4.1 INTRODUCTION

Violence against women is a globally observable fact. Diverse jurisdictions have addressed this issue integrating laws with their cultural background. A comparative analysis of the best practices of these jurisdictions is ideal for a better perceptive of the problem of intimate partner violence. This chapter provides an outline of the global strategies of the United Nations as well as the state obligations under different conventions. The chapter also looks into some of the best practices developed by other countries such as USA and UK, which are recognized by the UN as the model strategy which may be adopted by other states also. The legal regime in the above mentioned countries accommodate an integrated system of different agencies. The occurrence and reporting of violence against women has been considerably reduced due to such apt interventions in these countries. Moreover, the cultural background of violence in these societies resembles the background in India. How these jurisdictions have overcome these hurdles and brought down violence against women to a considerable extent is worth mentioning. This chapter basically interrogates to understand the applicability of such interventions in the Indian societal system.

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4.2 PROTECTION TO WOMEN AGAINST VIOLENCE BY INTERNATIONAL INSTRUMENTS

Globally, women experience varied forms of violence in their life. This issue is addressed from the perspective of human rights. Nearly all countries in the world condemn any form of gender discrimination and inequality. The United Nations (UN) has performed a vital role in adopting the spirit of human rights among nations. UN is an international forum through which states act and address issues which are significant worldwide. The international community under the umbrella of UN has taken many constructive attempts with respect to definite human rights violations. This initiative in the form of international treaties and conventions direct member states to take actions against domestic violence as a discriminative act. The promises undertaken by virtue of treaties are obligatory for the member states and are legally binding. Declarations provide consensus of the states for the advancement of treaties. The Universal Declaration of Human Rights (UDHR) lead to the accomplishment of two legal covenants: The International Covenant on Economic, Social and Cultural Rights (ICESCR) and The International Covenant on Civil and Political Rights (ICCPR) both of which was adopted in 1966 and came into force in 1976. The treaties were instrumental in extending core legal protection and advancement of human rights internationally.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), adopted by UN General Assembly in 1979, was entered

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3 The Convention defines discrimination against women as "...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, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."


5 DR. LALITA SHARMA, INTERNATIONAL HUMAN RIGHTS 22 (Venus Books, 2014).
into force in 1981. This convention provided a dynamic and concrete step towards the protection of women’s rights globally. This basically establishes a strategy to end gender based discrimination. States are hereby obliged to implement adequate measures for the purpose of eliminating custom and its gender based prejudices. It is obligatory on the ratifying states to enshrine equality in gender in their respective state legislations.

The United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) was established to monitor observance of CEDAW by member states. It comprises of 23 experts serving in individual capacities for a term of four years. Governments are required to report every five years on their progress toward full compliance with the convention. This committee has provided guidelines to the states for submission of report. The Convention is implemented by means of reports by member states. The initial reports submitted in 1982 are detailed and the subsequent reports are used in an updating nature. The committee in addition to filing of reports is also entitled to make suggestions and recommendations. With reference to the global issue of violence against women as a discriminatory practice was addressed in General Recommendation No. 12 which called upon the states to report on the actions taken to address the issue. The committee has held 53 sessions until 2012 and during each of its sessions it heard the reports adhering to the progress and implementation of the principles of CEDAW. The states are further required to report the

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6 Article 29(e), CEDAW, 1979.
7 Article 6, CEDAW, 1979.
8 Article 22, CEDAW, 1979.
11 Para 6, General Recommendation 19 UN Committee on CEDAW, 1992.
12 SHARMA supra note 5 at 260.
progress with respect to implementing the CEDAW obligations\textsuperscript{13}. The state parties are obliged to submit the report only once in four years. However, the committee can request a report before the stipulated period.

4.2.1 HUMAN RIGHTS RESPONSES OF UNITED NATIONS

The growing attention to VAW as a form of discrimination became prominent due to grass root effort of various organizations, movements and NGOs across the world. It became the concern of the international community through different strategies of UN. The statistical study conducted by the UN across the world revealed that among the different forms of VAW, women are more vulnerable to violence by her intimate partner rather than the one inflicted by a stranger\textsuperscript{14}.

Prohibition of domestic violence, being a systemic form of VAW, is a developing norm of international law as a human right violation which is largely initiated by the UN. It commences from the fundamental norm that if it amount to violation of an international human right, the states must have a corresponding duty to prevent and protect such a violation. It further proceeds with another synonymous principle that if the harm inflicted upon the victim falls within the purview of international human rights, then the malfunction of the state to assist the victim ought to fall within the state’s responsibility as well. United Nations, based on the theory of non coercive state compliance, indirectly compels the state parties to implement laws in accordance with international standards by stipulating norms that defines rights and corresponding obligations.

\begin{footnotesize}
\textsuperscript{13} Article 18, CEDAW, 1979.
\textsuperscript{14} United Nations, Facts and figures on domestic violence (10 Dec., 2016, 12. 45 PM)
\end{footnotesize}
Gender equality as a human right is present in its primitive form in the early Universal Declaration of Human Rights (UDHR)\textsuperscript{15}. Being a declaration than a treaty, UDHR constitutes a basic framework of customary international law which consists of mandatory norms applicable to all nations. The provisions of UDHR did not specifically articulate gender based violence and discrimination, but it can be taken as a catalyst to the development of other instruments for protecting women from all forms of discrimination. The UDHR was followed by International Covenant on Civil and Political Rights (ICCPR)\textsuperscript{16} and International Covenant on Economic, Social and Cultural Rights (ICESCR)\textsuperscript{17}. ICESCR recognized the inherent right to life of an individual which need to be legally enforceable\textsuperscript{18}. It is stated as a supreme right from which derogation is not permissible. Hence, the covenant requires the state parties to implement constructive measures in their respective territories. It recognizes the universal right to enjoyment of the utmost achievable standard of physical and mental health\textsuperscript{19}. Among other rights relating to individual liberties, the covenant mandates right of marriage\textsuperscript{20}. Marriage as an institution is recognized as the fundamental unit of the society and mandates that paramount protection need to be accorded to the family\textsuperscript{21}.

International Covenant on Civil and Political Rights (ICCPR) was drawn upon the principles laid down in the Charter of the United Nations to recognize intrinsic dignity and inalienable rights of all persons\textsuperscript{22}. Each state

\textsuperscript{15} Adopted 10 December 1948 by UNGA Res 217 A(III).
\textsuperscript{16} Adopted 16 December 1966, came into force 23 March 1976.
\textsuperscript{17} Adopted 16 December 1966, came into force 3 January 1976.
\textsuperscript{18} Article 6, ICESCR, 1976.
\textsuperscript{19} Article 12, ICESCR, 1976.
\textsuperscript{20} Article 10, ICESCR, 1976.
\textsuperscript{21} Article 10(1), ICESCR, 1976.
\textsuperscript{22} Preamble, ICCPR, 1976.
party undertakes to respect all individuals within their territory without any
distinction based on gender, nationality, religion and so on. The member
starts also undertake to ensure an effective remedy in their respective
jurisdiction. Gender equality is also ensured that there are equal rights of
enjoyment of civil and political rights as a subject matter of the covenant.
The family being a natural and elemental unit becomes entitled to protection
by the society as well as the state. The covenant also emphasizes upon the
right to marry, requirement of full consent of marriage and calls upon the
states to safeguard and ensure the rights of parties to marriage.
Accordingly, ICCPR and ICESCR expressed the inherent human rights of
dignity and equality in the domestic environment with respect to family.

