CHAPTER 2

PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE UNDER INTERNATIONAL LAW

2.1 Introduction

International law and policy on domestic violence has developed in the United Nations and in regional organizations such as the Council of Europe, and is in the process of being developed in the European Union. 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 clear that State have a duty under international law to prevent domestic violence and punish domestic violence offenders.¹

International law on violence against women has been created through international conferences, conventions and various programmes for action, such as the one signed in Beijing Conference, 1995.²

There have been four United Nations World Conference on women. The first one in Mexico (1975) which led to the Declaration of United Nations Decade for Women (1976-85), the second in Vienna (1993) which adopted a Programme for Action, the third one in Nairobi (1985) and the fourth one in Beijing (1995) which

² Ibid.
adopted the Nairobi Forward Looking strategies for Advancement of Women for the year 2000.3

In the past, violence against women, particularly violence occurring in the home or between intimate partners, was viewed as a private matter, not as an issue of civil or political rights. Now, however, by applying the legally accepted definitions of torture4 to the violence that women face every day around the world, the international community has explicitly recognized violence against women as a human rights violation involving State responsibility. Violence against women is a human rights scandal. At least one out of every three women has been beaten, coerced into sex, or otherwise abused in her lifetime.5

Violence in the home is a global epidemic. Around the world, a woman’s greatest risk of violence is from someone she knows. Domestic violence is a violation of a woman’s rights to physical integrity, liberty, and all too often, her right to life itself. Through domestic violence, women are subjected to the basest forms of abuse and humiliation. Such torture of women is rooted in a global culture which denies women equal rights with the men, and which legitimizes the violent appropriation of women’s bodies for individual qualification or political ends. Violence against women is compounded by discrimination on the grounds of race, ethnicity,

3 Ibid.
4 Article1(1), Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984, reads: “torture- as an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person, for a purpose such as obtaining information or a confession, punishment, intimidation or coercion or for any reason based on discrimination of any kind”.
5 www.amnestyusa.org/violence_against_women/stop_violence_against_women accessed on 13.05.2009.
sexual orientation, social status, class, and age and by social and cultural norms that deny women equality and render them more vulnerable to abuse. The common threat is discrimination against women, the denial of basic human rights to individuals simply because they are women. The universal Declaration of Human Rights affirms the inadmissibly of discrimination and proclaims that everyone is entitled to the rights and freedoms set forth in the declaration, without distinction of any kind, including distinction based on sex.6

Under International Law, violence against women is a form of discrimination against women and a violation of human rights. States’ obligations to respect, protect, fulfill and promote human rights include the responsibility to act with due diligent to prevent, investigate and punish all forms of violence against women and provide effective remedies to victims. The requirement to enact, implement and monitor legislation covering all forms of violence against women is set out in international and regional instruments and jurisprudence.7

At international level, human rights treaties set out a series of rights that are critical in the protection of women from violence. The treaty bodies established to monitor implementation of the human rights treaties, and in particular the Committee on the Elimination of Discrimination Against Women, have addressed States’ obligations to prevent, investigate and punish all forms of violence against women and provide effective remedies as well as the structural

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6 www.stopview.org/sites accessed on 13.05.2009.
7 Ibid.
causes of violence against women, discrimination against women and inequality between women and men.8

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) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which entered into force in 1976. While these documents do not explicitly address domestic violence, they, along with the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), articulate a State’s duty to protect fundamental human rights that are commonly violated in domestic violence cases. These 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.9

International law has successfully recognized the varied forms and aspects of violence against women, of which domestic violence forms an important part.

As a signatory to Committee on the Elimination of Discrimination Against Women (CEDAW) and the Beijing Platform

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8 These includes the Convention on the Elimination of All Forms of Discrimination against Women, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Eliminating All Forms of Racial Discrimination, the Convention against Torture and other Cruel Inhuman or Degrading Treatment or Punishment.

9 www1.umn.edu/humanrts/svaw/domestic/law/international.htm accessed on 16.05.2009.
of Action, India has accepted the following definition of violence against women.

The term "violence against women" means any act of gender based violence that result 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. Accordingly, violence against women encompasses but is not limited to the following:

(a) 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;

(b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.\(^\text{10}\)

The General Assembly Resolution\(^\text{11}\) adopting the Declaration on the Elimination of Violence Against Women also defines violence against women in similar terms as the CEDAW and the Beijing


Platform of Action. The United Nations framework for a model law on domestic violence contains this definition:

All acts of gender-based violence i.e. physical, psychological and sexual abuse by a family member against women in the family, ranging from simple assaults to aggravated physical battery, kidnapping, threats, intimidation, coercion, stalking, humiliating, verbal abuse, forcible or unlawful entry, arson, destruction of property, sexual violence, marital rape, dowry related violence, female genital mutilation, violence related to exploitation through prostitution, violence against household workers and attempts to commit such acts shall be termed domestic violence.12

It is pertinent to briefly discuss the achievements of the United Nations in the field of women’s rights since 1945. These are:

(ii) The Universal Declaration of Human Rights, 1948
(iii) The International Covenant on Civil and Political Rights, 1966
(iv) The International Covenant on Economic, Social and Cultural Rights, 1966

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2.2 United Nations Charter, 1945

At the international level, prohibition against sex discrimination was first articulated in United Nations Charter, 1945.

