A Comparative analysis with the western jurisdictions as to how the issue of domestic violence is addressed legally and the strategies adopted to condemn the issue of domestic violence is an important task in understanding the problem and solutions comprehensively. This chapter provides an overview of the comparative legal positions on domestic violence in western jurisdictions specifically U.S.A and U.K, the scope and coverage of the concept, the implementation mechanisms within and the judicial attitude to create an effective Domestic Violence Response System. These jurisdictions have been chosen for the reason that their legislations, policies and approaches have had become models in all over the world. Moreover the concept of coordinated response system was, to a large extent, pioneered and developed into a successful strategy in the US and UK.

The study in the two jurisdictions is categorized into five categories for easy understanding of the topic

1. How is the concept of domestic violence defined and what are the relationships included?
2. What is the scope of the legislative framework?
3. What are the strategic community interventions initiated?
4. What are the merits and demerits?
4.1 The USA Experience

Historically the common law of U.S imported from England permitted the ‘rule of the thumb’ and the principle of ‘public-private divide’ within the home from being reported and publicized\(^1\). The laws known as coverture, which merged a married woman's identity with that of her husband was in rule. As an individual she was held incapable to own property, vote, sign contract, or keep wages earned by employment outside the household. The Mississippi Supreme Court in *Bradley v. State*\(^2\) voiced approval of the husband's role as disciplinarian\(^3\).

The period from 1960 to 1980 with the support of the feminist agenda was critical in building up an informed citizenry on the issue in U.S.A. During the 1960s, the women's liberation movement started drawing attention to violence committed against women, and the battered women's movement began to form. At its core was the outrage of women who argued that individual cases of violence against women in the home added up to an enormous and unacceptable social problem. By the end of the 1970s, the need for protective measures was felt reflecting the inadequacy of society's response. The Battered Women's Movement emerged out of the feminist perspective, becoming one of the most powerful social justice and service movements in United States history\(^4\). The legislative reform efforts which started in the mid

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1 See *State v. Black* 60 N.C.262, (Win.1864) wherein, Pearson C.J., held that “husband is responsible for the acts of his wife, and he is required to govern his household, and for that purpose, the law permits him to use towards his wife such a degree of force, as is necessary to control an unruly temper, and make her behave herself; and unless some permanent injury be inflicted, or there be an excess of violence or such a degree of cruelty as shown that it is inflicted to gratify his own bad passions, the law will not invade the domestic forum, or go behind the curtain. It prefers to leave the parties to themselves, as the best mode of inducing them to make the matter up and live together as man and wife should.”

2 1 Miss. 156 (1824) (U.S. Commission on Civil Rights, 1982).

3 This decision reinstated the belief that the law should not disturb that role: Let the husband be permitted to exercise the right of moderate chastisement, in cases of great emergency, and use salutary restraints in every case of misbehaviour, without being subjected to vexatious prosecutions, resulting in the mutual discredit and shame of all parties concerned.

1970’s therefore had the goals of improving police, prosecutor and criminal court response to battered wives, creating or enhancing civil legal remedies for battered wives and establishing refuges for battered women and their children.

**Definition of Domestic Violence and Relationships Covered**

The US Office on Violence Against Women defines domestic violence as a "pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner". The definition adds that domestic violence "can happen to anyone regardless of race, age, sexual orientation, religion, or gender", and can take many forms, including physical abuse, sexual abuse, emotional, economic, and psychological abuse.

This definition refers to a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. It can consist of physical, sexual, emotional, economic, or psychological acts that serve to intimidate, manipulate, humiliate, isolate, coerce, threaten, or hurt someone.

Legal definitions across the States generally describe specific conduct or acts that are subject to civil and criminal actions, and the specific language used may vary depending on whether the definition is found in the civil or criminal sections of the State's code. In all States, the District of Columbia, Puerto Rico, and the U.S. territories, the statutes specify that only persons who have some sort of personal relationship are protected by the domestic violence laws. The most common relationships listed include spouses and former spouses, persons who are currently living together, who have previously lived together, are involved or were previously involved in a dating or intimate

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relationship, or who have a child in common, whether or not they have ever lived together\textsuperscript{6}.

Generally, the federal law recognizes an intimate partner as a spouse, a former spouse, a person who shares a child in common with the victim, or a person who cohabits or has cohabited with the victim\textsuperscript{7}. The original Violence Against Women Act of 1994 was restricted to only married and co-habiting couples. But the 2000 reauthorization of the Violence Against Women Act broadened the definition to encompass dating couples. This notion is now reflected in many state laws\textsuperscript{8}. More recently, a number of states have broadened the definition of “domestic” beyond relationships that are intimate or even romantic in nature\textsuperscript{9}. Now in most jurisdictions the class of eligible victims is much broader; including the victim who is divorced, who is a current or former family or household member of the perpetrator, who is related by blood or marriage to the batterer, who is the parent of a child of the abuser, and someone who has been sexually or otherwise intimate with the abuse. Gay and lesbian people in intimate relationships are eligible for relief in about half of the states.

An extended definition of domestic violence was inserted into the Violence against Women Act of 1994 by section 3(a) of the Violence against Women and Department of Justice Reauthorization Act of 2005. The term 'domestic violence' includes felony or misdemeanor crimes of violence:

\textsuperscript{6} http://www.childwelfare.gov/systemwide/lawspublic/stats/defdomvio.cfm. Last visited on 20th February 2012

\textsuperscript{7} According to the VAWA Act, a domestic violence misdemeanor is one in which someone is convicted for a crime "committed by an intimate partner, parent, or guardian of the victim that required the use or attempted use of physical force or the threatened use of a deadly weapon" (s. 922 (g)(9)).

\textsuperscript{8} In Rhode Island, for example, persons who “are or have been in a substantive dating or engagement relationship within the past one year” are considered to be governed by the state’s domestic abuse statute.

\textsuperscript{9} Under Colorado law, for example, the civil statute states: “Domestic abuse means any act or threatened act of violence that is committed by any person against another person to whom the actor is currently or was formerly related, or with whom the actor is living or has lived in the same domicile, or with whom the actor is involved or has been involved in an intimate relationship.”
committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

The common approach resorted to in U.S.A has been to define violence and harassment in terms of its alleged psychological impact. This is done both by expanding the definition of physical assault to include emotional distress, and by establishing new categories of offenses that are defined in large part by their psychological impact, such as harassment and stalking. The crime of stalking is of recent vintage. The first anti-stalking statute was enacted in California in 1990. There is no standard definition for stalking, but, like harassment, fear plays a pivotal role. Stalking refers to harassing or threatening behavior that an individual engages in repeatedly, such as following a person, appearing at a person’s home or place of business, making harassing phone calls, leaving written messages or objects, or vandalizing a person’s property. Though stalking is a gender-neutral crime, women are the

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11 Different interpretations to manifestations of violence is adopted in different states. In only five states—Connecticut, Kansas, Idaho, Nebraska, and South Carolina—do statutes define domestic violence simply in terms of overt actions that can be objectively proven or refuted in a court of law. In the other states, the concept of domestic “violence” has become broader. In Hawaii, the statute requires the psychological abuse to be “extreme.” The law reads: “extreme psychological abuse” means an intentional or knowing course of conduct directed at an individual that seriously alarms or disturbs consistently or continually bothers the individual, and that serves no legitimate purpose; provided that such course of conduct would cause a reasonable person to suffer extreme emotional distress. The Michigan statute states: “Harassment” means conduct directed toward a victim that includes, but is not limited to, repeated or continuing unconsented contact that would cause a reasonable individual to suffer emotional distress and that actually causes the victim to suffer emotional distress. In Oklahoma, causing mere annoyance to the partner can be included under the term harassment.

primary victims of stalking and men are the primary perpetrators.\textsuperscript{13} Stalking when it happens between intimate partners creates a strong link with domestic violence against women. Stalking in most jurisdictions is being addressed as an integral component of an overall strategy to handle domestic violence cases.

**State Legislations and Issues Addressed**

The first stage of law on domestic violence goes back to the civil protection order, first adopted in 1976, within thirteen years, all 50 states and the District of Columbia passed similar legislation. Initially, in most statutes only married people or individuals living in a committed relationship were eligible to petition for relief.

