

Criminalisation, modernisation, and globalisation: the US and international perspectives on domestic violence

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The growth of modernisation in a society is intimately connected to the growth of legal evolutions related to criminalisation. While modernisation expands the boundaries of tolerance in an open society, it also expands the boundaries of crime and criminalisation. As modernisation expands on a global scale, the process of redefining crime, criminalisation, and victimisation also occurs on a global scale. In the modern societies of the West, the advance of modern law and justice and the progress of the notions of human rights have expanded the boundaries of freedom. They have also expanded the boundaries of criminalisation in a number of social, cultural, political, and economic domains. One of the major areas of criminalisation that has rapidly expanded with modernisation and globalisation, particularly in the West, is domestic violence. During the last 30 years, a series of laws have evolved in these societies that criminalise a wide variety of behaviours related to domestic violence. A comparative study of legislative developments on domestic violence in the United States, Brazil, India, Japan, Bangladesh, and Ghana suggests that, in each, a relatively homogenous set of laws against domestic violence has evolved.

Keywords: domestic violence laws; criminalisation; modernisation; globalisation; human rights

Introduction

The philosophy of the Renaissance and the Age of Enlightenment – the philosophy that brought about the collapse of the medieval social order and the birth of modernity – heralded a new sense of humanity. It brought a new paradigm of thinking about issues of human rights, equality, justice, crime, and punishment. The paradigm of modernity in the nineteenth century is evidenced in the making of new institutions of law and governance for defining the contours of human rights and the nature and modalities of human relations. One of the central notions in the birth of modern law and modern institutions of governance was the notion of criminalisation – the notion of what is a crime and what is not acceptable within the boundaries of modern law. The growth of modernisation and criminalisation are thus intimately connected. The higher the level of modernisation in a society, the wider is its scope of criminalisation.

The enlargement of the boundaries of freedom and human rights necessitates the development of new laws and, hence, the enlargement of the boundaries of criminalisation.

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Revised Version of the Paper Presented at the Annual Meeting of the American Society of Criminology, St. Louis, Missouri, 12–15 November 2008.

When the boundaries of legal freedom and human rights are extended, the issues of control and regulation of human behaviour become more complex. The expansion of the boundaries of freedom leads to the expansion of uncertainties in regulating the social space. This leads to the necessity to define and limit the boundaries of freedom. In defining and limiting the boundaries of freedom, new laws are developed to criminalise the misuse and abuse of freedom and liberties. In most western societies, for example, laws have vastly expanded freedom within the domain of intimacy – the domain of love, sex, marriage, divorce, dating, cohabitation, reproductive choices, and alternative life styles. The expanded freedom in the domain of intimacy, however, brought the necessity of criminalising dating violence, physical stalking, cyber stalking, sexual harassment, and interpersonal violence in all facets of intimacy.¹ Modernisation in a society, by creating systemic change, risks, and complexities, creates the need for new institutional regulations primarily in the form of new laws and criminalisation. Criminalisation protects the boundaries of freedom. Increasing criminalisation in modern societies is not primarily a political or an ideological project. It is intrinsically related to the self-regulating nature of modernisation – a process that is sometimes theorised as ‘reflexive modernisation’.² Many scholars suggest this process as the emergence of a new ‘culture of control’ in modern societies.³ This culture of control seems to be an irreversible process linked to modernisation.

Since modernisation expands through globalisation, and globalisation tends to create homogenisation in articulation of the core institutions of law and governance, the nature and boundaries of what is and is not a crime are also bound to be global and increasingly homogenous.⁴ This paper examines this hypothesis in the context of the criminalisation of domestic violence in the United States, Brazil, India, Japan, Bangladesh, and Ghana – societies that are at different levels of modernisation and have disparate cultures, religions, and civilisations. One of the key arguments of the paper is that a legal trend to criminalise domestic violence today has been spreading to most countries of the world. There are differences in the nature of laws and statutes and in the extent of criminalisation, but the fact that domestic violence is being increasingly defined and perceived as a domain of new criminality suggests the increasing modernisation and globalisation of the issues of human rights, gender equality, and laws against interpersonal violence.⁵

1. J.L. Cohen, *Regulating Intimacy: A New Legal Paradigm* (Princeton, NJ: Princeton University Press, 2002).

2. U. Beck, A. Giddens, and S. Lash, *Reflexive Modernization: Politics, Tradition and Esthetics in the Modern Social Order* (Palo Alto, CA: Stanford University Press, 1994).