ICCPR also envisaged the establishment of Human Rights Committee as a
monitoring body on compliance by the states. The committee comprises of
18 members who have a recognized competence in the field of human
rights. The reporting of the committee is the main procedural component of
the implementation. The state parties undertake upon submission of reports
on the strategies adopted to implement the covenant. The reports are
detailed and discussed with respect to the effective steps taken to ensure
observance of human rights in the domestic law with special reference to

23 Article 2, ICCPR, 1976.
26 Article 23(1), ICCPR, 1976.
27 Article 23(2), ICCPR, 1976.
29 Article 23(4), ICCPR, 1976.
30 Article 28, ICCPR, 1976.
31 Article 28(1) ICCPR, 1976.
32 Article 28(2), ICCPR, 1976.
33 YOGESH TYAGI, THE UN HUMAN RIGHTS COMMITTEE 151(Cambridge, 2011).
34 Article 40, ICCPR, 1976.
women\textsuperscript{35}. The UN General Assembly urges the member states to provide adequate follow up of the observation and final comments upon the reports\textsuperscript{36}.

Convention on consent to marriage, minimum age for marriage and registration of marriages, 1962 by UN was an initiative to address the issues relating to the status of women upon marriage. The convention states that man and woman have equal rights during marriage as well as upon its dissolution\textsuperscript{37}. It further emphasis upon the requirement of free consent of the contracting parties to marriages\textsuperscript{38}. The states parties are called upon to fix the minimum age for marriages and any marriage without satisfying this requirement shall be rendered void\textsuperscript{39}.

The call of the international community for specific recognition of women’s rights has resulted in the progress of many significant instruments in international law. The significant among these instruments is CEDAW and the committee which is constituted to monitor the implementation of the same. Violence against women in the family environment was not the central theme of CEDAW\textsuperscript{40} since its commencement. It came to be recognized into the texts gradually. Earlier to the implementation of CEDAW, UN proclaimed 1975 as the International Women’s Year and the period of 1975-85 as UN Decade for Women\textsuperscript{41}. During this period, three

\textsuperscript{35} Tyagi \textit{supra} note 33 at p. 239.  
\textsuperscript{36} GA Res. 52/118 (12 December 1997), para. 17.  
\textsuperscript{37} Preamble, Convention On Consent To Marriage, Minimum Age For Marriage And Registration Of Marriage, 1962.  
\textsuperscript{38} \textit{Ibid}.  
\textsuperscript{39} Article 2, Convention On Consent To Marriage, Minimum Age For Marriage And Registration Of Marriage, 1962.  
\textsuperscript{40} When CEDAW was adopted in 1979, violence was not incorporated as the original text.  
World Conferences on Women took place in Mexico\textsuperscript{42}, Copenhagen\textsuperscript{43} and Nairobi\textsuperscript{44}. The World Plan of Action adopted in the First World Conference on Women was successful in drawing attention of the world to the need to ensure dignity, equality and security of members. The conference did not expressly refer to violence faced by women in the domestic environment as family was considered as a private sphere where the state should refrain from any forms of interference\textsuperscript{45}.

Second World Conference moved one step forward by referring to family violence by adoption of the resolution on ‘battered women and violence in the family’\textsuperscript{46}. It was the Third World Conference that gave more prominence to violence against women as an international concern. Prior to the third conference, UN Economic and Social Council passed a resolution on ‘violence in the family’ in 1984. This laid the foundation for the forthcoming legislative interventions by international jurisprudence. The resolution, even though not mandatory in nature, invited the state parties to enact civil and criminal legislations which can also incorporate providing shelter to victims and called the states to educate the society to curb ‘domestic violence’ more effectively. However, this resolution was instrumental in convening an Expert Group Meeting on Violence in the Family in 1986 which focused on different ways by which women are adversely affected by domestic violence.

\textsuperscript{42} First World Conference on Women in 1975.
\textsuperscript{43} Second World Conference on Women in 1980.
\textsuperscript{44} Third World Conference on Women in 1985.
\textsuperscript{46} Ibid.
The UN report on Violence against Women in the Family released in 1989 was a milestone towards jurisprudence of women’s rights in the international law. The report is considered significant as it described domestic violence as a problem faced by women worldwide by establishing that it is due to the gender inequality prevalent in different societies. The report also analyzed the adverse consequence of violence upon health of women and laid emphasis upon the need of international law to the level of protection of individuals within the family. Thus a new dimension of international law came to be recognized and since then, violence against women in the family has become a matter of concern internationally. Thus a matter which was considered as a ‘private matter’ was brought under the arena of international justice system. Human rights are often considered as international values by the UN and thus it is emphasized to have a universal validity and applicability.

Lack of adequate information and research was identified by the Resolution adopted UN General Assembly in 1990 which also identified the need to exchange information of strategies to deal with the problem considering its peculiar nature. The resolution identified that there is a need for a ‘specialised approach’ taking into account the specialized needs of the victims and diversity of culture. Thus a multi disciplinary approach to tackle the problem was considered as an appropriate strategy. The resolution was followed by the globalization of the problem through exchange of information and research findings between the member states. Finally, in

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47 Article 12 of UDHR, 1948 states that no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. This was often quoted as a defence for any kind of legal interference in matters relating to family.

1992, jurisprudence on violence against women gained thrust with the adoption of General Recommendation 19 by the CEDAW committee. The widest possible definition of violence was incorporated to include all forms of violence and included threats to commit such acts\(^{49}\). The definition has also widened the meaning by defining violence as an act which cannot be distinguished on the basis of the environment in which it occurs\(^{50}\). It also emphasized upon the requirement of more significance to ‘intimate partner violence’ as the statistics across the world identified this as the most occurring form of violence faced by women.

A positive step in the form of a Programme of Action and appointment of Special Rapporteur was the outcome of World Conference on Human Rights in Vienna in 1993. The Vienna Conference affirmed the universality of women’s rights and elimination of violence based on gender. The Conference was instrumental behind the Declaration on the Elimination of Violence against Women (DEVAW) by the General Assembly\(^{51}\). DEVAW has highlighted multi facets of violence such as family violence, community violence and violence that is perpetrated or condoned by the State. The Declaration can be taken as a meritorious step taken by the United Nations as it sets out a sequence of actions adopted by States to prevent and eliminate violence against women across the world. It also prescribes the States that no religion, custom or tradition can be invoked in favour of such practices. Further, DEVAW endorsed the CEDAW Committee

\(^{49}\) Gender-based violence is violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.

\(^{50}\) General Recommendation No. 19, CEDAW 1979.

\(^{51}\) Article 1, DEVAW defines VAW 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 deprivations of liberty, whether occurring in public or in private life.”
recommendations upon the need for an all-inclusive definition of violence against women and commitment by the international community towards its elimination. The fourth World Conference in 1995\textsuperscript{52} expanded the purview of violence by including violence against women perpetrated in times of war. Thus violence which is perpetrated and condoned by State was effectively incorporated into the concept by the fourth Conference.

The year 2000 witnessed the most significant steps towards women’s human rights jurisprudence. Active participation and contribution by individuals who had grievances were ensured by the adoption of Optional Protocol to CEDAW\textsuperscript{53}. Investigative powers were also given to the CEDAW Committee thus enhancing the status of CEDAW amongst the international community\textsuperscript{54}. In the same year, Millennium Declaration was adopted by 189 nations establishing Millennium Development Goals (MDGs)\textsuperscript{55} emphasizing on the need of empowerment of women through education, employment and political participation to curb violence.