The preamble of the United Nations Charter, adopted in 1945, reaffirms "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small. The charter recognizes that one purpose of the United Nations is:

To achieve international co-operation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion. Commenting on the charter, President Trueman observed that:

The charter is dedicated to the achievement and observance of human rights and fundamental

freedoms. Unless we can attain these objectives for all men and women everywhere—without regard to race, language or religion—we cannot have permanent peace and security.\textsuperscript{15}

2.3 The Universal Declaration of Human Rights, 1948

Atrocities committed by States during the Second World War, and in particular the appalling abuses of the Holocaust, led the newly formed United Nations to establish a Human Rights Commission in 1947. A group of government leaders came together, chaired by Eleanor Roosevelt, to draft a new document in an attempt to prevent such human rights abuses from happening again. The vision of leaders was not only influenced by events in Europe, other world events such as the assassination of Gandhi in India and the beginning of apartheid in South Africa were also at the forefront of their mind.\textsuperscript{16}

The resulting document, the Universal Declaration of Human Rights (UDHR) was adopted by the countries of the United Nations in 1948 and it remains the most important of all human rights frameworks in the world.\textsuperscript{17}

Although the Universal Declaration of Human Rights is not legally binding on the Member States, yet it has contributed significantly in the observance of human rights by the States and it also does not lag behind in giving protection to women. While recognizing the inherent dignity and equal and inalienable rights of all members of the human family as the foundation of freedom,

\textsuperscript{16} www.amnesty.org.uk/content.asp?category1D accessed on 18.05.2009.
\textsuperscript{17} Ibid.
justice and peace in the world,\textsuperscript{18} it has formed the basis of a range of treaties that are legally binding such as the Convention on Rights of the Child, and the Convention Against Torture.\textsuperscript{19}

Article 1 of the Universal Declaration of Human Rights, 1948, summarizes all of the subsequent Articles and succeeding treaties and Conventions when it says, “All human beings are born free and equal in dignity and rights”. In some matters, such as marriage rights, the declaration goes into some details in specifying the ways in which men and women should be treated. It specifies that men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to form a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. Marriage shall be entered into only with the free and full consent of the intending spouses”.\textsuperscript{20} The Universal Declaration of Human Rights affirms the inadmissibility of discrimination and proclaims that everyone is entitled to all rights and freedoms set forth in the declaration without distinction of any kind, including distinction based on sex.\textsuperscript{21}

In 1958 on the Tenth Anniversary of the Universal Declaration of Human Rights, Eleanor Roosevelt said: “where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man,
woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination”.22

Article 2 of the Universal Declaration of Human Rights states that everyone is entitled to all rights and freedoms whether we are rich or poor, whatever country we live in, whatever sex or whatever colour we are, whatever language we speak, whatever we think or whatever we believe.

Article 5 of the Universal Declaration of Human Rights states that nobody has any right to hurt us or to torture us.

Article 25 of the Universal Declaration of Human Rights identifies housing as the necessary part of the right to adequate living conditions.

Gender bias in property rights and economic inequalities present women with unique barriers to obtaining adequate housing.23 Housing is an especially important concern for victims of domestic violence. To escape their abusers, women must be able to obtain alternative housing or to evict the abusers from houses.24

Article 29 states that we have a duty to other people, and we should protect their rights and freedoms.

A workshop on “Media Training on Reporting Gender – based Violence”25 has been organized jointly by the Ministry and Gender Links and GEMSA at Media Trust, Port Louis, on November 20, 2008.

22 Observation by Eleanor Roosevelt in 1958 on the Tenth Anniversary of the Universal Declaration of Human Rights.
25 A workshop on Media Training on Reporting Gender- based violence organized jointly by the Ministry and Gender Links and GEMSA at Media Trust, Port Louis, on November 20, 2008.
Links at the Media Trust, Port Louis. This workshop is in line with the recommendations of the National Action Plan, namely the development of a code of ethics on responsible coverage of domestic violence by the media. The main objectives of the workshop were:

(a) to train media practitioners on how to write first hand accounts of women and men who have been affected by gender based violence and

(b) to develop a strategy on how training on covering of gender based violence is built into mainstream media training.

International Day Against Violence Against Women 2008

International Day Against Violence Against Women (IDAVAW) is used to promote global recognition and raise public awareness on violence against women and is an opportunity to urge both governmental and non-governmental organizations to commit themselves to providing support to survivors, enhance preventive efforts and press for legal and judicial reforms. 25th day of November is declared as the International Day for the Elimination of Violence against Women. The General Assembly of UNO designated 25th November as the International Day for the elimination of violence against women, by resolution 54/134 of 17 December 1999, and invited all concerned to organize activities designated to raise public awareness of the problem. Three Mirabal sisters were brutally assassinated by the political activists in the Dominican Republic, on orders of Dominican ruler Rafael Trujillo in 1960. Since 1981, women’s activists have marked 25th November as a day against violence targeted towards women. The General Assembly adopted
the Declaration on the Elimination of Violence against Women on December 1993. The theme retained by the Centre for Women’s Global Leadership (an organization responsible to develop and facilitate women’s leadership for women’s human rights and social justice), to commemorate the IDAVAW 2008 year as Human Rights for women – Human Rights for all: Universal Declaration of Human Rights 60 (UDHR60).

The 2008 theme has been formulated so as to watch with the 60 anniversary of the Universal Declaration of Human Rights on 10 December 2008.

Activities organized by the Ministry of Women’s Rights, Child Development and Family Welfare to commemorate the International Day Against Violence Against Women 2008.

