2.1 INTRODUCTION:

"Gender-based violence is violence involving men and women, in which the female is usually the victim, and which is derived from unequal power relationships between men and women. Violence is directed specifically against a woman because she is a woman, or affects women disproportionately. It includes, but is not limited to physical, sexual, psychological harm (including intimidation, suffering, coercion and / or deprivation of liberty within the family, or within the general community)."¹

Violence against women affects the lives of millions of women worldwide, in all socio-economic and educational classes. It cuts across the cultural and religious barriers, impedes the rights of women to participate fully in society.

Today violence against women is an universal problem of epidemic proportion. In a statement to the Fourth World Conference on women in Beijing in September 1995, Former UN Secretary General Boutros Boutrous Ghali said that, violence against women is an universal problem that must be universally condemned.

In the Platform for Action, the core document of Beijing conference, it was declared that—"Violence against women is an obstacle to the achievement of the objective of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedom.'²

Now a days, violence against women is a many headed monster of which domestic violence is one. For many of us, the adage, "there is no place like home"

²Beijing Declaration and Platform for Action 1995, Para 112.
creates the images of warm, comfortable family scenes. But for millions of women in the world, this phrase has a very different meaning. For these women, home is a place of intimidation, fear and violence. In fact, in every part of the world women are at greatest risk of becoming a victim of violent torture in their own homes and sometimes these injuries can be deadly.

Therefore, domestic violence is one of the most insidious forms of violence against women and it continues to be the leading cause of mental and physical injuries to women in their homes. Domestic violence is a gender neutral term and cuts across all racial, socio-economic, national, religious and ethnic boundaries.

In domestic violence, the majority of victims 90-95% are women. However, expert opinion and initial studies suggest that, domestic violence among lesbians, gay, bisexual and transexual individual may be comparable to domestic violence perpetrated against heterosexual women. Here I, the researcher, have discussed only about the domestic violence perpetrated against heterosexual women.

The recognition of domestic violence as a serious human rights violation of women is a recent phenomenon. It is essentially violence perpetrated by persons in intimate family relationships. Research from several parts of the world indicates that perpetrator of domestic violence are predominantly male and the violence is usually perpetrated by the male on his female sexual partner. The acts of violence include physical mental, sexual attacks and threats which control the victim’s thoughts, feelings and behaviours. Therefore, domestic violence is a pattern of assaultive and coercive behaviour including physical, sexual and psychological attacks, as well as economic coercion, that adults or adolescent men use against their intimate partners i.e. wife, former wife, girlfriend dating partner etc.³

Domestic violence allows the perpetrator to gain control on the victim through fear

³ Domestic Abuse Shelter of the Florida website :- www.domesticabuseshelter.org
and intimidation. So, domestic violence is a range of abusive behaviours (physical, sexual or emotional abuse) perpetrated by one partner in a couple (whether married or just living together), who behave aggressively, violently or destructively towards the other, to gain and maintain control upon her. It happens in the family and sometimes the children and other members of the family are involved too. In vast majority of cases violence is perpetrated by men. It affects the victim’s lives in a number of fields: housing, health, education and their freedom to live as they wish, without fear.

2.2 PREVALENCE OF DOMESTIC VIOLENCE IN THE WORLD:

Today domestic violence is a serious problem around the world. It violates the fundamental human rights of women and often results in serious injury or death of the women. Lack of economic independence forces many women to stay in violent relationships.

Reliable data on the prevalence of domestic violence against women by their partners are scarce, especially in developing countries, but many research on domestic violence confirms its pervasiveness. Domestic violence against women in families may also be one of the most important factor of female suicide, and is closely associated with homicide. Global evidence suggests that most homicides of women are committed by a male partner, husband or ex-partner.

Around the world, at least one in three women has been beaten, coerced into sex or otherwise abused during her lifetime. According to WHO report worldwide, 40-70% of all female murder victims are killed by their intimate partners.

In 2002 the world health organisation’s world Report on violence and Health, in 48 population based surveys around the world, 10% to 69% percent of women are reported being hit or physically harmed by their intimate male partners sometimes in their lives.

5. Integration of Human Rights of women and the Gender perspective, violence against women economic and social council commission on Human Rights Fiftyninth session.
In the United States Women are six times more likely than men to be victims of intimate partner violence. In 92% of domestic violence incidents, crimes are committed against women by men. Approximately 4 million women in the U.S.A experience a serious assault by an intimate partner during a 12 month’s period.6

In Egypt 35% of Women are beaten by their husbands, in Nicaragua 52% are abused by their partners at least once. In Canada 29% were of 12,300 women were reported being physically assaulted by a current or a former partner.

In Japan 59% of 796 women were reported being physically abused by their partners. In Kenya 42% of 612 women were reported being beaten by their partners. In Zimbabwe 32% of 966 women reported of being physically abused by their partners.7

Studies from Australia, Canada, Israel, South Africa and United States of America show that 40-70 percent of female murder victims were killed by their husbands or boyfriends frequently in the context of an ongoing abusive relationship.8 29% of women in Romania, 22% in Russia and 21% in Ukraine reported experience of spousal physical abuse.9

In 2000 the proportions of women who are reported to be attempted or completed forced sex with an intimate partner were Brazil 10%, Peru 46.7%, Thailand 29.9%. The proportion of women reported of being physically assaulted by an intimate partner were 34% in Egypt, 10% in Paraguay, 22% in U.S.A. In Canada 62% of women murdered, died at the hands of their intimate male partners.10

6. Times Union News - Studies show domestic violence is frequent, targets women— By Laurie Hahn Times - Union Staff writer websites- http://www.times wrsw.com/No. 420044. HTH.
8. Supra Note-5
In 2004 British Crime Survey (BCS) found that there were an estimated 12.9 million incidents of domestic violence against women in England and Wales. Every minute in the U.K, the police receive a call from the public for assistance for domestic violence. This leads to police receiving an estimated 1,300 calls each day or over 570,000 each year. However according to the British Crime Survey, only 40.2% of actual domestic violence crimes are reported to the police.\textsuperscript{11}

Domestic violence is widespread in Europe. In France, six women die each month at the hands of their spouses. In Spain, some 100 women are killed each year by abusive spouses or boyfriends and there are over 30,000 complaints of physical violence. In Switzerland, one in five women is affected by physical and sexual violence in their lifetime. More precisely more than one in eight women suffers physical violence while one in nine suffers sexual violence.\textsuperscript{12}

In India at least five women are burnt in dowry related disputes each day according to the official figure, although the number estimated by activist groups is much higher. Therefore, inspite of impressive economic, technological and social progress worldwide, millions of women around the world are routinely abused within their own homes and the figures of domestic violence (as mentioned above) most probably represent only the tip of the iceberg, considering that only a fraction of all cases are ever reported.

In this context it is also stated that, today stalking is a very popular from of domestic violence in many foreign countries like U.K, U.S.A etc. In U.S.A 78% of stalking victims are women.\textsuperscript{13}

Many antistalking legislations were enacted by different states. Marital rape is also considered as domestic violence in many foreign countries. In many Latin American

\textsuperscript{11} Domestic Violence Statistics - Women Aid Federation of England, www.woman said.org.uk
\textsuperscript{12} "Women, a battered section of society"—by Vaiju Naravane, The Hindu, 8 March, 2004.
\textsuperscript{13} Center for Policy Research. Stalking in America, July 1997, Website : www.end abuse.org
countries which have enacted legislation for preventing Marital rape as domestic violence are Argentina, Bolivia, Chile, Columbia, Costa Rica, Ecuador, El Salvador, Mexico, Nicaragua, Peru, Puerto Rico, Namibia, South Africa, U.S.A etc.14

2.3 INTERNATIONAL LAW AND WOMEN’S HUMAN RIGHTS:

Every person is entitled to certain fundamental human rights by virtue of being human. Both the United Nations and regional human rights organizations, such as the Council of Europe, have specifically recognised the human rights of women and the corresponding obligations of national government to protect and promote such rights. Women’s human rights are enumerated by treaties, conventions, resolutions and declarations, promulgated by either the United Nations or a regional human rights body. Treaties are formally adopted by the national governments and then create legally binding obligations for those governments. Every state which has ratified a human rights treaty must ensure that the human rights of its citizens are protected i.e the government both avoid and prohibit actions that violate human rights and also to undertake positive steps to ensure that such violations do not take place.

Under international law, specific enforcement bodies, usually specialized agencies, committees or special rapporteurs, monitor a nation’s human rights situation. These bodies also review reports and complaints about human rights violations, generally submitted by non-governmental organizations (NGOs) and also some times by individuals.

In this context it can be noted that under the international legal framework, there are two kinds of human rights systems, which are to protect the human rights of all the people including women globally. They are–

2.4 The United Nations Human Rights System

2.5 Regional Human Rights System

2.4 THE UNITED NATIONS HUMAN RIGHTS SYSTEM FOR PROTECTING WOMEN'S HUMAN RIGHTS (IN GENERAL):

The United Nations is a global organization that includes nearly every country in the world. When a country becomes a member of the United Nations, it undertakes the obligations set forth in the charter of the United Nations, which includes the promotion of human rights and fundamental freedoms for all people.

The basic human rights to which all people are entitled are contained in the Universal Declaration of Human Rights.

The Universal Declaration of Human Rights sets forth two broad categories of rights 1) civil and political rights and 2) economic, social and cultural rights. Civil and political rights include such basic freedoms as the right to liberty and security of person, freedom from torture and degrading treatment and the right to an effective remedy when a human rights violation has occurred.

Economic, Social and Cultural Rights include the right to an adequate standard of living, the right to adequate medical care and social services and the right to education. Although it is not a treaty, the Universal Declaration has the force of customary law. The United Nations system protects human rights through the creation of specific treaties, declarations and resolutions. These basic documents guarantee specific rights to women. The United Nations human rights treaties establish the obligations of the state to enforce those rights.

The human rights treaties of the United Nations also create specific enforcement mechanisms through which the UN itself and non-governmental organizations (NGOs) can monitor compliance and any individual can seek redress for human rights violations.

Within the United Nations system, programs, funds and specialized agencies, work to improve the conditions of particular populations and oversee the enforcement of specific rights, such as the right to health, through the World Health Organization, and
labor rights, through the International Labor Organization. These programs, funds and specialized agencies are the mechanisms through which the UN acts to put human rights ideals about protecting women from violence into practice.

2.4.1 UNITED NATIONS DOCUMENTS THAT PROTECT WOMEN’S HUMAN RIGHTS:

The United Nations has made it clear that violence against women’s human rights is a violation of basic human rights. The United Nations has promulgated treaties, recommendations and declarations that directly address the rights of women and outline government obligations to protect these rights. The fundamental documents outlining these rights are as follows:

a) Women’s Convention and optional Protocol
b) General Recommendation 19
c) Declaration on the Elimination of violence Against Women
d) Beijing Declaration and Platform for Action
e) Basic Human Rights Documents
f) Thematic Human Rights Documents
g) Conference Documents.

(a) WOMEN'S CONVENTION AND OPTIONAL PROTOCOL:

The Convention on the Elimination of All Forms of Discrimination against women (Women’s Convention) is the UN treaty that outlines women’s basic right to equality. The convention entered into force in 1981. The convention requires states parties to combat sex based discrimination through legislation, education and elimination of prejudices and practices those are based on stereotyped roles. The convention also requires states parties to submit periodic reports, reviewed by the committee on the Elimination of Discrimination against women (CEDAW).15

OPTIONAL PROTOCOL TO THE WOMEN'S CONVENTION:

The Optional protocol to the convention on the Elimination of All Forms of Discrimination Against Women:

The Convention on the Elimination of All Forms of Discrimination against women does not include an individual complaint system and therefore, alone, has no enforcement mechanism. In 2000, however, an Optional Protocol to the women's convention entered into force. The optional Protocol creates a mechanism by which individual citizen or groups in state party, which has ratified the Protocol, may submit complaints to CEDAW. After having received a communication, CEDAW has the authority to request the state party to adopt provisional measures to protect the victim of a human rights abuse from further harm.16

b) GENERAL RECOMMENDATION 19:

The Convention on Elimination of All Forms of Discrimination against women does not directly address violence against women. In 1992, the committee adopted general Recommendation 19, which explains that the prohibition of gender based discrimination includes violence. The committee stated, “violence that is directed at a woman because she is a woman or that affects women disproportionately is discrimination. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty .......” Violence Against Women is an internationally recognized human rights violation when either a public official or private person commits the violence. State parties to CEDAW must take all the necessary measures to eliminate violence, including legal sanctions, civil remedies, preventative measure such as public information and education campaigns and protective measures such as support services for the victims.17


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c) **DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN:**

The Declaration on the Elimination of violence against women was adopted by UN General Assembly resolution in 1993. While the Declaration does not create legally binding obligations for states, it never-the-less represents a clear consensus that "violence against women constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms....". The Declaration explains that violence against women is "a manifestation of historically unequal power relations between men and women." Although the Declaration describes violence as rooted in historical power inequalities between men and women, it still makes clear that the violence against women violates existing universal human rights norms. Significantly, the Declaration's definition of violence is expansive, including physical, sexual or psychological harm as well as threats and coercion, occurring in both public and private spheres. Finally, the Declaration emphasizes the obligation of the state to ensure prevention, investigation and punishment of all perpetrators, minimizing the distinction between public and private actors.¹⁸


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d) **BEIJING DECLARATION AND PLATFORM FOR ACTION:**

The Beijing Declaration and Platform for Action was adopted by the Fourth World conference on women in 1995. The platform for Action reaffirms the fundamental principle that the rights of women and girls are an "inalienable, integral and indivisible part of Universal human rights." The platform for Action also calls upon governments to take action to address several critical areas of concern, among them, violence against women is one. The platform for Action states, "violence against women is an obstacle to the achievement of the objectives of equality, development and peace. Violence against women both violates and impairs or nullifies the enjoyment by women of their human
rights and fundamental freedoms. The long-standing failure to protect and promote those rights and freedoms in the case of violence against women is a matter of concern to all states and should be addressed in all societies. To a greater or lesser degree, women and girls are subjected to physical, sexual and psychological abuse that cuts across lines of income, class and culture. The low social and economic status of women can be both a cause and a consequence of violence against women."

The definition of violence, contained in the platform for Action, is broad, including "any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life." The Beijing platform for Action also requires all governments to develop strategies or national plans of action to implement the platform locally. The National plans of Action for each country outline specific activities that the national government will undertake to improve the situation of women, including addressing violence against women.19

e) BASIC HUMAN RIGHTS DOCUMENTS:

Equality on the basis of sex is a fundamental principle of international human rights law. All United Nations treaties guarantee the same rights to women as men.

The Universal Declaration of Human Rights (1948) proclaims: "All human beings are born free and equal in dignity and rights”. But women’s freedom, dignity and equality are constantly denied all over the world on the basis of custom, tradition, culture and religion in ways that men’s rights are not. Advances in the recognition of this factor and women’s advocacy to establish that women are indeed human and therefore entitled to the enjoyment of rights accorded to all ‘human-beings’ has a long history that

encompasses almost a century of struggle. Therefore, the core documents which make up the International Bill of Human Rights are:

1) The human rights provisions of UN charter

2) The Universal Declaration of Human Rights 1948

3) International Covenant on Civil and Political Rights 1966 and its two optional protocol i.e Optional Protocol to the International Covenant on Civil and Political Rights and second optional protocol to the ICCPR aiming at the abolition of death penalty.


The Convention against Torture and other Cruel or Degrading Treatment or Punishment is also another basic Human Rights Document under UN.20

f) THEMATIC HUMAN RIGHTS DOCUMENTS:

Some human rights violations, such as trafficking in human beings, labour rights abuses and the use of rape as a war crime, disproportionately affect women and are prevented by Thematic Human Rights document of U.N, as for example—Protocol to prevent, suppress and punish Trafficking in persons, especially women and children etc.