Supervision of the implementation of obligations by the state parties is carried out by independent bodies constituted by the UN human rights treaty body system\textsuperscript{56}. The Committee on CEDAW (also referred as Women’s Committee) is thus constituted for monitoring the accomplishment of the convention by state parties and entrusted with certain powers\textsuperscript{57}. The


\textsuperscript{53} Women’s Committee (Optional Protocol to CEDAW, GA res. 54/5, 15 October 1999; entered into force 22 Decemeber, 2000).

\textsuperscript{54} Art.8, OP-CEDAW allows the Committee to undertake confidential inquiries upon grave human rights violations.

\textsuperscript{55} CEDAW, (13 Nov., 2016, 4:45 PM)

\textsuperscript{56} ALICE EDWARDS, VIOLENCE AGAINST WOMEN UNDER INTERNATIONAL HUMAN RIGHTS LAW 88 (Cambridge, 2011).

\textsuperscript{57} Art.18, CEDAW.,1979
Committee has the authority to receive and consider petitions, known as ‘individual communications’, by any person\textsuperscript{58} alleging violation of their rights by the state parties\textsuperscript{59}. In addition to this, the Committee can also conduct fact finding enquiries\textsuperscript{60}. This step is taken in case of grave or systemic violations of human rights.

On hearing the petitions the Committee can take urgent action to avoid irreparable harm being done to the complainant\textsuperscript{61}. Appropriate remedy, such as payment of compensation, is issued in the form of non-binding ‘views’. The CEDAW Committee also developed a strategy of outlining broad spectrum of recommendations in addition to findings\textsuperscript{62}. These recommendations are made with a purpose of improving the state machineries and to avoid repetition of such violations. However, these petitions do not substitute a criminal trial of the actual perpetrator, but effectively recognizes the relevance of human rights. Effectiveness of the findings in human rights jurisprudence may further be attributed to the fact that there are no reservations allowed to the Optional Protocol\textsuperscript{63}.

\textsuperscript{58} The admissibility criteria is that the complainant is a victim of any of the rights in the CEDAW and that all domestic remedies are exhausted.
\textsuperscript{59} CEDAW \textit{supra} note 53.
\textsuperscript{60} Optional Protocol of CEDAW provides an optional procedure to allow Women’s Committee to response when it receives reliable information. The Committee may also carry out country visits for that matter.
\textsuperscript{61} Art.5, OP-CEDAW and Rule 63, CEDAW Rules of Procedure.
\textsuperscript{62} See AT v. Hungary, CEDAW 2/2003 (26 January 2005) which has listed a number of recommendations in the context of individual complaint.
\textsuperscript{63} Art.17, OP-CEDAW. Given effect to the large number of reservations to the parent treaty viz. CEDAW, states agreed that no reservations be allowed to the Optional Protocol.
4.2.2 INTERVENTIONS BY THE CEDAW COMMITTEE

Cases decided by CEDAW Committee under the Optional Protocol\(^{64}\) needs special mention in this regard. The decisions of the CEDAW Committee render a concrete obligation upon its 79 signatories out of which 69 have ratified. These decisions also provide an insight into the human rights perspective of domestic violence. \(A.T. \text{ v. } Hungary\)\(^{65}\) was a case which dealt with the obligation upon the State’s failure to provide protection to the victim of domestic violence. The author, a Hungarian woman, was repeatedly subjected to domestic violence by her husband. The Hungarian law failed to give a protection order to the victim\(^{66}\). The court deprived her exclusive right to the apartment on the ground that her husband had a property based right which cannot be denied. The committee held that the law in Hungary is strongly rooted in gender discrimination and thus violative of right to equality\(^{67}\) and thus do not fulfill the obligation to curb discrimination in marital relationships\(^{68}\). The Committee also instructed Hungary to enact legislation to address domestic and sexual violence that permit victims to apply for protection and exclusion orders against the abuser. In \textit{Geoke v. Austria}\(^{69}\), Geoke was repeatedly a victim of domestic violence by her husband and thus had obtained three expulsion orders and prohibition orders against him. However, a local prosecutor denied detention of the abuser and after two days of his release he killed his wife. Police reports proved that the department failed in providing adequate protection to

\(^{64}\) CEDAW \textit{supra} note 63.
\(^{66}\) As stated in para.6.8, Communication No.: 2/2003, battered individuals have no right to the exclusive use of the jointly owned/leased apartments on grounds of domestic violence.
\(^{67}\) Article 2, CEDAW, 1979.
\(^{68}\) Article 16, CEDAW, 1979.
the victim. This reference highlighted state’s failure in protecting intimate partner violence victims. The committee reminded that the police force is accountable for failure in protecting her life. Emphasizing upon guaranteeing women the right to have equal access to human rights\textsuperscript{70}, it held that Austria need to strengthen its laws on implementation of Federal Act\textsuperscript{71} for the Protection against Violence within the Family.

Upon similar facts in another complaint viz. \textit{Yildrim v. Austria}\textsuperscript{72} the committee reminded that the perpetrator’s rights of presumption of innocence should not supersede the woman’s human rights to life and integrity\textsuperscript{73}.

Physical, psychological and sexual abuse on an intimate partner was addressed by the committee in \textit{Jallow v. Bulgaria}\textsuperscript{74}. In spite of complaints by the victim and social workers, authorities failed to take effective measures on account of insufficient evidence. Communication to the committee was forwarded by the victim’s mother alleging that the Bulgarian authorities have not taken any measure to protect the victim. Upon investigation, the committee concluded that Bulgaria had violated the convention and criticised Bulgaria that its actions are based upon stereotypes on the position of women in marriage\textsuperscript{75}. The Committee further urged Bulgaria to compensate victims for violating their rights under CEDAW. These communications to the committee has brought into light the

\textsuperscript{70} Article 3, CEDAW, 1979.
\textsuperscript{71} Federal Act on Protection against Domestic Violence, 1997.
\textsuperscript{72} CEDAW/C/39/D/6/2005.
\textsuperscript{73} Art. 2(a), CEDAW: States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.
\textsuperscript{74} CEDAW/C/49/D/20/2008.
\textsuperscript{75} Art. 11(2), CEDAW, 1979.
disadvantages of the judicial system of different countries and the international body had successfully reformed these inadequacies through appropriate observations.

4.2.3 INTERNATIONAL STANDARDS ON DOMESTIC VIOLENCE LAWS

The UN highlighted the need to have a legislative goal for all member states to prevent violence against women, brought a ‘report on good practices in legislation on violence against women’ in 2008. It identified the need to take a necessary step for the preparation of a good legislation in consultation with all the stakeholders. Stakeholders were identified as complainants, NGOs, human rights institutions, government departments, judges, health care professionals, advocates, social workers, and experts from other fields such as forensic and counseling experts also. Through this consulting process, an evidence based approach to legislation is called for. An evidence based approach relies upon research based data and centers on causes and implications of violence upon the victim and tries to identify the best legislation through a comparative analysis with other good practices. A human rights perspective is emphasized to assess the existing legislation according to international standards. Viewing that low conviction rates and increase in withdrawal of complaints as a demerit of the legislation, the report expressed its concern that there need to be a thorough revision of the existing system of enforcement of law. The report also highlighted the need

to have an inclusive definition of all forms of violence and further upon the inclusion of marital rape within the boundaries of domestic violence\textsuperscript{78}.