The Ministry released the booklet on 24 November, 2008. The booklet aims at sensitizing the public at large on issues pertaining to domestic violence and on the assistance provided to victims for their rehabilitation. The booklet is targeted for boys. It seeks to encourage men to inform male adolescents and other young men that violence is not equal to strength. Emphasis is placed on values such as respect, honor and responsibility in this booklet to encourage men not to commit/perpetrate any forms of abuse towards women. By encouraging men to use positive messages to teach and coach their

27 Activities organized by the Ministry of Women’s Rights, Child Development and Family Welfare to commemorate the International Day Against Violence Against Women, 2008.
sons/brothers/nephews it seeks to turn them into healthy young men and responsible citizens of tomorrow.\textsuperscript{28}

More than 20 years after adopting the Universal Declaration of Human Rights, the international community agreed on two covenants spelling out in more detail the rights embodied in the declaration. These were-

2.4 **The International Covenant on Civil and Political Rights, 1966 and the International Covenant on Economic, Social and Cultural Rights, 1966**

The Commission originally planned to draft one treaty as a second step in the process of developing an international Bill of Rights. They hoped to translate the Universal Declaration of Human Rights into a single treaty which would specify and codify the principles set forth in the declaration. After much study and debate, however, it was decided that two treaties should be drafted, one on civil and political rights which would be immediately binding and a second on economic, social and cultural rights, which would oblige States to take steps to progressively achieve the rights set forth therein. These Covenants were submitted, by the Commission to the third Committee (Social, Cultural and Humanitarian) in 1954, and were adopted unanimously by the General Assembly in Resolution 2200 (XXI) on December 16, 1966. The Civil and Political Rights Covenant came into force on March 23, 1976, in accordance with Article 49, three months following the deposition of the thirty fifth instrument of ratification. The Economic, Social and Cultural Rights Covenant came into force on January 3, 1976, in accordance with

\textsuperscript{28} Ibid.
Article 27, i.e., after three months of depositing of thirty fifth instrument of ratification.\textsuperscript{29}

While these documents do not explicitly address domestic violence, they, along with the Optional Protocol to International Covenant on Civil and Political Rights (ICCPR), articulate a State’s duty to protect fundamental human rights that are commonly violated in domestic violence cases.

These 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.\textsuperscript{30} Article 7 of the International Covenant on Civil and Political Rights (ICCPR) states that no one should be subjected to torture or to cruel, inhuman or degrading treatment or punishment. The Human Rights Committee, the monitoring body established by the Covenant, clarifies that “it is the duty of State Party to afford everyone protection through legislation and other measures as may be necessary against the acts prohibited in Article 7, whether inflicted by people in their official capacity, outside their official capacity, or in a private capacity, when States fail to provide such protections, they hold responsibility for the abuse.”\textsuperscript{31} Human Rights Committee monitors compliance with the International Covenant on Civil and Political Rights and receives complaints from individuals whose rights have been violated, while the Committee on Economic, Social and Cultural Rights monitors implementation of the economic rights covenant.


\textsuperscript{30} Supra note 9.

\textsuperscript{31} Article 7, the International Covenant on Civil and Political Rights (ICCPR), \url{http://www.amnestyusa.org/women/violence/domesticviolence.htm} accessed on 23.05.2009.
The Committee on Economic, Social and Cultural Rights has issued a number of recent rulings on reproductive rights. For instances, it has called on Cameroon to eliminate the practices of polygamy, forced marriages, and bias in favour of the education of boys; noted with concern the high incidence of pregnancies among female of school age in Saint Vincent and the Grenadines; and noted that Switzerland’s Parliament had not yet recognized the right of pregnant women to maternity benefits (1998).32

2.5 The Convention on the Elimination of All Forms of Discrimination Against Women, 1979

The adoption of the Convention on Elimination of Discrimination Against Women by the General Assembly of the United Nations on December 18, 1979 was the culmination of decades of international efforts to protect and promote the rights of the world’s women. It resulted from initiatives taken within the United Nations Commission on the Status of Women, a body established in 1947 to consider and make policy recommendations to improve the position of women.33

In the 10 years between 1949 and 1959 the Commission prepared a number of treaties, which protected and promoted the rights of women in areas in which the Commission considered these rights to be particularly vulnerable. These included:

The Convention on the Political Rights of Women; and

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32 Supra note 11.
The Convention on the Nationality of Married Women.\textsuperscript{34}

In 1965, the Commission embarked on the preparation of what was to become, in 1967, the Declaration on the Elimination of Discrimination Against Women. This declaration states in a single legal instrument the international standards articulating the equal rights of women and men.\textsuperscript{35}

As it was a declaration and not a treaty, it was only supported by moral force, and did not create binding obligations for States. In 1972, the Commission considered the possibility of preparing a treaty, which would give binding force to the declaration. Preparation of such a treaty was encouraged by the World Plan of Action adopted by the 1975 Conference of United Nations, in the International Women’s Year, which called for a Convention on the Elimination of Discrimination against Women with effective procedures for its implementation.\textsuperscript{36}

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), is the first international Convention that comprehensively underlines the rights of women. The Indian Government ratified CEDAW in 1993. The significance of CEDAW is that it presents an opportunity and challenge to use the law to women’s advantage, to broaden the way in which we perceive the law and its possibilities in terms of gender violence.\textsuperscript{37}

The Convention (CEDAW) may be described as the Megna Carta of Women’s human rights as it essentially constitutes the