Therefore, these Thematic Human Rights Documents are not relevant to Domestic violence against women.

g) UNITED NATIONS CONFERENCES:

The United Nations has integrated language that condemns violence against women into many world conference documents. Since the Forth World Conference on women, in 1995, the conference documents made clear that there is an international consensus that governments and society at large must work to eliminate gender based violence. The main conference documents that address violence against women since

1993 to the present day are as follows:

(1) 1993 World Conference on Human Rights, Vienna—Vienna Declaration and Program of Action (It is relevant with Domestic Violence Offences)

(2) 1994 International Conference on Population and Development (ICPD), Cairo—Cairo program of Action - (It is revelent with Domestic violence)

(3) 1995 Fourth World Conference on Women, Beijing—Beijing Declaration and platform of Action. (It is relevant with Domestic Violence Offences)

(4) 1995 World Summit for Social Development, Copenhagen—Copenhagen Declaration on Social Development, commitments.

(5) 1996 Second United Nations conference on Human Settlements (Habitat II), Istambul Habitat Agenda

(6) 1999 International conference on population and Development (ICPD) +5, Cairo program for Action (Relevant with Domestic Violence Offences)

(7) Beijing +5 ; Special session on “Women 2000 : Gender Equality Development and peace for the twenty First century”—Report of the adhoc committee of the whole of the twenty third special session of the General Assembly. (Relevant with Domestic Violence Offences)

(8) 2000 World Summit for Social Development +5 Resolution adopted by the General Assembly Further Initiatives for social Development.

(9) 2000 Millennium Summit United Nations Millennium Declaration

(10) 2001 World conference against Racism, Racial Discrimination Xenophobia and Related Intolerance, Durban—Durban Declaration and program of action. (Relevant with Domestic Violence Offences)


(12) 2005 forty-ninth session of Commission on the Status of Women.21

In this context it must be noted that when a nation ratifies a treaty it undertakes both negative obligations (to refrain from action that violates human rights) and positive obligations (to take affirmative actions to guarantee that human rights are protected). In order to ensure that governments are fulfilling both negative and positive obligations, the United Nations system includes a variety of enforcement mechanisms.

Enforcement mechanisms are usually categorized by the type of UN body that receives communications or carries out the monitoring process. There are three broad categories of enforcement mechanisms. (1) Charter based mechanisms such as the UN Commission on the Status of Women. (2) Convention or treaty based mechanisms such as Committee on the Elimination of Discrimination Against Women. (3) mechanisms contained in Un specialized agencies, such as the International Labor Organization or the World Health Organization. Each of these bodies monitors either a specific human rights issue or particular treaties.

Therefore, the major United Nations Enforcement Bodies which are dealing with woman’s human rights are as follows:

1. UN Committee on the Elimination of Discrimination Against Women
2. UN Commission on the Status of Women
3. UN Special Rapporteur on Violence Against Women
4. UN Committee on Economic Social and Cultural Rights
5. UN Human Rights Committee
6. UN Commission on Human Rights and sub-committee on the Promotion and Protection of Human Rights
7. UN Committee Against Torture.

In this connection it must be mentioned that individuals or non-governmental organizations (NGOs) can bring information about human rights violations, or non-

compliance with human rights obligations, to the UN bodies mentioned above through two procedures.

(A) Complaint Mechanisms

(B) Reporting/Monitoring Mechanisms.

Each procedure has its own requirements, limitations and outcomes.

A) Complaint Mechanisms: Some UN bodies accept complaints, which is usually referred to as “communications”, directly from private individuals or from NGOs on behalf of individuals. Depending on the body to which the complaint is submitted, there are two types of complaints, each of which serves a different purpose.

(i) The complaint recourse procedure: It should be used when the victim is seeking to redress for a specific human rights violation. The general purpose for submitting this type of complaint is to address individual grievances and seeking redress on behalf of the victim. The complaint procedure also serves to bring publicity to a specific case. The UN bodies that receive such complaints as for example the Committee on the Elimination of Discrimination Against Women, under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women review the submission and can ask the state government concerned to take measures to protect the victim and to provide redress for the violation. The decisions reached by the UN in such circumstances are not binding on national government. UN bodies do, however, continue to monitor state compliance.

(ii) The complaint information procedure: It functions in a way similar to the reporting mechanisms. The purpose for submitting this type of complaint is to inform the appropriate UN body about broad human rights violations that affect large segments of the population. The Commission on the Status of Women is an example of an UN body that receives such communications about the status of
women's rights. Victims can not ask for a remedy when using this complaint mechanism and the communication itself is only piece of information that the UN body considers in making a report.

B) Reporting and Monitoring Mechanisms: In order to enforce the provisions of international treaties, the UN does not rely solely on information about violations of human rights brought by individuals or NGOs. The UN human rights bodies themselves regularly monitor compliance with treaty obligations.

Monitoring and reporting procedures differ from complaint mechanisms in that monitoring does not result in a legally binding decision, nor does it depend on information communicated by individuals or groups. When UN bodies undertake monitoring they create a report on state non compliance which includes specific authoritative, but non-binding, recommendations.

There are three types of UN bodies (1) charter based mechanisms, (2) treaty based mechanisms and (3) specialized agencies, carrying out human rights monitoring.

There are two ways by which the reporting and monitoring procedures can be initiated:

1) Required State reporting
2) Committee or NGO Initiated reporting.23

Now the UN enforcement bodies which are dealing with women human Rights are briefly discussed below:-

1) UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN:

The Committee on the Elimination of Discrimination Against Women (CEDAW) was established to monitor state compliance with obligations under the Convention on the Elimination of All Forms of Discrimination Against Women. The committee consists of

a panel of 23 independent experts. The Committee on the Elimination of Discrimination Against Women carries out its mandate through two mechanisms: receipt of direct communications (complaints) and the reporting/monitoring process.

State that have ratified the Convention on the Elimination of All Forms of Discrimination Against Women are required to submit periodic reports documenting compliance with the provisions of the treaty. The Committee asks questions about specific articles of the convention and then prepares concluding observations, which may include recommendations for measures to be taken to improve the situation for women in a particular country. Although there is no formal mechanism for individuals and non-governmental organizations (NGOs) to participate in the monitoring process, the committee relies on information submitted by NGOs. NGOs may submit “Shadow” or alternative country reports that elaborate on information contained in state party reports. The committee, however, will not review an NGO report on a country that has not submitted a state report. NGOs can also monitor many of the committee’s proceedings as observers.24

Additionally, the central and East European Law Initiative (CEELI) of the American Bar Association (ABA) has recently created a tool with which to assess state compliance with the Convention on the Elimination of All Forms of Discrimination Against Women. In 2000, the optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women entered into force and expands the competence of the Committee on the Elimination of Discrimination Against Women, allowing it to receive complaints from both individual and groups. The Optional Protocol creates two procedures—

i) The Communications Procedure allows women or groups i.e. non-governmental organizations to submit complaints of violations of rights protected under

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the Convention on the Elimination of All forms of Discrimination Against Women to the Committee. Under this procedure, the Committee evaluates the complaint based on information presented by the complainant and by the state party. After it has reached a finding, the Committee transmit it to the state party, which is then obliged to reply about actions taken to remedy the violation within six months.

ii) **The Inquiry Procedure** allows the committee itself to initiate inquiries into situations of grave or systemic violations of women's rights in a particular jurisdiction, without having first received complaint. The Optional Protocol, however, also provides an "Optout Clause" that allows states to declare that they did not accept this procedure at the time of ratification.25

2) **THE UN COMMISSION ON THE STATUS OF WOMEN**:

The Commission on the Status of Women (CSW) was established as a commission of the Economic and Social Council (ECOSOC) to prepare recommendations and reports on "promoting women's rights in political, economic, civil, social and educational fields" and to implement the principles of equal rights between men and women. The Commission on the Status of Women also makes recommendations on urgent issues of women's human rights. Since 2000, the commission's mandate has also included review of the progress made in the implementation of the Beijing Platform for Action. The Commission currently consists of 45 members elected by the Economic and Social Council.

Since the 1980's, the Commission on the Status of Women has had the authority to receive complaints on a limited basis. The communication procedure of the Commission on the Status of Women is different from that under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, and leads to a different outcome for the victims. The Commission on the Status of Women

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will not make a decision on the merits of a complaint, and thus the communicating procedure does not provide an avenue for the redressal of individual grievances. According to the Commission on the Status of Women, "the purpose of this communications procedure is to provide information about violations against women that can assist the commission in its task of policy formulation and development of further strategies for the advancement of the status of women."{26}

3) THE UN SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN:

The United Nations Commission on Human Rights has created a number of Special Rapporteurs and working groups that address specific human rights violations including Domestic Violence Against Women. Special Rapporteurs can have either mandates, such as violence against women, or regional mandates, such as the Former Yugoslavia working Groups may focus on drafting international law or on certain human rights issues, such as the right to development of women. These mechanisms have been very effective in bringing urgent human rights issues to the attention of UN and the international community.

The mandate of the "Special Rapporteur on Violence Against Women, including its causes and consequences" began in 1994 when the commission on Human Rights appointed Radhika Coomaraswamy, from Sri Lanka, to the position. In August 2003, the commission appointed Ms. Yakin Erturk, from Turkey, to the Special Rapporteur position which she continues to be occupying till today.

The Special Rapporteur collects and analyses the data on violence against women in order to recommend measures to be taken at the international, regional and national level. The mandate of the special Rapporteur has three elements:

i) Collection of information on violence against women and its causes and consequences from a variety of sources, including government and inter

{26}The International Law and Women’s Human Rights- UN Commission on Status of Women – A Project of Minnesota advocates of Human Rights, University of Minnesota Human Rights Library.
governmental organizations, specialized agencies and non-governmental organizations (NGOs).

ii) Recommendation of measures at the international, regional and national levels to eliminate violence against women.

iii) Cooperation with other Special Rapporteurs, working groups and experts of the Commission on Human Rights.

The Special Rapporteur has conceptualized violence against women as occurring in three spheres: a) in the family including domestic violence and marital rape b) in the community including sexual assault or harassment in the work place etc and c) violence perpetrated or condoned by the state including custodial violence etc. 27

4) THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS:

The Committee on Economic, Social and Cultural Rights (CESCR) is established to monitor state compliance with obligations under the International Covenant on Economic, Social and Cultural Rights. The committee consists of a panel of 18 experts elected by the Economic and Social Council. Currently the Committee on Economic, Social and Cultural Rights carries out its mandate through the reporting/monitoring process, but the commission on Human Rights has discussed a draft optional Protocol that would create a complaint mechanism. At present, the draft optional Protocol is available for review and comment by state parties.

States which have ratified the International Covenant on Economic, Social and Cultural Rights are required to submit periodic reports documenting compliance with the provision of the treaty. The committee meets twice a year to review the government reports. On the final day of session, the committee prepares concluding observations, which may include recommendations for measures to be taken to improve the situation.

27. UN Special Rapporteur on violence against women—A Project of Minnesota advocates of Human Rights, University of Minnesota Human Rights Library.
for women in a particular country. The recommendations of the CESCR are broad and not legally binding.

The Committee on Economic, Social and Cultural rights involved non-governmental organizations (NGOs) in the monitoring process. The committee sessions are open to the public. The committee encourages NGOs with consultative status to submit written reports, as alternative to the state party report, with information that will contribute to the full and universal recognition and realization of the rights set forth in the covenant. Women’s rights NGOs have successfully used the mechanism of submitting shadow reports to the Committee on Economic, Social and Cultural Rights as a way to bring attention to the issue of violence against women.  

5) THE UN HUMAN RIGHTS COMMITTEE:

The Human Rights Committee is the UN body that monitors state compliance with and enforces the International Covenant on Civil and Political Rights. The committee consists of 18 experts who meet three times a year. States that have ratified the International Covenant on Civil and Political Rights are required to submit periodic reports documenting compliance with the provisions of the treaty. The committee holds a dialogue with the state representatives to obtain specific information about whether the state laws and practices are in conformity with the covenant. The UN has made it clear that the review process is not adversarial, and the role of the committee is not to pass judgment, but rather to facilitate the process of bringing state parties in line with the provisions of the International Covenant on Civil and Political Rights. The committee prepares concluding observations, which may include recommendations for specific measures to be taken.

The first optional protocol to the International Covenant on Civil and Political Rights allows individuals, who are from countries those have ratified these two documents, to bring complaints of human rights violation.

28. UN Committee on Economic, Social & Cultural Rights—A Project of Minnesota advocates of Human Rights, University of Minnesota Human Rights Library.
By ratifying the International Covenant on Civil and Political Rights, state parties undertake to ensure that women and men enjoy all civil and political rights equally. Additionally, article 26 of the International Covenant on Civil and Political Rights guarantee that all people are equal before the law and are therefore entitled to equal protection of the law without discrimination. Thus, national laws must guarantee equal and effective protection against discrimination. The Human Rights committee has held that article 26 "prohibits discrimination in law or in fact in any field regulated by public authorities and that the scope of article 26 is not limited to civil and political rights."

Women have, therefore, used article 26 to challenge discriminatory laws that do not necessarily relate to civil and political rights, such as discriminatory distribution of social security. In cases of violence against women, it may be possible to base a claim of unequal access to the legal system under the International Covenant on Civil and Political Rights.29

6) UN COMMISSION ON HUMAN RIGHTS AND THE SUB COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS:

The sub-commission on the promotion and protection of Human Rights has the authority to review situations which reveal a consistent pattern of violations of human rights and present recommendation to the Economic and Social Council (ECOSOC). Since 1970, the Sub-Commission on the Promotion and Protection of Human Rights can consider individual communications, under a procedure known as the 1503 procedure. The 1503 procedure is limited in scope. It enables two UN bodies, the Sub-Commission on the Promotion and Protection on Human Rights and the Commission on Human Rights to investigate specific types of complaints-those which appear to show consistent or wide spread patterns of gross human rights abuses. The 1503 procedure, however, applies broadly to any country in the world, not only UN members.

29. UN Human Rights Committee— A Project of Minnesota advocates of Human Rights, University of Minnesota Human Rights Library.
The 1503 procedure, as amended in 2000, allows the complaints to remain confidential, unless the national government indicates that they should be made public. At the same time, the 1503 procedure allows the authors of a complaint to have their names deleted and identities not revealed to the government.

In this connection it is to be noted that the Commission on Human Rights is not the same body as the Human Rights Committee. The Human Rights committee is a treaty monitoring body that enforces the International Covenant on Civil and Political Rights. The mandate of the Commission on Human Rights is to examine, monitor and report on human rights situations world wide. Most of the work of the Commission on Human Rights concerns reporting and monitoring mechanisms, rather than direct complaint mechanisms. The 1503 procedure, although it is a complaint mechanism, functions more like reporting so that its purpose is to provide information on patterns of human rights violation.

The Economic and Social Council also created by its resolution of the 1235 procedure, which should not be confused with the 1503 procedure. The 1235 procedure allows the Commission on Human Rights to create an adhoc working group of its own members for public study of gross violation of human rights. Individual cannot use the 1235 procedure, although NGO can access this mechanism.

In this context it is mentioned that the UN Commission on Human Rights has been replaced by the UN Human Rights Council in 2006.30

7) **UN COMMITTEE AGAINST TORTURE :**

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment establishes the Committee Against Torture to promote women's

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It consists of 10 independent experts who are members of state party to the convention. The Committee Against Torture carries out its mandate to eradicate the practice of torture through two mechanisms. (i) receipt of direct communications (ii) the reporting and monitoring process. The Committee Against Torture views violence against women, including sexual violence and trafficking as gender based acts of torture and which is within the purview of the committee.

States those have ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are required to submit periodic reports documenting compliance with the provisions of the treaty every four years. The committee meets twice a year to review the government reports. The committee invites representatives of the state party to attend these sessions and provide further information if the committee requests clarification. After its consideration of the report, the committee may make general comments, if the state party is in compliance with its obligations under the treaty. The concluding comments are broad and not legally binding.