The highlights of the report stand very significant vis-à-vis the legislative framework in India. In comparison with the conviction rates and the reservations of India in compliance with CEDAW on matters relating to religion, the study reveals the major drawbacks of the system. The discriminative personal laws need to be identified as a causal factor for the existing gender bias in the society. There is also a lack of regular monitoring system for the purpose of revision of law specifically upon the law with respect to violence against women. The points of concern with regard to low conviction rates and withdrawal of complaints are also relevant. The first initiative to address domestic violence separately was by the UK and US in the 1970s and 1980s\textsuperscript{79}. In order to develop a good legislative system, it is suggested to study the good practices in these jurisdictions.

4.3 LEGISLATIVE INTERVENTIONS, POLICIES AND PRACTICES ON ‘INTIMATE PARTNER VIOLENCE’: THE UK EXPERIENCE

‘Domestic Violence’ between intimate partners\textsuperscript{80} is given the widest meaning and scope in the legislations and policies of UK. It stated that

“All incident of threatening behaviour, violence or abuse [psychological, physical, sexual, financial or emotional]"

\textsuperscript{78} United Nations, supra note 52 at p. 27.
\textsuperscript{79} Id at p. 3.
between adults who are or have been intimate partners or family members, regardless of gender or sexuality.”81

The definition is inclusive of any act which is intended to threaten the victim which may be emotional, physical, sexual or economic as well82. The definition also caters to parties who were in intimate partnership in the past and ceased to be in such relationship presently and also includes same sex partners within its purview.

At present, there are distinctive branches of civil and criminal law to address domestic violence in UK. In order to assess the law relating to violence among intimate partners in UK, it is necessary to understand the evolution of law to the present from. The law ignored ‘domestic violence’ as a distinctive legal wrong. It was mostly treated as a private matter where there are limitations upon the law to interfere as it would amount to infringement of one’s right to privacy. Earlier, domestic violence was considered as a matrimonial wrong of ‘cruelty’ which entitled the wife to claim divorce83. The only remedy available was to restrain violence which can be claimed only within a suit for divorce. The law regarded violence in marriage as silently acceptable as it can be taken as a matrimonial wrong only when the parties have decided to sever the marital relationship.

81 Ibid.
82 “Domestic violence should be given a broad interpretation and is not restricted to cases of physical violence. It could include making someone fearful of violence or giving rise to a risk of violence. It could include denigration of the victim’s personality, or depriving them of their liberty” as stated in Yemshaw v. London Borough of Hounslow [2011]U.K.S.C. 3.
83 Divorce on such grounds was dependent upon the morality of the wife. If she was proved to be immoral, divorce was not granted.
4.3.1 LEGISLATIVE ADVANCEMENTS IN UK TO ADDRESS VIOLENCE AGAINST WOMEN

The Domestic Violence and Matrimonial Proceedings Act, 1976 was the foremost legislative step in UK to address the issue distinctly\textsuperscript{84}. The Act was mostly restricted to civil remedies rather than imposing sanctions with a deterrent impact. The drawbacks of 1976 legislation paved the way to the Domestic Proceedings and Magistrate Courts Act, 1978. The Act introduced criminal legal interventions by Magistrate’s Courts into the matter. The civil and criminal law contributed by these two legislations supplemented each other by rendering justice to victims\textsuperscript{85}. Further, the Matrimonial Homes Act, 1983 provided ancillary remedies such as divorce, assault and trespass. Thus these three legislations were able to be utilized by women victims and the choice of legislation depended upon the marital status of the woman at the time of filing the case. Mostly the remedies were civil in nature and only very few orders provided criminal sanctions.

The Law Commission's report on Domestic Violence and the Occupation of the Family Home, 1992 lead to the reforms in civil remedies. Repealing Domestic Violence and Matrimonial Proceedings Act, 1976 a new law viz. the Family Law Act, 1996 was enacted to render an effective protection to the victims through civil law and also dealt with matters related to occupation of matrimonial home. This provided a comprehensive remedy through Family Courts, High Courts, County Courts and Family Proceedings

\textsuperscript{84} RAN\textsc{d}AL W. SUMMERS, ALL\textsc{a}N MICHAEL HOFFMAN (Eds), DOMESTIC VIOLENCE: A GLOBAL VIEW 31 (Greenwood Publishing, 2001).
\textsuperscript{85} Id at p. 32.
(Magistrate’s) Courts. Part IV of the Act provided for two kinds of orders viz. non-molestation order\textsuperscript{86} and occupation orders\textsuperscript{87}. These orders may be sought as an independent proceeding. Occupation order obtained under sec. 33(3) of the Act confers upon the applicant not only the right to occupy the matrimonial home, but also the right to prohibit the respondent from entering the premises. The occupation order so obtained may continue for an indefinite period or for such a period as the court may decide\textsuperscript{88}. A former spouse\textsuperscript{89} or even a former cohabitant may also seek similar kind of remedies under the Act\textsuperscript{90}. Thus a well-built framework of law is created for the protection of victims\textsuperscript{91}.

But in most of the cases the woman victim may not opt for an occupation order in the place of residence of their intimate partners. In such cases victims need to be provided a safe place to reside. To assist victims in such instances, Housing (Homeless Persons) Act, 1996 is passed. Assistance with respect to housing is ensured to be provided by the public authorities or housing associations under this Act.

Protection from Harassment Act, 1997 is another source of protection under the civil law. The court is empowered to restrain the respondent from harassment of the victim if it is shown that the respondent is guilty of conduct specified under section 1 of the Act\textsuperscript{92}. The condemned conduct is broadly defined as a conduct amounting to harassment. This gives ample

\textsuperscript{86} Sec. 42, Family Law Act, 1996.
\textsuperscript{87} Sec. 33, Family Law Act, 1996. Similar kind of remedy is extended to former spouses who do not have existing right to occupy the dwelling house. The period is limited to six months, but it is renewable.
\textsuperscript{88} Sec. 33(10), Family Law Act, 1996.
\textsuperscript{89} Sec. 35, Family Law Act, 1996.
\textsuperscript{90} Sec. 36, Family Law Act, 1996.
\textsuperscript{91} "Cohabitants" are defined by sec. 62(1) as a man and a woman who, although not married to each other, are living together as husband and wife: homosexual or lesbian couples are therefore excluded.
\textsuperscript{92} Sec.1(1) states that ‘A person must not pursue a course of conduct- a) which amounts to harassment of another, and b) which he knows or ought to know amounts to harassment of another.’
freedom for the judicial authority to interpret the same. In *Lau v. DPP*[^93] the court defined the meaning of the term ‘course of conduct’ by developing a legal principle. In this case the defendant was physically violent on his partner once and later he verbally abused her in the street. While charging him for the offence, the court held that even though these were two incidents which are not similar in nature, there was nexus between the two in order to construct as ‘a course of conduct’. Thus the term ‘harassment’ was further elaborated to adopt a subjective meaning according to the facts and circumstances of the case.

