

Violence Against Indigenous Women in the United States: A Policy Analysis

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Disproportionate levels of violence, disappearance, and murder are endemic among Indigenous women in the United States (U.S.). The prevalence of such violence has persisted for centuries, with little direct action taken to elevate the issue, protect Indigenous women, and hold individual and systemic perpetrators accountable. As a result, Indigenous women in the U.S. face various forms of violence at 2.5 times the rate of non-Indigenous women, with murder being the third leading cause of death. A staggering 94% of Indigenous women experience sexual violence in their lifetime (Urban Health Institute, 2019).

Through an analysis of existing and new legislation aimed at addressing the issue of violence against Indigenous women, we reveal the ways in which policies have fallen critically short of achieving this mission, highlight the strengths of recently enacted legislation, and provide recommendations for implementation in order to truly prevent violence, and therefore to protect and empower Indigenous women.

INDIGENOUS WOMEN DESERVE JUSTICE



VIOLENCE AGAINST INDIGENOUS WOMEN IN THE UNITED STATES: A POLICY ANALYSIS

Indigenous women are experiencing endemic-levels of violence, disappearance, and murder, yet there is little to no accountability for the violence being inflicted upon them (Salam, 2019). Furthermore, a lack of awareness of these human rights abuses, among the public and policymakers alike, has led to far too few efforts toward protection from and prevention of such violence. It is time for Indigenous women to be guaranteed their rights to protections under the United States (U.S.) government, ensuring justice and safety in all jurisdictions. This paper will examine the lack of protection for Indigenous women and girls under U.S. government policy, and the characteristics, context, and responses to violence and abuses against them.

No person should ever experience psychological or physical harm. Any act of violence is a violation against humanity. The United Nations recognizes violence against women to be “any act of gender-based violence that is likely to result in physical, sexual, or mental harm or suffering to women, including threats, coercion or deprivation of liberty, whether occurring in public or in private life” (United Nations Inter-Agency Support Group on Indigenous Peoples’ Issues, 2014, p. 1).

In a brief review of the literature on violence against Indigenous women, this paper will first present the prevalence and severity of this social problem, and then evaluate new and existing protections for Indigenous women under current U.S. law. Building on these protections, this paper will make recommendations for further changes and approaches to implementation necessary to advance the rights, health, and safety of Indigenous women. For the purposes of this paper, we use the term “Indigenous” to refer to Native American, American Indian, and Alaska Native women.

VIOLENCE AGAINST INDIGENOUS WOMEN: A SEVERE YET IGNORED SOCIAL PROBLEM

Indigenous women’s and girls’ experiences of violence are a reflection of the U.S. history of colonization, extreme poverty, and the

exclusion of their wider communities—best contextualized in terms of the intersections of race, disability, age, sex, and location, in addition to mutually reinforcing forms of inequities. These conditions ensure that they do not benefit to the same extent as their non-Indigenous counterparts from services which would otherwise protect them from violence and support their ability to seek redress when it does occur (Inter-Agency Support Group on Indigenous Peoples’ Issues, 2014). Rates of violence towards Indigenous women are 2.5 times higher than the rate of violence towards non-Indigenous women in the U.S., with estimates ranging from 46-91% of Indigenous women compared with 7-51% of non-Indigenous women (Burnette & Cannon, 2014). The Indian Law Resource Center (2020), a leading non-profit legal and advocacy resource organization for Indigenous people, found that four out of five American Indian and Alaska Native women experience violence, and more than one in two experience sexual violence (p. 1). These experiences of violence lead to significant trauma, substance use, depression, and other mental and physical health issues (Loerzel, 2020). Additionally, children of Indigenous women who experience intimate violence also experience high stress and anxiety, low self-esteem, and aggressive behaviors (Burnette & Cannon, 2014).

A key contributor to such violence is the fact that cases have not received attention or interventions whatsoever from any authoritative agency in centuries. While Indigenous women were once held in high esteem, given great respect and reverence among their tribes, the cultural erosion of Indigenous societies as a whole has been cited as a precursor to the violence Indigenous women face in their communities today (Burnette & Hefflinger, 2017). The U.S. colonial government system has failed to appreciate, preserve, and affirm the humanity, cultures, lands, territories, and resources of Indigenous peoples. Historical trauma refers to the cumulative emotional and psychological wounding over lifespans and across generations, emanating from massive group trauma experience (Brave Heart, 2003). Since multigenerational trauma continues as a consequence of such historical oppression, this trauma is seen as both a cause and a consequence of the normalization of violence towards Indigenous women in society (Burnette & Hefflinger, 2017).

