone living in the home, as well as stalking, dating and same sex relationships. [See page 171]

Myths and misconceptions

7.4.1

There are many myths and misconceptions about women abuse and domestic violence.

A 'Myth' is a commonly held belief, idea or explanation that is not true. Myths arise from people's need to make sense of acts that are senseless, violent or disturbing.

Definition

BATTERED WOMEN SYNDROME
 Women develop the Battered Women Syndrome when they are victims of repetitive and constant physical and psychological abuse.

7.4.2

Myth or reality
 Tick the true or false boxes regarding the following myths.

MYTHS	TRUE	FALSE
Woman abuse is a private family problem	<input type="checkbox"/>	<input type="checkbox"/>
Woman abuse is harmless – just a few slaps now and again	<input type="checkbox"/>	<input type="checkbox"/>
If he does not hit her – it is not abuse	<input type="checkbox"/>	<input type="checkbox"/>
A man has a right to discipline his wife	<input type="checkbox"/>	<input type="checkbox"/>
Hurting someone emotionally is not abuse	<input type="checkbox"/>	<input type="checkbox"/>
Men abuse women when they drink alcohol or take drugs	<input type="checkbox"/>	<input type="checkbox"/>
If the abuse is that serious the woman would leave her home	<input type="checkbox"/>	<input type="checkbox"/>
Children need their father even if he is violent	<input type="checkbox"/>	<input type="checkbox"/>
Women abuse happens to working class woman	<input type="checkbox"/>	<input type="checkbox"/>
Women do not abuse men	<input type="checkbox"/>	<input type="checkbox"/>

Battered women syndrome

Women develop the Battered Women Syndrome when they are victims of repetitive and constant physical and psychological abuse. This means that they stay in the relationship because they become caught in the cycle of violence which makes it difficult to leave. The abuser is not always violent and there are often stages in the relationship that are calm and full of love.

7.4.3



ABUSE vs CALM
 Cycles of calm become shorter and the abusive stages become longer and more violent.

The cycle of violence

There are three stages in the cycle of domestic violence. During the first stage tension in the relationship arises over minor incidents. The second stage is characterised by outbursts of violence which lead into the third stage, a calm stage, called the ‘honeymoon’ stage when the abuser is apologetic and usually promises not to repeat the violence.

Many women believe they can stop the violence stages but as the relationship proceeds the cycles of calm become shorter and the abusive stages become longer and more violent.

7.4.4

Why women stay

Many abused women, even after being violently assaulted, will return to live with the abuser, withdrawing any criminal charges, civil claims or divorce proceedings she may have initiated against him.

The reason she returns are complex and often difficult to understand because they arise out of women’s unequal position in polit-

ical, economic, social and religious spheres. This inequality makes her more vulnerable to violence in the family.

Reasons for staying

Women stay in the abusive relationships for emotional and economic reasons:

- **Emotional reasons:** The woman loves the abuser and believes that he will change. Part of the abusive pattern is that the abuser undermines her abilities and strengths and destroys her self-esteem. This makes her feel worthless, and that she cannot survive on her own. She and the children are often threatened with assault or death should they leave. The abuser often succeeds in isolating her from her family and friends (either by the behaviour of the abuser or because she is ashamed to tell them what is happening). This makes it very difficult for her to receive assistance and support. Sometimes families are not supportive because of religious, cultural or social values and insist she stay with the abuser.
- **Economic reasons:** The woman is usually financially dependent on the abuser, isolated at home, uneducated and unable to make a secure income. She may have nowhere to go, (especially if her family is not supportive of her decision to leave), and she may feel that it is in the children's financial and emotional interests to remain as a family. She often does not understand the law and her rights regarding divorce, custody or maintenance proceedings, fearing that she will lose the children to the abusive partner if she leaves.

WHY WOMEN STAY IN ABUSIVE RELATIONSHIPS

EMOTIONAL REASONS

- Love
- Lack of self-esteem
- Threats
- Isolation
- Lack of emotional support

ECONOMIC REASONS

- Dependence
- Lack of education
- Nowhere to go
- Unemployable

Domestic violence is a matter of public interest

Violence in the home, and its devastating impact on society is no longer acceptable to women, communities and the state.