In the United States the laws that deal with domestic violence may be classified under both Criminal law and Tort law, and certain aspects overlap with Family law. Domestic violence cases are treated as criminal offences and at times it has civil remedies also. Criminal offenses may be classified as felonies or as misdemeanors, although most domestic violence crime is charged and prosecuted as a misdemeanor.\textsuperscript{14} All states, territories, and the District of Columbia have statutory provisions for civil protection orders. These statutes provide processes for domestic violence victims to seek relief from domestic violence directly from the court and outside the criminal justice system.\textsuperscript{15}

A majority of the states have adopted statutes requiring courts to consider domestic violence as a factor in custody and visitation determinations. In

\textsuperscript{13} https://www.ncjrs.gov/pdffiles1/ovw/172204.pdf. Last visited on 13\textsuperscript{th} May 2012

\textsuperscript{14} In some statutory schemes, subsequent misdemeanor offenses may become enhanced to felony status. In many state criminal codes, domestic violence crimes are addressed in separate code sections (e.g., Alabama) and include specific definitions of what behaviors and relationships constitute domestic violence. In many states, the violation of a civil protection order (restraining order) is a misdemeanor crime. All states and the District of Columbia have separate stalking statutes (National Center for Victims of Crime, Stalking Resource Center). In some states (e.g., Pennsylvania), domestic violence crimes are included in general criminal code provisions (e.g., assault, aggravated assault, sexual assault, rape, kidnapping, theft, burglary, trespassing).

\textsuperscript{15} Although the actions brought under civil protection statutes are not criminal matters, violations of protection orders are criminal offenses in many states and the existence of a protection order against an offender raises several issues for the supervision of that offender.
Washington State if the court concludes that a parent has engaged in child abuse or domestic violence, it is precluded from awarding joint legal custody and it may limit unsupervised residential time of the offending parent with the child\(^{16}\).

Criminal offenses may be classified as felonies or as misdemeanors, although most domestic violence crime is charged and prosecuted as a misdemeanor\(^{17}\). All states, territories, and the District of Columbia have statutory provisions for civil protection orders. These statutes provide processes for domestic violence victims to seek relief from domestic violence directly from the court and outside the criminal justice system\(^{18}\).

All the states in USA has its own state laws to deal with domestic violence encompassing its own notions of what forms domestic violence, the relationships to be included in its purview, its own courts of jurisdiction to deal such cases, the orders and remedies passed, the methods of implementation etc. Most state statutes provide that orders of protection may be enforced by police officers, and authorize them to arrest spouses alleged to have violated these orders on the same basis that persons alleged to have committed a crime may be arrested\(^{19}\). Additionally many states have enacted legislation that requires police officers to make an arrest ‘mandatory arrest provision’ when there is probable cause to believe that someone has engaged in specified domestic violence.

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\(^{16}\) Prior to the adoption of these provisions, custody judges routinely concluded that the abuse of a parent by the other was irrelevant in custody proceedings; that violence toward a spouse/partner had nothing to do with one's ability to adequately parent.

\(^{17}\) In some statutory schemes, subsequent misdemeanor offenses may become enhanced to felony status. In many state criminal codes, domestic violence crimes are addressed in separate code sections (e.g., Alabama) and include specific definitions of what behaviors and relationships constitute domestic violence. In many states, the violation of a civil protection order (restraining order) is a misdemeanor crime. All states and the District of Columbia have separate stalking statutes (National Center for Victims of Crime, Stalking Resource Center). In some states (e.g., Pennsylvania), domestic violence crimes are included in general criminal code provisions (e.g., assault, aggravated assault, sexual assault, rape, kidnapping, theft, burglary, trespassing).

\(^{18}\) Although the actions brought under civil protection statutes are not criminal matters, violations of protection orders are criminal offenses in many states and the existence of a protection order against an offender raises several issues for the supervision of that offender.

violence crimes or has violated a restraining order. These “mandatory arrest laws” (also sometimes referred to as “pro-arrest laws”) were intended to reduce police discretion in responding to domestic violence.

Domestic violence victims could file tort actions against their abusers, in the form of assault and battery, stalking, intentional infliction of emotional distress, and fraud, among others. Perceptions about domestic violence are gradually changing and the inter-spousal immunity doctrine has been abolished in all but two states, providing today’s domestic violence victims with a range of potential tort causes of action. Assault and battery and infliction of emotional distress claims against perpetrators constitute the majority of domestic-violence related torts. The latter, which is recognised in a number of states, is particularly useful where the abuse alleged is non-violent. In cases of negligent infliction of emotional distress, many jurisdictions require that the victim exhibit physical manifestations of emotional distress. Most jurisdictions do not have a similar requirement for cases alleging reckless or intentional infliction of emotional distress.

Creation of Battered Woman syndrome as a civil tort for domestic violence victims was decided in the New Jersey Case Giovine v. Giovine in 1995. This was the first case in U.S.A to recognize that separate acts of assault and battery related to domestic violence consisted of a continuous tort that tolls the statute of limitation until the tortuous conduct desists.

The Court has laid down the elements of a battered woman’s syndrome cause of action.

1. Involvement in a marital like intimate relationship;
2. Physical or psychological abuse perpetrated by the dominant partner to the relationship over an extended period of time;

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20 In the past, a legal doctrine known as inter-spousal immunity, combined with misguided perceptions of domestic violence as being a private matter, limited a woman’s ability to obtain compensation for abuse committed by a spouse.
21 Statute of Limitation for most torts of assault and battery was only few years.
3. The above stated abuse has caused recurring physical and psychological injury over the course of relationship; and

4. A past and present inability to take any action to improve or alter the situation unilaterally.\(^{22}\)

The inability referred is the complete helplessness and mental incapacitation of the abused. This situation is in consonance with the learned helplessness theory as a causative theory behind the perpetration of domestic violence against women. The impact of this decision was to provide the domestic violence victims the legal vehicle to initiate a civil tort. Tortuous conduct giving rise to a mental condition is thus considered a continuous tort. This sends out the message that domestic violence torts are to be separately treated.

Court cases marked the first attempts to challenge and change police procedure in the United States.\(^{23}\) Arrest policies do differ by jurisdiction even in the same state. Some states, such as New York, Wisconsin, and Minnesota, have adopted mandatory/presumptive arrest policies\(^{24}\) which dictate that an officer must make an arrest at a domestic situation. Such policies were adopted after it was realized how serious domestic situations could be for the victims and their children. An arrest is usually made after the following conditions have been satisfied: 1. There is probable cause of a crime; 2. The suspect and the


\(^{24}\) The police should arrest domestic violence perpetrators when probable cause for misdemeanor violence exists, even if the violence does not occur in the officer’s presence and even if the victim does not desire prosecution. The proponent of mandatory arrest policies and no-drop prosecution stress that domestic violence is a public harm in which the State should be involved. The psychological state of learned helplessness (theory referred to in the first chapter of this thesis while explaining theories that are causative factors to domestic violence), the repetitive nature and cyclical nature of domestic violence and threats perpetrated against the children are the driving factors behind such strategic interventions.
victim fit the definition of having a domestic relationship; 3. The suspect's alleged act fits the definitions of domestic assault; 4. There is reason to believe that the domestic abuse will continue if the suspect is not arrested and/or there is evidence of injury; 5. The incident was reported within 28 days of occurrence. Usually, if any of these conditions is not satisfied, the officer may use his or her discretion in deciding whether to make an arrest. The expansion of arrest authority to include domestic violence crimes has given law enforcement a powerful tool for domestic violence intervention in situations in which they previously concluded (erroneously or otherwise) that they had no authority to act. In some jurisdictions, police may be required to use strict crime scene investigation and evidence gathering techniques as to do away with the victim’s testimony by the prosecutors.

Criminal prosecution constitutes another tool for ensuring victims’ safety. Changes in the police response to domestic violence have also influenced the changes in prosecutorial practices. Prosecutors across the country have enormous discretion and they resort to either no-drop policies wherein they can proceed without victim’s cooperation or allow the victims to drop charges on completion of counseling and an official explanation to the court.

Civil restraining orders or protection orders developed in response to the inefficiency of criminal justice system to deal with the issue of domestic violence. Prior to 1970’s it could be obtained only on filing divorce proceedings. Before the federal interventions came up to address violence against women in USA the passage of civil protection order statutes at the


26 Advantages of civil protection order statutes areas follows: Protection order statutes are designed to allow victims to proceed on their own, without an attorney, and in some cases (e.g.,
state level precipitated a great change in social attitudes. In many states for the first time there was a legal recognition that certain patterns of action engaged in by a spouse or other intimate partner, including physical violence, sexual assault, financial deprivation, threats, stalking, and harassment constituted a prohibited activity called domestic violence\textsuperscript{27}. These orders which are in the nature of injunctions directed abusive spouses to cease beating and threatening their spouses and children, order the respondent to stay away from the petitioner, her workplace or school and the children and their schools, not contact her, move out of the petitioner’s residence, follow custody and visitation orders, and pay child support if children are involved. Child custody may be awarded and visitation prohibited or limited to supervised settings to assure the safety of the children as well as their mother. Abusive spouses may be ordered to pay the medical bills and legal fees incurred by the abused spouse. This relief is available on an immediate, temporary basis prior to the time set for a full hearing and before notice is given to the accused spouse\textsuperscript{28}.