The offence of harassment is punishable for imprisonment not exceeding six months[^94]. An actual or apprehended harassment entitles the victim with civil remedies also[^95]. The remedies under the Act is not just limited to issuing orders restraining the respondent but even the court can also require payment of compensation from the respondent for harassing the victim[^96]. Damages for anxiety due to anticipated harassment may also be claimed out of the Act[^97]. In order to improve upon victim safety and defendant accountability, specialized domestic violence courts were established in 1999. This system was established with recognition that training is a matter of priority for all those who deal with domestic violence cases[^98]. Thus a professional system was developed through continuous monitoring of the

[^94]: Sec.2 (2), Protection from Harassment Act, 1997.
[^95]: Sec. 3, Protection from Harassment Act, 1997.
[^96]: Sec. 3(1) An actual or apprehended breach of section 1 may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question. (2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.
[^97]: Ibid.
http://webarchive.nationalarchives.gov.uk/20110218135832/rds.homeoffice.gov.uk/rds/pdfs/hors203.pdf
working of these courts. Through these courts more focus is placed on the criminal justice remedies. The research upon the efficacy of these courts has indicated that victim participation has been improved and the system is successful in gaining public confidence.

The Homelessness Act, 2002 was passed superseding the Housing Act, 1997. The main objective of the Act was to provide a better constructive support to the homeless people in the country. The Act may be utilized by the victims of violence too. The legislation is successful in reinforcing the practice of local authorities to women who are survivors of intimate partner violence.

A more emphasis upon the criminal justice remedies may be derived from the legislative reforms since 2004. Domestic Violence, Crimes and Victims Act, 2004 set the beginning stage of better enforcement of laws through the criminal justice system. This was passed to amend Family Law Act, 1996 and the Protection from Harassment Act 1997. Assault was made as an arrestable offence by virtue of these amendments. Compliance of non molestation orders passed by the civil courts was made stricter. The non compliance of these orders invites criminal liability under contempt of court proceedings which is punishable with imprisonment for a period up to 5

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103 Under the Family Law Act, 1996 breach of non molestation order was treated as a civil contempt of court.
years\textsuperscript{104}. Thus an element of deterrence was added on by means of these changes.

\textit{R. v. Khan}\textsuperscript{105} illustrates the merits of the law. The court held that failure to protect a vulnerable child or adult is punishable under sec. 5 of the Domestic Violence, Crime and Victims Act, 2004. The 2004 Act formed a new offence based upon the positive duty of the members of the household to protect them from grave harm. The scope of duty and the conditions for its breach to attract criminal liability was elaborated\textsuperscript{106}. It is extended to a course of violent conduct and would include omissions which resulted in severe physical harm. Thus it is possible to envisage cases of gross negligence on the part of the defendant.

Regarding the risk of domestic violence victims as a priority, The Crown Prosecution Service (CPS) issued its policy in prosecuting in 2005. The policy recognized the security of the victim and their dependants as the first factor to be considered in deciding to prosecute the perpetrator. Basically the policy aims at assisting the police within protocols in dealing with cases of domestic violence. Policy on Prosecuting cases of Domestic Violence, issued by the CPS provides guidance upon prosecution. The two tests which need to be satisfied are the evidential and the public interest test. Adequate evidence need to be there in each case so as to provide a prospect of a conviction upon the charge. If this is fulfilled then the second test, viz. the public interest test is applied. This is determined upon various factors such

\textsuperscript{104} Sec. 42 A, Domestic Violence, Crimes and Victims Act, 2004.
\textsuperscript{105} (2009) 4 All E.R. 544.
\textsuperscript{106} Sec. 5, Domestic Violence, Crimes and Victims Act, 2004.
as seriousness of the crime, use of weapons, injuries of the victim, risk of being attacked in future and so on\textsuperscript{107}.

Crime and Security Act, 2010 was implemented upon the recommendation of \textit{Together We Can End Violence Against Women and Girls} consultation published in March 2009. This law empowers the police officer to take immediate action upon an instance of threatened domestic violence. The alleged perpetrator may be served a notice to vacate the premises immediately\textsuperscript{108}. Hearing upon the notice may be made before the magistrate within 48 hours of serving the notice\textsuperscript{109}. Upon hearing, the magistrate may issue protection order which may last up to 28 days. Thus immediate action can be initiated by the police who could immediately reach the place of complaint and take effective action to prevent fatal consequences of violence.

Coercive or controlling behaviour in an intimate relationship is created as a new offence in Serious Crime Act, 2015 to strengthen law on domestic violence\textsuperscript{110}. The offence is qualified as a continuing one to come within the ambit of this provision. It should be proved as a consequence of substantial adverse effect upon the victim. Thus necessary safeguards are taken against misuse of law. A policy of a multi co-ordinated system known as Clare’s


\textsuperscript{108} Sec. 24 states the power to issue a domestic violence protection notice (1)A member of a police force not below the rank of superintendent (the authorising officer) may issue a domestic violence protection notice (“DVPN”) under this section. (2) A DVPN may be issued to a person (“P”) aged 18 years or over if the authorising officer has reasonable grounds for believing that—(a) P has been violent towards, or has threatened violence towards, an associated person, and (b) the issue of the DVPN is necessary to protect that person from violence or a threat of violence by P.

law\textsuperscript{111} was introduced in 2012. This scheme enables to access and identify whether one’s partner had a history of domestic violence. This is more of a preventive or precautionary system to stop violence against intimate partners.

The remedies provided under each of these legislations are different from each other. Thus a holistic approach to the issue is taken by the UK legislature through prevention and deterrence through appropriate law. Attempt made by the legislators to criminalise marital rape deserves special mention. It is relevant to understand the same as this can be the best model for India to follow as the justification for exemption of marital rape from criminalization is based on the same theory of consent that is implied by virtue of marriage.

\textbf{4.3.2 UK LAWS ON MARITAL RAPE: A PARADIGM SHIFT FROM ‘IMPLIED CONSENT TO CRIMINALISATION}

It is apt to examine the advances of legislations in UK addressing marital rape as the shift was gradual from ‘implied consent’ leading to criminalization. The theory of implied consent justifying that marital rape is not an offence as the consent to the same is implied through the fact of marriage. The evolution of this theory in UK can be traced back to 1600s in the writings of Sir Hale, the Chief Justice of England. He propounded the theory as follows:

“The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given herself in kind unto the husband, whom she cannot retract.”

This expression was carried and applied by courts since 1736 on all instances of violence perpetrated by husband upon wife. Some concern in applying this doctrine was raised by the court in *R v. Clarence* but the court was hesitant to reject it as a whole. *R v Clarke* that Byrne J held that the husband’s immunity concludes as soon as the wife becomes no longer bound to cohabit with the defendant. But even Byrne J had to recognise that:

“As a general proposition it can be stated that a husband cannot be guilty of rape on his wife. No doubt, the reason for that is that on marriage the wife consents to the husband’s exercising the marital right of intercourse during such time as the ordinary relations created by the marriage contract subsist between them”.

This proposition was heavily relied in many cases such as *R v. Miller* and *R v. Kowalski* where the courts held that a husband can no longer be guilty of rape on his spouse. This theory of the 17th century was extended even in 1991 in the decision of *R v. J* where it was further justified upon the statutory interpretation of the definition of rape under Sexual Offences (Amendment) Act, 1976. In this case an interpretation lead to the conclusion

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113 (1888) 22 Q.B.D. 23.
that the intention of the parliament was to exempt ‘marital rape’. Rape is defined thus\(^{118}\) ‘a man commits rape if he has unlawful sexual intercourse with a woman who at the time of the intercourse does not consent to it.’ The court interpreted the word ‘unlawful’ as ‘illicit’ and thus effectively read the exception to marital rape into it.