Additionally, the convention against torture is the only treaty to allow committee members to make a confidential inquiry about a specific country and to report the findings directly to the committee when it receives reliable information that torture is systematically practised in the territory of the state party. This procedure is similar to that which allows members of the Committee on the Elimination of Discrimination Against Women to initiate inquiries into situations of grave or systematic violations of women’s rights under the optional protocol.

Although there is no formal mechanism for individuals and non-governmental organizations (NGOs) to participate in the monitoring process, the committee relies on information submitted by NGOs. NGOs may submit “shadow” or alternative country reports that elaborate on information contained in state party reports. NGOs can also monitor many of the committee’s proceedings as observers.
Therefore, NGOs can bring international attention to issues of violence against women through the monitoring of government obligations under any treaty that protects women’s human rights. Women’s rights NGOs are using the mechanism of submitting shadow reports to the Committee Against Torture as a way to bring attention to the issue of violence against women. Amnesty International USA, a human rights NGO, conceptualizes domestic violence as the torture or ill treatment of women occurring in the home.

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment also allows private individuals the right to make direct complaints to the Committee Against Torture in some instances. Article 22 of the convention allows state parties to recognize the competence of the committee to review complaints that the particular state is not fulfilling its obligations under the convention. The committee reviews individual complaints to determine admissibility before consideration of the merits. Before making a decision, the committee may request the state party to undertake provisional measures to protect the victim. The committee’s conclusions are sent to the complainant and the state party concerned and are summarized in the committee’s annual reports.31

The International law and policy to protect domestic violence specifically under the United Nations Human Rights system are discussed later in this chapter.

### 2.5 REGIONAL HUMAN RIGHTS SYSTEM FOR PROTECTING WOMEN’S HUMAN RIGHTS: (IN GENERAL)

The idea of regional arrangements for the promotion and protection of human rights has been gaining recognition since the adoption of the Universal Declaration of Human Rights. The absence of any effective international agency for the protection to

31. The International Law and Women’s Human Rights UN Committee Against Torture- A Project of Minnesota advocates of Human Rights, University of Minnesota Human Rights Library.
these rights required the need for the existence of regional arrangements comprising of such states which have a common heritage of political traditions, ideals, freedoms and the rule of law. The Regional Organisations are likely to help the promotion of human rights in a more effective manner than the machinery of the United Nations which is already very complex and overburdened. The Regional Organisations are likely to decentralise its activities and avoid confusion. They are also more readily available.

The Vienna conference on Human Rights in 1993 stated in the Declaration that "Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standard, as contained in international human rights instruments. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of co-operation with the United Nations human rights activities". The conference reiterated the need to consider the possibility of establishing regional and subregional arrangements for the promotion and protection of human rights where they do not already exist.32

Here I will briefly discuss about the European Human Rights System consisting of Regional Inter-Governmental Organization that focuses on issues emerging in the larger European arena.

2.5.1 EUROPEAN HUMAN RIGHTS SYSTEM:

European Human Rights system consists of three major inter governmental organizations (1) the Council of Europe (COE), (2) the European Union (EU) and (3) the Organization of Security and Co-operation in Europe (OSCE).

The council of Europe (COE) has the broadest human rights focus. The council of Europe promotes and protects human rights and the rule of law through education, monitoring and direct enforcement of the obligations found in COE treaties.

32. International Law and Human Rights by Dr. H.O. Agarwal, Central Law Publication, Allahabad.

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The European Union was created as the European Economic community following the Second World War primarily for the purpose of promoting economic stability and peace in Europe. The institutions of the Union have created policy on human rights issues as well as economic community issues. There are currently 25 European Union member states, following the accession of 10 new member states on May 1, 2004.

The Organization for Security and Co-operation in Europe is a regional security organization consisting of 56 member states in Europe, Central Asia, and North America.

In addition to the organizations mentioned above, the Stability Pact for South-Eastern Europe plays an important role in the promotion of women's rights in the region. The Stability Pact is not an international organization but is a political declaration of a commitment of co-operation and a shared strategy to ensure stability in South Eastern European countries.33

2.5.2 EUROPEAN DOCUMENTS THAT PROTECT WOMEN'S RIGHTS:

The European human rights legal system is based on treaties and is elaborated and explained by other non-binding documents, such as resolutions and directives which directly address the human rights of women. The European human rights institutions through resolutions and recommendations make it clear that violence against women is a human rights violation and that member states are obligated to protect the human rights of all.

COUNCIL OF EUROPE: [CONVENTIONS]

The council of Europe's human rights system is based on three treaties.


33. The International Law and Women's Human Rights, European Human Rights System- A Project of Minnesota advocates of Human Rights, University of Minnesota Human Rights Library.
ii) The European Social Charter (charter).

iii) The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.34

COUNCIL OF EUROPE RESOLUTIONS AND RECOMMENDATION FOR PROTECTING WOMEN'S RIGHTS:

In 1993, the 3rd European Ministerial Conference on equality between women and men was devoted to the issue of violence against women as a human rights abuse. At that time, a working group was formed to create a Plan of Action to combat violence against women. The final report of the group was completed in 1997 and includes recommendations to combat violence against women at both the national and international level.

In 1997, the Parliamentary Assembly of the Council of Europe expressed concern for the increased violence against women in member States when it adopted Resolution 1325 on traffic in women and forced prostitution in member states of Council of Europe.

In 2000, the Parliamentary Assembly adopted Recommendation 1450 on violence against women in Europe which addresses violence against women broadly. Resolution 1450 condemns violence against women including domestic violence, rape etc as a general violation of their rights as human beings, the right to life, safety, dignity and physical and psychological well-being. The Parliamentary Assembly also recommended that the Committee of Ministers would create an European program to combat violence against women that would include harmonizing national law with European law, ensuring the protection of victims through the legal system, the creation of services for women, the training of members of the law enforcement and judicial systems and the establishment of closer cooperation with European Union and between state institutions and NGOs.

In 2002, the Parliamentary Assembly adopted Recommendation 1582 on domestic violence against women in which it reiterated that “domestic violence is the most common form of violence against women and its consequences affect many areas of the lives of victims housing, health, education and the freedom to live their lives without fear and in the way they wish.”

Recommendation 1582 states that the act of domestic violence violates criminal law and therefore the Parliamentary Assembly urges member states “to recognize that have an obligation to prevent, investigate and punish the acts of domestic violence and to provide protection to victims.” Recommendation 1582 also includes specific measures that member states should adopt to provide victims of domestic violence with free legal advice, to protect victims throughout the legal process, to provide financial assistance, to train professionals to work with victims of domestic violence, to launch awareness-raising campaigns and to improve the collection of statistics related to domestic violence.

In 2002, the Committee of Ministers adopted Recommendation Rec. (2002) 5 on the protection of women against violence. This Recommendation states “violence towards women is the result of an imbalance of power between men and women and leads to serious discrimination against the female sex both within the society and within the family” and reaffirms that “violence against women both violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms.” Because “violence against women runs counter to the establishment of equality and peace and constitutes a major obstacle to citizens’ security and democracy in Europe.” The committee of ministers recommends that national governments should review their legislations to ensure that women’s rights are guaranteed, to exercise due diligence to prevent and punish acts of violence, to encourage participation of men in combating violence against women and to promote research of the problem. The Recommendation is explicit that “It is the responsibility and in the interest of states as well as a priority of national policies to
safeguard the right of women not to be subjected to violence of any kind or by any person” and therefore member states are to introduce policies that protect, support and assist victims and hold perpetrators of violence legally accountable for their acts.

In this context it also stated that the Council of Europe addresses women’s human rights as well as other human rights issues through the Directorate General for Human Rights. The Directorate General for Human Rights is one of four bodies that address the priority areas of the Council of Europe. The mandate of the Directorate General for Human Rights is to develop and implement human rights policy for the Council of Europe. Within the Directorate General for Human Rights, the Steering Committee for Equality between Men and Women is the inter governmental body responsible for defining, stimulating and conducting the council of Europe’s action to promote equality between women and men. The Steering Committee recognizes that violence against women is a serious obstacle to equality between women and men, and perpetuates inequality and addresses all forms of violence against women, including domestic violence, rape, sexual harassment etc. The steering Committee has carried out research, organized seminars and drafted legal texts to combat violence against women in Council of Europe member States.35

EUROPEAN UNION:

The European Union regards violence against women, both in public and in private, as a violation of fundamental human rights.

Five major institutions—(1) the European Parliament, (2) the Council of the Union, (3) the European Commission, (4) the court of justice (5) the Court of Auditors and a number of smaller bodies conduct the work of the European Union. The institutions that deal with issues of women’s human rights are the European Parliament, the European Commission and the Court of Justice. There are currently 17 Parliamentary

Committees including the Committee on Women’s Rights and Equal Opportunities. This committee is responsible for implementation of women’s rights in the EU, including monitoring internal agreements on the rights of women, the establishment and evaluation of policies and programs for women and work connected to research and studies of issues related to women.

The European Commission addresses women’s human rights through the Employment and social Affairs Directorate General which focuses on promoting gender equality between women and men. The European Union considers violence against women a manifestation of gender inequality and approaches violence as a basic policy concerned for the European community.

Prior to 1999, Human Rights were outside of the competence of the Court of Justice. It is the body of the EU that ensures that EU treaty law is observed by member states. Prior to 1999 the European Court of Human Rights, of the Council of Europe, was the single European Court to determine issues of human rights violations. In 1999, however, the Treaty of Amsterdam expanded the Jurisdiction of the Court of Justice to include protection of the human rights articulated in Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms. Thus, the Court of Justice has the power to rule on compliance with European human rights standards by community institutions.

In this connection it can be stated that Treaty of Amsterdam, signed in 1997 and entered into force in 1999 amended and simplified the EC and EU treaties and added a number of protocols. The Amsterdam Treaty brings human rights to the fore front and formally recognizes the role of the Court of Justice in protecting human rights and fundamental freedoms. The Amsterdam Treaty includes new provisions on actions to combat discrimination based on sex and a goal to eliminate inequalities, and to promote equality between men and women.

It is also noted that in EU constitution, human rights issues are primarily
addressed in Part I and II of the constitution. Article 1-7, Fundamental Rights, recognizes the rights, freedoms and principles set forth in the charter (Part II), and accedes the EU to the European Convention for the protection of Human rights and Fundamental Freedoms of Council of Europe. Therefore, Article 1 to 7 of the EU constitution integrates both European Union charter of Fundamental Rights which constitutes part II and the Council of Europe’s European Convention for the protection of Human Rights and Fundamental Freedom.

The constitution and Domestic violence: In reference to Article III 2 of the constitution the Union shall aim to eliminate inequalities and promote equality between men and women and the Union will aim in its different policies to combat all kinds of Domestic violence. The member states should take all necessary measures to prevent and punish these criminal acts and to support and protect the victims.36

ORGANIZATION FOR SECURITY AND COOPERATION IN EUROPE:

Since its creation in 1973, the Organization for Security and Cooperation in Europe (OSCE) has addressed security broadly to include the protection and promotion of human rights.

In 1990 the OSCE created the office for Democratic Institutions and Human rights (ODIHR). The Gender Unit of the ODIHR addresses the rights of women in some specific areas including violence against women and through projects designed to empower women and to combat violence against women.

In 2000 the ODIHR adopted a Gender Action Plan which describes the need to promote gender equality, safeguarding the physical integrity of women, and elimination of the threat of violence against women for maintaining peace and democracy in the OSCE region.37 The Regional Law and Policy to protect domestic violence specially under the European Human Rights Systems are discussed later in this chapter.

2.6 AN OVERVIEW OF THE INTERNATIONAL LEGAL FRAME WORK AS IT PERTAINS TO DOMESTIC VIOLENCE AGAINST WOMEN:

Today, Domestic Violence is a world-wide problem. Unremedied domestic violence essentially denies women’s equality before law and reinforces their subordinate social status. Men use domestic violence to diminish women’s autonomy and sense of self-worth. All countries of the world experience this barbarous violence perpetrated by men of all categories. Domestic violence cuts across all racial, social, cultural, economic, political and religious spectrums and it is estimated that half of the world’s women have been abused by their husbands or intimate partners.

A number of international human rights instruments provide protection to women against Domestic violence and guide States to take effective measure to prevent and eradicate this type of gender based violence.

2.6.1 INTERNATIONAL LAW AND POLICY TO PROTECT DOMESTIC VIOLENCE UNDER THE UNITED NATIONS HUMAN RIGHTS SYSTEM:

International law and policy on domestic violence has developed through the creation of U.N treaties and conventions and documents created through U.N conferences. The Declaration on the Elimination of Violence Against Women and the work of the Special Rapporteur on Violence Against Women have been instrumental in articulating and strengthening women’s human rights norms. The recognition that domestic violence is a human rights violation under international law required decades of work by activists around the world. Now, international legal instruments and policy statements make it clear that states have a duty under international law to prevent domestic violence and punish domestic violence offenders.

(i) UN TREATIES AND CONVENTIONS:

Early human rights law enacted by the United Nations is relevant to domestic
violence. The International Bill of Human Rights consists of The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in 1948, and its implementing covenants, the International Covenant on Civil and Political Rights (ICCPR), 1966 and the International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966 which entered into force in 1976. While these documents do not explicitly address domestic violence, they along with optional Protocol to the ICCPR, articulate a state’s duty to protect fundamental human rights that are commonly violated in domestic violence cases. Those rights include the right to life, the right to physical and mental integrity, the right to equal protection of the laws and the right to be free from discrimination.

The International Convention on the Elimination of All Forms of Discrimination Against Women was adopted by the General Assembly of the United Nations in December 1979 and entered into force in 1981. More than 165 countries have ratified the convention. The convention requires states to eliminate discrimination against women in the enjoyment of all civil, political, economic and cultural rights.

The definition of discrimination given by Article 1 of the convention is interpreted to include gender based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. Gender based violence may breach specific provisions of the convention, regardless of whether those provisions expressly mention violence, if it impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions. The full implementation of the convention requires States to take positive measures to eliminate all forms of violence against women. Discrimination under the convention is not restricted to action by or on behalf of government. For example, under article 2(e) the convention calls on States parties to take all appropriate measures to

38. Articles 2(e), 2(f) and 5 of the convention on the Elimination of All forms of Discrimination Against women.
eliminate discrimination against women by any person, organization or enterprise. Therefore, Under general international law and specific human rights covenants, states may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, then they may be required to provide victims with compensation.

Article 2 and 3 of the Convention also seek the elimination of traditional attitudes by which women are regarded as subordinates to men or as having stereotyped roles. These attitudes perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths etc. Such prejudices and practices of gender-based violence are often justified as a form of protection or control of women.

The Committee on the Elimination of Discrimination against women, created under Article 17 of the convention, makes recommendations regarding the implementation of the Convention. The committee has made the following recommendations regarding domestic violence which are stated below: 39

i) States parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.

ii) States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity.

iii) Appropriate protective and support services should be provided for the victims.

iv) Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the convention.

v) Effective measures should be taken to overcome discriminatory attitudes and practices that lead to domestic violence.

vi) States should introduce education and public information programs to eliminate prejudices that hinder women's equality.

In 1992, CEDAW, which is the United Nations Committee charged with monitoring the convention, adopted General Recommendation Number 19.

The General Recommendation No.19, Committee on the Elimination of Discrimination Against Women, [U.N. DOC A/47/38 (1992)] : This recommendation addresses the women’s conventions’s silence on violence and states that “gender-based violence is a form of discrimination which seriously inhibits women’s ability to enjoy rights and freedoms on the basis of equality with men.” The recommendation made clear that domestic violence was included in gender based violence.