An order in the nature of temporary restraining order could be granted by the court on request by the battered spouse. A victim who is threatened with imminent harm or has already been harmed by the abuser and/or already has an order of protection against the abuser has no other legal remedy than to seek a restraining order. Violators of such orders are subject to civil contempt as well as criminal penalties. Like domestic abuse, laws governing these orders are also enacted on the state level and vary among the different states.

Family Court) without the involvement of the criminal justice system. The procedures for obtaining an order and the types of orders vary, and may include emergency orders, temporary orders, and final or permanent orders. Orders issued through a civil process can provide critical relief for domestic violence victims. Civil protection orders can be obtained relatively quickly, providing a wide range of relief needed to support distance, protection, and independence from an abuser as well as providing an alternative to the criminal justice system. For more details refer Cheryl Thomas, “Domestic Violence” in Kelly. D Askin and Dorean M.Koeing (Eds.), \textit{Women and International Human Rights Law} 235 (1999), Transnational Publishers, Inc.Ardsley, New York.

\textsuperscript{27} Supra n. 21 at p.283.
\textsuperscript{28} Supra n. 18 at p.376.
The Violence Against Women Act-An Overview

The problems that cropped up due to weak enforcement of protection orders and an existence of different laws in different states to the disadvantage of victims led to the realization that changes to the state’s family and criminal laws is not a sufficient remedy to eliminate violence against women. The Violence Against Women Act (VAWA) is a comprehensive legislative package specifically addressing domestic violence, sexual assault and stalking first enacted in 1994 and reauthorized with new provisions in 2000 and 2005. The intention behind the passage of VAWA was to influence state legislators, particularly in regard to arrest policy for domestic situations. In order to receive Federal funding, states must adopt certain responses. The Act aggressively attempted to: mandate the arrest and prosecution of domestic violence offenders; devote greater resources to domestic violence training for law enforcement; make certain domestic violence offenses federal crimes; and provide various civil remedies for victims. This Act has had a profound effect on state laws governing domestic abuse. The Act offers direction for a new collaborative approach between law enforcement, prosecutors, the courts and the judiciary, and the medical and

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29 Protection orders are criticized as having soft approach to women battering cases as it prevents the future conduct and has little enforcement effect with no effective sanctions. See Supra n. 4 at p.1511.
30 The Violence Against Women Act of 1994 (VAWA) is a United States federal law. The enactment of the VAWA in 1994 focused national attention on domestic violence and “its detrimental effects on families, business, and society.” The Act also led to the infusion of large sums of money into the nation’s court systems, law enforcement, and communities “to improve access to justice and services for domestic violence victims and to increase batterer and system accountability” These efforts included the development of specialized judicial processes for domestic violence. It was passed as Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994 HR 3355 and signed as Public Law 103-322 by President Bill Clinton on September 13, 1994.
health community, social service agencies, community leaders, and the private sector. A federal domestic violence victim has the following rights 34

1. The right to be treated with fairness and with respect for the victim's dignity and privacy;

2. The right to be reasonable protected from the accused offender;

3. The right to be notified of court proceedings;

4. The right to be present at all public court proceedings related to the offense, unless the court determines that testimony by the victim would be materially affected if the victim heard other testimony at the trial;

5. The right to confer with the attorney for the Government in the case;

6. The right to restitution;

7. The right to information about the conviction, sentencing, imprisonment, and release of the offender.

Of the many portions of VAWA, five sections have the potential for having the greatest impact on improving the handling of crimes of violence against women in USA. These include:

The full faith and credit provision 35 means if one court issues a protection order, all other states, territories, and tribes must enforce it as vigorously and completely as they would enforce their own orders 36. States have adopted legislation to make sure the basic rules of Full Faith and Credit provision are followed. This is equally applicable to protection orders issued during criminal proceedings. The interstate crimes of domestic violence 37 suggests that States and territories only have the authority to address crimes committed completely within their borders. Congress crafted three new federal

34 42 U.S.C. S. 10606(b).
35 (18U.S.C Ss. 2265,2266).
36 Supra n. 18, p.286.
crimes Interstate Travel to commit Domestic Violence\textsuperscript{38}, Interstate Violation of a Protection Order\textsuperscript{39} and Interstate Stalking\textsuperscript{40} as one of the crimes related to domestic violence envisaged under the VAWA is that of Stalking\textsuperscript{41}. This new law makes it a federal crime to cross a state line or to travel within areas of special federal jurisdiction with the intent to injure or harass any person if, during the course of or as a result of the travel, the offender place as the person or a member of the person’s immediate family in treasonable fear of death or serious bodily injury. There is no requirement under this statute that actual bodily harm occur for a conviction to result\textsuperscript{42}. An abuser can no longer use the confusion of multiple jurisdictions to evade justice.

VAWA has effectively addressed the problems faced by battered immigrant women under the user friendly provisions of the Immigration and Naturalization Service and has sought to reduce the barriers to permanent residency and citizenship. For the first time for many of these women, their immigration decisions and processes are under their own control, not subject to the harassing whims of the abusive spouse\textsuperscript{43}. VAWA also resulted in changes to the Immigration and Nationality Act so that now it is possible for abused spouses, children, and parents of U.S. citizens or lawful permanent residents (green card holders) to petition on their own (self-petition) for lawful

\textsuperscript{38} [18 U.S.C. S. 2261(a) (1)-(2)] An abuser may commit a crime of interstate domestic violence when he decides intentionally to travel from one state, tribal land or territory to another to threaten or harm a spouse or an intimate partner. An abuser may also commit this crime by forcing a spouse or intimate partner to cross a state, tribal or territorial line to threaten or harm that spouse or intimate partner. In both cases the abuser must cause bodily injury to the victim. This crime covers actions that take place when a protection order has not been issued. An abuser can no longer evade prosecution just because it is unclear in which state, tribe or territory the harm to the victim began.

\textsuperscript{39} [18 U.S.C.Ss.2262(a)(1)-(2); This section recognizes the crime of travelling across a state, territorial or tribal border with the intent to violate a protection order; when the violation of the order occurs, the crime is complete. Only violations of certain provisions within a protection order can trigger the application of this law-specifically behavior constituting threats of violence, repeated harassment or bodily injury to the protected persons.

\textsuperscript{40} [18 U.S.C.S. 2261A].

\textsuperscript{41} See for more details, supra n. 18 at p.292.

\textsuperscript{42} Supra n. 18, p.293.

\textsuperscript{43} For more details, see supra n. 21, p.294-295.
permanent resident status/obtain a green card. This is significant because it means the abused immigrant no longer needs to rely on the abuser to obtain or maintain legal immigration status in the U.S.

The gun control provision\(^4^4\) is yet another major development in VAWA. In 1994, Congress recognized the risk that firearms present to victims of domestic violence when it amended the Gun Control Act\(^4^5\) to include four firearm prohibitions related to domestic violence. These amendments make it a federal crime for people to, possess a firearm or ammunition if they are subject to certain types of protection orders or have been convicted of certain types of misdemeanor domestic violence crimes\(^4^6\).

The enactment of VAWA led to the creation of 3 new grant programmes; the Grants to encourage Arrest\(^4^7\); the Law Enforcement and Prosecution Grants to Reduce Violent Crimes Against Women (popularly known as STOP Violence Against Women Formula Grant Program and STOP Violence Against Indian Women Grant Program\(^4^8\);and the Rural Domestic Violence and Child Abuse Enforcement Assistance Grants\(^4^9\). VAWA also issues grants to support domestic violence shelters, rape prevention courses, domestic violence prevention and intervention programs, and programs aimed at strengthening law enforcement, victim services, and prosecutorial/judicial responses domestic violence\(^5^0\). These grant programmes are administered by the U.S Department of Justice’s Violence Against Women Office.