Enforcing the rights of victims of domestic violence

There are a number of legal procedures available to victims of domestic violence, most of which are covered extensively in Chapter 2 of this book.

Procedures which can be used are as follows:

7.4.5

7.4.6

DOMESTIC VIOLENCE PROCEDURES:

- Protection order
- Criminal charge
- Civil claim
- High Court Interdict
- File for divorce

Legal procedures for victims of domestic violence

- Obtain a protection order in terms of the Domestic Violence Act, 1998. [See pg 173] The procedure to obtain the protection order is deliberately simple enabling the complainant to obtain an order without the assistance of a lawyer
- Lay a criminal charge at the police station against the abuser [See pg 40]
- Institute a civil claim against the abuser for damages suffered (such as humiliation, bodily injury, medical expenses or loss of earnings). This is difficult to do without the assistance of a lawyer. [See pgs 121-122]
- Obtain an urgent High Court Interdict (an expensive alternative to the Protection Order in the Domestic Violence Act). This is difficult to do without the assistance of a lawyer. [See pgs 40-41]
- File for a divorce against the abusive partner.

The most important of the above remedies is the Domestic Violence Act, 1998, and the protection order provided by it to abused women or men.

7.4.7

Prevention of Family Violence Act, 1993

The Prevention of Family Violence Act, 1993 first addressed the problem of family or domestic violence but it was of limited and narrow application. This act was largely repealed and replaced by the Domestic Violence Act, 1998.

Two important sections, Sections 4 and 5, were retained in the Prevention of Family Violence Act, 1993.

Section 5, recognised that a husband may be convicted of the rape of his wife. Until this the concept of rape in marriage was not recognised, and consequently allowed and condoned.

Section 4 imposes an obligation on any person who examines, treats, attends to, advises, instructs or cares for any child in circumstances which give rise to a reasonable suspicion that such child has been ill treated, to immediately report such circumstances to:

- A police official, or
- A commissioner of child welfare or a social worker.



NEW ACT

The Prevention of Family Violence Act was replaced by the Domestic Violence Act 1998.

7.5

Domestic Violence Act, 1998

The Domestic Violence Act, 1998, which is far reaching and influenced by numerous women's lobbies, became law in 1998.

The preamble or introduction to the act recognises that:

- Domestic violence is a serious social evil
- There is a high incidence of domestic violence amongst South African communities
- Victims of domestic violence are amongst the most vulnerable members of society.

The Act takes into consideration the Constitution of South Africa and in particular the rights to equality and freedom and security as well as the obligations by the state in terms of international agreements to end violence against women and children.

The aim of the Act is to give maximum protection against domestic violence and to guarantee participation by the different organs of state (such as the departments of justice, safety and security, welfare, health) in assisting and supporting victims of domestic violence.



THE ACT'S AIM

The aim of the Domestic Violence Act is to give maximum protection against domestic violence and to guarantee participation by the different organs of state in assisting and supporting victims of domestic violence.

Key points of the Act

Complainant and respondent

The Domestic Violence Act refers to the victim or abused person as the 'Complainant' and the abuser or perpetrator of domestic violence as the 'Respondent'.

Domestic relationships

The Domestic Violence Act allows anyone in a domestic relationship to obtain a protection order. The Act protects a much wider range of relationships than the Prevention of Family Violence Act. The Act protects:

- People who are or were married according to any law, custom or religion
- People who live or have lived together (whether of the same sex or not)
- All family members (including parents, children, grandparents, brothers, sisters of the child or children)
- Engaged people and those in dating or customary relationships.

Defining domestic violence

Domestic violence takes many forms. It may be physical, sexual, emotional, verbal, psychological, economic and includes intimidation, harassment, stalking, damage to property, entry into a residence without consent or any other controlling or abusive behaviour.

A protection order in terms of the Domestic Violence Act

The core of the Domestic Violence Act is the issuing of a protection order to the complainant by a Magistrate.