3. M. Foucault, *Discipline and Punish: The Birth of the Prison* (London: Allen Unwin, 1977); T.L. Dumm, *Democracy and Punishment: Disciplinary Origins of the United States* (Madison, WI: University of Wisconsin Press, 1987); D. Garland, *Punishment and Modern Society: A Study in Social Theory* (Chicago: Chicago University Press, 1990); T.G. Bloomberg and S. Cohen, eds., *Punishment and Social Control* (New York: Aldine de Gruyter, 1995); and D. Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (Chicago: Chicago University Press, 2001).

4. M.J. Levy, *Modernization and the Structure of Societies* (Princeton, NJ: Princeton University Press, 1966); T. Parsons, *Societies – Evolutionary and Comparative Perspectives* (Englewood Cliffs, NJ: Prentice-Hall, 1966); A. Giddens, *The Consequences of Modernity* (Palo Alto, CA: Stanford University Press, 1991); R. Robertson, *Globalization: Social Theory and Global Culture* (London: Sage Publications, 1992); P.K. Nandi and S.M. Shahidullah, *Globalization and the Evolving World Society* (The Netherlands: Brill Academic Publishers, 1998); and A. McGrew and H. David, *Globalization Theory: Approaches and Controversies* (Cambridge, UK: Polity Press, 2007).

5. S.M. Shahidullah, ‘Domestic Violence: The Social Context of Abusive Bonding (with Ann Paccione)’ (Annual meeting of the Eastern Sociological Society, Boston, March 28–29, 1994).

Domestic violence is traditionally and commonly perceived as violence in a family, particularly between married spouses. The nature of violence is also perceived primarily as physical in nature. Traditionally, domestic violence has not been perceived to include such behaviour as threats of violence, marital rape, forcible sodomy, and stalking. However, in contemporary law in most western countries domestic violence is defined to include a wide array of such behaviours including acts of physical violence, sexual violence, physical stalking, cyber stalking, economic abuse, and emotional abuse projected in a large trajectory of intimate relations including relations between husband and wife, ex-husband and ex-wife, cohabitating partners, gay and lesbian partners, partners in adult dating, and partners in teen dating. In contemporary legal definitions, the issues of power, domination, and control are also explored to discover the intent behind domestic violence. Domestic violence, as the Office on Violence Against Women of the US Department of Justice defines it, is

a pattern of abusive behavior in any relationship that is used by one partner to gain or maintain power and control over another intimate partner. Domestic violence can be physical, sexual, emotional, economic, or psychological actions This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, coerce, threaten, blame, hurt, injure, or wound someone.⁶

The contemporary definition of domestic violence is multidimensional, space-neutral, and inclusive in nature. Laws are also increasingly defining domestic violence as a process of domination, exploitation, and dehumanisation. This broader definition of domestic violence that has gained ground in law and academic discourses in western countries is becoming universal in most countries of the world engaged in legal reforms in domestic violence.⁷

Criminalisation of domestic violence in the United States: evolution of laws and statutes

Nature and prevalence of domestic violence in the United States

One of the positive results of the criminalisation of domestic violence in the United States is that systematic collection and analysis of domestic violence data are now required by Congress. The National Crime Victimization Survey (NCVS) and the National Incidence-Based Reporting System (NIBRS) conducted by the Department of Justice, and National Violence against Women Survey (NVAWS) conducted jointly by the National Institute of Justice and the National Center for Injury Prevention and Control, Centers for Disease Control and Prevention are two of the most comprehensive systems of surveys funded by the federal government that presently collect and analyse data on domestic violence in the US. Data are also collected by the Centers for Disease Control's Behavioral Risk Factor Surveillance System (BRFSS), National Violent Death Reporting System (NVDRS), National Intimate Partner and Sexual Violence Survey (NISVS), and Youth Risk Behavior

6. Office of Violence Against Women, 'The Fact Sheets About the Office on Violence against Women Focus Areas' (2009), 1, <http://www.usdoj.gov> (accessed February 2, 2009).