Indigenous peoples all over the globe experience cultural and individual oppression. Identifying the best way to restore Indigenous women’s rights to safety, health, and autonomy is not only crucial to empowering Indigenous women, but to empowering Indigenous culture as well. Indigenous women and girls play essential roles in maintaining community resilience and wellbeing, acting as vital keepers of cultural identity and tradition. When their rights are violated through violence and coercion, such human rights violations “[constitute] a violation of the sanctity of the ecological, spiritual and cultural identity of indigenous peoples as a whole” (Inter-Agency Support Group on Indigenous Peoples’ Issues, 2014, p. 2). For Indigenous culture to flourish, programs must go beyond merely solving crimes against Indigenous women to preventing these crimes altogether. By focusing on how to empower and protect Indigenous women in the U.S., we can learn more about how to protect Indigenous peoples, cultures, and traditions worldwide.

CURRENT POLICY INTENDED TO EMPOWER INDIGENOUS WOMEN: THE VIOLENCE AGAINST WOMEN ACT (VAWA)

A key policy aimed at empowering Indigenous women is the Violence Against Women Act (VAWA). VAWA was introduced in 1994 as the first federal bill of its kind, acknowledging and addressing domestic violence and sexual assault as crimes. This paved the way for increased protections and support for women at federal, state, and local levels (NNEDV, 2020). The bill requires reauthorization every five years, and each renewal brings about key expansions in support for enhanced or newly-specified priorities, such as housing programs for victims of domestic violence or the implementation of culturally-competent services (NNEDV, 2020). The bill is key in raising awareness of violence against women and increasing support for victims and those impacted by sexual assault, stalking, rape, trafficking, and domestic violence.

The Violence Against Women Reauthorization Act of 2005 was the first to introduce plans to address violence experienced by Indigenous women and girls, specifically acknowledging the disproportionate level at which Indigenous women experience gender-based violence (Burnette & Cannon, 2014). As a result, section 903 was added to the bill, mandating

the Attorney General (AG) to consult with Indian tribal governments on a yearly basis. These consultations afford an opportunity to provide recommendations to the AG regarding the federal administration of tribal funding for programs offered under VAWA, enhancing protection of Indigenous women from various forms of violence by improving the federal response—or lack thereof—to such violence (Salam, 2019; National Indigenous Resource Center, 2020).

The next iteration of the bill—the Violence Against Women Reauthorization Act of 2013—strengthened protections for Native American women and girls as a result of collaboration among the Indian Law Resource Center, the National Congress for American Indians Task Force on Violence Against Women, Clan Star, Inc., and the National Indigenous Women’s Resource Center (Indian Law Resource Center, n.d.). Specifically, provisions were added to restore tribal criminal authorities to target and address violence inflicted upon Indigenous women and girls by non-Indian perpetrators on tribal land. This provision, known as the Special Domestic Violence Court Jurisdiction (SDVCJ), was instrumental in ensuring that Indian Nations can effectively investigate, punish, and hold perpetrators of violence—Indian and non-Indian alike—accountable for the harm they cause towards Indigenous women on tribal lands (Indian Law Resource Center, n.d.).

While the important addition of SDVCJ could benefit tribes in the 48 contiguous U.S. states, because of restrictive land resettlement laws, the federal government does not recognize tribal land as “Indian country” in Alaska (Indian Law Resource Center, n.d.). Under 18 U.S.C. § 1151 and 40 C.F.R. § 171.3, Indian country is defined as:

- a. all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation;
- b. all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and

- c. all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (U.S. Environmental Protection Agency, n.d.)