CONTINUED

A protection order issued out of the Magistrate's Court may prohibit the abuser (respondent) from doing some or all of the following:

- Committing any act of domestic violence
- Asking others to help commit an act of domestic violence
- Entering a shared residence or entering a specific part of that residence
- Entering the complainant's residence or place of employment
- Committing any other specified act.

Children may apply for a protection order from the court without the assistance of a parent or guardian.

Safety, health or well-being of the abused person or complainant

In terms of the Domestic Violence Act the court may also:

- Order the police to seize any dangerous weapons in the possession of the abuser
- Order the police to accompany the complainant to collect personal property
- Order the abuser to pay maintenance, rental or any urgent financial relief to the complainant
- Make an order as to access to and maintenance of any children.

Breaching or breaking the protection order

If the abuser breaks the order then the complainant must call the police and give them the certified copy of the order and the warrant of arrest. The police must, depending on the circumstances, arrest the abuser or give him a notice to appear in court.

The abuser will appear before the magistrate who will decide whether to fine or imprison the abuser. The abuser can be sentenced up to five years in prison for breaking the order.

Once the warrant for arrest has been used a second warrant must be obtained from the court in case the abuser breaks the protection order again.

Responsibilities/duties of the police

The Act is very clear that members of the South African Police Service have a responsibility to victims of domestic violence. The Act specifically sets out these duties.

The Police

- Must assist the victim in any way necessary, as well as help the victim to obtain medical attention and find a safe place to stay
- Inform the victim of her rights in terms of the Act, including the right to lay a criminal complaint
- May arrest the abuser without a warrant of arrest if the police officer suspects the abuser has committed an offence in which physical violence was used against the victim.



How to obtain a protection order

The victim/survivor or as described by the Act, the complainant, will need to visit the court twice to obtain a protection order.

The complainant must speak to the Clerk of the Magistrates Court who will explain to the complainant her rights in terms of the Act (including the right to lay a criminal charge) and assist the complainant in filling in the form to apply for a protection order. This will include the preparing of an affidavit (sworn statement) setting out the reasons for applying for the protection order. The complainant's case can be made much stronger by including:

- Supporting affidavits by a doctor setting out the injuries suffered or by witnesses to the event
- A report from a social worker
- Proof of previous cases against the abuser
- Photographs of the injuries.

The clerk of the court will take the application to the magistrate.

The magistrate has three options. The magistrate can:

1. Refuse to grant the order because he/she does not accept the evidence (set out in the statement) of the complainant
2. Grant an interim (temporary) protection order to the complainant and set a second court hearing (return date) when both parties can appear in court to set out their versions of what happened
3. Refuse to grant the order but set a date for a second court hearing for both the parties to appear in court to argue the matter. [Note: pgs 171-172 for type of order the complainant can request]

Once the magistrate decides to grant the protection order together with a 'suspended' arrest warrant the sheriff, the clerk of the court or the police serves the order on the abuser. The order only then becomes binding on the abuser.

The protection order will also inform the abuser that he may attend the court on the return day to tell the court why the order should not be made a final order. The abuser may ask the court to hear the matter earlier.

On the second date the magistrate, after reading the affidavits or listening to the arguments of the abuser and the complainant, will either refuse or grant a final protection order.

The final order is also served on the abuser and a copy is sent to the police station.

The complainant is given a certified copy of the order together with a warrant of arrest should the abuser breach (break) the protection order.

NOTE: If the complainant cannot pay the service fee for the order to be served by the sheriff of the court on the abuser the state must pay it.



The victim/survivor will need to visit the court twice to obtain a protection order.



TALKING POINT

Campaigning against domestic violence



1. How would you plan a national campaign against domestic violence.
2. What are the problems associated with campaigning against domestic violence?
3. What role-players would you include in the campaign?
4. How will you change attitudes during the campaign?
5. How can you involve or influence community and government structures?
6. To what extent do you think the campaign will be successful? Why or why not?

7.6

Sexual harassment

Definition

SEXUAL HARASSMENT

Sexual harassment occurs in the workplace and is the unwanted attention of a sexual nature that one person receives from another.