\textsuperscript{34} Ibid.
\textsuperscript{35} Ibid.
\textsuperscript{36} Ibid.
International Bill of Rights for Women. The preamble to the Convention declares that discrimination against women violates the principles of equality of rights and respect for human dignity and as a result it hampers the growth of the prosperity and the family. States Parties are required by the Convention to eliminate discrimination in the exercise and enjoyment of all civil, political, economic, social and cultural rights. In Part-I (Articles 1-6) of the Convention, States Parties agree to take all appropriate measures to bring about the advancement of women. In Part II (Articles 7-9), States undertake to protect women’s rights in political and public life. In Part III (Articles 10-14), the governments make various commitments to eliminate discrimination in education, employment, economic, social and cultural life. Part IV (Articles 15-16) of the Convention provides that States Parties have agreed to ensure equality of women with men before the law, in the exercise of legal rights and family relationship. A Committee on the Elimination of Discrimination Against Women is established under Article 17. It comprises 23 experts and the main function of the Committee is to consider the reports submitted by the State Parties. Of course, the Committee is empowered to make suggestions and recommendations to the State Parties.38

The Indian Government ratified CEDAW in 1993 while ratifying, India made the following declaration and reservations:

With regard to Articles 5(a) and 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions, in conformity with its policy of non-

interference in the personal affairs of any community without their initiative and consent.

With regard to Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that though in principle of marriages, it is not practical in a vast country like India with its variety of customs, religious and level of literacy.\textsuperscript{39}

With regard to Article 29 of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it does not consider itself bound by paragraph 1\textsuperscript{40} of this Article.

Article 1 of CEDAW defines discrimination against women as follows:

“For the purpose of present Convention, the term ‘discrimination against women’ shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, of human rights and fundamental


\textsuperscript{40} Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
freedoms in the political, economic, social, cultural, civil or any other field”.

Article 1 provides a comprehensive definition of discrimination which is then applicable to all provisions of the Convention. In contrast to the International Bill of Human Rights, which simply refers to “distinction” or “discrimination” on the basis of sex, Article 1 gives a detailed explanation of the meaning of discrimination specifically against women. Such discrimination encompasses any difference in treatment on the grounds of gender which:

Intentionally or unintentionally disadvantages women;

Prevents society as a whole from recognizing women’s rights in both the domestic and public spheres;

Or which prevents women from exercising the human rights and fundamental freedoms to which they are entitled.

Gender based violence, which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights Conventions, is discrimination within the meaning of Article 1 of the Convention. These rights and freedoms include:

(i) The right to life;

(ii) The right not to be subject to torture or to cruel, inhuman, or degrading treatment or punishment;

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(iii) The right to equal protection according to humanitarian norms in time of international or internal armed conflict;
(iv) The right to liberty and security of person;
(v) The right to equal protection under the law;
(vi) The right to equality in the family;
(vii) The right to the highest standard attainable of physical and mental health;
(viii) The right to just and favourable conditions of work.43

In a number of countries throughout the world, women are denied their basic legal rights, including the right to vote and the right to own property. Such instances of legally entrenched differentiation will be easily identified as discriminatory.44

At the same time, not every differentiation will constitute discrimination. The definition set out in Article 1 makes it clear that, in addition to establishing the criterion of differentiation (sex), it is also necessary to consider the outcome of the differentiation. If the result is a nullification or impairment of equal rights in any of the forms set out in Article 1 then the differentiation is discriminatory and therefore prohibited under the Convention.45

In 1992, the Committee on the Elimination of Discrimination against Women extended the general prohibition on sex discrimination to include gender-based violence.46

44 Id. at 670.
45 Ibid.
46 Ibid.
Article 2 of CEDAW states that ‘violence against women’ shall be understood to encompasses; (a) 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. (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

General Recommendation 12 requires States Parties to include information relating to all forms and settings of violence against women in reports and General Recommendation 14, which specifically concerns female circumcision, makes suggestions and recommendations aimed at eradication of violence. General Recommendation No. 19 addresses the Women’s Convention’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 a basis of equality with men”. This recommendation was the first time a human rights treaty or Convention which was officially interpreted to prohibit violence against women. The recommendation made clear that domestic violence was included.

47 Supra note 33 at xivii.
48 Supra note 9.
In 1994, the Committee on the Elimination of Discrimination Against Women found that violence against women within families constituted a violation of the “right to non-discrimination against women in all matters relating to marriage and family relations”. It called for criminal penalties and civil remedies in domestic violence cases; outlawing the ‘defence of family honour’ as a justification for assault or murder; services to ensure the safety of victims of family violence; rehabilitation programmes for perpetrators of domestic violence; and support services for families where incest or sexual abuse had occurred.\textsuperscript{49}

The Committee subsequently described the high incidence of teenage pregnancy in Belize, which is linked to a lack of adequate family planning information and contraceptive use; it also expressed concern that schools are free to expel girls because of pregnancy, and that only a few allow girls to continue their education after pregnancy (1999). It ruled that in Chile, deep-rooted social and cultural prejudices hold back the achievement of equality for women, it expressed concern at high rates of teenage pregnancy, which is linked to sexual violence; and it urges the government to revoke laws imposing criminal penalties on women who undergo abortions and requiring health professionals to report them (1999).\textsuperscript{50}

On December 10, 1999, Human Rights Day, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women was opened for signature, ratification and accession. As on March 28, 2000, 33 countries had signed the protocol and some had started parliamentary procedures