In resolution 2003/45, Elimination of Violence Against Women, the Commission on Human Rights welcomes the Special Rapporteur’s 2003 report, condemns all acts of violence against women, and affirms that violence against women constitute a violation of women’s human rights. The commission specifically condemns battering and stresses that “all forms of violence against women occur with in the context of dejure and defacto discrimination against women and the lower status accorded to women in society and are exacerbated by the obstacles women often face in seeking remedies from the State.” Further, in paragraphs eleven and twelve, the commission reminds governments of their obligations under the women’s convention, and urges States those have not yet done so to ratify and accede to the women’s convention and its Optional Protocol. In paragraph fourteen, the commission stresses that governments have an affirmative duty to promote and protect the human rights of women and girls and must exercise due diligence to prevent, investigate and punish acts of all forms of violence against women and girls including domestic violence.39A

(ii) DECLARATION ON THE ELIMINATION OF VIOLENCE AGAINST WOMEN:

In 1993, the United Nations General Assembly adopted the Declaration on the

Elimination of Violence Against Women (DEVAW). The Declaration is more specifically intended to clarify the definition of “violence against women”. Article 1 of the Declaration defines the term “violence against Women” as “any act of gender-based violence that results in or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts coercion or arbitrary deprivation of liberty, whether occurring in public or in private.” This clearly encompasses domestic violence. This Declaration is the first international human rights instrument to address the issue of violence against women including domestic violence. While DEVAW does not have the binding legal authority of a convention or treaty, as a United Nations General Assembly declaration, it is Universal in Coverage and a strong statement of principle to the international community. It also stated that violence against women constitutes a violation of the rights and fundamental freedom of women and impairs or nullifies their enjoyment of those rights, and is concerned about the long standing failure to protect and promote those rights and freedoms in the case of violence against women.

Identifying the subordination of women as a principle cause of domestic violence, DEVAW states, “violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men.” DEVAW condemns the crucial social mechanisms by which women are forced into a subordinate position as compared with men and defines “violence as that occurring in private or public life.” Importantly, DEVAW provides specific steps, that member states should take to combat domestic violence, including reform of the legal system. DEVAW provides that states should investigate and punish acts of domestic violence, develop comprehensive legal, political, administrative and cultural programs to prevent violence against women, provide training to law enforcement official and promote research and collect statistics relating to the prevalence of domestic violence.

In this connection it can be noted that other human rights treaty monitoring body
like The Human Rights Committee, adopted in March 2000 a comprehensive new general comment on gender equality and has put increasing emphasis on the need to adopt appropriate measures to combat domestic violence.

It is important that the Committee Against Torture continue to focus on gender discrimination, torture and ill treatment, as it is the Convention against Torture, that is the instrument which provides the most detailed protection against many forms of gender based violence including domestic violence. 40

(iii) U.N CONFERENCE DOCUMENTS:

United Nations conference documents address the issue of domestic violence. While not legally enforceable, these documents are, as one writer states "signposts of the direction in which international human rights law is developing and should influence states that have accepted enhanced respect for human rights in their international conduct and domestic law." 41

The Report of the World Conference of the United Nations Decade for women: Equality, Development and Peace, Copenhagen, July 1980, domestic violence was first time explicitly mentioned in an official document of the United Nations. 42 Domestic violence is referred to several times in the document. The Legislative Measures section of this document states — Legislation should also be enacted and implemented in order to prevent domestic and sexual violence against women. All appropriate measures, including legislative ones, should be taken to allow victims to be fairly treated in all criminal procedures.

At 1985 Third World Conference on Women in Nairobi, Kenya, domestic violence received significant attention. The final conference report called on governments


42. U.N.DOC A/CONF. 94/35 (80.IV.30)
to “undertake effective measures, including mobilizing community resources to identify, prevent and eliminate all violence, including family violence against women and to provide shelter, support and reorientation services for abused women and children.”

The conference document from Second World Conference on Human Rights, held in Vienna in June 1993, was the Vienna Declaration and Programme of Action. The Vienna Declaration stated — “In particular, the world conference on Human Rights stresses the importance of working towards the elimination of violence against women in the public and private life....... the elimination of gender bias in the administration of justice and the eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices.”

Violence against women, including domestic violence, was a major focus at the 1995 Fourth World Conference on Women in Beijing, China. In this conference, states were urged to look at the roots of gender-based violence and its impact on women and society. The conference document, the Beijing platform for Action, identifies domestic violence as a human rights violation. The platform states: “violence against women both violates and impairs or nullifies the enjoyment by women of their human rights and fundamental freedoms.” It addresses violence against women as a separate “Critical Area of Concern” and includes it under the “Human rights” section. The Beijing platform outlines many specific actions of governments, non-governmental groups and others. According to this document, states should take measures to confront and combat violence against women, including strengthening legal systems’ response to domestic violence.

In 1999, the General Assembly declared 25th November as the International Day for the Eradication of Violence Against Women, a day on which the World community could assess progress and commit itself to renewed efforts to end gender based violence.

44. U.N.DOC.A CONF.157/23, July 12, 1993
Five years later, the General Assembly special session, “Women 2000 : Gender Equality, Development and Peace for the Twenty first century”, also known as Beijing +5 was held to review implementation of the Beijing platform for Action, and again made violence against women a priority concern.

Therefore, at the United Nations’ conference, Beijing plus 5: A Special Session on Women 2000: Gender Equality, Development and Peace for the Twenty First Century, the final document detailed obstacles for women and included domestic violence.

The language of the document is strong and very specific :

“14. Obstacles: Women continue to be victims of various form of violence. Inadequate understanding of the root causes of all forms of violence against women and girls hinders efforts to eliminate violence against women and girls. There is a lack of comprehensive programs dealing with the perpetrators, including programs, which would enable them to solve problems without violence. Inadequate data on violence further impedes informed policy-making and analysis. Sociocultural attitudes which are discriminatory and economic inequalities reinforce women’s subordinate place in society. This makes women and girls vulnerable to many forms of violence, such as physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation. In many countries, a co-ordinated multidisciplinary approach to respond to violence which includes the health system, workplaces, the media, the education system, as well as the Justice system, is still limited. Domestic violence, including sexual violence in marriage, is still treated as a private matter in some countries. Insufficient awareness of the consequences of domestic violence, how to prevent it and the rights of victims, still exists. Although improving, the legal and legislative measures, especially in the criminal justice area, to eliminate different forms of violence against women and children, including domestic violence and child pornography, are weak in
many countries. Prevention strategies also remain fragmented and reactive and there is a lack of programs on these issues.”

“69-a) As a matter of priority, review and revise legislation, were appropriate, with a view to introduce effective legislation, including on violence against women, and take other necessary measures to ensure that all women and girls are protected against all forms of physical, psychological and sexual violence, and are provided recourse to justice; 

b) Prosecute the perpetrators of all forms of violence against women and girls and sentence them appropriately, and introduce actions aimed at helping and motivating perpetrators to break the cycle of violence and take measures to provide avenues for redressal to victims; 

c) Treat all forms of violence against women and girls of all ages as a criminal offence punishable by law, including violence based on all forms of discrimination; 

d) Establish legislation and/or strengthen appropriate mechanisms to handle criminal matters relating to all forms of domestic violence, including marital rape and sexual abuse of women and girls, and ensure that such cases are brought to justice swiftly.......”45

Other United Nations Conference documents which address the issue of domestic violence are: – The Programme of Action from the 1994 International Conference on Population and Development (ICPD) in Cairo, Egypt, articulates the need for government attention to all forms of violence against women. This need was emphasized again in the “Cairo Plus 5” document, the Programme for Action,


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form the second International Conference on population and Development (ICPD) in 1999.

The Copenhagen Declaration on Social Development from the 1995 World Summit for Social Development in Copenhagen also calls on Governments to take effective measures to combat and eliminate all forms of violence against women.

**The Durban Declaration and Program of Action from the 2001 World Conference against Racism, Racial Discrimination Xenophobia & Related Intolerance in Durban**, recognizes that the intersection of gender and race, ethnicity or other status can make women particularly vulnerable to certain kinds of violence and calls on the governments “to consider adopting and implementing immigration policies and programs that would enable immigrants, in particular women and children who are victims of spousal or domestic violence, to free themselves from abusive relationships.”

(iv) **SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN**: In 1994, the Commission on Human Rights made its first appointment to the position of “Special Rapporteur on Violence Against Women, including its Causes and Consequences”. Radhika Coomaraswamy, from Sri Lanka, held the position from 1994 to July 2003. Yakin Erturk, from Turkey, currently holds the position.

The mandate of the Special Rapporteur as articulated by the Commission is to “see and receive information on violence against women, its causes and consequences, from Governments, treaty bodies, specialized agencies and other special rapporteurs......and recommend measures, ways and means, at the national, regional and international level to eliminate violence against women and its causes, and to remedy its consequences.” Special Rapporteurs are seen as one of the most effective tools within the United Nations to monitor human rights violations. From 1994 to July 2003, Ms. Coomaraswamy issued 28 reports on violence against women. The reports focus on many different forms of violence against women, including sexual violence, domestic violence, and violence in the workplace.

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46. Supra note: 45
violence, in many different countries and many include references to domestic violence.

In 1996, Ms. Commaraswamy’s reports addressed domestic violence and included model legislation on domestic violence. The model legislation includes a definition of domestic violence, a declaration of purpose and both civil and criminal provisions. It includes requirements for police officers, judges and prosecutors. Importantly, the legislation highlights the importance of victim safety throughout criminal and civil proceedings. Under the Declaration of purpose, the model law stresses that all domestic violence legislation should “assure victims of domestic violence the maximum protection in cases ranging from physical and sexual to psychological violence.” The model legislation directs that upon responding to a report to domestic violence, police officers “shall take all reasonable steps to ensure that the victim and her dependents are safe.” The legislation contains provisions for ensuring safety during criminal proceedings. It states, “during the trial phase, the defendant accused of domestic violence shall have no unsupervised contact with the plaintiff.” The model legislation includes provision on protection orders and exparte restraining orders. The legislation provides that “where a situation of grave danger exists to the life, health and wellbeing of the victim and she is unlikely to be safe until a court order is issued, the victim/plaintiff a relative or welfare worker may apply to a judge or magistrate on duty to provide emergency relief, such as an exparte temporary restraining order to be issued against the abuser within 24 hours of violence occurring.” The model legislation emphasizes the importance of developing written procedures for officials prosecuting crimes of domestic violence and in Section V, directs the state prosecuting attorney or attorney-general to put such procedures into effect. The model legislation recognizes that domestic violence cannot be effectively addressed solely in the legal system. In section VII, the model legislation directs states to provide emergency and longterm services to domestic violence victims and to train legal professionals and social service providers in the complicated dynamics of domestic
2.6.2 THE REGIONAL LAW AND POLICY TO PROTECT DOMESTIC VIOLENCE AGAINST WOMEN, (EUROPEAN HUMAN RIGHTS SYSTM):

Regional law and policy is in the process of developing through regional organizations such as the Council of Europe (COE), and is in the process of being developed in the European Union (EU). Although there is relatively little law that deals specifically with domestic violence, the obligations imposed by the EU's legal framework regarding violence against women would govern member states' obligations with regard to domestic violence. Similarly, while the COE has yet to create a binding instrument concerning domestic violence, the problem has been receiving increasing attention and both the COE and its Council of Ministers have issued a number of recommendations on domestic violence.

(i) COUNCIL OF EUROPE:

The COE's work on the issue of domestic violence, began with Recommendation NO.R (85)4 "Recommendation on violence in the Family" adopted by the Committee of Ministers in 1985, Recommendation NO.R(85)4 was followed by Recommendation NO.R(90)2, 1990, Recommendation on Social measures concerning violence within the family and recommendation on Emergency Family Matters Recommendation NO.R(91)9 (1991). Violence against women, including domestic violence, was also a subject of the Third, Fourth and Fifth European Ministerial Conferences. The subject of the Third Conference in Rome in 1993 was "Strategies for the elimination of violence against women in society: the media and other means." At the conclusion of that conference, the
Ministers adopted the Declaration on Policies for Combating Violence Against women in a Democratic Europe that, among other things, recommended that the COE draft and implement a plan of action to combat violence against women including domestic violence.

The COE established a Group of Specialists to investigate the issue and produce the plan of Action. The Group of Specialists’ final report, Equality Between Women and Men: Priorities for the Future, describes effort that has been undertaken in Europe to combat violence against women, discusses the success to these efforts and obstacles to success, evaluates options that are available to enforce anti-discrimination provisions, and makes recommendations for future action.

The report of the Plan of Action to combat Violence Against Women, June 1998, describes the Group of Specialists’ findings with respect to the nature of violence against women, the scope of the problem, the work that has been undertaken, and current challenges and problems. The report also describes the COE’s plan of Action for Member states. The plan of action recommends a number of strategies to combat domestic violence, including legislative, judicial and law enforcement reforms. The plan also emphasizes the importance of prevention, education, assistance to victims and treatment of perpetrators.

The Declaration on Equality Between Women and Men as a Fundamental Criterion of Democracy was developed at the Fourth European Ministerial conference on equality between women and men in Istanbul on 13-14 Nov, 1997. In this document, the Ministers called on the COE to prepare instrument setting forth the COE’s position on domestic violence, and recommended that members states work to reduce and eliminate men’s violence “by initiating education ensuring respect of the other person and as concerns violent men by supporting practical and therapeutic initiatives.”

Recommendation No. R(98) 1 of the Committee of Ministers to member states on Family Mediation was adopted in 1998. In this Recommendation, the Committee of
Ministers recommends that member states would introduce and promote family mediation. The Recommendation specifically notes, however, that “the mediator should pay particular regard to violence if it occurred in the past or may occur in the future between the parties and the effect this may have on the parties’ bargaining positions, and should consider whether in these circumstances the mediation process is appropriate.”

In April 2000, the Parliamentary Assembly of the Council of Europe adopted Recommendation 1450 on violence against women in Europe. In this Recommendation, the Parliamentary Assembly called on the Committee of Ministers to create an European program to combat violence against women, with the aim of, among other things, “bringing in legislation outlawing all forms of domestic violence; establishing legal recognition of marital rape and making it a criminal affence; ensuring greater protection for women, for example by means of orders restraining violent husbands from entering the marital home and measures to properly enforce penalties and sentences; and ensuring greater flexibility as regards both access to justice and the availability of various procedures, with provision for ex-officio action by the authorities, in camera hearing and court benches made up equally of female and male judges.”

Recommendation No. R (2002)5, The Protection of Women Against Violence, was adopted by the committee of Ministers on 30 April 2002. In that resolution, the committee “reaffirmed that violence towards women is the result of an imbalance of power between men and women and is leading to serious discrimination against the female sex within society and within the family and affirmed that violence against women both violates and impairs or nullifies the enjoyment of their human rights and fundamental freedoms.” The Recommendation called on Member States to:

i) review their legislation and policies with a view to ensure the fulfillment of women’s rights;

ii) Recognise that states have an obligation to exercise due diligence to prevent, investigate and punish acts of violence, whether those acts are perpetrated by the state or private persons, and provide protection to victims;
iii) Recognise that male violence against women is a major structural and societal problem, based on the unequal power relations between women and men and therefore encourage the active participation of men in action aiming at combating violence against women;

iv) Encourage all relevant institutions dealing with violence against women (police, medical and social professions) to draw up medium and long-term co-ordinated action plans, which provide activities for the prevention of violence and the protection of victims, etc.

The Recommendation made it clear that domestic violence was included in the definition of violence against women. The council also provided an Annual report for 2002. The Council of Europe’s (COE) report, Gender Equality: a core issue in changing societies, a document developed at the Fifth European Ministerial Conference on Equality between women and men, held in Skopje, on 22-23 January 2003, sets forth the committee of Ministers’ recommendations to the steering committee for Equality between women and men on violence against women. The third objective outlined in the document is preventing and combating violence against women. Towards this goal, the council recommended that the committee develop COE norms and standards on violence and continue to develop activities to combat violence against women. The Roles of women and men in conflict prevention, peace building and post-conflict democratic process—a gender, perspective, sets forth the COE’s recommendations developed through the Fifth European Ministerial Conference on Equality between women and men, held in Skopje on January 2003. As part of these recommendations, the COE calls on governments to “raise awareness on the violation of the human rights of women during and after conflicts, and on the increase of domestic violence.”