\(^4^4\) 18 U.S.C.S.922(g)(8).
\(^4^5\) 18 U.S.C.S.921.e seq.]
\(^4^6\) 18 U.S.C.S. 922(g)(1)-(9) Exemption:] Law enforcement and military personnel who are subject to qualifying protection orders are exempt from this section while on duty. Transfer of firearm to a second person with full knowledge or has reasonable cause to believe the second person is subject to one of the types of protection orders covered by this law is also a federal crime. [18 U.S.C.S.922(d)(8)].
\(^4^7\) (42 U.S.C. S.3796hh).
\(^4^8\) (42 U.S.C. S. 3796gg).
\(^5^0\) Supra n.18, p.297.
The uneven framework of laws existing across the country leading to unjust differences in the outcomes of cases addressing violence against women, the historical bias of the law and the legal professionals as to the legally inferior status of women compared to men led to the creation of civil rights remedy to address the discriminatory injustices. The civil rights remedy was primarily designed to give the victim of a gender motivated crime the right to sue in federal or state court for monetary damages\textsuperscript{51}.

However, in 2000, the United States Supreme Court in a case of \textit{United States v. Morrison}\textsuperscript{52} held that the United States Congress did not have the authority to enact the civil law remedy in the Violence against Women Act. The basis of this decision was, inter alia, that gender-motivated crimes of violence are not “economic activity” nor do they affect interstate commerce for the purposes of the commerce clause in the United States Constitution. Of course, if women are deemed to be on the margins of public life, their abuse would not constitute a retardation of the economy. Because women are not perceived as pivotal public or economic players, they do not warrant the same status and consideration as men by public structures. The United States Supreme Court revealed that women are not relevant to the public sphere: that violence against women, and therefore women themselves (as what could be a greater curtailment of an individual’s commercial participation than violence) cannot and do not fall within the purview of a commercial conversation. This case further highlights the failure of the domestic legal system to take steps towards curing private torture. It struck down a portion of the Violence Against Women Act (the more formal title of which is the Civil Rights Remedies for Gender-Motivated Violence Act). The act was an attempt by Congress to allow

\textsuperscript{51}See for details \textit{supra} n. 21, p.298.Monetary damages was presumed to be necessary to cover the costs borne by victims of violence against women, including medical and mental health treatment, job retraining, loss of property and assets and a host of other financial and physical injuries arising from the offenders commission of crimes of violence.

\textsuperscript{52} 529 U.S.598 (2000) \textit{United States v. Morrison} invalidated the section of the Violence Against Women Act (VAWA) of 1994 that gave victims of gender-motivated violence the right to sue their attackers in federal court, although program funding remains unaffected.
a person to sue for damages if another person “commits a crime of violence motivated by gender.” The Supreme Court, although sympathetic to issues of domestic violence, held that domestic violence did not involve a sufficient connection to economic activity to be justified under the Commerce Clause of the U.S. Constitution. It also held that since the conduct the act sought to prevent was private conduct rather than conduct of the state government, the act also was not a proper exercise of power under the Constitution’s Fourteenth Amendment. Although the Court held that Congress did not have the power to create a remedy for domestic violence, victims of domestic violence still can use state laws seek to prevent further violence and collect damages for violence that already has been done.

**Community Intervention Strategic Models**

The Community Organizing Model has proved to be highly effective in several communities in the U.S. Under this model, each individual member of the community is encouraged to actively engage in the effort to prevent domestic violence. An unambiguous message is combined with greater awareness-raising on the manner in which the entire community can adopt practices and undertake tasks on an individual basis to further the goal.

One of the areas of co-ordinated strategy implemented in United States as a part of VAWA (Reauthorized in 2005) has been the provision relating to federal public housing, based on the recognition that women facing violence

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53 Another option desperate women have used in response to unchecked violence and abuse is to sue the police for failing to offer protection, alleging that the police violated their constitutional rights to liberty and equal protection under the law. The Equal Protection Clause of the Fourteenth Amendment provides that no state shall deny to any person within its jurisdiction the equal protection of the laws. “This clause prohibits states from arbitrarily classifying individuals by group membership. If a woman can prove that a police department has a gender based policy of refusing to arrest men who abuse their wives, she can claim that the policy is based on gender stereotypes and therefore violates the equal protection laws.

need to be empowered in multiple ways. Title VI of VAWA therefore extends the protection provided to vulnerable sections under the Public Housing Scheme by providing protection specifically to survivors of domestic violence who utilize such public housing and emergency shelters. The title says that a survivor of domestic violence cannot be evicted from her shelter provided by housing programmes on the basis that she is facing domestic violence. This step aims to counter the problem of women being evicted from housing on the grounds of a crime being committed by an occupant or guest, even though that crime may constitute an act of domestic violence. The tenancy rights of a survivor of domestic violence are protected under the law because of recognition of her vulnerable situation. Domestic violence against immigrant women has been a major source of concern in the United States. Policy makers have acknowledged the need for protective measures to address the vulnerability faced by immigrant women and their children. This was achieved through two different provisions: firstly by allowing self-petitions by women for lawful permanent resident status. In order to avail of this provision, the woman is required to prove, in addition to the immigration status of her spouse that she has suffered extreme cruelty or abuse, and that among other things, she and her children will face extreme hardship if deported; and secondly by applying for VAWA suspension of deportation. This provision has the same requirements as the self-petitioning provision, except the additional requirement of three years of physical presence in the United States. This provision entitles women who were not covered under the first clause to get protection from being deported, like divorced women or women whose husbands have lost lawful immigrant status due to unlawful activities.

The Office on Violence Against Women (OVW), a branch of the U.S. Department of Justice, has established the “VAWA Measuring Effectiveness Initiative” to collect qualitative data on victim services, staffing, criminal justice case processing, and other VAWA program services in order to determine the law’s progress, enable long-term planning to combat violence
against women, and to report these results to the U.S. Congress. Although organizations such as the Lawyers Collective and National Commission of Women have played a monitoring function for the PWDVA, their important role needs to be supported and strengthened to create more accountability55.

The OVW also administers government funding for the Family Justice Center Initiative, which brings together NGO’s, victim service providers, law enforcement officers, forensic medical professionals, lawyers, and community-based organizations under one roof in order to make victims’ quest for justice within the criminal justice system more efficient and effective56. A one-roof system for service providers in India may enable increased monitoring and effectiveness of the Act.

An interesting feature of the VAWA 2005 STOP programme is the grant eligibility requirement that states should incorporate, as part of their strategies, the forging of partnerships between the justice system and survivor advocacy organizations, and include non-profit, faith-based and community organizations as partners. It is important to note that a majority of the programmes that have emerged as good practices have been aided by the VAWA grant programme

Another development in the field of domestic violence is the specialized courts. Compared to other problem-solving courts, the offenses involved are violent, not non-violent; court proceedings are primarily adversarial, not therapeutic; and the perpetrator’s behavior is viewed as learned rather than rooted in treatable addiction The promise of domestic violence courts is that they can institutionalize procedures that promote victim safety, ensure accountability for domestic violence perpetrators and enhance informed, educated judicial decision-making. The first identifiable court of the kind was

the integrated (civil and criminal) domestic violence division established in Dade County (Miami), Florida in 1992. To sum up, the law is imperfect because the application of statutory and case law are uneven. Courts, prosecutors, police, parole boards and crime victim compensation boards all exercise a great deal of discretion in implementation of the law.

**Specialized Domestic Violence Courts**

Specialized Domestic violence courts were developed as part of the coordinated response of the justice system to the issue of domestic violence in American jurisdictions like Dade County, Florida, Duluth, Minnesota, and La Crosse, Wisconsin. Court specialization in the US has been grounded in ‘problem-solving’ or ‘therapeutic’ approaches to domestic violence The American courts have, for the most part, served as models for the Canadian domestic violence courts. Based on the principles of therapeutic jurisprudence, preventive law and restorative justice, the two model courts have both criminal and civil jurisdictions with the express purpose of ensuring victim safety and holding the perpetrator accountable. The emphasis is on treatment of perpetrators rather than punishment. Batterer intervention programmes assume significance under this approach. The combining of traditionally separate systems into a single integrated approach contributes to the comprehensive provision of services by supplying a single forum within which both criminal and civil matters can be addressed The judges also form part of the larger community initiatives and provide sensitization training. Benefits of specialisation were in terms of increased judicial understanding of

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57 Dade County’s Domestic Violence Division hears all criminal misdemeanors involving domestic violence and petitions for civil protection orders. Dade County addresses domestic violence from a community-wide perspective and incorporates into the court process referrals for counseling, batterer intervention programs, and other resources for victims, batterers, and their families.