\textsuperscript{49} Supra note 11.
\textsuperscript{50} Ibid.
required before ratification, 10 ratifications were needed for the protocol to enter into force. The Optional Protocol is a legal instrument that will enable victims of gender discrimination to submit complaints to the Committee on the Elimination of Discrimination Against Women. By accepting the Protocol, a State would recognize the Committee’s competence to receive and consider complaints from individuals or groups of individuals within its jurisdiction in cases where they have exhausted domestic remedies.\(^{51}\)

The Optional Protocol also enables the Committee to initiate inquiries into situations of grave or systematic violations of women’s rights. Although the Protocol allows States upon ratification or accession to declare that they do not accept the inquiry procedure, it explicitly provides that no reservations may be extended to its terms. Upon its entry into force, the protocol will put the Convention on equal footing with other human rights instruments that have individual complaints procedures, such as the International Covenant on Civil and Political Rights.\(^{52}\)

(i) Implementation of CEDAW by Government of India

Four-pronged strategies have been adopted to address violence, i.e., (a) legislative action (b) training and awareness (c) support services, like crisis intervention and rehabilitation centres, crimes against women (CAW) cells, poverty alleviation programmes, education of girls, proactive efforts of the enforcement machinery with participation of Non Governmental Organisations (NGOs) and (d) actions at the social level such as NGOs generating public

\(^{51}\) Supra note 11.

\(^{52}\) Ibid.
opinion on law enforcement, women’s self-help groups, gender-awareness weeks, etc.\textsuperscript{53}

Progress on combating violence against women has been made on the legal front with the enactment of The Domestic Violence Act, 2005, proposed amendment of the Immoral Traffic Prevention Act, a draft bill on Sexual Harassment at the Workplace and an amendment in 2003 to the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PNDT Act). The National Commission of Women (NCW), the Ministry of Women and Child Development (MOWCD) and the Parliamentary Committee on Empowerment of Women have reviewed various laws and recommended amendments to promote gender equality.\textsuperscript{54}

All-women police stations have been set up in 14 States. Help-lines have been set up in police stations. We have Voluntary Action Bureaus and Family Counseling Centers to provide counseling and rehabilitative services to women and children. Some Family Courts and Fast Track Courts are exclusively devoted to addressing crime against women (CAW). Gender sensitization of enforcement agencies especially the police and the judiciary is being imparted periodically.

The National Policy for the Empowerment of Women, 2001 commits to address all forms of violence against women, physical and mental, at domestic and societal levels and to create and

\textsuperscript{53} Supra note 39.
\textsuperscript{54} Ibid.
strengthen existing institutions and mechanisms to prevent such violence.\textsuperscript{55}

National and State Governments, United Nations agencies, Non Governmental Organisations, religious leaders and the corporate sector have come together in an advocacy coalition to prevent the incidence of pre-natal sex selection. Sensitization has been undertaken of medical officers and health functionaries responsible for implementing the PNDT Act. Grappling with the ever-worsening problem of uneven sex ratio, four Northern states- Punjab, Haryana, Himachal, Uttarakhand and UT Chandigarh will form a cooperative committee to combat the menace of female foeticide jointly.\textsuperscript{56} Sex ratio in the age group of zero to six years of age, which was 851 in the year 2001 has been improved to 924 in the year 2008 in Himachal Pradesh State. Pre-natal tests have been completely banned in the State of Himachal Pradesh and reward of Rs. 10,000 is fixed for any person imparting information about the same.\textsuperscript{57}

The Government has formed a Special Cell to fight female foeticide, acting as a watchdog in Punjab, Haryana, Gujarat, Himachal Pradesh and Delhi. The ministry of Family Welfare has registered 387 cases of sex selection across the country as of 31 May 2006.\textsuperscript{58}

The Government has adopted several strategies to address the problem of trafficking- law enforcement measures, income generation schemes, educational opportunities, rescue and rehabilitation, special schemes such as Swadhar, etc. A National

\textsuperscript{55} Ibid.
\textsuperscript{56} The Tribune, July 26, 2009 at 9.
\textsuperscript{57} The Tribune, July 26, 2009 at 9
\textsuperscript{58} Supra note 47.
Plan of Action has been drawn up to combat trafficking in girl children. National Human Rights Commission, the Ministry of Women and Child Development (MOWCD), Institute of Social Sciences and UNIFEM undertook a path breaking action research on this multi layered and multi dimensional problem. International Human Rights Organisation Breakthrough, the multimedia Bell Bajao campaign aims to combat the incident of domestic violence.\(^59\)

Women’s groups and their networks and Non Governmental Organisations (NGOs) have been instrumental in spearheading initiatives towards combating gender- based violence. Action research, lobbying for law reform, legal literacy training, nari adalats, mahila panchayats, shelters, counseling and 16 days of activism campaigns have been the highlights of their efforts.\(^60\)

In order to facilitate better tracking of on-going work in different States with regard to work on violence against women a consultant will be placed at the Ministry of Women and Child Development (MWCD) to compile information so as to facilitate a more coordinated response from MWCD and better reporting on the issue to the CEDAW Committee. The Consultant will be hired for a period of 6 months starting from \textbf{15 June 2009}.\(^61\)

\section*{(ii) Implementation of CEDAW by the Judiciary}

Though CEDAW has not been incorporated, the judiciary and its proactive role have paved the way to use the principles of the treaty in many judgements. The Supreme Court in Vishaka’s case\(^62\)