But the position of law to exempt marital rape was not uniform. The courts also have expressed its disagreement in other instances such as \(R v.\) \(Clarke\)^{119} where the court was meaningfully silent upon the legality of marital rape. Further, it was in 1974 that legal separation theory was extended as a revocation of consent to marital intercourse in \(R v.\) \(O’Brien\)^{120}. Finally in \(R v.\) \(R\)^{121} marital rape was criminalized in UK. The House of Lords unanimously maintained a strong position that ‘it cannot be seriously maintained that by marriage a wife submits herself irrevocably to sexual intercourse in all circumstances’. It was held that the exemption to marital rape is no longer form part of English law. Following this progressive judgment the Parliament enacted the Criminal Justice and Public Order Act of 1994 eliminating marital rape as an exemption altogether. Thus the judiciary took the initiative to bring the law to the changed circumstances which was further supported by legislative enactment. These reforms in the jurisprudence clearly reflect the flaws of implied consent theory which is blindly followed as a justification for exempting marital rape as an offence.

Thus the legislative advancements and judicial construction in UK shows commitment to end violence against women. In \(Yemshaw v.\) \(London\)

\(^{118}\) Sec. 1(1) of the Sexual Offences (Amendment) Act, 1976.
\(^{119}\) [1949] 2 All E.R. 448.
\(^{120}\) [1974] 3 All E.R. 663.
\(^{121}\) [1991] 3 W.L.R. 767.
‘domestic violence’ was given a broad interpretation. The appellant challenged the denial of housing facility from the local authority on the ground that there exists only emotional abuse, that her husband had not been physically violent to her in any instance. The Council was of the view that she cannot be treated as a victim of domestic violence as there existed only emotional abuse. However, the UKSC gave a broad interpretation to ‘domestic violence’ to include emotional abuse that creates a reasonable apprehension of violence. It includes deprival of victim’s personality or denigration of the integrity of the victim. Thus violence is interpreted to include any act that is affecting the personal liberty of the victim.

4.4 LEGISLATIVE INTERVENTIONS, POLICIES AND PRACTICES ON ‘INTIMATE PARTNER VIOLENCE’: THE US EXPERIENCE

Intimate Partner Violence is prevalent across the range of varied demographics of culture and economy. Government based research sources reveal that 20-25% of women in US have experienced domestic violence from her intimate partners at least once in their lifetime. The latest statistics reported in 2012 noted that the overall rate of IPV in US declined by 64%. This development leads into the examination of US laws that has strategically dealt with IPV in a successful manner.

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125 Ibid.
National Institute of Justice, a research and evaluation agency of the government of US defines ‘intimate partner violence’ as a kind of domestic violence against a particular category of population. It is elaborated as a physical, sexual, or psychological harm by a current or former intimate partner or spouse. The term intimate partner or spouse is wider as it includes both heterosexual and homosexual couples. Domestic violence is considered as a phenomenon that has its deep cultural background in the culture of the society. Predominance of domestic violence in the western culture is also not devoid of such an influence. US culture is to remain resistant to view family as a vulnerable place for conflict among individuals. The victims of such violence are seen by the public as those responsible for violence. A bird’s eye view of the history of western culture reveals that the society has extended its strong hands in support of subordinating women by their husbands within their intimate relationships. In some parts of Latin America, killing a wife upon indiscretion was acceptable, even though the same privilege was not extended to women.

The United States are not a signatory to the CEDAW. In 2010, the administration of US has strongly supported its ratification and has included CEDAW as one of the multilateral treaties it has identified as a priority. However, in 1994, same year of DEVAW, Organisation of American States

127 Ibid.
(OAS) adopted Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, which came to be known as the Convention of Belem Do Para. This is drawn upon recognizing human rights enshrined in the American Declaration of the Rights and Duties of Man and the Universal Declaration of Human Rights. In principle, the convention is drawn upon the fundamentals of CEDAW as the preamble affirms that violence against women is a violation of human rights, particularly human dignity, and places the basic factor that leads to the same upon gender inequality. The convention describes 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 the private sphere. It includes physical, sexual and psychological violence that occurs within the family or domestic unit or within any other interpersonal relationship, whether or not the perpetrator shares or has shared the same residence with the woman, including, among others, rape, battery and sexual abuse. The parties to the convention agrees to provide fair and effective legal measures for protection of women under such circumstances and further promises to adopt such other measures as required. The initiative by the convention upon matters of customary practices in order to bring the terms of commitment into reality is worth mentioning. It undertakes to modify the existing customary practices which sustain violence against

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132 Preamble, Convention of Belem Do Para.
133 Article 5, Convention of Belem Do Para states that every woman is entitled to the free and full exercise of her civil, political, economic, social and cultural rights, and may rely on the full protection of those rights as embodied in regional and international instruments on human rights. The States Parties recognize that violence against women prevents and nullifies the exercise of these rights.
134 Article 4 (a) & (b).
135 Ibid.
136 Article 1, Convention of Belem Do Para.
137 Article 2, Convention of Belem Do Para.
138 Article 7 (f), Convention of Belem Do Para.
139 Article 7 (h), Convention of Belem Do Para.
women in any form. This is a unique feature of the US convention where it is expressly mention to repeal or amend laws including customary practices to end violence against women.

Follow-up Mechanism to the Belém do Pará Convention, an independent consensus based peer evaluation mechanism was constituted by the member states in 2004. It monitors the advancement of the state parties in compliance with the convention. The report on the convention, in 2012, stated that the increase in the number of specialized agencies constituted under different state legislations is appreciable. The committee further emphasized upon the need to have the existing agencies to be mot specialized in violence against women rather than specializing in family counseling and other matters.

4.4.1 LEGISLATIVE FRAMEWORK

Privacy of the family and male supremacy were the key factors governing the legal response in US. Family was viewed as the unit that falls outside the legitimate control of the state before the influence of feminist consciousness in US. Male violence against women is recognized as a pervasive reflection of patriarchy. Husband was considered as the master of all affairs of the household and he was entitlement for chastisement of his

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140 Article 7 (e), Convention of Belem Do Para.
141 Article 8(b) also undertakes to modify social and cultural patterns of conduct of men and women.
144 Id at p.20.
145 Bradley v. State 1 Miss. (1 Walker) 156, 158 (1824).
spouse\textsuperscript{146}. For the purpose of chastisement he was entitled to use reasonable means which was not regarded as ‘violence’ in olden years.

Feminist movement in the 1970s had brought a complete reformation of the thinking of the society\textsuperscript{147}. Accordingly ‘domestic violence’ began to be considered as a specific phenomenon. Period between 1977 and 1987 witnessed significant changes in the existing legislations and creation of new laws specifically designed to provide government and legal support to women who are victims of domestic violence from intimate partners.

US have more localized state laws than federal law. The federal government of US plays a role of motivating the states to address violence against women. Family Violence Prevention and Services Act, 1984 and Victims of Crime Act, 1984 were the two federal laws that were primarily enacted for providing financial support for the state programs. Family Violence Prevention and Services Act, 1984 was the first federal response to domestic violence. This was enacted to provide funding for service providers to victims. Even though emergency services to victims are essential, the enactment relies upon the principle of prevention of violence in the beginning itself. The Act is executed by the US Department of Health and Human Services. Emergency services such as shelters, counseling and advocacy serve as both primary and secondary means of ending domestic violence\textsuperscript{148}. Another attempt of the federal government was Victims of


Crimes Act, 1984. This was primarily codified for the purpose of compensating the victim rather than giving punishment for the offender. By virtue of this, a stable and strong funding to the states has been provided\textsuperscript{149}. By virtue of this Act, the victims of violence are entitled to reimburse their loss through financial assistance upon medical costs, counseling and lost wages. Domestic violence was not considered as a ‘qualifying offence’ to claim compensation under the Act\textsuperscript{150}, but it was included in 1988 by means of amendment. Office for Victims of Crime was established under the US Department of Justice in 1988\textsuperscript{151}. The office is constituted for the purpose of utilizing funds in supporting victims. Through this office, the funds are received and utilized by all states for providing local victim assistance as well\textsuperscript{152}. Thus the Act envisages the rights of victims to be reasonably protected from the accused\textsuperscript{153} and effectively protects the right to full and timely restitution by law\textsuperscript{154}. Domestic violence victims are only partly addressed by the Act among other victims of crime. For specifically addressing violence faced by women in intimate relationships, Violence Against Women Act (VAWA), 1994 was enacted. VAWA was originally intended to change approach towards domestic violence.