EXAMPLES OF WORKPLACE SEXUAL HARASSMENT

- A direct exchange of a benefit for sexual favours (e.g. promotion for sex)
- A hostile working environment (e.g. pornographic magazines or calendars in the office)

Sexual harassment has a limited meaning in terms of South African law.

It occurs in the workplace and is the unwanted attention of a sexual nature that one person receives from another. Both women and men can be victims of sexual harassment but it is mainly women who suffer from this form of abuse.

Human rights infringements

A number of human rights set out in the South African Constitution are infringed when a woman is sexually harassed. Some examples of these rights are:

- The right to human dignity and respect
- The right to freedom and security of person
- The right to privacy.

The Industrial Court has described sexual harassment as follows:

“It may be trivial, it may be verbal but gross, or it may be physical, again varying from trivial to gross. It may be a single act or the act may be repeated. The actions as such disclose a total disregard for the feelings and the integrity of the recipient”.

[J v M Ltd, (1989) 10 ILJ 755 (IC)]

Nedlac

During the multiparty negotiation process prior to 1994 all political parties agreed to the establishment of the National Economic Development and Labour Council (Nedlac). The activities of Nedlac are governed by the Nedlac Act passed in 1994. Nedlac is made up of four interest groups – labour, government, business and communities. The main aim of Nedlac is to:

- Promote economic growth, participation in economic decision-making and social equality
- Reach agreement on social and economic policy
- Consider new laws relating to labour issues and to try and obtain agreement from the various interest groups on new laws before legislation is passed.

Nedlac has great influence on the making of labour laws and has drafted and developed codes of good practice on such issues as sexual harassment and dismissal.

These codes influence:

- Employers and trade unions in negotiating, drafting and implementing workplace policies and procedures
- The interpretation of the law on sexual harassment in courts.

Nedlac's Code of good practice on the handling of sexual harassment cases

The Code defines sexual harassment as 'unwanted conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual'. The Code expands and states that sexual attention becomes sexual harassment if:

- The behaviour is persisted in although a single incident of harassment can constitute sexual harassment, and/or
- The recipient (the person being harassed) has made it clear that the behaviour is offensive (unwanted), and/or
- The perpetrator (the person doing the harassing) should have known that the behaviour is regarded as unacceptable.



7.6.1



NEDLAC

Nedlac has great influence on the making of labour laws and has drafted and developed codes of good practice.



THE CODE

The Code defines sexual harassment as 'unwanted conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutual'.



EXAMPLES

Examples of verbal sexual harassment are innuendos, suggestions, hints or comments with sexual undertones.

Examples of sexual harassment

- **Unwanted physical contact** – touching, assault, rape
- **Verbal** – unwelcome innuendos, suggestions, hints or comments with sexual undertones, unacceptable sexual jokes and remarks
- **Unwelcome signs and gestures** – indecent exposure, display of explicit pictures or objects
- **Sexual favouritism** – where workers who submit to sexual advances are rewarded with amongst others, promotion, a better merit rating or salary increases.

7.6.2

Direct or indirect sexual harassment

Sexual harassment in the workplace can either be direct or indirect. Direct sexual harassment includes direct physical attack or verbal abuse.

Indirect sexual harassment happens when a hostile or unfriendly atmosphere is created where it is impossible for women to work. A hostile environment is created by inappropriate pictures on the wall (e.g. nude women) or the constant telling of sexist jokes.

7.6.3

Protecting and enforcing rights in sexual harassment cases

Protection against sexual harassment can be achieved through two main mechanisms:

- Advocacy and lobbying (such as influencing trade unions and employers to draft codes of conduct concerning appropriate behaviour in the workplace or influencing the making of new laws) [See para 2]
- Using formal disciplinary procedures at work, the courts [See para 2] or the procedure of the Employment Equity Act.



NEW LAW

Sexual harassment will be dealt with under the new law, the Employment Equity Act.