7. L. Waldorf, C. Arab, and M. Guruswamy, *CEDAW and the Human Rights-Based Approach to Programming* (United Nations Development Fund for Women (UNDFW), 2007), <http://www.unifem.org> (accessed December 10, 2008).

Surveillance System (YRBSS). The data on domestic violence in the United States are collected mostly in terms of the category of intimate partner violence (IPV).

A recent study conducted by the National Institute of Justice and the Centers for Disease Control and Prevention found that intimate partner violence 'is pervasive in the U.S. Society'.⁸ This study, based on telephone interviews of 8000 US women and 8000 US men, observed that 25% of surveyed women 'were raped and/or physically assaulted by a current or former spouse, cohabitating partner, or date at some time in their life time'.⁹ The study estimated that approximately 1.5 million women are raped and/or physically assaulted by an intimate partner annually in the United States. Since many women are victimised more than once, the study estimated that 'approximately 4.8 million intimate partner rapes and physical assaults are perpetrated against U.S. women annually'.¹⁰ A similar study estimated that 17.7 million women are forcibly raped at some time in their lives, and more than 50% of them were raped before their 18th birthday.¹¹

One of the Bureau of Justice Statistics studies on victimisation in terms of gender shows that between 2001 and 2005,¹² intimate partner violence was responsible for 30% of homicides and 22% of non-fatal victimisations of females. Females who were separated or divorced reported higher rates of intimate partner victimisations than those of other marital status. Between 2001 and 2005, 'about 96 percent of females who experienced nonfatal intimate partner violence were victimised by a male'.¹³ One study conducted by the Federal Bureau of Investigation in 2002 shows that 'in the last 25 years almost 57,000 individuals have been killed in domestic violence situations'.¹⁴ Several empirical surveys and analyses,¹⁵ estimate that about 85–95% of victims of intimate partner violence are females.

The intimate partner victimisation of females, however, depends on their class, race, ethnicity, and marital status.¹⁶ Females who were from lower socio-economic categories are more likely to be victimised by intimate partner violence. Research conducted by the Bureau of Justice Statistics shows that annual nonfatal intimate partner victimisation rate for females,¹⁷ whose annual household income is less than \$7500, is 13 per 1000 persons age 12 or older. The rate of intimate partner victimisation for females who were from households with annual income of \$50,000 or more was 2 per 1000 persons age 12 or older. Studies have also shown that most intimate partner victimisations are not reported

8. P. Tjaden and N. Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings from the National Violence against Women Survey*, National Institute of Justice (NIJ) and the Centers for Disease Control and Prevention (CDC) (Washington, DC and Atlanta: National Institute of Justice (NIJ) and the Centers for Disease Control and Prevention (CDC), 2000), p. iii.

9. *Ibid.*

10. *Ibid.*

11. *Ibid.*, 2006.

12. Bureau of Justice Statistics (BJS), *Intimate Partner Violence in the United States* (Washington, DC: Department of Justice, 2007).

13. *Ibid.*, 1.

14. Office of Justice Programs, 'First Annual Symposium on Violence against Women' (2002), 1, <http://www.usdoj.gov/ovw> (accessed March 5, 2008).

15. Tjaden and Thoennes, *Consequences of Intimate Partner Violence*; C.M. Rennison and S. Welchans, *Intimate Partner Violence* (Washington, DC: Department of Justice, Bureau of Justice Statistics, 2000); and C.M. Rennison, *Intimate Partner Violence, 1993–2001* (Washington, DC: Department of Justice, Bureau of Justice Statistics, 2003).

16. Centers for Disease Control and Prevention, *Measuring Intimate Partner Violence Victimization and Perpetration: A Compendium of Assessment Tools* (Atlanta: CDC, 2006).