\textsuperscript{149} Sec.8, Victims of Crimes Act, 1984.
\textsuperscript{152} Ibid.
\textsuperscript{153} Sec 3771(a) (1), Victims of Crimes Act, 1984.
\textsuperscript{154} Sec 3771(a) (6), Victims of Crimes Act, 1984.
VAWA was passed primarily as a solution for the weak response of police and prosecutors upon domestic violence cases\(^{155}\). The Act had a good impact upon federal investigations and prosecutions in many ways. Remarkable in the scheme was that a grant program to encourage state and local policies in domestic violence cases. Grants were also approved for training for judges in state and federal courts to deal with domestic violence cases. The Act addressed new offenses such as violation of protection order and stalking where the abuser crossed a particular state boundary in commission of such crime. These innovative changes brought the enforcement of domestic violence laws within and among the federal states much easier than before\(^ {156}\).

Since its inception the Act has been modified and reauthorized many times. Through reauthorization of the Act in 2000 and 2005, the penalties for stalking and federal domestic violence were enlarged. Programmes were also designed for the purpose of improving public response to such cases\(^ {157}\). Through these timely reforms the Act established National Domestic Violence Hotline and provided financial support for its smooth functioning. Other activities under the VAWA worth mentioning include ensuring confidentiality of addresses of domestic violence victims’ shelters through US postal services\(^ {158}\). The reauthorization of the Act in 2013 mandates special programme for police and service personals to train them in identifying victims under high risk of domestic violence\(^ {159}\). Thus the


\(^{157}\) Ibid.

\(^{158}\) Ibid.

\(^{159}\) Sec. 102, VAWA, 2013.
enforcement machinery under the VAWA, 2013 consolidated different programmes under the original Act and enforces it in an effective way. The reauthorization process which is regularly conducted every five years is a follow up of the statistical study and critical analysis of the Act by experts in fields such as enforcement, policy making and health care\textsuperscript{160}.

As per the Bureau of Justice Statistics, the rate of female victims of intimate partner violence has declined by 53\% since the passing of the Act in 1994\textsuperscript{161}. Homicide rates of females have also decreased by 26\% by virtue of the effective violence prevention mechanism under the Act. University of Kentucky reported that there is a decrease of 63\% of non fatal violence and a drop in fatal violence by 24\% as a result of the effectiveness of VAWA\textsuperscript{162}. Specialised Domestic Violence Courts were developed as a result of a coordinated approach of the system which includes community intervention models, qualitative data analysis on services extended to the victims, criminal justice processing and so on. This specialized approach has reflected its merits in the decline of figures of intimate partner violence in US\textsuperscript{163}.

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\textsuperscript{162} Impact of the Violence Against Women Act. Figure created from data collected at University of Kentucky Center for Research on Violence Against Women, 2011 (21 Aug., 2016, 7:17 AM) http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3952594/ .

\textsuperscript{163} Factsheet: The Violence Against Women Act (17 Sept., 2016, 4:45 PM) https://www.whitehouse.gov/sites/default/files/docs/vawa_factsheet.pdf
\end{flushleft}
4.4.2 AFFIRMATIVE ACTION BY POLICE

The enforcement machinery of the US in tackling domestic violence cases and preventing domestic violence is appreciable in this context. Earlier, the police was hesitant to interfere in domestic violence cases as a reflection of the principle that family matters are outside the scope of public sphere. Del Martin, in 1976, has documented official policy of non intervention in police departments. Subsequent consequences of such non intervention upon battered women were also highlighted in his research. Parnas, a social scientist has opined that police force of US was reluctant to entertain complaints of domestic abuse and such cases were given a low priority.

It was not regarded as a ‘real police work’ by the department. Research in the field of social science helped the police department in recognizing the need for a changed approach to these issues. Mediation and crisis intervention training were provided. But the success rates of such intervention remained in grass root level. The system was constantly under review of the Attorney General’s Task Force on Family Violence. Some suits filed by the women’s groups also supported reform of the US police department. In Thurman v. City of Torrington the U.S. District Court for Downstate Connecticut criticized the denial of appropriate action by the police upon repeated calls by the victim. The court stated the duty of affirmative action by the police thus

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164 DEL MARTIN, BATTERED WIVES 92 (Volcano Press, 1976).
165 Marilyn D. McShane & Franklin P. Williams (Eds.), LAW ENFORCEMENT OPERATIONS AND MANAGEMENT 261 (Garland Publishing, 1997).
166 Ibid.
167 Id at 262.
“City officials and police officers are under an affirmative duty to preserve law and order, and to protect the personal safety of persons in the community. This duty applies equally to women whose personal safety is threatened by individuals with whom they have or have had a domestic relationship as well as to all other persons whose personal safety is threatened… If officials have notice of the possibility of attacks on women in domestic relationships or other persons, they are under an affirmative duty to take reasonable measures to protect the personal safety of such persons in the community.”

This judgment acted as an eye opener to the administrative system of US. It elaborated upon the need of affirmative action in cases of domestic assault and emphasized upon the need to intervene in appropriate cases. The need to take preventive measures by the police was also examined.

Simultaneously with the judicial attempts, legislatures of different states passed laws that enhanced the power of police to arrest batterers. These legislations authorized police to arrest on the basis of probable cause for domestic violence. Earlier, a police officer had no power to arrest a person on complaint of domestic violence unless any such act is committed in his presence. In the 1980s, chances of arrest and prosecution for acts of violence depended upon the nature of relationship between the victim and the offender. By 1983, 33 states in US have enacted legislation empowering police to arrest a person on grounds of probability of inflicting violence.

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170 Ibid.
Task Force on Family Violence was appointed by US Attorney General in 1984. Recommendation to justice system was given that family violence needs to be responded as a criminal act. In 1985, 47 states had police policies of mandatory arrests. Under these policies, police officers were empowered to arrest where there is a probable reason to believe that the suspected alleged acts are committed within the ambit of ‘domestic abuse’ and this may continue if not arrested\textsuperscript{172}.

Community policing initiative was created to combat domestic violence in an effective manner in 1996. Responsibility was also imposed upon police such as providing information on law and assistance to cases that require hospitalization. Thus the service of police in domestic violence cases were driven from the way of routine investigation, arrest and other formalities to a totally different strategy understanding the peculiar nature of such cases. Studies have proved that coordinated community services by the police involving victims and their family have been successful in many states in US\textsuperscript{173}.