58 Conference of Chief Justices and Conferences of State Court Administrators of America 2000 has equally agreed upon the concept of therapeutic approach and have included the same approach in drug courts and mental health courts. See for more details, Susan Elley, “Changing Practices: The Specialised Domestic Violence Court Process”, 44(2) The Howard Journal 113(2005).
domestic violence issues, perpetrator accountability and more comprehensive support for victims at an early stage. Hence, both the initiatives utilize an integrated community approach to domestic violence cases that comprises support and advocacy services for survivors, and form a comprehensive response in providing a single forum where women facing domestic violence can seek access to justice.

The Core Components of Specialist Domestic Violence Courts identified by the Family Violence Prevention Fund\(^59\) are access to advocacy services\(^60\), coordination of partners\(^61\), victim and child friendly court\(^62\), specialist personnel\(^63\), even handed treatment\(^64\), integrated information systems\(^65\), evaluation and accountability\(^66\), protocols for risk assessment\(^67\), ongoing training\(^68\), compliance monitoring\(^69\) and sentencing.\(^70\)

Specialised Domestic violence Courts themselves may be seen as grounded in principles of what has been termed ‘therapeutic approach’. This signals a welcome move away from traditional adversarial principles and instead adopts a coordinated and problem-solving approach in an effort to meet the needs of victims, their families and the community. Confined within

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60 Advocates act as a ‘liaison, buffer and contact’ between the victim and the court, a source of referrals to other services and, with consent, a conduit of information to the court.
61 This was accomplished with regular meetings and joint training.
62 Security at the court should be reviewed and if necessary improved, building on best practice (e.g., separate waiting areas, child care facilities, security guards trained in domestic violence).
63 Specialist domestic violence training for all magistrates/judges, court administrators, prosecutors and other key personnel.
64 Both parties should be adequately represented and the court’s tone should indicate that domestic violence is being treated seriously.
65 Systems and protocols in place for sharing and accessing information, to connect the court with community-based service providers and ensure compliance with orders.
66 Plans for evaluation (and the systems to carry it out) should be in place from the outset.
67 All agencies should gather information on factors known to increase risk to facilitate risk assessment.
68 Training should be on a continuous rolling basis and be joint training (to increase each agency’s understanding of each other’s roles).
69 Through submission of reports to the court or regular review hearings, defendants’ compliance with court orders should be monitored.
70 It is to be consistent and promote accountability from domestic violence offenders.
specialist courts, cases on domestic violence are regarded as having higher status, top priority cases requiring skilled lawyers. The therapeutic approach posits that the legal system can promote the well-being of both survivors and perpetrators of domestic violence.

**The Merits and Demerits**

The attitude of the police and prosecution in most jurisdictions has generally been that of hesitant enforcement, based on the notion that domestic violence is a “private matter” where the State has no role to play. The battered women’s movement in the United States initiated and campaigned for a stronger criminal justice response as part of systemic reforms on the issue of domestic violence that resulted in a sea change in official policy in most states, providing for mandatory arrest and prosecution of domestic violence offenders. A mandatory arrest policy clearly states that, as far as the State and the society are concerned, there is zero-tolerance for domestic violence. Mandatory prosecution is considered to be essential as having a deterrent effect in a society where domestic violence is a public policy concern and where women face severe barriers in access to justice.

The prosecution of the new federal crimes and enforcement responsibilities created by VAWA caused an enormous shift in how seriously these crimes were treated on the state level. Prior to the passing of VAWA, specialized units in police departments, prosecutor’s office or courts to deal with domestic violence, sexual assault and stalking. It defined new national standards and expectations regarding community responses to domestic

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71 This is the opinion collected from the literature review on specialized domestic violence courts. The three primary benefits of specialization of courts have been identified by American Bar Association,1996 are the following 1. fostering improved decision making by having experts decide complex cases 2. reducing backlog of cases in general courts by shifting complex cases to specialized courts and 3. decreasing the number of judge hours required to process complex cases by having experts deciding on such issues. Refer for more details to Supra note 53 at p.121

72 Scholars have opposed mandatory arrest on many grounds. For more details, see supra n. 4 at pp.1538,1539
violence, sexual assault and stalking. In the absence of any substantive federal remedy for failure to protect women’s rights, VAWA’s role in preventing and punishing violence against women is limited primarily to making grants to state and local police and advocacy organizations who seek to implement training or programming, funding domestic violence service provision and training, providing immigration relief to non-citizen victims of violence, and coordinating interstate recognition of protective orders.

The Reauthorized VAWA 2005 has introduced new provisions and programmes to provide survivors of violence further housing rights. Amended various laws to ensure that survivors of domestic violence would not be evicted from or denied public housing because they are survivors and provided funding for educating and training public housing agency staff, developing improved housing admissions and occupancy policies and best practices, and improving collaboration between public housing agencies and organizations working to assist survivors of violence.73

Children of abusive families are also protected under VAWA. In addition to the federal legislation, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIA) also relaxed norms, particularly with regard to the 3-10 year ban on re-entry into the United States. VAWA was reauthorized in 2000 and 2005, further expanding the scope of protection given to battered immigrant women, by extending immigration relief to a larger group of survivors of violence, including survivors of elder abuse and adolescent children.

Another important measure was the authorization of the Legal Services Corporation funded programmes to use any source of funding to assist survivors of domestic violence.74 Legal aid, including independent legal advice,

are critical components of complainants/survivors’ access to, and understanding of, the legal system and the remedies to which they are entitled. Legal representation has proven to increase the likelihood of a positive outcome for the complainant/survivor in the legal process. In various jurisdictions in the United States, Government-funded domestic abuse service centres are located in court buildings to provide efficient and easy access to legal advice and other services, in various languages, for domestic violence complainants/survivors.

Of all the changes created by VAWA, the grant programs had the greatest impact on social and system responses to domestic violence, sexual assault and stalking. With its legal authority and financial supports, it has created a new climate that promotes victim safety, offender accountability, and a responsive system of justice. Funds are channeled towards sensitivity training programs for law enforcement, lawyers, the judiciary, and court personnel on domestic violence issues and in the importance of responding to domestic violence calls and civil protection order violations, as well as training medical staff on detecting signs of domestic violence. Funds have also been allocated to various initiatives helping domestic violence victims receive legal aid, maintain housing and employment, retain confidentiality, assist rural populations, older women, immigrant women and children, and women with disabilities in accessing victim services, and maintain a national domestic violence hotline75.

The specialized domestic violence court has the advantage of ensuring victim safety and it offers greater consistency in sentencing. It offers fast track access to programmes for perpetrators intended to control their violent behavior and with proven efficiency76.

The criticism leveled against the effectiveness of VAWA is that it is non-binding on states and is primarily a source of grants Multiple and

76 For advantages of specialized court, see supra n. 53, p.114.
overlapping jurisdictions and multiple legal actions pending in different courts of different states has complicated the supervision of domestic violence offenders. Litigating domestic violence disputes at the state level also has an important impact on judicial understanding of domestic violence; each jurisdiction adopts its own method of judicial education, as well as its own remedy. States differ on the type of relationship that qualifies under domestic violence laws. In many states the laws are still not encompassing the totality of the effects of violence on women. The mandatory arrest policies are likely to be counter-productive and may lead to increased violence in certain situations. Non Cooperation by recantation or failure to appear at trial is an epidemic in domestic violence cases.

Many local government domestic violence programmes have received scholarly treatment and publicity, including the San Francisco Family Violence Project, Quincy Plan (Massachusetts) and programmes in Duluth and Minneapolis. The community intervention strategies can be highly successful in an empowered society and enlightened citizenry. Therapeutic approach as contemplated through specialized domestic violence courts to be made workable requires commitment from all parties – from police and judiciary to healthcare and voluntary and community sector support workers. Way back from 1980’s police non-cooperation, prosecutorial non-cooperation and judicial

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77 Some states still don’t recognize that domestic violence involving pregnant women should be treated as a violent felony because it also affects the unborn child. Even when domestic violence involves a pregnant woman, the abuser is often still awarded custody rights after the child is born because the law does not recognize the abuse against the pregnant woman as abuse against the unborn child.