A complaint in a clearly criminal matter (rape or assault) can be laid with the police or a civil claim (for damages suffered) initiated in the civil courts. [See pg 40, para 2.5]

The Commission for Conciliation, Mediation and Arbitration (CCMA) has interim jurisdiction over sexual harassment matters but the legislature intends sexual harassment to be dealt with under the new law, the Employment Equity Act. [See pg 14, para 1.3.2]

The Employment Equity Act became law in 1998 and is aimed at creating equality in the workplace. The Act stops unfair

discrimination and creates equal opportunities for those discriminated against in the past – Africans, Coloureds, Indians, women and the disabled.

The Act prohibits harassment of a worker on the basis of sex, race, religion, and sexual orientation and calls harassment ‘discrimination’.

Perpetrators of sexual harassment face disciplinary action and workers are able to take action in court against employers for compensation for failing to provide a safe, hostility-free workplace.

The Act sets out certain procedures to ensure that the terms of the Act are applied in the workplace. These procedures fall under the Department of Labour and deal with undertakings by employers as well as the issuing of orders by labour inspectors. These undertakings and orders will in some cases be reinforced by the Labour Court together with a system of fines.



WORKPLACE EQUALITY

The Employment Equity Act became law in 1998 and is aimed at creating equality in the workplace.

Sexual harassment at work

[J v M Ltd 1998 10 ILJ 755 (IC)]

J, a manager, was dismissed by the company for allegedly fondling and making suggestive remarks to a woman employee.

“Sexual harassment, depending on the form it takes, violates the right to integrity of the body and personality which belongs to every person and which is protected in our legal system both criminally and civilly. An employer has a duty to ensure that its employees are not subject to this form of sexual harassment”.



TALKING POINT

1. What are the main elements of sexual harassment?
2. What effect does sexual harassment have on women?
3. What steps can women take to stop sexual harassment?
4. Do you think that there should be a sexual harassment code of conduct in the workplace? If so, why? If not, why not?
5. Draft a brief sexual harassment code of conduct for the workplace.



7.7

Harmful repercussions for women resulting from domestic violence and rape

Women suffer severe consequences because of the high incidence of rape, sexual assault or the fact that they are often not in a position to make decisions on their sexual activity or have safe and protective sex.

In addition to the physical and psychological injuries suffered from violent sex women fall victim to sexually transmitted diseases, including HIV/AIDS and unwanted and unplanned pregnancies.

7.7.1

Reproductive rights

Socio-economic rights are included in the South African Constitution. These rights impose obligations on the government to provide basic education, health care, food, water, shelter and a clean environment for the people of South Africa.

EVERYONE HAS THE RIGHT TO:

- Health care
- Food and water
- Social security
- Emergency medical treatment

Excerpt from the Constitution

S 27(1) of the South African Constitution states:

- (1) “Everyone has the right to have access to –
 - Health care services, including reproductive health care
 - Sufficient food and water, and
 - Social security, including, if they are unable to support themselves and their dependents, appropriate social assistance.
- (2) The state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of each of these rights.
- (3) No one may be refused emergency medical treatment.”

The Constitution makes particular mention of reproductive rights, as reproductive rights are central to any health system. Women have special health problems relating to becoming pregnant and giving birth.

What are reproductive rights?

- The choice to have children or terminate a pregnancy
- Access to family planning and contraception
- Access to education and counselling services.

Termination of pregnancy

There is international controversy on whether to allow medical or surgical terminations of pregnancy. People who support termination of pregnancy by medical or surgical means are described as being 'pro-choice' or 'anti-life'. People who do not support this right are described as being 'anti-choice' or 'pro-life'.

Many people consider that a termination of pregnancy infringes the right to life and is the same as murder. Others say that termination of pregnancy is a choice that should be left to the individual women to make – and unless women are allowed to make this choice they cannot participate equally in political, economic and social spheres of life. The reality is that many women are not able to make their own decisions about reproduction and do not have control over their own bodies – leading to unwanted pregnancy.

Excerpt from the Constitution

The South African Constitution adopts a pro-choice approach and S12 (2) states:

“Everyone has the right to bodily and psychological integrity, which includes the right:

- To make decisions concerning reproduction
- To security and control over their body, and
- Not to be subjected to medical or scientific experiments without their informed consent.”