4.4.3 JUDICIAL RESPONSES

The attitude of American jurisprudence upon intimate partner violence was mostly reflected by the application of Common Law upon matters relating to spouses. Like common law, American courts relied upon the doctrine of Sir Mathew Hale. Upon the issue of ‘marital rape’, Hale commented thus

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{173} Melissa Reuland (Et Al), POLICE COMMUNITY PARTNERSHIPS TO ADDRESS DOMESTIC VIOLENCE (U.S. Department of Justice Office of Community Oriented Policing Services (COPS) (24 Sept., 2016, 2:12 PM) www.cops.usdoj.gov.
\end{itemize}
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“...But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up her in this kind unto her husband which she cannot retract”\textsuperscript{174}.

This was considered as a precise term of common law as it was justified that the wife relinquished her irrevocable consent for sexual intercourse at the time of marriage. The subordinate status of women in the context of marriage is implicit in this justification on legal impossibility of rape in marriages.

In the wake of feminist movements in 1970s, the courts also responded positively to the reforms demanded for the upliftment of women. The changing positive legal attitude of the courts to address violence against women by their intimate partners is reflected through many judicial pronouncements. In \textit{People v. Liberta}\textsuperscript{175} the court, while dealing with the issue of rape by the husband during the period of judicial separation, observed that there is no rational basis for distinguishing between marital and non marital rape. The same stand was taken by the Criminal Appeal Court of Alabama in \textit{Merton v. State}\textsuperscript{176} and held that the statutory exception of married individuals in offences of rape is unconstitutional. In \textit{Trammel v. U.S.A}\textsuperscript{177} the court stated thus

“...nowhere in modern society, a woman regarded as chattel or demeaned by denial of a separate legal identity and the dignity associated with recognition as a whole human being”.
These reflections are in accordance with the right of dignity of women. By late 1990s, as some states initiated addressing marital rape, legislators, judicial officers, law enforcement agencies and human rights bodies took an active participation in the dialogue for the need for criminalizing it same in all states. By 1993 all states have withdrawn marital rape exceptions.

In the midst of these progressive cases, at some instances the concern of limitation of law to intervene in cases of private matter was also shared by the courts. The Supreme Court of US in *De Shaney v. Winnebago County* outrightly rejected the positive duty of executive from failure to protect private parties from violence. The safe boundary between ‘private affairs’ and limitation of law to interfere in such matters was maintained in this case. On the other hand, in the landmark case of *R v. Goday* the Supreme Court of Canada ruled in favour of affirmative action of the state. In this case, the police entered the premises of the residence upon the request by the wife who was brutally assaulted by the husband. As an act of resisting the arrest, the police officer was also assaulted by the respondent. Police was sued for unlawful entry into private property. The court observed that

“The public interest in maintaining this system may result in a limited intrusion in one’s privacy interests while at home. This interference is authorized at common law as it falls within the scope of the police duty to protect life and safety and does not involve an unjustifiable use of the powers associated with this duty”.

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180 [1999] 1 S.C.R. 311
The failure of US in protecting women from domestic violence was highlighted in Jessica Gonzales v. US\textsuperscript{181}. This was the first case that brought the US government into criticism before a human rights tribunal. The Inter American Commission on Human Rights (IACHR) criticized the failure of administration in protecting the life of victim’s children. IACHR is a self governing organ established by the Organisation of American States (OAS) in 1959\textsuperscript{182}. As per the objects of IACHR, an aggrieved individual may submit a petition upon violation of human rights upon exhaustion of all other remedies\textsuperscript{183}. In this case, the petitioner chose to file the same as the Supreme Court of US held that no constitutional right can be claimed by her to sue the state against police inaction upon failure to protect her children. The commission issued a ‘merit report’ which is the remedy along with the law and policy to prevent such instances in future. The affirmative duty of the state was well stated by the commission as

““The state must hold public officials accountable, administratively, disciplinarily or criminally, when they do not act in accordance with the rule of law”.\textsuperscript{184}

This case is mostly highlighted as the first case in which an international commission has decided against US government upon women’s rights. The decision was influential in shifting from the traditional approach of law in understanding domestic violence as a ‘private matter’\textsuperscript{185}.

\textsuperscript{183} Ibid.
\textsuperscript{184} Lenahan v. United States, Case 12.626, Inter-Am. Comm’n H.R., Report No.80/11 at p.179.
4.4.4 CIVIL SUITS AGAINST CRIMINAL JUSTICE MACHINERY: A PROGRESSIVE RESPONSE

As a part of changing perception about intimate partner violence in US, remedy available under the law of torts was also made available to the victims. More than actual infliction of violence, the recognition of domestic violence as an action of tort has helped many victims of mental cruelty to recover damages as a civil remedy. In *Giovine v. Giovine*¹⁸⁶, the court emphasized on the emotional distress suffered by women as victim of violence. The plaintiff and defendant were married in 1971 and a complaint was filed against the husband seeking divorce and torts. The court held that the emotional consequences upon the victim call for a continuing tort which is actionable and thus the statute of limitation does not apply in such instances. While deciding upon the action of tort, the court stated thus

“The combination of all of these symptoms — resulting from sustained psychological and physical trauma compounded by aggravating social and economic factors — constitutes the battered-woman's syndrome. Only by understanding these unique pressures that force battered women to remain with their mates, despite their long-standing and reasonable fear of severe bodily harm and the isolation that being a battered woman creates, can a battered woman's state of mind be accurately and fairly understood”.

Deriving the principle of actionable claims of assault and battery from this case, many decisions were followed. Compensation was imposed upon the

police administration for their negligence upon a matter of domestic violence in the landmark decision of *Thurman v. City of Torrington*. In spite of wide powers to police for arrest of batterers to address violence against women effectively, the police perception of their primary duty to preserve ‘public peace and order’ remained the same especially when the ambit of public peace according to the officers did not include domestic violence.\(^{187}\) As a result of this police hesitated to arrest. *Thurman v. City of Torrington* is demonstrative of the attitude of enforcement machinery. However, the District Court of Connecticut awarded $2.3 million compensation to the victim. This case indicates the expectation of the court with respect to accountability of law in such instances of domestic violence.

Domestic violence cases were mainly treated as criminal offences and at times they were given civil remedies especially when the criminal law mechanism failed to provide justice to the victim. Statutory provision for civil protection orders helps victims to seek relief from outside the criminal justice system. Violation of these civil protection orders are strictly treated as criminal offences. The implementation of Family Law Act, 1996 was with the objective of providing effective civil remedies to victims.\(^{189}\) Thus the legislative initiatives and judicial activism have provided with a totally new approach to render justice to victims of intimate partner violence in US.

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\(^{188}\) 595 F. Supp. 1521 (D. Conn. 1985)

\(^{189}\) MANDY BURTON, *LEGAL RESPONSES TO DOMESTIC VIOLENCE* 33 (Routledge, 2008).
4.5 CONCLUSION

The human rights responses of United Nations and its agencies are remarkable in the recognition of domestic violence as a social concern. The intensity and the demerits of the existing system in different countries are brought to the limelight of the world by virtue of a coordinated action of these agencies. The multi country studies and various reports also highlighted the good practices of countries such as USA and UK. Latest studies have proved that as a result of societal consciousness and positive response of authorities to policies and legal interventions, the rates of intimate partner homicide has dropped to around 30% in the last 25 years. General intervention strategies such as arrest and court interventions such as protection orders and batterer intervention programs have been identified as effective mechanism to curb such violence. Researchers assert that rather than depending solely on criminal justice system, shelter based programs may be more effective. Thus the need for a multi coordinated action is emphasized as the best strategy.