In October 2004 the Council of Europe’s Parliamentary Assembly issued Recommendation 1681, campaign to combat Domestic violence Against Women in Europe, expressing its concern about the rising level of domestic violence against women.
in Europe, and outlining a plan for a pan European Campaign Against Domestic Violence in 2006. The goals of such a campaign would be three-fold: Prevention, victim assistance and increased public information. The recommendation urges Member States to prioritize the issue of domestic violence and suggests ways for government, parliament and civil society to work together on the issue.48

(ii) EUROPEAN UNION:

While not legally binding, a resolution issued by the European Parliament does indicate that criminalization of domestic violence is an appropriate way for Member States to fulfill their legal obligations under EU law. On 21 June 1999, the European Parliament called on Member States to "make domestic violence against women, including rape within marriage and sexual mutilation, a criminal offence and to set up services to help women who are victims of this kind of violence."

In 1986, the European Parliament adopted the Resolution on violence against women. In paragraphs ten, nineteen and twenty, the Resolution called for the legal recognition of marital rape, training of those who may come into contact with domestic violence victims, and provision of counselling to victims in shelters. The Resolution recommended that women be provided with legal assistance, and called on national authorities "to ensure increased availability of short term refuges for periods possibly as short as one or two nights, for women and children who need a place to go for a brief time."49

In 2004 the European Parliament and European Council adopted a directive that, like the United States' Violence Against Women Act, provides victims of domestic violence with the ability to retain their EU residency even after divorce from their EU

Although nonbinding, the council of the European Union has issued a report containing draft council conclusions on review of the implementation by the Member States and the EU institutions of the Beijing platform for Action (13348/02), 12 October 2002, with regard to the issue of domestic violence. The report, to be reviewed by the Social Questions Working Party in late October 2002, includes draft council conclusions relating to domestic violence.

2.6.3 THE INTER-AMERICAN HUMAN RIGHT SYSTEM:

The Inter-American norms and procedures provide a framework that is complementary to the international framework. It allows for the adjudication of individual cases in the Inter-American Commission on Human Rights, and, for those countries that have accepted the compulsory jurisdiction of the Inter-American Court of Human Rights, there is a second level of review.

In addition to the case system, there are other important regional mechanisms for dealing with the problems of violence against women including domestic violence.

The commission has appointed a Special Rapporteur on Women’s Rights, with the authority to investigate the status of women’s rights in the American Regions and produce reports on this issue;

The Inter-American Court on Human Rights can issue advisory opinions on a State’s compliance with any regional instrument.

The Inter-American Commission can make visits to countries in the region and report on the level of compliance with regional and international human rights instruments. The Inter-American Commission on women is charged with ensuring the civil and political rights of women. It plays an active role in the establishment of norms

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relating to the rights of women. It was instrumental in the drafting and presenting of the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women and helps to monitor compliance with this and other instruments.

**Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (“Convention of Belem do para”)**

This convention was adopted by General Assembly of the Organisation of American States, on June 9, 1994, 29 countries have ratified it: Argentina, Antigua, Barbuda, Bahamas, Barbados, Belize, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominica, Dominican Republic, Ecuador, El-Salvador, Guatemala, Guyana, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts Nevis, Saint Vincent, Uruguay, Venezuela etc.

It is likely the strongest international or regional instrument to address domestic violence. It represents a re-envisioning of the inter-American human rights system in a gender-specific way, its adoption represents a powerful consensus among both state and non-state actors that the struggle to eradicate gender violence requires concrete action and effective guarantees.

**Article 1 defines** “violence against women” as “any act or conduct, based on gender, which causes death or physical, sexual, or psychological harm or suffering to women, whether in the public or private sphere”.

**Article 7 requires** that states-parties must “apply due diligence” to prevent, investigate, and punish violence against women whereever it occurs. States parties must take the measures necessary to give effect to the objectives of the convention. Women who have been subjected to violence must have access to available and effective recourse to obtain protective measures and to seek restitution or reparation.

**Article 8 sets forth** multiple requirements dealing with states’ duties to implement progressive measures such as promoting awareness and observance of the right of women to be free from violence; implementing measures to modify the social and cultural
patterns of conduct that lead to prejudice and gender stereotypes; training for police and other law enforcement officers; developing programs for women who are victims of domestic violence, such as shelters and counseling services, etc.

**Article 10-12 setforth the protection mechanisms:**

**REPORTS**—States parties must report to the Inter-American Commission on Women regarding the measures they have adopted and obstacles to be confronted in addressing gender violence.

**CASE SYSTEM**—Any person, group or NGO legally recognized in a member state can file a case in the IACHR against a state party, complaining of a violation of its principal undertakings.

It is usually necessary to identify the victim, but this may be kept in confidence if necessary. The petition must be in writing, and setforth facts which tend to show the violation of a protected right. Once the petition is reviewed and requirements to initiate proceedings are met, there is an information gathering process: a request for a response is given to the government. The petitioner can respond to this response. The government must also submit its own information. The petitioner has to show exhaustion of domestic remedies, or show that this would have been futile. The Commission can offer itself to friendly settlement. The Commission may hold a hearing.

**REMEDIES** — The Commission can issue a report and make recommendation, generally aimed at securing a full investigation of the facts, prosecution and punishment of those determined responsible, and action to repair damage suffered by the victim woman. The initial report is confidential and gives the state an opportunity to comply. If compliance is insufficient, the commission can publish the report. The Commission can also request the state to take protective action on an urgent basis if it is necessary to avoid irreparable damage to persons. The Commission can also request that the Inter-American court takes provisional measures. Finally, it can refer a case to the Inter-American Court if the state in question has accepted the jurisdiction of the Court.
Therefore many countries in the region that have ratified this convention, created institutions to promote gender equality and many of these have mandates specifically to prevent domestic violence. Not only that, the Organization of American States (OAS) adopted some recommendations for the Inter American states that—

(i) States that have not ratified the convention of Belem do para should do so as soon as possible.

(ii) States need to adopt legislation on domestic violence to ensure that it is not tolerated by the state, and that it is duly investigated, tried before a court and punished.\(^{51}\)

2.7 NATIONAL DEVELOPMENTS IN THE AREA OF DOMESTIC VIOLENCE AGAINST WOMEN—BRIEF OVERVIEW:

Domestic violence is a serious universal problem affecting families irrespective of race, class, religion and socio-economic status. Now for the sake of understanding properly about the awareness of different countries of the world and the National developments of those countries in the area of domestic violence against women I first of all divided the World into five regions and then try to discuss about the recent position of domestic violence in any one or two countries of each and every region.

The name of the five regions and the countries of every region are mentioned below:

<table>
<thead>
<tr>
<th>Name of the Region</th>
<th>Name of the Country</th>
<th>Domestic Violence in—</th>
</tr>
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<tbody>
<tr>
<td>2.7.1 African Region</td>
<td>i. Kenya    ii. South Africa</td>
<td></td>
</tr>
<tr>
<td>2.7.2 Arab Region</td>
<td>i. Egypt    ii. Morocco</td>
<td></td>
</tr>
<tr>
<td>2.7.3 Asia/Pacific Region</td>
<td>i. China    ii. Japan</td>
<td></td>
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</tbody>
</table>

\(^{51}\) The Article “Violence Against Women, domestic violence in Inter American System”— by Claudio Grossman, Washington College of Law.
2.7.4 The American Region:
   (a) Latin America and Caribbean Region – i. Peru
   (b) North America i. United States of America

2.7.5 European Region:
   (a) Western Europe i. United Kingdom
   (b) Eastern Europe i. Russian Federation

2.7.1 THE AFRICAN REGION:

Almost all the countries of African region have acceded to or ratified human rights treaties that guarantee the right to equality of all persons and prohibit discrimination on any basis including sex. At least 41 countries of African region have specifically ratified the Convention on the Elimination of all Forms of Discrimination Against Women. Mali, Namibia, South Africa, Senegal etc. are the African Countries to ratify the Optional Protocol of this Convention, which establishes an individual complaints procedure, in case of violences of the rights guaranteed by CEDAW and in the absence or inadequacy of domestic remedies.

In addition to the international instruments, all countries of the African region are states parties to the African Charter on Human and Peoples’ Rights, The African Union (formerly OAU) is developing an Additional Protocol to the African Charter on Human and Peoples’ Rights, on women’s rights in Africa. The protocol already adopted by an intergovernmental meeting of experts (Nov. 2001), was developed at the recommendation of the African Commission on Human and Peoples’ Rights. The protocol is seen as amplifying the human rights of women as guaranteed by African Charter. It acknowledges, reaffirms and builds on all international human rights instruments guaranteeing the human rights of women. The draft protocol explicitly provides for the elimination of violence against women, considered a violation of the right to life and integrity of the persons among others. Once ratified, the Protocol will obligate states
parties to enact and enforce laws to prohibit all forms of violence against women including domestic violence and to adopt such other legislative, administrative, social and economic measures as may be necessary to ensure the prevention, punishment and eradication of all forms of violence against women and girls. The African commission on Human and Peoples’ Rights is the principal organ for the promotion and protection of human and people’s rights in Africa. It was established by the African Charter on Human and Peoples’ Rights, which came into force on 21st October 1986 after its adoption in Nairobi in 1981 by the Assembly of Heads of State and Government of the Organisation of African Unity (OAU). In 1993, the Commission provided the forum for the drafting of an Additional Protocol to the African Charter on Women’s rights which is now being developed by the African Union. The Commission has adopted resolutions, appointed special rapporteurs on the Rights of Women in Africa. The Special Rapporteur and commission were generally used as regional mechanisms. The Intergovernmental Authority on Development (IGAD) established a women’s desk within the IGAD secretariat. The three East African states established the East African Community in which the promotion of gender equality is identified as one of its objectives. Article 121 of the Treaty of the East African Community 1999, directs the member States to undertake to “abolish any legislation and discourage customs that are discriminatory against women, promote effective education awareness programs aimed at changing negative attitudes towards women, take such other measures that shall eliminate prejudices against women and promote the equality of the female gender with that of the male gender in all respects.”

At the country level, the last decade has witnessed significant policy and legislative reforms in the area of violence against women including domestic violence. Most countries in this region have adopted gender policies as a framework for main streaming gender.52

52. Report of the Special Rapporture on VAW, its causes and consequences, by Radhika Coomaraswamy.
DOMESTIC VIOLENCE IN KENYA:

Domestic violence against women is a serious and widespread problem in Kenya. According to the World Health Organisation 42% of Kenyan women are suffering domestic violence and killed by their husbands. In Kenya the Media reported 49% of women killed in domestic violence incidents in 1998, a 71% rise from 1995. In 1999, FIDA - Kenya (International Federation of Woman’s Lawyers, Kenya), had reported 60% deaths resulting from domestic violence, and said at least three out of every five women in the country had been assaulted in their homes and every week at least one woman is killed as a result of domestic violence. In 2000, the Kenyan media reported some 50% deaths and 69% cases of severe injury resulting from domestic violence.

According to the FIDA-Kenya 2001 report, domestic violence was the most common human rights violation in Kenya. Of a total of 62% murders reported between January and September, 2001, 29% involved a man killing his wife.

However, Organisations like COVAW (Kenya based Coalition on violence Against Women) have argued that the reported cases are just the “tip of the iceberg” because many cases of domestic assault are never reported, either due to women’s economic dependency on their spouses, or pressure exerted on them by the families of their husbands.

Anu Muthoni, Advocacy officer at the COVAW based in Nairobi, says that in 2001 and 2002 about five women a day were being seriously battered by their husbands in Nairobi and that the figure was thought to be much higher in rural areas.

COVAW Programs officer Ann Gathumbi says that staff at the organisation currently handle seven cases of violence against women daily. FIDA-K deals with more

than 5,000 cases of battered women annually. Joyce Majiwa, chairman of FIDA-Kenya, agrees that recently domestic violence is on the increase. Wife beating is rampant in Kenya, but only a few cases are reported in the local media or to the authorities. In this context it can be stated that it is difficult to obtain an accurate estimate of the frequency of domestic violence in Kenya because it is under-recognized, under reported and often occurs within the privacy of the homes.

Generally, victims of domestic violence do not report the abuse for fear of retaliation and shame, some women considering physical abuse as the part of their married lives. Even where victims are determined to report to the police, police are not only insensitive, but most police stations lack private reporting facilities, for which victims are often being asked to give personal details in the presence of other people. If a case of domestic violence for instance goes to Court, victims are faced with an inauspicious judicial system coupled with a hostile social environment. In the case where the perpetrator is known to the victim or is even a close relative, a successful prosecution is impeded by a society that customarily frowns upon members prosecuting other family members. As a result, many victims of sexual offences withdraw their cases or fail to report the offences due to immense pressure from friends and relatives to keep the matter private. In addition, relatives or acquaintances that could give evidence often decline to cooperate with the prosecution. It is therefore nearly impossible to quantify the actual magnitude of domestic violence against women in Kenya, especially from police reports or court records.

Kenya has ratified all the international human rights treaties and conventions which prohibit violence against women including Domestic Violence. Such as African Charter on Human and Peoples' Rights, the International Convenant on Civil and Political Rights, the Convention Against Torture and other Cruel Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination Against Women, etc.

According to Section 74(1) of the Kenyan Constitution, the constitution prohibits torture, inhuman or degrading treatment. Discrimination on grounds of gender was incorporated into the constitution through a constitutional amendment in 1997.

Under amendments in November 1997 to the Police Act, Section 14A(2) and (3) declares torture, cruel, inhuman or degrading treatment committed by a police officer to be a criminal offence. The Penal Code of Kenya does not recognize marital rape as a criminal offence because of the presumption, especially in customary law, that consent to sexual intercourse is given by the act of marriage. No legal challenge to this presumption has been made through the Courts in Kenya. The lesser charge of assault is more commonly used in marital rape cases, carrying with it a lower maximum sentence.

The Criminal Law (Amendment) Bill, published in April 2000, for amending the penal laws to facilitate expeditious disposal of cases, discourage torture and harmonize penalties relating to sexual offences like rape, domestic violence etc. The Bill aims to ensure that there is an element of privacy and confidentiality for a victim giving testimony.

The Domestic Violence (Family Protection) Bill of 2001 seeks to allow the courts to intervene in cases of domestic violence and "to provide for grant, enforcement and variation of court orders for protection from such violence." The Bill would for the first time recognize sexual and psychological as well as physical violence as domestic violence. Yet, while it categorizes rape as a form of violence, the Bill fails to make specific reference to marital rape. The Bill proposes the establishment of a Domestic Violence (Family Protection) Fund to support victims who may need financial assistance for basic necessities like medical and counselling care, legal fees, and food. An advisory committee is established to evaluate applications for assistance. The Domestic Violence Bill has yet to be debated in Parliament and local rights activists fear that the debate will not take place soon. The delay suggests a lack of will on the part of the government of Kenya to ensure
that legislation that would give women an equal basis in society is passed immediately by Parliament. In Kenya today the family is viewed by many Kenyan as a private domain in which the authorities should not interfere.54

(ii) DOMESTIC VIOLENCE IN SOUTH AFRICA:

Domestic Violence is a serious crime against society and has an unacceptably high incidence in South Africa. The number of incidents of domestic violence appear to be continually on the increase in South Africa. Recently every six hours a woman is killed by her intimate partner or husband in South Africa.

A National Victimisation Survey which was carried out in South Africa during 1998 made the following significant findings with regard to domestic violence crime—Most assaults 54% and sexual offences 68% occur in and around the home of the victim. Victims are most likely to know their attackers. A significant proportion of attackers are closely related to their victims 33.8% in the case of assault and 27.9% in the case of sexual offences.