This clause firmly supports the right of women to request a termination of pregnancy in terms of the Choice on Termination of Pregnancy Act of 1996.

The constitutionality of this act was challenged in the Constitutional Court during 1998. [See pg 182] The Constitutional Court confirmed the validity of the Choice on Termination of Pregnancy Act.

The courts have held that if a foetus is born alive it can sue for anything due to it while it was inside its mother's womb from the date of conception (e.g. a foetus injured in a car collision can sue for its injuries once it is born).

Choice on Termination of Pregnancy Act, Act 92 of 1996

This act allows women to choose to terminate a pregnancy.

7.7.2



PRO-CHOICE/ ANTI-LIFE

People who support termination of pregnancy by medical or surgical means are described as being 'pro-choice' or 'anti-life'.



UNWANTED PREGNANCY

The reality is that many women are not able to make their own decisions about reproduction and do not have control over their own bodies – leading to unwanted pregnancy.

7.7.3

Introduction to the Act

The law promotes reproductive rights and extends freedom of choice by affording every woman the right to choose whether to have an early, safe and legal termination of pregnancy according to her individual beliefs.

The law states specifically that it recognises:

- The values of human dignity, the achievement of equality, the security of person, non-racialism and non-sexism, and the advancement of human rights and freedoms which underlie a democratic South Africa
- The Constitution protects the right of persons to make decisions concerning reproduction and the right to security in and control over their own bodies
- Both women and men have the right to be informed of and to have access to safe, effective, affordable and acceptable methods of fertility regulation of their choice, and women have the right of access to appropriate health care services to ensure safe pregnancy and childbirth
- The decision to have children is fundamental to women's physical, psychological and social health. Universal access to reproductive health care services includes family planning and contraception, termination of pregnancy and sexuality education and counselling programmes and services.

Consent to termination of pregnancy

The Act gives any female person of any age the right to choose to have a termination of pregnancy. This includes girls under the age of 18 years. Women, according to this law, can choose to terminate their pregnancy without the knowledge or consent of their parents, family, husbands or boyfriends, although they should be counselled to inform such persons.



REPRODUCTIVE RIGHTS & FREEDOM OF CHOICE

The law promotes reproductive rights and extends freedom of choice by affording every woman the right to choose whether to have an early, safe and legal termination of pregnancy.



TERMINATION

A termination of pregnancy between 0-12 weeks is relatively easy. Terminating pregnancies becomes more complicated after 12 weeks.

Pregnancy termination timeframes

The law has different requirements depending on how advanced the pregnancy is.

Pregnancy: 0 – 12 weeks

A termination of pregnancy during this period is relatively easy so any woman or girl may have a termination at a state hospital merely on request. A doctor or a registered midwife is allowed to perform the termination during this period.

Pregnancy: over 12 and up to 20 weeks

The procedure relating to terminating pregnancies become more complicated after 12 weeks and only a doctor is allowed to perform a

CONTINUED

termination after this initial period. A woman's right to the termination becomes limited during this middle stage of pregnancy. A woman is entitled to a termination if, in the opinion of a doctor:

- There is a risk of injury to the woman's physical or mental health;
- There is a risk that the foetus will suffer severe physical or mental harm
- The pregnancy is a result of rape or incest
- Having the child would affect the social or economic circumstances of the woman.

Pregnancy: over 20 weeks

A doctor must perform the termination at this stage and may only do so if the doctor is satisfied, after consultation with another doctor or registered midwife, that:

- The woman's life is in danger
- There is a risk of injury to the foetus or it is severely deformed.

Sanctions

Any person who prevents the lawful termination of a pregnancy or obstructs access to a facility for the termination of a pregnancy will be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding six months.

If the termination of a pregnancy is not performed by a medical practitioner or a registered midwife the person doing so will also be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Obstructions to obtaining a termination of pregnancy

A woman or girl is entitled to decide whether to end or continue with the pregnancy and should seek assistance from a group that will support and respect the choice she has made.

The intention of the Choice on Termination of Pregnancy Act is to make terminations of pregnancy more accessible to all women and not only to the middle or wealthy classes as in the past.