Because Alaskan tribal land does not fit this definition, section 910 of VAWA 2013 cites Special Rule for the State of Alaska (S.47-Violence Against Women Reauthorization Act of 2013). As a result, the SDVCJ currently applies to only one of 229 Alaskan tribes, thus excluding 40% of federally recognized tribes from these reforms (Indian Law Resource Center, n.d.). Jurisdictional complexities, in addition to insufficient resources for investigating and prosecuting those who commit crimes, add to the already high levels of vulnerability of Alaska Native women and girls, who make up 19% of the state population, but 47% of reported rape victims (Alaska Native Women's Resource Center, 2019). The Violence Against Women Reauthorization Act of 2019 (HR 1585), which is currently awaiting consideration in the Senate (Congress.gov, 2019), addresses this issue by introducing a pilot program that would allow five Alaska Native tribes to exercise SDVCJ (Alaska Native Women's Resource Center, 2019). VAWA 2019 will also add sexual violence, sex trafficking, stalking, and assault of law enforcement or corrections officers to the list of crimes Indian Nations can prosecute (Indian Law Resource Center, 2019).

CURRENT POLICY'S LACK OF EFFECTIVENESS IN PROTECTING INDIGENOUS WOMEN'S RIGHTS

The VAWA limits tribal prosecution of non-Indian perpetrators to those with prior connections to the tribe, but should expand to include those who commit any act of violence that is likely to result in physical, sexual, or mental harm or suffering to women or girls. Although evidence is limited, available studies indicate that this legislation is not achieving its intended goal of addressing and prosecuting crimes with the specific intent of increasing protections for women and girls (NNEDV, 2020). For example, while VAWA 2013 introduced legislation allowing tribes to charge non-Indian perpetrators of violence against women for their crimes, Creppelle (2020) highlights that tribes only have the authority

to prosecute such perpetrators for three specific crimes: domestic violence, dating violence, and protective order violations (p. 60). Due to this limitation, tribes lack authority in prosecuting additional crimes committed during these same circumstances, such as child abuse, stalking, and other violent crimes, which often include children, women, and men, with sometimes dramatic consequences for entire tribes (Creppelle, 2020). These circumstances are exacerbated by a preexisting lack of protections for Indigenous women, including high rates of poverty and limited resources for law enforcement to put towards prevention efforts (Creppelle, 2020, p. 63).

VAWA also neglects to uphold and advance tribal sovereignty, a necessary facet of Indigenous women's well-being. VAWA lacks substantial compatibility with United States legal processes and procedures (Allison, 2019). This not only constitutes a significant burden on tribes to exercise civil jurisdiction but also helps to bring into focus the scope of oppression imposed by the United States government. VAWA does not provide any sense of consideration for historical oppression and genocide against Indigenous women, nor is it inclusive of Indigenous perspectives or demonstrate cultural reverence. As it does not include support for the safeguarding of sovereignty, VAWA seeks to strengthen a legacy of white supremacy and heteropatriarchy. As a result, VAWA does not adequately address the significance of violence towards Indigenous women, and fails to address the systemic causes and mediators of gender-based violence and genocide (Maxwell & Robinson, 2019).

While VAWA has come a long way since its introduction in 1994, it is clear that more work is needed based on the disproportionate levels of violence faced by Indigenous women throughout history and still today (Burnette & Cannon, 2014; Creppelle, 2020). As the SDVCJ does not apply to all tribes, most Indigenous women are not afforded the protections that the VAWA 2013 amendment celebrates (Allison, 2019). Despite increasing the list of crimes Indian nations can charge against (Indian Law Resource Center), VAWA 2019 does not provide a means of preventing the overwhelming levels of violence, abuse, and genocide imposed upon Indigenous women. In order to ensure safety and

empowerment of Indigenous women, the scope of protections should include violence prevention efforts as well as accountability measures that apply to all tribal jurisdictions.

URGENT SOLUTIONS: SAVANNAH’S ACT, NOT INVISIBLE ACT, AND CHANGES TO VAWA 2013

Historically, criminal justice systems on reservations and in Indian country have created more barriers to investigating crime than to attaining solutions. Prevention, investigation, and prosecution of crimes against Indigenous women are often inconsistent or incomplete due to several different agencies—including the FBI, tribal police, and U.S. attorneys—working with conflicting protocol (Pao, 2020). In this section, we first review two recent acts that aim to combine and coordinate efforts to better protect Indigenous women and then propose a change to VAWA 2013 that would strengthen the ability to hold perpetrators of violence accountable.