Domestic Violence as a key feature in gender based violence is further confirmed by city surveys conducted in 1998 by various reputable organisations in Cape Town, Durban and Johannesburg. These surveys indicated that in 58.7% of cases, the abusers were the partners, lovers or spouses of the victim women and in 18.3% of cases the abusers were relatives of the victims. Domestic Violence therefore constitutes a significant proportion of all violent crimes committed in South Africa. There is an extremely high rate of domestic violence, including physical, sexual, emotional and verbal abuse, as well as harassment and stalking of former partner in South Africa.

   iii) No upright words - The Human Rights of Women in Kenya - Sophia ceneda www.asylumaid.org.UK
In this connection it must be noted that entrenched patriarchal attitudes towards women are significant factors in under reporting. It is difficult for abused women’s cases to be prosecuted effectively, and abused women often are treated poorly by doctors, police officers, and judges. Societal attitudes and a lack of infrastructure, resources and trainings hampered the implementation of domestic violence legislation for law enforcement officials.

South Africa has signed and ratified the Convention on the Elimination of All Forms of Discrimination Against Women on 15 December, 1995. Under CEDAW, the government of South Africa is committed to a wide range of measures to end formal inequality between women and men and to take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.”

For preventing the Domestic violence, the South African Government passed the domestic Violence Act 116 of 1998. The Act after commencement replaces the previous Prevention of Family Violence Act, 1993. The Act comprises a substantial broadening of the limited scope of the 1993 Act and recognises that domestic violence is a serious social evil and an obstacle for achieving gender equality. The Act offers protection to any victim of domestic violence who is in a domestic relationship with an abuser. The Act was put into operation on 15th December, 1999.

The Domestic violence Act 1998 broadens the definition of domestic violence to include, Physical, sexual, emotional, verbal, psychological, and economic abuse, intimidation, harassment, stalking, property damage, entering the complainants residence without her consent and any other uncontro lling or abusive behaviour towards the complainant. The law defines marital rape as a criminal offence and allows women to obtain injunctions against abusive husbands in a simple, less expensive and more effective manner. Rather than focus on married couples, the 1998 Act covers all domestic
relationships in the South African Context, including cohabiting couples, same-sex couples, adoptive parents or guardians, and any one in an "actual or perceived romantic, intimate or sexual relationship." 55

The Act places a duty on a member of the Police Service to inform a victim of her rights at the scene of the incident of domestic violence. Provision is also made for the National Commissioner of the South African Police Service to issue national guidelines which must be observed when dealing with domestic violence, and failure to comply with these guidelines will result in disciplinary proceedings against the member concerned. Therefore, the Police Officers are obligated to render assistance to the complainant (Survivor of domestic violence) including finding alternative accommodation and informing her of her legal rights. The Act institutes easier, faster and victim friendly procedures including the publication of any material that might lead to the identification of parties to proceedings under the Act.

Researchers at the University of Cape Town's Institute of criminology in South Africa reported that the number of women who filed complaints represented only a fraction of those who suffered abuse. Today domestic Violence has been the subject of extensive media coverage, much of which has been focused on the need to improve implementation of domestic violence legislation and to impose longer sentences on convicted abusers. 56

2.7.2 THE ARAB REGION:

Arab states have made significant progress regarding the promotion and Protection of Women's human rights. The issue of violence against women including domestic violence is now being openly discussed. States are more aware of the challenges and appear to be taking measures to address the situation such as naming 1st February as

55. 1) 'Institute for Security Studies, South Africa", 22nd June, 2004 by Emily Schroeder.
56. The report "Special Rapporteur on violence against women, its cause and consequences" - by Radhika Coomaraswamy
Women's Day in the Arab World. Among recent achievements: the launching of an Arab Women's Organization by the League of Arab States; a number of conferences stimulating debate about women's rights in the region and adoption of strategies to improve women's status, and the establishment of an Arab Women's Council. However, inspite of those gains, the progress of women in the region has been uneven and several challenges and gaps remain.

According to Arab Human Development Report 2002 in the League of Arab States (LAS), the Human Rights section of the Legal Department has been upgraded to a separate department and was responsible for servicing the Arab Permanent Commission for Human Rights. There has also been the creation of new commissions including Family Commission, Women Commission etc.

The Arab character for Human Rights was adopted on 15 September 1994 by LAS. The First Arab Women's Summit was held in 2000. The conference marked the culmination of a long series of steps, Arab feminists had taken over the past decades, and marked a new start for the Arab women's movement. The Summit produced the Cairo Declaration, which announced a plan of action for organizing and mobilizing Arab women during the year of 2001, the year of the Arab Women.

An extra ordinary Arab Women's Summit was held in Cairo in Nov, 2001. The Arab Women's organization (AWO) was launched at the Summit under the patronage of the Arab League. This Summit adopted the Amman Declaration, 2002, a strategy in the form of several recommendations aimed at reinforcing the civil, political and social status of women in the region.

In all States in LAS that have national constitutions, gender equality is clearly stated and all forms of discrimination prohibited. There are a number of societal norms and practices that reinforce the gender based violence in the region: Traditional practices undermine women’s rights, such as denial of education, early and forced marriage, domestic violence, crimes committed in the name of honour, dowry and female genital
mutilation. More than 130 million women have undergone some sort of mutilation.\textsuperscript{57}

(i) **DOMESTIC VIOLENCE IN EGYPT:**

Domestic violence against women was a significant problem in Egypt. Wife beating was common. One of every three women who have ever been married has been beaten at least once during marriage. The Center for Egyption women’s Legal Affairs conducting a survey of women which found that 67\% in urban areas and 30\% in rural areas had been involved in some form of domestic violence at least once during a set period between 2002 and 2003. Among those who had been beaten, less than half had ever sought help. Due to the value attached to privacy in the country’s traditional society, abuse within the family rarely was discussed publicly. Spousal abuse was ground for a divorce, however, the law requires the plaintiff to produce eye witnesses, a difficult condition to meet. Several NGOs offered counseling, legal aid, and other services to women who were victims of domestic violence. Activists believed that in general the police and the judiciary considered the “integrity of the family” more important than the well being of the women. The Ministry of Insurance and Social Affairs operated more than 150 family counselling bureaus nationwide, which provided legal and medical services.

Established by Presidential Decree in 2000, the National Council for Women (NCW) played an important role in proposing and advocating policies to promote women’s empowerment and also designing development programs to benefit women. The office of the National Ombudsman for women, provided counseling, advice, referrals, and other assistance to women pursuing a range of complaints including discrimination in housing to domestic violence etc. The law prohibits rape; however, marital rape is not illegal. The Government prosecuted rapists, and punishment for rape ranged from 3 years to life imprisonment with hard labor. The law does not specifically address “honor killings” (men killing women for perceived lack of chastity). In practice, the courts

\textsuperscript{57} Report of the Special Rapporteur on violence against women, its causes and consequences—by Radhika Coomaraswamy.
sentenced perpetrators of honor killings to lesser punishments than those convicted in other cases of murder. There were no reliable statistics regarding the extent of honor killings, however, it was believed that they were not common.

Egypt ratified the convention on the elimination of all forms of discrimination against women on 18th September, 1981 & reservations were made to articles 2, 9(2), 16, and 29.

The Egyptian constitution establishes the rights and freedoms of citizens and has provisions on equality between women and men. All crimes related to human rights as setout in international instruments are punishable under Egyptian penal law. The international treaties that Egypt has ratified, including human rights instruments, are part of the law in force in the country. The law does not prohibit domestic violence abuse specifically, provisions of law relating to assault in general are applied.

The National Commission for women, to serve as central machinery for women’s advancement, is created in 1978 in Egypt and restructured in 1993. Still there is no separate specific laws for domestic violence in Egypt.58

(ii) DOMESTIC VIOLENCE IN MOROCCO:

Domestic violence is reportedly common in Morocco. Spousal abuse was common, but there were no reliable statistics regarding its extent.

According to one survey, approximately one of three women who have ever been married has been beaten at least once during marriage. According to national survey which revealed that 60 percent of violence concern married women aged 20 to 49 years and 59.8% are the consequence of disputes over child custody, divorce and alimony. Spousal abuse was more frequent in rural than urban areas and among less-educated persons. Although a battered wife had the right to file a complaint with the police, as a practical matter she would do so only if prepared to bring criminal charges. While

physical abuse legally was ground for divorce, a court would grant a divorce only if the woman was able to provide two witnesses to the abuse. Medical certificates were not sufficient. If the court found evidence against the woman, she was returned to her husband’s home. Thus, few women reported abuses to the authorities. However, there was substantial progress in making the public awareness of problems concerning women, including domestic violence.

The Criminal Code provides for severe punishment for men convicted of rape or sexual assault. Spousal rape was not a crime. The law is more lenient toward men with respect to crimes committed against their wives. A light sentence may be accorded to a man who murders his wife after catching her in the act of adultery.

In Morocco, the constitution provides for the equality of all citizens before the law, however, non-Muslims and women face discrimination in the law and in traditional practice. Women were subjected to various forms of legal and cultural discrimination. The civil law status of women was governed by the code of Personal Status (Known as the Moudouana), based on the Malikite School of Islamic law, revised in 1993. Women’s groups called attention to unequal treatment under the 1993 code, particularly to the laws governing marriage, divorce etc.

Many NGOs worked to advance women’s rights and to promote women’s issues. Among these were the Democratic Association of Moroccan Women, the Union for Women’s Action, and the Moroccan Association for Women’s Rights, all of which advocated enhanced political and civil rights, as well as numerous NGOs that provided shelters for battered women, taught women basic hygiene, family planning, child care and promoted literacy.59

Still in Morocco the law does not specifically prohibit domestic violence against women, but the general prohibitions of the Criminal code address such violence. Ministry

of Family, setup toll numbers for victims of domestic violence in 20 centers throughout the country.

In 2003 the Moroccan Government adopted a new family code that increased women’s power in the family. This new law increased the marriage age for women from 15 to 18 years and placed the family under the joint responsibility of both spouses, rescinded the wife’s duty of obedience to her husband, eliminated the requirement of a marital tutor for women to marry, and advised divorce by mutual consent, and imposed limitation on the practice of polygamy. However, citizenship still passed through the father and single mothers were heavily stigmatized. The new law was predicated on the establishment of 70 family courts and the training of judges to implement the laws. Time limits were established for the family courts to pronounce judgments for example—1 month for alimony cases and 6 months for divorces.

2.7.3 ASIA-PACIFIC REGION:

Nearly all the States in the Asia-Pacific region have ratified the convention on Elimination of all forms of discrimination against women. Notable exceptions are Brunei and some of the Pacific Islands. Although a majority of the Countries in this region are party to the Convention on the Elimination of All Forms of Discrimination Against Women, many of the countries have reservations. Some of the exceptions are Bhutan, Cambodia, Japan, Mongolia, Nepal and Sri Lanka etc. However many countries in the region adopt a “dualist” approach to international law. Therefore, unless the Government passes separate legislation, these international standards including the Convention, cannot be enforced in the domestic legal system.

There is an explicit reference to gender equality in many national constitutions in the Asia-Pacific region. However, these are often juxtaposed by discriminatory laws and practices.

A number of countries have paid increased attention, to the issue of violence against
women including domestic violence and measures are taken to include establishing national commissions for the protection of Women's Human Rights, enactment of new constitutional provisions and other legislation, and the adoption of national plans of action to combat the problem of violence against women including domestic violence in the region. Governments have taken the initiative in some countries to enact domestic violence legislation, like in Malaysia. Steps have been taken to make investigative procedures more women friendly with the creation of women's police desks. There are many examples of gender sensitization programmes in the region. Support services have also been strengthened. These include medical and counselling support, legal aid, financial and housing assistance. Visible progress has been made in improving female life expectancy and reducing maternal and child mortality rates in several countries in the Asia-Pacific region. There has also been an increase in civil society activism. Closer collaboration has been observed between regional and national non-governmental organizations and the Private sector with the Government.

In this region there are two main regional mechanisms which are working to protect the violence against women including domestic violence are (1) The South Asian Association for Regional Cooperation (SAARC), (2) Association of Southeast Asian Nations (ASEAN).

The Pacific Women's Network to combat violence against women was established in 1992. The Net Work links Governments and non-governmental organizations throughout 13 pacific Island countries those are working to eliminate violence against women. It embraces 35 agencies and organizations. The network is involved in providing counselling and support services, community awarenees on the issue of violence against women and lobbying for policy and legislative reform to promote and protect women's human rights.60

60 Report of the Special Rapporteur on violence against women, its causes and consequences—by Radhika Coomaraswamy.
(i) DOMESTIC VIOLENCE IN CHINA:

In 1990s nearly fifty years after the Communist Liberation, China began to explore the issue of domestic violence in Chinese society while individual academics have studied and surveyed domestic violence, those efforts have received attention only in recent years, most notably after the United Nations Forth World Conference on women and Non-Governmental Organisations Forum held in Beijing in 1995. At that international Women’s Conference, one Chinese Women’s Group in particular caught the attention of participants from around the Globe. At that time in 1995, the Jin Lung Family Center was the only group in whole China that directly addressed the issue of domestic violence.

Inspired by the international conference, and perhaps empowered by the visibility it gave to women’s issues, many women leaders in China have pushed for greater public and governmental awareness of domestic violence because Chinese public lacks awareness about domestic violence.

Despite the lack of public awareness, a growing body of research in China is documenting the widespread nature of domestic violence. A recent report issued by the Women’s Study and Information Center of Chinese Women’s College noted that especially in rural China, men continue to hold such beliefs as “marrying a woman is the same as buying a horse—the husband is entitled to beat or ride on her as he likes”. Moreover, the Commonly held belief that “family shame should not be aired in public,” most likely led to under reporting.61

Therefore, in China, beating wives is very usual practice in many families and is considered as “no one else’s business.” Domestic violence is hidden and families’ scandals are rarely admitted. Local police stations and neighborhood committee are usually reluctant to get involved in that.

Official media reports: “........ Like a plague, domestic violence has occurred in 30

http://www.endabuse.org/
percent of 270 million Chinese families and about 1,000,000 marriages are getting broken each year due to domestic violence, according to statistics from the All-China Women's Federation. Family violence not only disturbs the harmony of families, but also threatens the stability of the society, experts said.\textsuperscript{62}

Studies and surveys found that domestic violence occurs also among the highly educated people. 14\% of the victims could not leave their abusive husbands because of financial problems, though the main reason for staying in abusive relationships was not money problems. Seventy per cent of the abused women had jobs and were economically independent. The family bond was more important and women have the responsibility to keep the family together. More than 52\% of the Women pinned hope on their partners' change of attitude and behaviour. About 24\% of the victims do not want a divorce because they want to "let their child have a complete family."

In 2000, a national project was launched aimed at encouraging national and local lawmakers to outlaw domestic violence and setup help agencies for victims. However, by the end of the year 2000, rape inside marriage as part of domestic violence was yet to be discussed in Chinese Courts.

China's amended Marriage Law (April 2001) outlawed bigamy and prohibited married people from cohabiting with anyone other than their spouses. But there is still no legal definition for domestic violence nor the prohibition of violence directed at women. Legislation (such as the Constitution, the Criminal Law) lacks real legal provisions for punishment of the accuseds of domestic or family violence. On the otherhand, over 20 cities and provinces have issued regulations or administrative decrees on domestic violence. These give the law enforcing departments assistance in dealing with domestic violence cases.

In many cities across the country, hotlines and emergency aid centers have been set up to offer domestic violence victims psychological consultation and consolation, as well

\textsuperscript{62}. \textit{China Daily, Fighting domestic violence, April 5, 2002}
as safe shelters. "The Service Center for Domestic Violence" was founded in Beijing. In some cities such as Jinan in East China's shandong Province, where a Family violence injury testimony center has been established by the Jinan Intermediate People's Court, help is offered to the victims of domestic violence in getting medical evidence for filing a lawsuit. Another Organization is the Guangzhous women's Federation (GWF), located in south China's Guangdong Province.