17. BJS, *Intimate Partner Violence in the United States*.

to law enforcement. About 80% of rapes, 75% of all physical assaults, and 50% of all stalking perpetrated against women are not reported to law enforcement.¹⁸ A study conducted jointly by the Department of Health and Human Services, Centers for Disease Control and Prevention, and the National Center for Injury Prevention and Control found that the costs of intimate partner violence in the United States

exceed \$5.8 billion each year, nearly \$4.1 billion of which is for direct medical and mental health care services. The total cost of IPV also includes nearly \$0.9 billion in lost productivity from paid work and household chores for victims of nonfatal IPV and \$0.9 billion in lifetime earnings lost by victims of IPV homicide.¹⁹

Domestic violence in the United States: the contexts of criminalisation

Traditionally, law enforcement agencies, the court and prosecutors, under the doctrine of family privacy, largely ignored domestic violence cases and issues. The legal notions of marriage, family, and domestic violence in America, until the 1970s, were broadly based on the English Common Law.²⁰ From the time of pre-Christian Roman customs and throughout the middle ages, a husband was given the legal authority to govern his household even to physically punishing his wife and children. In the medieval notion of family, a husband was seen as the ‘regulator of social order’.²¹ The members of a Roman household or a domus

were subject to the authority of the paterfamilias, whose legal right – patria potestas – permitted him to do to them whatever he desired: children and wives were in the same category as slaves and domestic animals, all being subject to sale, barter, the most cruel abuse and even death.²²

Throughout the middle ages and the birth and expansions of English Common Law, family was defined as a ‘hierarchically constructed social unit in which paterfamilias ruled as lord and master of his domain’.²³ Medieval social customs and English Common Law traditions recognised a husband’s ‘authority to use violence to protect his domain’ and laws and customs ‘shielded his domain from outside intrusion’.²⁴

From the days of the promulgation of the Bill of Rights in the American constitution, statutory laws began to replace the Common Law provisions in a variety of areas of crime and justice. In the United States, as one legal historian noted,

The criminal law itself, quite naturally, underwent considerable surface change in the later 19th century. It became and remained by and large a matter of statute. The concept of the common-law crime . . . had been wiped out in the federal law.²⁵

18. Tjaden and Thoennes, *Consequences of Intimate Partner Violence*.

19. Department of Health and Human Services, Centers for Disease Control and Prevention, and the National Center for Injury Prevention and Control, *Costs of Intimate Partner Violence against Women in the United States* (Atlanta, Georgia: CDC, 2003), 2.

20. O.W. Holmes Jr., *The Common Law* (Boston, MA: Little Brown, 1943).

21. E. Salisbury, G. Donavin, and M.L. Price, eds., *Domestic Violence in Medieval Texts* (Gainesville: University Press of Florida, 2002), 4.

22. *Ibid.*

23. *Ibid.*, 5.

24. *Ibid.*

25. L.M. Friedman, *A History of American Law*, 2nd ed. (New York: Simon and Schuster, 1985), 573.

In the areas of family, marriage, and particularly domestic violence issues, this movement of statutory development, however, did not begin systematically until the middle of the 1970s.

Statutory developments for the criminalisation of domestic violence in the United States were initially begun by different states. 'By 1980, 47 states had passed domestic violence legislation mandating changes in protection orders, enabling warrantless arrests for misdemeanour assaults, and recognising a history of abuse and threat as a part of legal defense'.²⁶ Federal laws on domestic violence began to slowly evolve from the middle of the 1970s. Between 1976 and 1981, the federal government's Law Enforcement Assistance Administration (LEAA) funded 23 programs for domestic violence services 'including shelters, special prosecution units, treatment programs for wife beaters, mediation units, and civil legal interventions'.²⁷ In 1984, Congress passed the Family Violence Prevention and Services Act – legislation introduced by the National Coalition of Domestic Violence in 1978 – to fund domestic violence programs. However, much wider and comprehensive process of criminalisation of domestic violence began after the enactment by Congress of the Violence Against Women Act (VAWA) of 1994 (Title IV of the Violent Crime Control and Law Enforcement Act of 1994).