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\(^{59}\) Ibid.  
\(^{60}\) www.wcd.nic.in accessed on 25.06.2009.  
\(^{61}\) Ibid.  
\(^{62}\) AIR 1997 SC 3011.
has held that any international Convention, not inconsistent with the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content to promote the object of the constitutional guarantee. This decision thus enabled women to invoke the provisions of the international treaties its enforcement. In this case, Supreme Court has laid down the guidelines for combating sexual harassment and while doing so it has adopted the definition of sexual harassment from General Recommendation 19 of the Convention. In Gita Hariharan case, the Supreme Court dealing with the rights of woman to be a guardian for the minor child, the principles of the Convention have been applied to hold the provisions of the Hindu Guardianship and Minority Act, 1956, as being discriminatory. In Gaurav Jain’s case, the Supreme Court dealing with women in prostitution, has reiterated the principles of CEDAW and has acknowledged that human rights for women including girl child are inalienable, integral and indivisible part of the universal human rights. In Apparel Export Promotion Council case, the Supreme Court, dealing with sexual harassment, has recognized that the international instruments cast an obligation on the Indian State to gender sensitize its laws and the Courts are under obligation to see that the message of the international instruments is not allowed to be drowned. The Courts are under an obligation to give due regard to International Conventions and Norms for constructing domestic laws more so when there is no inconsistency between them and there is a void in the domestic law.

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63 AIR 1999 SC 1149.  
64 AIR 1997 SC 3021.  
65 AIR 1999 SC 625.
In C. Masilamami Mudliar’s case\textsuperscript{66} the Supreme Court, dealing with the property rights for women, has held that the personal laws, derived from scriptures, conferring inferior status on women is anathema to equality. The Court has called upon the State to eliminate obstacles, prohibit all gender-based discriminations as mandated by Articles 14 and 15 of the Constitution of India. By operation of Article 2(f) and other related Articles of CEDAW the State should take all appropriate measures including legislation to modify or abolish gender based discrimination in existing laws, regulations, customs and practices which constitute discrimination against women. In fact in Valsamma Paul’s case,\textsuperscript{67} the Supreme Court has observed that though the Government of India kept its reservations on Articles 5(a), 16(1), 16(2) and 29 of the CEDAW, they bear little consequence in view of the fundamental rights in Article 15(1) and (3) and Article 21 and Directive Principles of the Constitution. The Supreme Court in John Vallamattom’s case\textsuperscript{68} has once again reiterated the need to frame a Common Civil Code as per Article 44 of the Constitution of India, which will help in removing the contradictions based on ideologies.

\textbf{2.6 United Nations Conference Documents}

United Nations Conference documents address the issue of domestic violence. They are widely recognized as consensus documents—that is, documents that reflect an international consensus on the State of International law. While they are not legally enforceable, but they are signposts of the direction in which

\textsuperscript{66} AIR 1996 SC 1697.  
\textsuperscript{67} AIR 1996 SC 1011.  
\textsuperscript{68} AIR SC 2003 2902.
international human rights law is developing and should influence States that have accepted a commitment of progressive development toward enhanced respect for human rights in their international conduct and domestic law.69

The Report of the World Conference of the United Nations Decade for Women:70 Equality, Development and Peace, Copenhagen, was the first time domestic violence was explicitly mentioned in an official document of the United Nations. Domestic violence is referred to several times in the document. The legislative measures section 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.

(i) The First World Conference on Women, Mexico, 1975

Resolution adopted by the General Assembly of the United Nations concerning the World Conference on International Women’s Year, 1975. The first World Conference on the status of women was convened in Mexico City to coincide with the 1975 International Women’s year, observed to remind the international community that discrimination against women continued to be a persistent problem in much of the world.71

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The First International Conference on Women took place in Mexico in 1975, under the title “Equality, Development and Peace”. One of the conclusions of this conference was that women should and could contribute to the progress of their country. In one word, women were recognized as a factor of development. Later on, a new step was taken, after the decision of the Member States of the United Nations to recognize the necessity not only of the full participation of women in the development process but also to guarantee them the enjoyment of this development. They were, from now on, the factor and the beneficiary of that development.\textsuperscript{72}

The conference, along with the United Nations Decade for Women (1976-1985) proclaimed by the General Assembly five months later at the urging of the conference, launched a new era in global efforts to promote the advancement of women by opening a worldwide dialogue on gender equality. A process was set in motion – a process of learning – that would involve deliberation, negotiation, setting objectives, identifying obstacles and reviewing the progress made.\textsuperscript{73}

The Mexico City Conference was called for by the United Nations General Assembly to focus international attention on the need to develop future orientation goals, effective strategies and plans of action for the advancement of women. To this end, the General Assembly identified three key objectives that would become the basis for the work of the United Nations on behalf of women:

- Full gender equality and the elimination of gender discrimination;

\textsuperscript{72} Murlidhar C. Bhandare, \textit{The World of Gender Justice}, 114 (1999).
\textsuperscript{73} \textit{Supra} note 71.
• The integration and full participation of women in development;

• An increased contribution by women in the strengthening of world peace.\textsuperscript{74}

The conference responded by adopting a World Plan of Action. The Plan of Action fixed minimum targets, to be met by 1980, that focused on securing equal access for women to resources such as education, employment opportunities, political participation, health services, housing, nutrition and family planning.\textsuperscript{75}

This approach marked a change, which had started to take shape in the early 1970s, in the way that women were perceived. Whereas previously women had been seen as passive recipients of support and assistance, they were now viewed as full and equal partners with men, with equal rights to resources and opportunities.\textsuperscript{76}