China ratified the Convention on Elimination of All Forms of Discrimination Against Women on 4 Nov, 1980 but maintains a reservation to Article 29.

Article 27 of the Chinese Constitution states that women enjoy equal rights with men in all respects and that the State protects marriage, the family and the mother and child. Even though China has no national law specifically targeting domestic violence, amendments to the Marriage Law, passed in April 2001, provide some preventive measures against spousal abuse. In addition 13 provinces and provincial cities have passed their own legislation addressing domestic abuse. For example, the Domestic violence Ordinance of 1997 provides protection in situations of domestic violence for the residents of Hong Kong and Domestic violence Prevention Act 1998 of Taiwan, also does the same.

The revisions made to the Marriage Law in 2002 are among some of the most significant changes made for the laws in China. This law has been introduced to promote domestic harmony and Control, to prevent domestic violence and to protect the interest of the victim of domestic violence. These revisions induce domestic violence as a ground for divorce and allow a spouse in a divorce proceeding to seek compensation from the other party if he is at fault due to certain specific grounds including domestic violence. Despite these reforms in the law, the advocate have argued that without any clear definition of domestic violence, it will be very difficult to institute an action for civil compensation for domestic violence. Domestic violence is not broadly defined in China to cover threats of violence to the woman and/or her family members, psychological
damage, sexual abuse and rape within marriage. Also, the question arises whether a claim for compensation can be made during the existence of marriage. Due to the discretion left to the judges, similar cases can be decided differently.

Women also find it difficult to meet the high standard of proof required under the criminal law to hold batterers criminally responsible. In order to invoke Article 260 of the Criminal Law on Crimes Disrupting Marriage and Family, a woman has to prove that the crime was particularly “evil” and the abuse was “continued and consistent". On the other hand the crime of “intentional injury” requires the forensic authentication of the injury and that the injury amount to at least a “flesh wound”. In the absence of a clear definition of what constitutes domestic violence, it is most often interpreted as an injury that results in severe bodily harm, broken limb loss of eyesight etc. Most courts and prosecutors in China will not address what is considered a minor physical injury as domestic violence. The Public security personnels intervention is necessary for proving domestic violence unless it will be very difficult for the victim women to gather forensic authentication and proof of domestic violence, in order to seek protection during marriage or civil compensation at divorce.

The Chinese law does not expressly recognize or exclude marital rape. There is a general recognition that where sexual intercourse occurred without the consent of women in forced or purchased marriage or during separation and after an application for divorce has been filed, it could amount to rape or a crime of intentional injury.63

The law on Population and Family Planning 2002 makes China’s ‘One child’ Policy an official law. Even though it provides for the improvement of reproductive health education and prohibits mistreatment of and discrimination against women who give birth to female children, it severely restricts women’s enjoyment of reproductive rights.64

64. The Article “Beaten women in China” www.chinawn.com
DOMESTIC VIOLENCE IN JAPAN:

For many years in Japan, domestic violence existed in the shadows. According to director-general for Japan’s Gender Equality Bureau, Mariko Bando—‘People don’t think it is a crime. They think it is a private matter inside the home.’ The right of men to use violence against their wives is ingrained in Japanese culture and is considered as a normal part of marriage. According to Bando, “There are still so many Japanese men who think the husband is superior to the wife, so if the wife does not obey his order, he uses violence without any guilty feelings.” Recently numerous studies show that attitude is changing but slowly, too slowly in the opinions of the victims and their Advocates. According to UNICEF, 59% of 796 women are reported of being physically abused by their partners.

Japan is a state party to the Convention on the Elimination of all forms Discrimination against women (CEDAW) since 1985.

Japan began to consider specific legislation and support services to combat domestic violence in mid 1999, which resulted in a 2001 law titled “The Law for the Prevention of Spousal violence and the Protection of victims 2001.” It provides protection order to protect victims and also created government services for victims. It also stipulates the establishment of a spousal violence counselling and support centre.

The law allows district courts to issue six-month restraining orders against abusers and to evict abusers from the home for as long as two weeks. Abusers who violate the Court orders can receive as much punishment as a year in jail and a fine up to 1 million yen (or about $8,000). Anyone who makes a false report of domestic violence can be fined up to 1,00,000 yen (or about $800). The law makes no distinction between couples who are legally married and those who are living together.

According to Kimi Kawana, an editorial writer for the Asahi Shimbun, Japan’s largest daily newspaper, “The victim doesn’t have the knowledge that this is a crime.... What happen in the family was not supposed to be of national concern.”

According to critics, the law for domestic violence in Japan is requiring too much from the victims and not doing enough for them. To obtain a restraining order, the burden
of proof is on the victim, who must notify authorities and submit either a notarised affidavit or reports from doctors, women’s shelters or police backing up the claim of abuse. The law does contain a provision for the courts to issue emergency injunctions against abusive partners without a hearing when danger is imminent for the victim. There is also no recourse for women seeking relief from marital rape. On numerous occasions, the courts have upheld a man’s might to force or coerce his wife into having sex.

A new anti stalking law went into effect in Nov, 2000 in response to rising complaints about women’s lack of recourse in dealing with stalkers.65

2.7.4 THE AMERICAN REGIONS :

a) LATIN AMERICA AND THE CARIBBEAN REGION :

In Latin America and the Caribbean region domestic violence is widespread and affects 25 to 50 percent of women in the region.

In this region special rapporteur on violence against women (SRVAW) has been an important mechanism for the formulation of actions, programmes and measure to sanction, eradicate and prevent violence against women including domestic violence.

In 1994 the Inter-American Convention on the Prevention, Punishment and Eradication of violence against women (“convention of Belem do Para”) was adopted by the General Assembly of the Organization of American States (OAS). This convention has provided an unparalleled basis for advances in fighting violence against women in the Americas.

In 1994 United Nations Commission on human rights established its special Rapporteurship on the rights of Women. Together the UN Commission and its Rapporteurship have made same important contributions in addressing the priority challenges in this regard, in the region.

65.(1) Article “Japan Adopts Tough Domestic Violence Law”–by Melinda Rice, WE news Correspondent. www.womensenews.org
(2) Japanese Women Confront Domestic Violence – by Yukiko Tsunoda  www.umich.edu
(3) The Report of Special Rapporteur on violence against women, its causes and consequences – by Ms. Radhika Coomaraswamy.
The Inter American Commission on Human Rights is the principal organ of the OAS mandated to protect and promote human Rights in Americas. The commission derives its authority principally from the OAS charter and the American Convention on Human Rights as well as the American Declaration of the Rights and Duties of Man and the other regional human rights treaties including the convention of Belem do para. The Inter American Commission established its Special Rapporteurship on the Rights of Women and published its “Report on the Status of Women in the Americas.” The Comission and its Rapporteurship placed special emphasis on the problem of violence against women including domestic violence.66

(i) **DOMESTIC VIOLENCE IN PERU:**

Domestic Violence is wide spread in Peru and women, overwhelmingly, are its victims. A survey undertaken by the National Institute of Statistics in metropolitan Lima found that no less than 82% of the 2,460 women who were interviewed said that they knew someone who had suffered some kind of domestic abuse. Recently the National Police of Peru received nearly 28,000 reports of domestic abuse. Yet with many victims reluctant to report domestic violence, the real number of women who live in violent interpersonal relationships almost certainly is much higher.

The State authorities in Peru have taken a number of steps to address this problem and notably, Peru was among the first countries in Latin America to adopt special legislation on domestic violence. The Law for Protection from Family Violence (here in after “Family Violence Law”) first adopted in 1993 and subsequently strengthened in 1997, established a distinct and expedited procedure for dealing with cases of domestic violence and sought to define more clearly the respective roles and responsibilities of those within justice system who are involved with such cases.

In addition, since the late 1980s : twelve women’s police stations have been

established specifically to respond to violence within the home and twenty specialized sections have been created within regular police stations for the same purpose. Further, a system of Municipal Defender’s offices (Demunas), put in place since the early 1990s, has taken an increasing role in responding to the needs of victims of domestic violence. The most recent innovation has been a system of one-stop centers for victims of domestic violence, where women can find under one roof, women police officers, medical examiners and state prosecutors. The Ministry for the Promotion of Woman and Human Development has inaugurated nine such centers since March 1999. In addition, the vibrant non-governmental women’s rights community in Peru has played a crucial role in both providing services to victims of domestic violence and pressing the governments to improve its overall response to violence against women.

The Family violence Law, despite its amendment in 1997, remains deeply flawed. Its definition of family violence is incomplete, effectively excluding entire categories of women as well as particular forms of domestic violence. Furthermore, the law privileges conciliation over prosecution, the law makes conciliation mandatory for any one who reports domestic violence. The Law does not recognize sexual violence as a type of domestic violence. Intimate partners not living together when the violence occurs are not covered under the law, denying many women the protection, it established. The Law excludes marital rape as a form of domestic violence and women who have been raped by their intimate partners cannot report the assault as physical domestic violence.

Adding to the impact of these deficiencies, implementation in Practice of the Family Violence Law is also seriously inadequate. Police are unresponsive and ineffectual; medical examinations by forensic doctors are frequently cursory and inadequate, tending to minimize injuries women have sustained through domestic violence, and state prosecutors and judges often appear to consider domestic violence insufficiently serious to warrant prosecuting and punishing the perpetrators. As a result, in practice women are
afforded inadequate protection against domestic violence by the state, and this in turn, serves only to deter women from making complaints and to mask the full extent of the problem.

Peru’s international human rights obligations require that the State authorities take effective steps to ensure that women are able fully to exercise their human rights, including protecting them from threat or use of violence generally and within the family. The International Covenant on Civil and Political Rights and the American Convention on Human Rights both ratified by Peru in 1978, require the state to ensure that all individuals enjoy the rights to life, without distinction of any kind, including sex. Further, since 1982 Peru has been a state party to the Convention on the Elimination of All Forms of Discrimination Against Women, which requires state authorities to exercise due diligence in investigating, prosecuting, and punishing violence against women. Peru’s obligations to act effectively to eliminate violence against women including domestic violence are also set out in the Inter-American Convention for the Prevention, Punishment and Eradication of violence against women (“Convention of Belem do Para”) which Peru ratified in 1996.67

b) NORTH AMERICA:

The North American relationship with the Inter American system is fairly negative. Canada and the United States of America (U.S.A) have not ratified the American Convention and do not recognize the jurisdiction of the Inter-American commission and Inter-American court. However, the commission is still competent to receive complaints against Canada and the United States of America and other non-convention States under the 1949 American Declaration of Rights and Duties of Man.


(2) The report of Special Rapporteur on Violence against Women, its causes and consequences—by Ms. Radhika Coomaraswamy.
DOMESTIC VIOLENCE IN UNITED STATES OF AMERICA:

Domestic Violence is a prevalent issue in the United States. It is estimated that every 15 seconds a woman is battered in the United States by her husband, boyfriends or living partners. Four thousand of them are killed. One in four female suicides were victims of domestic violence. Six millions of American women are beaten each year by their husbands and boyfriends. As many as 3,24,000 women each year experience intimate partner violence during their pregnancy. In the year 2001, more than half of million American Women (588,490 women) were victims of non fatal violence committed by their intimate partners. On an average more than three women are murdered by their husbands or boyfriend in this country every day. Annually in the United States, 503, 485 women are stalked by an intimate partner. 78% of stalking victims are women. According to American Bar Association 90-95% of domestic violence victims are women and as many as 95% of domestic violence perpetrators are male.

The United States is not a State party to the Convention on the Elimination of All Forms of Discrimination Against Women. On June 30, 2002, the Senate Foreign Relations Committee took the first step by voting to forward the treaty to the entire senate for ratification.

The Violence Against Women Act (VAWA) was passed as part of the violent crime control and Law Enforcement Act of 1994. Under this law, the Violence Against Women Act of 1994 (VAWA) the Federal Government for the first time adopted a comprehensive approach to fight domestic violence and sexual violence against women in United States of America. It also amended the Gun Control Act to make it illegal for a person to possess a firearm while subject to a restraining order due to domestic violence including stalking. The Act created new relief measures designed for immigrants whose abusive spouses obstruct their access to lawful status in the United States. According to National Coalition of domestic violence, VAWA created a national domestic violence hotline and allocated substantial funds for a number of different kinds of initiatives and programs, including
shelters and other services for battered women, judicial education and training programs, and programs to increase outreach to rural women. VAWA not only authorized STOP (Service, Training, Officers, Prosecutor) grants, which support programs designed to improve law enforcement and prosecution response to domestic violence, but also mandated that domestic violence advocates be involved in the planning and implementation of these programs. VAWA also authorized funds for victims and witnesses counselors, who work with domestic violence victims in federal prosecutions.

A provision of VAWA created a federal Civil rights of action—a right of action that would have allowed a victim of violence, such as sexual assault or domestic violence, to sue the perpetrator for civil damages. Recently, the renewal of the Violence Against Women Act (VAWA), was signed into law by President George Bush on January 5, 2006. The Violence Against Women Act 2005 promises $2.7 billion over the next five years and increases attention and funding for victim assistance and efforts for prevention of violence against women.

The Act authorizes $10 million to assist communities in creating permanent housing options for victims of domestic violence. VAWA 2005 also increased funding for health care services and for securing employment leave for women who would miss work while moving or trying to make court appearances. In addition, VAWA 2006 will also expand its focus to change attitudes towards other violent crimes including dating violence, sexual assault and stalking.

The victims of Trafficking and violence Prevention Act of 2000 created a new form of relief for victims of domestic violence in United States. The new law created “U-Visas” which allow immigrants who are victims of certain crimes, including domestic violence, or have information about those crimes, to apply for residence in United States.

Every State now criminalizes marital rape, at least in some situations, though only 17 states plus the District of Columbia have completely abolished exceptions in criminal law for marital rape.
By 1996, 15 states and the District of Columbia had responded to the problem of domestic violence by enacting mandatory arrest laws. Several States such as California, Minnesota, New Mexico, Washington, Wisconsin and Colorado have passed laws that prohibit housing discrimination and provide some protections for domestic violence victims in certain circumstances.

The USA Department of Justice established the violence Against Women Office (VAWO) in 1995 to administer the programs authorized by VAWA, as well as other independent programs. Campaign such as V-Day and the Domestic violence Awareness Month have increased public awareness of the problem in U.S.A.

California, Maine, Maryland, New York state, Rhode Island, as well as New York city all passed legislation since 2000, protecting victims of domestic violence against discrimination. Stalking, a form of domestic violence, that has been acknowledged only recently in U.S.A is now recognised as a crime in all 50 states of U.S.A.

California, in 1990 enacted the first stalking law in Penal Code section 646.9 which became the basis for most other states' stalking laws. By 1994, 35 other states have followed California's lead and have also adopted stalker legislation. They are Alabama, Arkanas, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, North Carolina, Mississippi, Nebraska, New Jersey, New Mexico, New York, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin etc. The Interstate stalking Punishment And Prevention Act 1996 dramatically increased federal sanctions against stalking and harassment. Alaska, Michigan, Oklahoma, etc. prohibit not only conventional stalking but also stalking through electronic means such as email. 21 states prohibit letter threats.

In U.S.A Minnesota, California, New York, State create separate domestic violence legislation. Minnesota's Domestic Abuse Act Section 518 B.01 of Minnesota's statutes, creates a civil remedy of an Order for Protection (OFP), designates the
procedures that must be followed in applying for and granting an OFP, and describes the Kind of relief that can be granted. The Act also describes penalties for violations of OFPs.