TWO RECENT ACTS AIMING TO BETTER PROTECT INDIGENOUS WOMEN

In response to the inconsistency that has allowed abuse, disappearance, and murder of Indigenous women to continue, two acts were recently signed into law to enhance cohesion and diligence in protecting Indigenous women. Specifically, the first law, Savannah’s Act (Public Law No: 116-165), signed into law in October 2020, requires the Department of Justice to create a task force made up of members from various agency bodies to ensure all teams are collaborating and can devise a concrete plan to investigate a crime. In creating a task force, the Department of Justice will also be required to conduct trainings for each agency, from the Bureau of Indian Affairs police all the way to the FBI, in order to establish each agency’s role in locating missing women on and off tribal lands or investigating crimes against Indigenous women (Pao, 2020). Savannah’s Act also requires transparency from the Department of Justice through recording data and reporting statistics on missing and murdered Indigenous women (Congress.gov, 2020).

The second law recently enacted is the Not Invisible Act (Public Law No: 116-166), which was also signed into law in October 2020. Also working to increase coordination efforts, this Act focuses on establishing more robust efforts to prevent murder, trafficking, and violence towards Indigenous women. Mandated by law, the Department of the Interior will designate an official from the Bureau of Indian Affairs to spearhead prevention by establishing grants, programs, and recommendations to combat violence towards Indigenous peoples (Sanchez, 2020). Furthermore, the Act creates an advisory committee on violent crime comprised of survivors, service providers, and members of law enforcement.

A NEW DIRECTION: PROPOSED CHANGES TO VAWA 2013

In order for these two laws to be effective, criminal authority must be restored to Indian Nations. According to a study by the National Institute of Justice, 97% of Indigenous women have been victims of violence at the hands of at least one non-Indian perpetrator during their lifetime (Rosay, 2016). If we truly aim to protect and provide justice for Indigenous women, girls, and their families, the Special Domestic Violence Court Jurisdiction (SDVCJ) provision introduced in VAWA 2013 must be implemented in all Indian Nations. As mentioned earlier, while VAWA 2019 proposes a pilot program to introduce and exercise the SDVCJ in five Alaska Native tribes (Alaska Native Women’s Resource Center, 2019), it is critical that the SDVCJ be implemented in all tribes and reservations as soon as possible. Until then, non-Indian perpetrators will not be held accountable, and Indigenous women and girls will still be vulnerable to endemic-level violence, murder, and disappearance.

IMPLEMENTATION OF APPROACHES: RECOMMENDATIONS FOR PROTECTING INDIGENOUS WOMEN’S RIGHTS

As evident in this review of literature, it is important not only to pass laws, but also to implement them effectively and equitably so that the rights, health, and safety of Indigenous women can be protected and advanced. The two new laws—Savannah’s Act and the Not Invisible Act—complement each other to streamline prevention efforts among

federal, state, and Tribal officials to strengthen justice and public safety in tribal communities. As both laws were passed with wide bipartisan support and sponsorship, it is promising to see that this crisis is being recognized and prioritized across party lines. Through grant funding from the U.S. Department of Justice's Office on Violence Against Women, Savannah's Act incentivizes tribal communities by providing increased funding to jurisdictions that implement guidelines created by the Act (The Navajo Nation, Office of the President and Vice President, 2020; Department of Justice Office on Violence Against Women). Grant funds can be used towards training for law enforcement officers and data collection and reporting to the Attorney General (S.227-Savanna's Act, 2020). Increased funding to ensure the Act is implemented shows that policy makers recognize the potential impact of the Act on protecting Indigenous women.

As Savannah's Act and the Not Invisible Act are both newly signed into law, their efficacy will depend greatly on how the laws are implemented. One key determinant of successful implementation will be the involvement of Indigenous women, including survivors of violence and family members of survivors, victims, and missing women—key stakeholders in the fight for justice. The Not Invisible Act mandates the creation of an advisory committee on violent crimes. In addition to tribal leaders and law enforcement, the Act indicates the committee is to be made up of survivors and service providers who will work together to issue recommendations to the Department of Justice and Department of the Interior (The Navajo Nation, Office of the President and Vice President, 2020).