79 For more details, see Doughlas E.Beloof & Joel Shapiro, “Let the Truth Be Told: Proposed Hearsay Exceptions to admit Domestic violence Victims Out of Court Statements as Substantive Evidence,”11 Colum. J. Gender &L.1(2002)

80 See for details, supra n. 4,pp.1516,1517,1525.
non cooperation added with victim non cooperation has led to the difficulties in dealing with the issue of domestic violence in U.S.A.81

Given the legislation social change is not instantaneous. It is a complex process that can be accelerated by legislation. Given the force of law and the necessary funding for programs, it is highly possible to attain the goal of combating domestic violence

4.2 The UK Experience

National laws in European countries are based either on Roman law (e.g. Germany) or the French “code civil” (e.g. France, Belgium, Italy, Portugal, and Netherlands). The historical and philosophical underpinnings as to the treatment of women in society was more or less similar.82

Definition of Domestic Violence and Relationships Covered

There is no specific criminal offence of domestic violence—but there exists a government-backed definition agreed in 2004.

“Any incident of threatening behaviour, violence or abuse [psychological, physical, sexual, financial or emotional] between adults who are or have been intimate partners or family members, regardless of gender or sexuality.”83 The definition is supported by an explanatory text in the following lines:

The definition acknowledges that domestic violence can go beyond actual physical violence. It can also involve emotional

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81 For more details see, Maureen McLeod, “Victim Noncooperation in the Prosecution of Domestic Violence” 21 Criminology 395 (1983)
82 With marriage, women were subject to the husband’s guardianship. According to §213 of civil code, the husband was obliged to protect his wife, whereas her duty was to obey. In Roman law, family, house and courtyard were subordinated to ‘major domus’, the man of the house (patria potestas). He had the unrestricted right to issue corporal punishment to his subordinates (ius vitae necisque).
abuse, the destruction of a spouse's or partner's property, their isolation from friends, family or other potential sources of support, control over access to money, personal items, food, transportation, the telephone and stalking. Violence will often be witnessed by children and there is an overlap between the abuse of women and abuse (physical and sexual) of children. The wide adverse effects of living with domestic violence for children must be recognised as a child protection issue. They link to poor educational achievement, social exclusion and to juvenile crime, substance misuse, mental health problems and homelessness from running away. It is acknowledged that domestic violence and abuse can also manifest itself through the actions of immediate and extended family members through the perpetration of illegal activities, such as forced marriage, so-called 'honour crimes' and female genital mutilation. Extended family members may condone or even share in the pattern of abuse.

This definition recognizes same sex relationships. Family members are defined as mother, father, son, daughter, brother, sister, and grandparents, whether directly related, in laws or stepfamily. Domestic violence is acknowledged as occurring across society regardless of age, gender, race, sexuality, wealth and geography. Since in the UK adults are defined as any person aged 18yrs and over, cases of domestic violence do not cover the violent acts of juveniles against parents or vice versa. Usually child abuse is excluded from domestic violence.

The Crown Prosecution Service definition is more extensive in the sense that the definition includes within itself any criminal offence arising out of physical, sexual, psychological, emotional or financial abuse by one person

against a current or former partner in a close relationship, or against a current
or former family member.

The Legislative Framework

The status of women in U.K during 1950’s was similar to that of the
U.S.A counterparts. Unless there was an indisputable claim divorce as a relief
was dependent on the court’s view of her morality. In cases of proved
immorality custody orders could be granted in favour of husbands. Obtaining
maintenance payments from the abusive husbands was problematic and
stigmatizing. The issue of domestic violence within the household was only a
private matter. The remedy available between 1945-1970 was a civil remedy to
stop the violence, that too only if she had already filed for divorce. No unified
social or medical services nor counseling services were promoted at the cost of
the Government.

Since the 1970’s, both the criminal and civil legislation aimed at
supporting and protecting those experiencing domestic violence have been
piecemeal, unclear and inadequate. The Domestic Violence and Matrimonial
Proceedings Act 1976 and Domestic Proceedings and Magistrate’s Court Act 1978 failed to introduce a valuable power of arrest in instances where offenders
committed assault. This lack of the power of arrest coupled with the use of
police discretion provided little protection for women. The lack of power of
arrest, coupled with the use of police discretion, provided little protection for

85 The common justification was lack of compliance by the wives to their husbands and
traditional idea of rightful authority.
86 See more details in Gill Hague; Claudia Wilson, “The Silenced Pain :Domestic
87 This situation changed with the enactment of Domestic Violence and Matrimonial
88 Amy Musgrove and Nicola Groves, “The Domestic Violence, Crime and Victim’s Act 2004:
89 The Act empowered county courts to grant restraining orders or injunctions to women
experiencing violence and to exclude one party from the home. Repealed and replaced in 1997
women\textsuperscript{90}. In the mid 1990’s all previous legislations were consolidated under the auspices of Family Law Act 1996. This Act introduced measures such as molestation orders, to improve protection under civil law for those experiencing domestic violence. These included two new remedies: non-molestation orders and occupation orders. The 1996 Act was significant to the extent that it recognized physical sexual or psychological molestation or harassment as having serious detrimental effect upon the health and wellbeing of the victim but failed to apply to those who have ever co-habited or same sex couples.

The Protection from Harassment Act 1997\textsuperscript{91} although not specifically targeted at those experiencing domestic violence, it introduced four new criminal, arrestable, offences viz; applicable to women experiencing harassment\textsuperscript{92} to fear of violence\textsuperscript{93}, to breach of civil injunction,\textsuperscript{94} and to breach of restraining order\textsuperscript{95} punishable by up to five years imprisonment on indictment.

The National Assistance Act of 1948 relieved the victims from the issue of homelessness to an extent by providing residential care and limited access to temporary accommodation\textsuperscript{96}. Housing legislation with provisions for victims of domestic violence specifically also developed from the 1990s. The Housing Act, 1996 broadened the definition of homelessness for those who are eligible for accommodation, including victims of domestic violence and articulating

\begin{itemize}
\item \textsuperscript{90} \textit{Supra} n. 80, p.235
\item \textsuperscript{91} It extends to both civil and criminal law, deals with violence from outside the home. Whilst the Protection from Harassment Act 1997 was originally designed to combat the problem of stalking, it is used by those who cannot apply for any order under the Family Law Act 1996. The Protection and Harassment Act 1997 is useful when dealing with post-separation harassment or violence with a non-cohabitant partner and for stalking. The limitations of this Act are that it did not include occupation orders, or consider children; or the possibility that the attacker is a close relative (e.g. father, son or brother).
\item \textsuperscript{92} Protection from Harassment Act 1997 s.2.
\item \textsuperscript{93} \textit{Id.}, s.4.
\item \textsuperscript{94} \textit{Id.}, s.3(6).
\item \textsuperscript{95} \textit{Id.}, s.5(5).
\item \textsuperscript{96} \textit{Supra} n. 81, p.162.
\end{itemize}
this explicitly. This legislation provides for housing assistance to victims by engaging with their landlords (supported housing), who can take special measures to assure the accommodation. The Homelessness Act, 2002 broadened the definition of violence to include all types of violence, not only domestic violence. In April 2003 the 'Supporting People' housing programme for vulnerable people was launched and specifically included victims of domestic violence within eligible groups which could be supported by local authority area based grants (Department for Communities and Local Government, 2003). In 2006, new schemes including sanctuary schemes and panic rooms were developed as placing a victim in temporary accommodation was recognised by some as less.

The psychological trauma of the children affected by witnessing domestic violence within homes received attention through the Adoption and Children Act, 2002, when it amended the definition of significant harm provided by the Children Act 1989, by adding a new category of impairment suffered from seeing or hearing the ill-treatment of another recognising the impact of domestic abuse on children. This legislation enabled courts to remove a suspected child abuser from his or her property, as a part of an application for an Emergency Protection Order or Interim Care Order. The Children Act, 2004 promoted a multi-agency approach to local service delivery. This Act promoted consultation among different parties (e.g. schools, health services) regarding children's safety and calls for closer cooperation between children’s services and the police in the identification and investigation of domestic abuse. The Adoption and Children Act 2005 makes it clear that when a family court is considering whether a child has suffered or is

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97 The sanctuary scheme is defined as a possibility for the victim to remain in the accommodation by setting up additional protection measures (e.g. internal doors, safety glass, smoke alarms as well as immediate delivery of legal solutions under Family Law Act 1996 etc.)

likely to suffer harm, it must consider harm that a child may suffer not just from domestic violence, but from witnessing it\textsuperscript{99}.

The Domestic Violence, Crime and Victims Act 2004 provided a new focus for the criminal justice system response to domestic violence, aiming to improve support and protection offered to women and introducing new powers to enable both police and courts to deal more effectively with offenders\textsuperscript{100}. The Domestic Violence National Action Plan contains substantial policy proposals to improve its functioning. The UK Government has set up a Domestic Violence Advisory Group in 2005 made up of police officers, lawyers, justices, social workers and other agencies to ensure a concerted approach in tackling the problem\textsuperscript{101}

The Act focuses its attention on the criminal justice system and has led to following developments within its jurisdiction: firstly by making common assault an arrestable offence.