The Conference called upon governments to formulate natural strategies and identify targets and priorities in their effort to promote the equal participation of women. By the end of the United Nations Decade for Women, 127 Member States had responded by establishing some form of national machinery, institutions dealing with the promotion of policy, research and programs aimed at women’s advancement and participation in development.\textsuperscript{77}

Declaration of Mexico on the Equality of Women and their contribution to Development and Peace, 1975:

The World Conference of the International Women’s Year,
Recognizing the women of the entire world, whatever differences exist between them, share the painful experience of receiving or having received unequal treatment, and that as their awareness of this phenomenon increases they will become natural allies in the struggle against any form of oppression, such as is practiced under colonialism, neo-colonialism, zionism, racial discrimination and apartheid, thereby constituting an enormous revolutionary potential for economic and social change in the world today.\textsuperscript{78}

Recognising also the urgency of improving the status of women and finding more effective methods and strategies which will enable them to have the same opportunities as men to participate actively in the development of their countries and to contribute to the attainment of world peace.

Women have a vital role to play in the promotion of peace in all spheres of life: in the family, the community, the nations and the world. As such, women must participate equally with men in the decision-making processes which help to promote peace at all levels.\textsuperscript{79}

(ii) The Third World Conference on Women, Nairobi, Kenya, 1985

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

(iii) The Second World Conference on Human Rights

The final conference document from ‘Second World Conference on Human Rights’ held in Vienna in June, 1993 was the Vienna Declaration & Programme of Action, called for full and equal participation of women in all aspects of public life.

The World Conference on Human Rights declared human rights to be a universal norm, independent of the standards of individual States. The Vienna Declaration emphasizes that the rights of women and girls are “an inalienable, integral and indivisible part of human rights,” requiring special attention as part of all human rights activities.

The conference urged that increased priority be given to eradicating all forms of discrimination on grounds of sex, to ensuring women’s full and equal participation in political, civil, economic, social and cultural life, and to ending all forms of gender-based violence. Countries agreed that women’s enjoyment of rights – including equal access to resources – is both an end in itself and essential to their empowerment, to social justice, and to overall social and economic development.

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82 Supra note 13.
83 Ibid.
The Vienna Declaration also affirms that women should enjoy the highest standard of physical and mental health throughout their life span. It reaffirms the principle of equality between men and women and the right to equal access to all levels of education. And it acknowledges women's right to accessible and adequate health care and the widest range of family planning methods and services.84

(iv) Fourth World Conference on Women, Beijing, 1995

Another landmark event in efforts to achieve full equality for women was the Fourth World Conference on Women. The Platform for Action 3 adopted by Fourth World Conference on Women (FWCW) affirms that women's human rights are inalienable, universal indivisible and interdependent. It puts forth the principle that rights for all must be defended in order that rights for any are preserved. It calls on all governments, organizations and individuals to promote and protect the human rights of women, through the full implementation of all relevant human rights instruments, especially the Convention on the Elimination of All Forms of Discrimination Against Women, and to work to ensure that equality of the sexes and non-discrimination based on gender exist both in the law and in practice.85

Violence against women, including domestic violence, was a major focus at the 1995 Fourth World Conference on Women in Beijing, China. 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

84 Ibid.
85 Ibid.
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 should take to confront and combat violence against women, including strengthening legal systems’ response to domestic violence.86

Five years later, 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 specific87

**Obstacles:** Women continue to be victims of various forms 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, where appropriate, 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

86 **Supra** note 9.
87 **Ibid.**
practices harmful to women, non-spousal violence and violence related to exploitation. In many countries, a coordinated multidisciplinary approach to responding 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.

(a) As a matter of priority, review and revise legislation were appropriate, with a view to introducing 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 redress 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.  

2.7 Other United Nations Conference Documents Address the Issue of Domestic Violence

The 1994 International Conference on Population and Development recognized that empowering women and improving their status are important ends in themselves and essential for achieving sustainable development. The International Conference on Population and Development Programme of Action 2 affirmed that universally recognized human rights standards apply to all aspects of population programmes.

The Programme of Action from the International Conference on Population and Development, 1994 (ICPD) in Cairo, Egypt sets out the context and content of reproductive rights. The reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic rights of all couples and individual to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the

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88 Ibid.
highest standard of sexual and reproductive health. It also includes their right to make decision concerning reproduction free of discrimination, coercion and violence as expressed in human rights documents.89

(i) Five Year Review

The consensus documents of the International Conference on Population and Development and other Conferences are intended to lead to action. Five-year reviews have assessed progress towards the agreed goals, identified obstacles and set new benchmarks.90

The International Conference on Population and Development+5 (ICPD+5), follow up, for example, took place in 1998 and 1999 in a service of events culminating in a special session of the General Assembly. The special session adopted a document on key actions for the further implementation of the International Conference on Population and Development (ICPD) programme of action.91

The special session called on governments to respect, protect and promote the human rights of women and girls – particularly freedom from coercion, discrimination and violence, including harmful practices and sexual exploitation – by developing, implementing and effectively enforcing gender sensitive policies and legislation. It called for intensified action on reproductive and sexual health; maternal morality; the reproductive health needs of adolescents; reducing abortion and addressing the health

90 Supra note 13.
91 Ibid.
consequences of unsafe abortion; prevention of HIV/AIDS, gender issues and education.92

The Durban Declaration and Program of Action from the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and 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 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 relationship.93

2.8 Declaration on the Elimination of Violence Against Women, 1993

In 1993, the United Nations General Assembly adopted the Declaration on the Elimination of Violence Against Women (DEVAW). This landmark document was a result of efforts of the United Nations Commission on the Status of Women (CSW) and the Economic and Social Council (ECOSOC). While the Declaration on the Elimination of Violence Against Women, (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.94

92 Ibid.
93 Ibid.
94 Ibid.
The Declaration on the Elimination of Violence Against Women defines violence against women broadly to include more than just physical aggression.