Many doctors, nurses, midwives and hospital staff do not support the law nor understand the reasons behind the making of the law. They are actively hostile to women seeking a termination of pregnancy. Most state hospitals only allow a termination if the pregnancy is less than 12 weeks and many women do not realise that they are pregnant until later in the pregnancy. Such refusal is unconstitutional.

Most rural hospitals and many urban hospitals do not allow a termination of pregnancy at all. This is against the policy of the state and against the Constitution and the law. A woman who is refused



THE MIDDLE STAGE

A woman's right to termination becomes limited during the middle stage of pregnancy (after 21 weeks) only if there is risk to the mother or foetus.

7.7.3.3

7.7.4



OBSTRUCTING LAWFUL TERMINATION

Any person who prevents the lawful termination of a pregnancy or obstructs access to a facility for the termination of a pregnancy will be guilty of an offence.

such a termination should approach a lawyer (or a legal aid clinic or a Legal Aid Board office if she cannot afford a lawyer) for help.



TALKING POINT

Does the right to life in the Constitution protect the unborn foetus?

[*Christian Lawyer's Association of South Africa v Minister of Health* 1998 (II) BCLR 1434 (T)]

The Christian Lawyer's Association argued that the Choice on Termination of Pregnancy Act allowed for the termination of human life which was contrary to the right to life in the South African Constitution. The court rejected their application on the basis that the foetus is not a person and does not have a right to life. The decision refusing to recognise the rights of a foetus is consistent with legislation in other countries and South African common law. The recognition of what rights a foetus has impacts on the interpretation of many laws, not only the termination of pregnancy debate.

Many cultures and religions are divided in their attitudes towards the termination of pregnancies.



- Should a particular culture be allowed to impose their beliefs regarding terminations of pregnancy on other cultures and religions? If so, why? If not, why not?

7.8

Sexually transmitted diseases

Sexually transmitted diseases (STDs) are diseases transferred through sexual intercourse or close sexual contact. HIV/AIDS is a sexually transmitted disease.

AIDS means Acquired Immune Deficiency Syndrome. AIDS is an illness which affects the ability of the body to defend itself against infections like TB. HIV is the virus that causes AIDS and is transferred from one person to another through body fluids or blood, and especially from unprotected sex with an HIV infected person.



Women often do not have the freedom to choose whether to have safe sex or to demand that their partners use a condom.

Women and HIV/AIDS

7.8.1

Women are at greater risk than men of being infected with HIV/AIDS because:

- They hold an unequal position in society, politically, economically and socially
- They are often victims of violence and rape
- They often do not have the freedom to choose whether to have safe sex (e.g. with a condom) or to demand that their partners practice safe sex.

Protection against discrimination on the grounds of disability

7.8.2

The Bill of Rights in the South African Constitution states:

“Everyone is equal before the law and has the right to equal protection and benefit of the law”.

It also states that neither the state or any person: “may unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age disability, religion, conscience, belief, culture, language and birth”.

This means that:

- No-one may be discriminated against because they have HIV or AIDS
- Children cannot be turned away from school because they have HIV or AIDS

- No-one including doctors, health workers, employers or anyone in possession of information about a client with HIV or AIDS, can inform someone else about the infected person, without the person's permission or unless there is serious risk of danger to someone else (like the partner of the person with HIV/AIDS)
- Employers and hospital staff cannot force people to have HIV/AIDS tests or to tell them they have HIV/AIDS
- Hospitals cannot refuse to treat people with HIV/AIDS
- Employers cannot discriminate or treat people with HIV/AIDS differently from other employees
- Prisoners cannot be discriminated against because they have HIV/AIDS – they cannot be forced to be tested for the illness, refused work or separated from other prisoners
- Banks cannot refuse to give people with HIV/AIDS loans
- Companies do not have to give life or disability insurance to people who have HIV/AIDS. If people want this insurance they will have to take an HIV test. The Company is not allowed to tell anyone else whether the person has HIV/AIDS or not. [See pgs 99-102 for legal and ethical aspects of HIV/AIDS]