Secondly, by introducing significant new police powers to deal with domestic violence including making it an arrestable, criminal offence to breach a non-molestation order, punishable by up to five years imprisonment; thirdly, by strengthening the civil law on domestic violence to ensure cohabiting same-sex couples have equal access to non-molestation and occupation orders as opposite sex couples, and extending the availability of these orders to couples who have never lived together or been married; and fourthly, providing for stronger legal protection for victims of domestic violence by enabling courts to impose restraining orders when sentencing for any offence. Until then, such orders could only be imposed on offenders convicted of harassment or causing fear of violence.


\textsuperscript{100} Domestic Violence, Crime and Victims Act 2004 s.10 of the Act.

\textsuperscript{101} \textit{Supra} n. 94, p.1275.
The courts are enabled to impose restraining orders on acquittal for any offence (or when a conviction has been overturned on appeal) if they consider it necessary to protect the victim from harassment. This will deal with cases where the conviction has failed but it is still clear from the evidence that the victims need protection. A system is put in place to review domestic violence homicide incidents, drawing in the key agencies to find out what can be done to put the system right and prevent future deaths. A code of practice that is binding for all criminal justice agencies, so that all victims receive the support, protection, information and advice they need is introduced. If in case if they feel the code has not been adhered to by the criminal justice agencies, victims can take their case to the Parliamentary Ombudsman. An independent Commissioner for Victims to promote the interests of victims and witnesses, encouraging the spread of good practice and reviewing the statutory code is set up. The victims of mentally disordered offenders are guaranteed the same rights to information as other victims of serious violent and sexual offences. The Criminal Injuries Compensation Authority is given the right to recover from offenders the money it has paid to their victims in compensation. A surcharge is made payable on criminal convictions and fixed penalty notices which will contribute to the Victims Fund. A new offence of causing or allowing the death of a child or vulnerable adult is created. The offence establishes a new criminal responsibility for members of a household where they know that a child or vulnerable adult is at significant risk of serious harm. The Law Commission recommendation for a two-stage court trial to ensure that high volume crimes like fraud and internet child pornography can be

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Witneess and victims of domestic violence appearing in criminal courts can apply for special measures like being screened off from the rest of the court; giving evidence by live television links; allowing witnesses to give their evidence in pre-recorded interviews; having the victim's/witness's name withheld from the press (through CPS application); the public being asked to leave the courtroom when the victim is giving evidence (sexual offences or cases involving intimidation); deriving information from the Witness Liaison Officers who act as a main point of contact etc.
punished in full is brought into effect. Specialist Domestic Violence Courts\(^\text{103}\) were introduced to consider only cases of domestic violence and offer tailored support and advice from trained magistrates and prosecutors.

To coincide with the implementation of the Act, the Labour Government, in collaboration with organisations such as women’s domestic violence charities Refuge and Women’s Aid, launched a national 24-hour free phone helpline and associated awareness raising publicity. Although there is no separate offence of “domestic violence” under the law, the Domestic Violence, Crime and Victims Act, 2004 puts survivors in the centre of the criminal justice system and provide tougher powers for the police and courts to protect victims and prosecute abusers. Current criminal law does not explicitly criminalise domestic violence.

Under sections 33 to 41 of the Family Law Act (1996) in the United Kingdom, a complainant/survivor may apply for an occupation order, in addition to a protection order, which would entitle her to remain in the home and “bar” the offender from the premises or restrict him to a particular part of the home. In India there does not exist the concept of occupation order in addition to protection order. Instead Indian legislation has restraining orders to prevent the respondent from interfering with the privacy of the aggrieved person.

**Governmental and Community Interventions in UK**

Recognizing domestic violence as a crime has become an increasingly important part of government policy on crime control. The Home Office is the leading government agency for publishing and co-ordinating policy and legislative developments on domestic violence and violence against women is seen as one of the key priorities in its agenda\(^\text{104}\). Inter-ministerial groups that

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\(^{103}\) The first British specialist court was established in 1999 in Leeds. The aim of the Specialist Domestic Violence Courts is to combine criminal and civil settings in order to deal with domestic abuse more effectively. They take a multi-agency approach to domestic violence with criminal justice agencies, magistrates and specialist support services for victims working together in partnership. They aim to have a clear focus assessing and reducing the risk to victims and supporting victims through the court process.

\(^{104}\) Supra n.79 p.12.
were first established in 1992 co-ordinates across the governmental departments the cause of preventing domestic violence\textsuperscript{105}.

Police Domestic Violence Units were introduced in early 1990s and were consolidated at a national level with staff specially trained to help people experiencing domestic violence (Domestic Violence Liaison Officers). These Units are now renamed as Community Safety Units. Police officers are tasked to work closely with other statutory and non-governmental organisations to prevent domestic violence.

Independent Domestic Violence Advisors\textsuperscript{106} (IDVA) are funded by the Home Office and the non-governmental sector to provide specialist support to victims of domestic violence. The group is made up of police officers, lawyers, justices, social workers and other agencies to ensure concerted approach to tackling domestic violence.

Sexual Assault Referral Centres (SARCs) are safe locations where victims of sexual assault can receive an integrated service of medical help, legal advice and counseling from professionally trained staff. Once again, SARCs as a multi-agency approach brings together various legal, medical agencies and departments in one place which helps both the victims and those investigating the crimes. The Independent Sexual Violence Advisors\textsuperscript{107} (ISVA) provide independent support to victims of sexual abuse through the criminal justice process and are also funded by the Home Office\textsuperscript{108}.

\textsuperscript{106} Their responsibilities are serving as a victim’s primary point of contact, IDVAs normally work with their clients from the point of crisis to assess the level of risk, discuss the range of suitable options and develop safety plans. They are pro-active in implementing the plans, which address immediate safety, including practical steps to protect themselves and their children, as well as longer-term solutions.
\textsuperscript{107} The advisors are based in the Sexual Assault Referral Centres or within voluntary organisations.
\textsuperscript{108} Supra n.78, p.14.
Domestic violence legislation and its implementation in USA and UK

The Ministry of Justice is the government department responsible for criminal, civil and family justice, democracy, rights and the constitution and its remit includes safeguarding human rights. The Crown Prosecution Service, HM Courts & Tribunals Service, Probation Service and the Prison Service come under the guidance of Ministry of Justice. The Family Justice Review 2011 (Ministry of Justice) and Children and Family Court Advisory and Support Service (CAFCASS) is yet another government initiative that takes into account the best interests of family and children involved in family proceedings. The Women’s Aid federations of England, Scotland, Wales and Northern Ireland are the key agencies promoting the protection of women and children experiencing domestic violence and coordinating the provision of refuge, support and advocacy services.

Domestic violence has long been recognised as an important public health issue with significant implications for health service delivery in accident and emergency units, primary care, maternity services and mental health services. The Department of Health is involved in the domestic violence policy making process concerning both public health (improving the health and wellbeing of the population and protection from serious ill health) and health

109 Domestic violence policy and strategy cuts across each element of the justice system and the Ministry of Justice has a broad aim to increase the rate that domestic violence is reported and brought to justice and to make sure that victims of domestic violence are adequately protected and supported.
110 They prosecute offences investigated by the police.
111 HM Courts & Tribunals Service administers courts in England and Wales and provides administration and support for the Magistrates' courts, County Courts, the Crown Court, the High Court, and the Court of Appeal. Victims of domestic violence can apply for civil or criminal remedies.
112 They are up to produce a system which allows families to reach easy, simple and efficient agreements which are in the best interests of children whilst protecting children and vulnerable adults from risk of harm.
113 An independent agency of the Department of Education, which was established under provisions of the Criminal Justice and Court Services Act (2000) to safeguard and promote the welfare of children involved in court proceedings. CAFCASS provides expert independent advice to courts on the interests of children involved in family proceedings. CAFCASS
114 Supra n.79, p.16.
service delivery. The National Action Plan sets out priorities for the Health Service which can be seen as having four distinct focus like awareness raising of domestic violence as a public health issue; training and developing the health service workforce to offer an improved standard of service to those experiencing domestic violence (e.g. training for health visitors to provide support to families when they suspect violence against women or children may be a factor); improving the quality of service provision and finally developing information and research frameworks.