Violence against women shall be understood to encompass, but not be limited to the following:

(a) Physical, sexual, 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;

(b) Physical, sexual and psychological violence occurring within the general community including rape, sexual abuse, sexual harassment and intimidation at work, in educational institution and elsewhere, trafficking in women and forced prosecution;

(c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.95

The Declaration on the Elimination of Violence Against Women also sets forth the obligations of Governments and Non Governmental Organisations (NGOs) in protecting the human rights of women and girls. These obligations include (a) refraining from engaging in violence against women; (b) preventing, investigating, and appropriately punishing acts of violence against women; (c) developing laws and procedures to create just and effective remedies for women victims of violence and informing women of their rights

95 http://books.google.co.in/books?id, accessed on 28.05.2009.
to these remedies; (d) training law enforcement officials to be sensitive to issues of violence against women; and (e) providing adequate resources for activities related to the elimination of violence against women. The Declaration also calls on governments to promote research, collect data, and compile statistics relating to violence against women.\textsuperscript{95}

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 both in “private or public life”.\textsuperscript{97}

2.9 The Special Rapporteur on Violence Against Women

Violence affects the lives of millions of women world-wide, in all socio-economic and educational classes. It cuts across cultural and religious barriers, impeding the right of women to participate fully in society. In view of the alarming growth in number of cases of violence against women throughout the world, the Commission on Human Rights adopted a Resolution, in March 1994, in which it decided to appoint the special rapporteur on violence against women including its causes and consequences. It has a mandate to collect and analyze comprehensive data and to recommend measures aimed at eliminating violence at the international, national and regional level.

\textsuperscript{96} General Assembly Resolution 48/104, 1994.
\textsuperscript{97} Ibid.
In 1994, the Commission on Human Rights appointed Radhika Coomaraswamy, from Sri Lanka, to the position of Special Rapporteur on Violence Against Women, Including Its Causes and Consequences. 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. Rapporteurs are seen as one of the most effective tools within the United Nations to monitor human rights violations. Since taking office in 1994, Ms. Coomaraswamy has issued 28 reports (as of February 2003) on violence against women. The reports focus on many different forms of violence, in many different countries and many include references to domestic violence.

A preliminary report in 1994 by the special rapporteur Ms. Radhika Coomaraswamy, focused on three areas of concern where women are particularly vulnerable, in the family (including domestic violence, traditional practices, infanticide), in the community (including rape, sexual assault, commercialized violence such as trafficking in women labour exploitation, female migrant workers, etc.) and by the State including violence against women in detention as well as violence against women in situation of armed conflict and against refugee women. Governments agreed to adopt and implement national legislation to end violence against women and to work actively to ratify all international agreements that relate to violence against women. They agreed that there should be shelters, legal aid
and other services for girls and women at risk, and counseling and rehabilitation for perpetrators. Governments also pledged to adopt appropriate measures in the field of education to modify the social and cultural patterns of conduct of men and women.98

In 1996, Ms. Coomaraswamy's reports addressed domestic violence at length 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.

Ms. Coomaraswamy's 2001 report to the Preparatory Committee for the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban, Racial Discrimination, Xenophobia and Related Intolerance on the subject of race, gender and violence against women, 27 July 2001,99 describes some of the ways in which race, gender and violence against women intersect and emphasizes that battered women who belong to marginalized groups often confront additional obstacles, such as language barriers or cultural insensitivity, to protecting themselves from violence.

2.10 State Responsibility for Private Acts of Violence

One of the most significant obstacles to overcome in the effort to define domestic violence as a human rights violation was the traditional view that international law is applicable only to governments and their representatives, but not to private actors as in the case of intimate partner assault. In fact, even before the United

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99 (A/CONF. 189/PC. 3/5).
Nations and other institutions explicitly named domestic violence as a human rights violation, there was significant authority that States have a duty to protect individuals from offences by private actors. When the International Covenant on Civil and Political Rights was drafted, it was contemplated that governments had a duty to protect individuals from violations by private citizens. The Human Rights Committee of the United Nations, the European Commission of Human Rights and the European Court of Human Rights have concurred with this view.\textsuperscript{100} 

This human rights law dictates that, although one act of domestic violence may not invoke the protections of international law, a State’s institutionalized inaction in the face of a pervasive domestic violence problem violates its international obligations.\textsuperscript{101} In addition, a State may violate its international legal obligations if it applies its laws in a discriminatory fashion, giving more attention and resources to crimes other than domestic violence. However, Joan Fitzpatrick, in her article, The Use of International Human Rights Norms to Combat Violence Against Women, in Human Rights of Women makes the important point that an equal treatment approach for battered women leaves important issues unaddressed. She emphasizes that domestic violence survivors "operate under pressures not felt by other crime victims." They may not be able to sever ties to their assailants in a way that accommodates the application of general criminal laws. Instead, domestic violence


survivors may require additional services to truly achieve equal treatment.102