A more intensified process of criminalisation of domestic violence in the United States began in the 1990s in the context of a series of historical events and forces that were unfolding since the beginning of the 1920s. The core issue that was driving those events and forces was the notion of establishing the right of women to be treated equally in the eyes of law. Scientific studies on the impact of abuse and public health issues were important. However, the movement for the criminalisation of domestic violence was essentially a 'rights movement'. From the beginning of the 1920s, two separate but inter-related processes began for the broader expansion of the rights of women. The first was about increasing expansion of the boundaries of rights and freedom for women. The second was about increasing expansion of the boundaries of crimes against women.

The expansion of the boundaries of rights and freedom for women first began with the Nineteenth Amendment to the US Constitution which legalised women's right to vote. The Nineteenth Amendment states: 'The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex. Congress shall have power to enforce this article by appropriate legislation.' After the Nineteenth Amendment, Congress, through a series of enactments, broadened the boundaries of women's rights and freedom. Some of the notable congressional enactments include the Fair Labour Standards Act of 1938, The Equal Pay Act of 1963 (PL 88-38), The Civil Rights Act of 1964 (Title VII, PL 82-352), Pregnancy Determination Act of 1978 (PL 95-555), Civil Rights Act of 1991 (PL 102-166), and the Family and Medical Leave Bill Act of 1993 (PL 103-3).

Further expansion of women's rights came through a series of US Supreme Court decisions. Some of the related landmark cases include *New York v. Sanger* in 1918 (doctors were legally allowed to advise married women on contraception), *United States v. One Package* in 1936 (women's right to use of birth control for medical purposes), *Fay v. New York* in 1947 (women were legally allowed to serve in a jury), *Griswold v. Connecticut* in 1965 (prohibition of contraceptive use by married women was declared unconstitutional), *Loving v. Virginia* in 1967 (the state's ban on interracial marriage was declared unconstitutional), *Eisenstadt v. Baird* in 1972 (unmarried women's right to use contraceptives),

26. J. Fagan, *The Criminalization of Domestic Violence: Promises and Limits* (Washington, DC: Department of Justice, National Institute of Justice, 1995), 6.

27. *Ibid.*, 5.

Roe v. Wade in 1973 (women's constitutional right to abortion), and *Kirchberg v. Feenstra* in 1981 (state laws defining a husband as 'head and master' with unilateral rights to control property jointly owned by married couples were declared unconstitutional).

In addition to legal expansion of rights and freedom for women, a process of increased expansion of laws defining crimes against women began, particularly in the early 1980s. In the 1980s, most states began to enact statutes to introduce rape shield laws and criminalise statutory rape. Under English Common Law, sexual histories and reputations of rape victims were admissible in court. It was legal and justified to cross-examine rape victims about their past sexual histories and activities. Through a series of legislations in the 1980s and 1990s, states substantially reformed these Common Law notions of rape and rape prosecutions. In the 1980s, through a landmark decision in *Meritor Savings Banks v. Vinson* in 1986, the US Supreme Court criminalised sexual harassment. The Court held that 'A claim of "hostile environment" sexual harassment is a form of sex discrimination that is actionable under Title VII' of the Civil Rights Act of 1964. The US Supreme Court in *Harris v. Forklift Systems, Inc.* in 1993 further extended the boundary of the criminalisation of sexual harassment by including emotional abuse at work. The Court held the view that

To be actionable as 'abusive work environment' harassment, conduct need not 'seriously affect [an employee's] psychological well being' or lead the plaintiff to 'suffer injury' The effect on the employee's psychological well being is relevant in determining whether the plaintiff actually found the environment abusive.²⁸

A year after *Harris v. Forklift Systems, Inc.*, Congress passed the VAWA 1994, and from there began a new legal discourse and a series of new legal developments on domestic violence.