The Crime and Disorder Act 1998 places a statutory requirement on local authorities to monitor the level of domestic abuse in their communities and establish partnerships in order to reduce the problem as well as to pressurize more reluctant agencies Crime and Disorder Reduction Partnerships bring together the representatives of statutory, voluntary and private organisations which deal with crime reduction including domestic violence.

The Greater London Domestic Violence Programme, started in 1997, is a groundbreaking instance of a multi-agency initiative to develop strategies, identify common goals, minimum standards and good practices in order to raise awareness and increase effectiveness of domestic violence responses. The Project coordinates Domestic Violence Forums (consisting of representatives of every governmental and voluntary agency dealing with domestic violence) in each Borough.

The London Domestic Violence Forum, operating in the Borough of London, has become a model for other boroughs working in the area of inter-agency cooperation in tackling domestic violence. The London Domestic Violence Forum consists of various other significant initiatives within its mandate, and implements the Mayor’s Second London Domestic Violence Strategy, launched in 2005. The London Domestic Violence Forum works as

\[115 Id., p.17.\]
\[116 Id., p.19.\]
\[117 Supra n. 50, p.44.\]
the coordinating body, ensuring that the progress in implementation is communicated to each agency. Membership to the forum is open to all service providers and policy staff within the area of London118.

Women survivors of domestic violence or violence in the workplace whose immigration status in a country is tied to their marital, family or employment status are often reluctant to report such violence to the police. UK Domestic Violence Concession Rules in the United Kingdom permit a woman whose residency status is dependent on a perpetrator of violence to apply for leave to remain in the United Kingdom indefinitely.

The Association of Chief Police Officers “Guidance on Domestic Violence” model indicates that risk assessment in domestic violence cases are complex process requiring training to be used to promote victim safety and improve the standard of investigation119.

Multi-Agency Risk Assessment Conference (MARAC)120 is an innovation in improving multi-agency coordination, with service delivery and risk management as its goal. The programme was first mooted by the Cardiff Women’s Safety Unit in 2003, and are regular conferences on a case of domestic violence. All agencies, including criminal justice organizations including the local authority, the police, probation, local refuges and independent women’s support services and other voluntary sector

118 Id., at p.44.
119 Supra n. 94, p.1276.
120 See http://www.nordaf.co.uk/public/Editor/assets/Library/SDVC%20Resource%20Manual.pdf. Last visited on 20th February, 2012: Aims of MARAC envisaged are to share information to increase the safety, health and well-being of victims – adults and their children; to determine whether the perpetrator poses a significant risk to any particular individual or to the general community; to construct jointly and implement a risk management plan that provides professional support to all those at risk and that reduces the risk of harm; to reduce repeat victimization; to improve agency accountability; to improve support for staff involved in high risk DV cases. The responsibility to take appropriate actions rests with individual agencies; it is not transferred to the MARAC. The role of the MARAC is to facilitate, monitor and evaluate effective information-sharing to enable appropriate actions to be taken to increase public safety.
organizations/agencies involved in the case and providing support services encompasses a collectivity to discuss on the issue. The actions taken on each problem is discussed and they collectively decide on measures to improve safety and better access to justice for the complainant. The significant aspect of the MARAC is that the conference involves “high-risk” cases of domestic violence and is intended to reduce the possibility of repeat victimization. “By sharing information and working together through the MARAC process the outcomes for the survivors of domestic violence incidents can be improved. The conference is usually held on the complainant’s behalf and they will not usually attend but there may be some cases where the complainant’s attendance becomes necessary”. The decision to take a case to a MARAC lies with the agencies involved. While the complainant has the right of refusal, she will have to provide sufficient reason. However, even in such a case, the agency may still decide to refer it to the MARAC. The woman is updated as to the course of action decided upon by the agencies, and the case is given priority within the system. Hence, the MARAC is an innovative tool to ensure coordinated handling and improved risk management of a case by agencies.\textsuperscript{121}

Another significant risk assessment programme of U.K to prevent victims of domestic violence from suffering further abuse is called as SPECS\textsuperscript{122} introduced in 2003 (Separation(child contact);Pregnancy; Escalation(aggravated attacks);Cultural issues; Stalking; SexualAssault.)

The Corporate Alliance against Domestic Violence aims to raise awareness of and take action to reduce the social and economic impact of domestic violence in the workplace as well as shape policy in this matter\textsuperscript{123}.

\textsuperscript{122} Supra n. 94,p.1275.
\textsuperscript{123} Supra n. 70, p.22.
Merits and Demerits

The acknowledgment of many consequent individual costs of domestic violence like the child abuse, the mental health, homelessness etc. through the Government’s definition on domestic violence effectively addresses the problem of domestic violence in its holistic sense. Such a kind of definition is the first of its kind and not followed by U.S.A. The inclusion of housing programme in the Housing Act of 1996 effectively addresses the homelessness issue related to the victims of domestic violence. Adoption and Children Act 2005 is a right step in acknowledging child abuse in cases of children witnessing and experiencing domestic violence\textsuperscript{124} and is in consonance with the best interest principle of the child. The vulnerability and psychological trauma of women and children victims is adequately taken care of in the U.K legal regime. As compared to U.S.A brings in a much more refined proposal of combating the issue of domestic violence.

Compared to the U.S.A legislation there is no protection guaranteed as to women subject to Immigration control. Sexual Assault Referral Centres provides the trilogy of services much needed for a victim of domestic violence is a good practice to be emulated by other jurisdictions. The community intervention model and the corporate alliance programme to raise awareness on the issue is applaudable. The co-ordination of the Home Ministry Office and the Woman’s aid federations in U.K is significant in the context of public participatory process. The multi agency work at the local community level has added to the commendable performance of U.K in the field of combating domestic violence\textsuperscript{125}. The inter agency domestic violence forums engage in five main types of work namely, co-ordinating local agency responses, attempting to improve the practice of agencies, facilitating development of women’s refuge and advocacy services, engaging in public education and

\textsuperscript{124} Supra n. 99, p.377.
\textsuperscript{125} Id., p.371.
awareness raising campaigns and engage in preventive works. The risk assessment programmes enunciated by U.K is commendable. The experience of MARAC can be regarded by the victims as a programme for access to justice. The other side of the argument is that when such conferences are held the privacy issues of victim may come up. The insensitivity in dealing with the issue can lead to counterproductive consequences.

**Conclusion**

The recommendations of United Nations as to the model suggested for legislation for violence against women emphasizes on the funding of programmes related to the issue. It has opined that Legislation should: mandate the allocation of a budget for its implementation by creating a general obligation on Government to provide an adequate budget for the implementation of the relevant activities; and/or requesting the allocation of funding for a specific activity, for example, the creation of a specialized prosecutor’s office; and/or allocating a specific budget to non-governmental organizations for a specified range of activities related to its implementation. In the United States, the Violence Against Women Act and its reauthorizations, provides a significant source of funding for non-governmental organizations working on violence against women. It is important that any budgetary allocation be based on a full analysis of funding required to implement all measures contained in the legislation. Such a funding plan or strategy can really work well in India.

Trained staff, known as victim advocates, help victims and witnesses of crime to navigate the criminal justice system, inform them of court proceedings and court dates, provide crisis intervention and safety planning, ensure specific rights under specific victim rights bills are met, and assist them in accessing

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126 *Id.*, pp.374, 375. E.g., the South Bristol Domestic Violence Forum is running multi-agency training courses on domestic violence in its own area.
other service providers for economic security, protection, housing, counseling, and post-conviction services.

Breaking up the number of responsibilities into different subgroups of individuals, while maintaining lines of communication between the groups, seems to play a positive role in the effectiveness of domestic violence reform. The governments in England and Wales have developed a domestic violence national action plan in response to domestic violence, where subgroups working on reducing the prevalence of domestic violence and increasing abuse reports are managed by government officials who submit quarterly progress reports to an inter-ministerial group. Additionally, members of key government agencies and NGOs hold multi agency risk assessment conferences to share information about their cases. Furthermore, in 2005 the home secretary launched the Corporate Alliance against Domestic Violence, bringing together a group of companies and organisations in order to address the impact of domestic violence at the workplace and to identify and protect staff from their perpetrators.

Critically viewed the legislations on domestic violence in USA and UK do not highlight all the essential domestic relationships within its coverage and scope of study. The significance that can be attributed to these two jurisdictions in dealing with domestic violence issue is in evolving community integrity models and their contribution towards the concerted community response to the issue thereby promoting the accountability of judicial system in approaching the issue.

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