Section 609.2242 of Minnesota’s statutes criminalizes domestic violence. Minnesota has also enacted a domestic violence arrest law, Section 629.341, that allows officers to arrest an individual without a warrant if there is probable cause to believe that the individual has committed domestic abuse, and that requires officers to provide victims of domestic violence with notice of their legal rights. Section 629.342 of Minnesota’s statutes provides that police departments must develop policies and protocols for dealing with domestic violence, and explicitly requires police officers to assist victims in obtaining medical treatment and providing the victim with a notice of her legal rights.68

New York State’s Domestic violence Prevention Act, creates a comprehensive network of services for victims of domestic violence. The Act provides emergency shelter and other services, including advocacy, counselling and referrals to the victims of domestic violence.

The New York State also passed a law creating an office for the Prevention of Domestic Violence. New York city has adopted a local VAWA, that allows civil rights action for gender-motivated violence.

California possesses Tough New Domestic Violence Laws. The California Penal Code include Section 836 of the State’s law, on arrest, as well as section of part 4 Title 5 of the Penal Code, governing the law enforcement response to domestic violence.

(2) National Domestic Violence Awareness Month – President Proclamation www.whitehouse.gov.
(3) The Report of Special Rapporteur on Violence against Women, its causes and consequences by Ms. Radhika Coomaraswamy.
(4) Domestic violence is a serious, widespread social problem in America: the fact – www.adoption.com
California’s Family Code contains provisions, governing protections for victims of domestic violence, including the issuance and enforcement of OFPs (called “Protective orders” under the Family code) and the duties of law enforcement officers.

### 2.7.5 THE EUROPEAN REGION:

The key development in the European region to end violence against women including domestic violence are briefly stated below:

The Convention for Protection of Human Rights and Fundamental Freedoms was drawn up within the Council of Europe.

The Convention set up a system of enforcement of the obligations, entered into by contracting States. Three institutions were entrusted with this responsibility:


ii) The European Court of Human Rights (Setup in 1959).

iii) The Committee of Ministers of the Council of Europe.

In terms of legislation, domestic violence is undoubtedly the area in which practically almost all countries in this region have made progress over the past decade. However, the type of legislation varies from one country to another. In all cases there are either limited mechanisms to evaluate the impact and outcomes of the law or none at all. It is therefore difficult to ascertain the effectiveness of the measures adopted in this area.

The European Union Presidencies have, since 1998, placed the issue of violence against women on the political agenda and passed a number of recommendations dealing mainly with domestic violence. In addition a European Campaign on Domestic Violence was launched in 1999.

In this connection it can be stated that starting in the late 1970s, the Council of Europe and in particular its first committee for the promotion of equality between women and men, took a series of initiatives to promote the protection of women against violence including domestic violence. Recommendations were drawn up on the rights of victims of violence to assistance, the legal remedies, open to them and the respect due to them in
all criminal proceedings.

The Organization for Security and Cooperation in Europe (OSCE) has made efforts to integrate women's humanrights into its efforts to monitor human rights violations and develop policies to curtail such abuses in the region.

The Third European Ministerial Conference on Equality between Women and Men held in Rome, 21-22 oct, 1993 on ‘Strategies for the elimination of violence against women in Society, the media and other means."69

(a) **WESTERN EUROPE**:

The response to gender based violence, varies across the western region. Some Countries are just embarking on the process where as others have over two decades of experience in attempting to develop new ways of combating violence against women including domestic violence. In terms of legislative provision and policy developments, many countries have embedded the issue of violence against women in their legislation and there are a number of instances of good practice in legislative and policy work which can be identified. Such work includes, for example— (1) Policy memoranda in the Netherlands in 1982 and 1990, (2) The development of research programmes in Norway. (3) The recent recognition of rape in marriage in Belgium, Finland, Slovenia, England and Wales and Germany, (4) The introduction of sexual coercion as a crime in Portugal and (5) revision of Spanish law in 1996. In addition, in Germany and Portugal women reporting rape should be interviewed only by Women officers, and the German Victims Act allows civil suits for damages.

Most Scandinavian Countries now provide access to legal Aid for Women experiencing violence and many countries have introduced specific training for police officers with some forces, having specialist women officers, and a number of Domestic Violence relief units were established in this region to combat domestic violence.70

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69. *The report of Special Rapporteur on Violence against Women, its causes and consequences— by Ms. Radhika Coomaraswamy.*

70. *Supra note- 69.*
DOMESTIC VIOLENCE IN UNITED KINGDOM:

Domestic violence against women is reportedly a wide spread and serious problem in the United Kingdom.

The British Crime Survey (BCS) found that there were an estimated 12.9 million incidents of domestic violence in England and Wales. 81% of the victims were women. Domestic Violence incidents also made up nearly 22% of all violent incidents, reported by participants in the BCS. Repeat victimisation is common.

The results of the British Crime Survey found that more than half (57%) of victims of domestic violence were involved in more than one incident. No other type of crime, had a rate of repeat victimisation as high. On every minute, in the UK, the Police receives a call from public for assistance for domestic violence. This leads to police receiving an estimated 1,300 calls each day or over 570,000 each year. However, according to British Crime Survey, only 40.2% of actual domestic violence crimes are reported to the police. Women are at greatest risk of homicide at the point of separation or after leaving a violent partner. It is estimated that one in four women usually experience domestic violence at some time in their lives.

The United Kingdom ratified the Convention on Elimination of All Forms of Discrimination Against Women on 7th April 1986, but has neither signed nor ratified the protocol to the convention.

PROTECTION FROM VIOLENCE THE CIVIL LAW OF ENGLAND:

Over the last 20 years, the need for better protection from domestic violence under civil law has been highlighted through a number of reports and enquiries. Since 1976, injunctions could be obtained under three different statutes:

2) The Domestic Proceedings and Magistrates’ Courts Act 1978

Abused Women, face a number of problems within the legal process under those
laws, such as access to legal representation, lack of specialist services or interpreters for Black and ethnic minority women, the trauma of the Court process, the lack of training for court staff on the impact of domestic violence on Women and Children are the reasons why many women stay with or return to a violent partner.

A review of the existing laws by the Law Commission, led to recommendations for change, supported by many statutory and voluntary bodies, and eventually, the introduction of the “Family Law Act 1996”, Part IV in October 1997 was made.

Part IV of the “Family Law Act 1996” provides a single set of remedies available in all Family Courts, including High Court, County court and Family Proceedings (Magistrates) Court. There are two main types of orders under the Act. (1) Occupation order, which regulate the occupation of the family home, and (2) Non-molestation orders, for protection from all forms of violence and abuse.

The existing legislation of UK in this area, are all repealed and replaced by the Family Law 1996. The Act introduces the “balance of harm test” which in some cases will oblige the court to make an order.

The Court can also make ancillary orders to Occupations orders, imposing obligations on either party with regard to repairs and maintenance, discharge of rent or mortgage, or other payments as well as use or care of possessions of furniture. Court may take “exparte” non-molestation or occupation orders, if it considers it just and convenient to do so.

It is also noted that The Family Law Act, 1996 (Chapter 27 of 1996) [Part IV, in particular] does not extend to those, who have never lived with their abusers, except where there has been a formal promise of future marriage, or if there is a child for whom both are parents or have parental responsibility. According to this Act, improved protection from domestic violence may depend crucially both on access to legal Aid and to its effective enforcement by the police and the Courts.
PROTECTION UNDER CRIMINAL LAW:

Until very recently, the Criminal Justice system has paid little attention to the needs of women and children, experiencing domestic violence, while many women have sought help from the police in an emergency, often unsuccesfully. For others, calling the police is not the first option, and is often only a last resort, after repeated violent domestic violence attacks. Many abused women in U.K are ambivalent about calling the police, they fear that they will not be believed or taken seriously. Black women, in particular, are less likely to call the police if they fear racism against themselves or their partners.

The "Protection from Harassment Act 1997" introduces new measures for protection under both the criminal and civil law, and also provides a new link between criminal and civil law. The provisions include two new criminal offences. (1) The offence of criminal harassment and (2) a more serious offence involving fear of violence. If convicted of either of these offences, there is an additional measure for protection. A restraining order can be granted by the court prohibiting the offender from further similar conduct to the victim of domestic violence. The immediate arrest and removal of the abuser by police will often be helpful in providing many women and children who are victims of domestic violence, with much needed "breathing space" and time to consider what they should do.

In 2004, the Domestic Violence, crime and victims Act 2004 aims to introduce new powers for the police and courts, to deal with the offenders, while improving support and protection that victims of domestic violence receive. This act makes common assault an arrestable offence. The Act extend the restraining orders to domestic violence offenders, if there is a continued risk. According to this Act, breach of non-molestation order will be a criminal offence.

PROTECTION UNDER THE HOUSING LAW:

In U.K. the options for protection available under the civil and criminal law have a number of limitations to their effectiveness, therefore many women sometimes rely on
provision under the homeless legislation for safe housing, and longer term protection from
domestic violence for themselves and their children. The “Housing Act 1996” has made
a number of major changes to the provision of public and private rented accommodations.
Parts VI and VII of the Act affect decisions about who is housed in social rented sector
and are of particular relevance for women and children experiencing abuse. The Act has
broadened the definition of homelessness for women, experiencing domestic violence
from just those living in the home. In the “Housing Act 1996” domestic violence is
defined as violence or threats of violence from a person who is associated with the
person under threat. An “associated person” is defined in the Code of Guidance to the
Act. Homeless people are in “priority need” for accommodation if they are pregnant, have
dependant children, are vulnerable, or are threatened with homelessness as a result of an
emergency. Women and children seeking rehousing, because of domestic violence should
therefore apply through Part VI of the Housing Act, to be put on the housing register, to
access permanent accommodation, either through nomination to a housing association or
from local authority’s housing stock. The code of Guidance gives guidance to local
authorities, on how they should implement the Housing Act 1996. It makes a number of
specific references to the needs of women experiencing domestic violence. There are also
a number of exchange mechanisms by which women experiencing domestic violence
may be able to access a new safe accommodation.

Some of this was further amended by the provisions of the Homeless Act 2002.
This Homeless Act 2002 removed any automatic link that existed between homeless
under the law and being given permanent housing. Under previous legislation, people
who were unintentionally homeless and in priority need were offered permanent
accommodation.

Now Part VII of this act gives local authorities a number of temporary duties. This
act 2002 broadened the definition of homeless, for women experiencing domestic
violence and local authority can fulfil its duties to homeless applicants by temporarily
housing them in its own accommodation or by giving advice and assistance to help applicants secure access to private rented accommodation, if it is satisfied that suitable accommodation is available in its area. The Code of Guidance gives guidance to local authorities on how they should implement the Homeless Act 2002.\textsuperscript{71}

(b) **EASTERN EUROPE** :

There are some positive steps being taken by the Eastern and Central European Countries in terms of Women's status, legal protection and institutional mechanisms.

Domestic violence is the most widespread form of gender based violence in all the countries across the region. The legal systems do not properly address this issue; no specific provisions exist, nor are any restraining orders possible. There is also an insufficient understanding in society of what exactly domestic violence is, and thus a failure to always recognize and name it. The lack of knowledge about the nature of domestic violence among women and absence of a support network in part, explain why women themselves often downplay the seriousness of the abuse. There are no shelters for victims of domestic violence. It is very common for Women to stay in an abusive marriage or relationship due to economic dependence on an abusive male partner or husband, at the same time state authorities of different countries do either little or nothing to put an end to this situation. With regard to marital rape, although a few countries changed their legislation making it an offence, but in practice, no cases have been decided by the courts so far.\textsuperscript{72}

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\textsuperscript{71}1. Report of the Special Rapporteur on violence against women, its causes and consequences, —by Ms. Radhika Coomaraswamy.


5. Women's Aid Federation of England Policy and Practice.

\textsuperscript{72} The report of Special Rapporteur on Violence against Women, its causes and consequences— by Ms. Radhika Coomaraswamy.
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DOMESTIC VIOLENCE IN RUSSIAN FEDERATION:

With the collapse of the Soviet Union (Union of Soviet Socialist Republics) in 1991, the Russian Federation ("Russia") has emerged as the largest, richest, most popular, and most powerful successor state to the former superpower.

Domestic violence is a major problem in Russian society, but because it is considered a private matter, it is under reported and accurate statistics are not available. According to Fifth Periodic Report of the Russian Federation, (U.N. DOC, CEDAW/C/USR/5 para 9, 1999) 14,000 women were killed by their partners or relatives in 1999. According to World Organization against Torture 2003, 36,000 women are beaten on daily basis by their husbands or partners. According to Russia NGOs, 75% of all Russian women suffer from some type of violence within the family. According to Freedom House, approximately 15,000 women die each year because of domestic violence. According to Amnesty International, over 1 million women a year suffered from domestic violence. In Russia no reliable statistics existed to permit evaluation of the true extent of the problem nationwide, individual jurisdictions varied in their statistical methodology.

In Russian society, victims rarely had recourse to the authorities for protection. Police were reluctant, and at times unwilling, to intervene in what they regarded as purely domestic dispute. Many women were deterred from reporting such crimes, not only because of social and family pressure but also because the tight housing market made it difficult either to find housing outside the family dwelling or to expel an abusive spouse, even after a final divorce action. There was a general lack of understanding of these problems in the legal community and there was no legal definition of domestic violence. Some forms of battering are addressed in the criminal code but are defined too narrowly to apply to most cases. There also was no national political will to consider these problems seriously.

Therefore there is no legislation in Russian Federation that specifically prohibits domestic violence, nor there is a popular movement or governmental initiative to establish
any such legislation in Russia. Offenders can be punished under Articles 111-115 of the Russian Criminal Code, which prohibit inflicting intentional harm on another person. Long term domestic violence can be prosecuted under Act 113 of the code, which prohibits the systematic infliction of blows or other acts bearing the nature of torture. Offenders can also be prosecuted under Article 116 of the Criminal Code, which prohibits beating another person. However, most offenders are not prosecuted at all because it is widely believed that spouses should keep such problems to themselves. Women who are victims of domestic violence are usually unable to leave their abusive relationships. They have few alternatives because of unemployment and low wages make it nearly impossible to live independently. Additionally, shelters that accommodate victims of domestic violence are rare and difficult to finance. However, divorce is widely tolerated in Russian society, especially when domestic violence is the cause.

Even though the government has not shown much interest in addressing domestic violence, many Russian NGOs are working towards a solution. For example, IREX, an American Organization that funds nonprofit activity in Eurasia, helps Russian women’s NGOs set up hotlines and shelters, educate the public about the problem, and train police officers on handling domestic violence reports.73

CONCLUSION:

Domestic violence in all its forms, over the last two decades, have been increasingly recognised nationally and internationally as a serious problem. Traditional attitudes towards women around the world help to perpetuate the violence and it has been ignored or condoned, because it occurs between close relations in the privacy of their homes.

   3) RUSSIA : Inside the Broken Cell by Andrei Sinelnicov - www.endabuse.org
Today there are many international conventions, treaties, international, regional, national legislations etc. which provide for a range of rights and protective measures for protecting women from violence including domestic violence but inspite of all these initiatives, progress in the achievement of women's rights has been very slow worldwide.

The different international, regional and national conferences on the women, encourage governments of all the countries of the world, research institutions, non-governmental and other organizations to promote research on the prevalence of domestic violence and its causes and consequences and to assess the effectiveness of the legislations and provide preventive measures to the victims worldwide. Today many countries have some form of legislation concerning violence against women, most commonly domestic violence. Some countries have specific legislation on domestic violence, some are drafting new laws and some have amended their criminal laws to include domestic violence. But these legislations and policies alone are insufficient to eradicate totally the domestic violence problem from the world.

Finally, it can be stated that, domestic violence is not simply a legal problem which can be eradicated by the appropriate legal remedies. It is also a social and psychological problem, which can be eliminated by fundamental changes in the society and in attitudes to women and children. While legal remedies are an attempt to alleviate the symptoms of domestic violence, it can do little to tackle causes. In fact inspite of various international human rights instruments and impressive economic, technological and social progress worldwide, millions of women around the world are routinely abused within their own homes and are suffering from domestic violence, a tragic crime which need to be urgently addressed and vigorously tackled.