Another key to implementation is respect for Indigenous culture and tradition. Under Savannah's Act, agencies are tasked with ensuring that culturally appropriate services are available for victims of violence and trafficking, such as access to culturally-aligned mental and physical health providers. Additionally, the Act requires the “[c]ulturally appropriate identification and handling of human remains identified as belonging to American Indians” (2020). Guaranteeing that Indigenous women, survivors, families, and service providers have a say in how these two acts

are adopted on the ground is vital in making sure the efforts to protect and provide justice for Indigenous women and girls are not only effective, but sustainable and appropriate as well.

It must also be noted that for both of these laws to be effective, the VAWA 2019 reauthorization bill must expand the implementation of the SDVCJ provision. Whereas non-Indian perpetrators are “above the law” (Creppelle, 2020, p. 1) in territories where the SDVCJ is not in effect—that is, they cannot be prosecuted by tribes for crimes committed in Indian country—the provision ensures that all perpetrators of violence are appropriately held responsible for their crimes, which, most pressingly include violence against women (Creppelle, 2020). This provision will also support efforts to prevent violence against Indigenous women in the first place.

DISCUSSION

Savannah's Act and the Not Invisible Act have the potential to amplify awareness of the crisis of missing and murdered Indigenous women, while also putting into action concrete strategies to prevent violence, conduct investigations, and provide services for survivors and their families. Despite the Acts both including best practice recommendations for searching for missing Native persons on and off Tribal land (The Navajo Nation, Office of the President and Vice President, 2020), a key challenge that persists is the lack of universality in the application of SDVCJ in tribal courts. Without the ability to appropriately hold non-Indian perpetrators accountable for crimes against Indigenous women, these Acts will not be able to provide the level of justice Indigenous women deserve. Additionally, as the Department of Justice did not release crime data regarding Native peoples until 1999 (Pao, 2020), the scope of the crisis and therefore best approaches to protecting Indigenous women have not been thoroughly or justly explored.

Efforts to protect Indigenous women and ensure their ability to live with safety and dignity must not stop at the passage of these Acts. Future community-based, participatory action research should evaluate

implementation of the Acts, as including Indigenous women in the guidance and maintenance of the process will be vital to the success and survival of Indigenous women. Additionally, researchers and advocates should evaluate the potential impacts of expanding the SDVCJ provision to all jurisdictions. Ongoing evaluation will also be necessary in order to secure justice, violence prevention, and ongoing support for all Indigenous women.

CONCLUSION

The lack of protections in place for Indigenous women and girls throughout history has led to endemic levels of physical and sexual violence, missing women, and generational trauma. Murder is the third leading cause of death among this population, and rates of violence towards Indigenous women are 2.5 times higher than the rate of violence towards non-Indigenous women in the United States, with estimates ranging from 46-91% of Indigenous women having experienced these forms of violence, compared with 7-51% of non-Indigenous women (The Navajo Nation, Office of the President and Vice President, 2020; Burnette & Cannon, 2014). The Indian Law Resource Center (2020) found that four out of five American Indian and Alaska Native women experience violence and more than one of every two women experience sexual violence. At the same time, there has been little focus on holding perpetrators accountable, ensuring Indigenous women their rights to safety and adequate services, or implementing best practices to effectively investigate and prevent such levels of violence.

According to a 2018 survey conducted by the Urban Indian Health Institute, of 5,712 missing Alaska Native and American Indian women and girls, only 116 were registered in the Department of Justice database (The Navajo Nation, Office of the President and Vice President, 2020). Savannah's Act specifically allocates the resources needed to efficiently collect and enter data into national databases and further prevent and investigate crimes against Indigenous women. When 97% Native women experience physical, sexual, and psychological abuse at the hands of non-Indians, compared with 35% at the hands of Indian perpetrators (Rosay,

2016), it is critical that tribal courts be able to prosecute all perpetrators of violence in order to truly protect women and girls.

Despite laws in place such as VAWA which aim to protect women from violence, specific protections for Indigenous women have fallen short. While it is too soon to tell whether the Not Invisible Act and Savannah's Act will effectively address the issues discussed in this paper, with proper implementation they offer alternatives to a lack of protections and policies that have previously allowed violence towards Indigenous women to continue at disproportionate levels. It is time for Indigenous women and girls to be free of the human rights violations they have been subject to for far too long.

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