This evolution of laws and statutes related to increased expansion of the boundaries of rights and freedom for women and expansion of the boundaries of crimes against women came in the context of modernisation that began from the middle of the nineteenth century and intensified in the middle of the twentieth century. The rise of urbanisation and industrialisation, growth of technology, growth of the service economy, rapid entrance of women into education and the professional workforce – all contributed to the evolution of new laws to protect the rights of women. The establishment of the National Organization of Women (NOW) in 1966, the emergence of the Women's Movement in the 1970s,²⁹ and the rise and expansion of feminist jurisprudence from the 1980s forced the issues of women's rights and freedom into the federal policy agenda.³⁰ Beginning in the 1990s, the demands for the expansion of rights of women and criminalisation of violence against women became far more compelling for politics and policy-making in the United States.

28. Supreme Court of the United States, *Harris v. Forklift Systems, Inc.* (Washington, DC: US Supreme Court, 1993), 1.

29. F. Davis, *Moving the Mountain: The Women's Movement in America since 1960* (Chicago: University of Chicago Press, 1999); R. Rosen, *The World Split: How the Modern Women's Movement Changed America* (New York: Penguin, 2006).

30. P. Smith, *Feminist Jurisprudence* (New York: Oxford University Press, 1993); M. Becker et al., *Cases and Materials on Feminist Jurisprudence: Taking Women Seriously* (New York: West Publishing, 2001).

US domestic violence laws and statutes

Between 1994 and 2005, Congress enacted three major domestic violence legislations. These legislations are: the VAWA of 1994 (Title IV of the Violent Crime Control and Law Enforcement Act of 1994, PL 103-322), the VAWA of 2000 (Division B of the Victims of Trafficking and Violence Protection Act of 2000, PL 106-336), and the Violence Against Women and the Department of Justice Reauthorization Act of 2005 (PL 109-162). These legislations developed four policy approaches for the control and containment of domestic violence: (1) deterrence of domestic violence through increased penalties, (2) improvement in criminal justice system capacity to respond effectively to and prosecute domestic violence cases, (3) improvement in victim assistance programs, and (4) research on domestic violence.

The VAWA of 1994 is the first comprehensive federal legislation on domestic violence signed into law by President Clinton. 'The Violence Against Women Act, the first federal legislation to comprehensively address violence uniquely targeted at women and their children, represents key turning points in our nation's response to sexual violence, domestic violence, and stalking.'³¹ The VAWA, passed with bipartisan support, 'contained a combination of new federal penalties and a myriad of grant programs to support both state and local criminal justice and victim services responses to violence against women'.³² The major policy directives and guidelines of the Act are contained in seven major Subtitles: (1) Safe Streets for Women, (2) Safe Homes for Women, (3) Civil Rights for Women, (4) Equal Justice for Women, (5) Violence Against Women Act Improvement, (6) National Stalker and Domestic Violence Reduction, and (7) Protection of Battered Immigrant Women and Children. Each of these Subtitles contains a number of chapters with legislative directions on four policy tracks: new laws for punishment and deterrence, improvement in criminal justice system, victims' assistance programs, and research on domestic violence.³³

The VAWA imposed increased penalties for interstate domestic violence and interstate stalking, and authorised the Department of Justice to provide funds to state and local governments to implement a mandatory arrest policy for domestic violence and protective order violations. It introduced a new law that the protection order issued by one state must be accorded 'full faith and credit' by the court of another state. For the violation of the provisions of interstate domestic violence laws and interstate protective order laws, the VAWA imposed a penalty of life imprisonment if such violations result in death of the victim.³⁴ The VAWA imposed 20 years of imprisonment if such violations cause life-threatening bodily injury to the victim, and 10 years of imprisonment if such violations cause serious bodily injury because of the use of dangerous weapons. The United States Sentencing Commission was instructed to prepare the new penalty guidelines. The VAWA amended the federal criminal code and made a provision for restitution for the victims of domestic abuse and sexual abuse offences. The new law made it legally mandatory for

31. K.J. Roe, 'The Violence against Women Act and Its Impact on Sexual Violence Public Policy: Looking Back and Looking Forward' (2004), 1, <http://www.new.vawnet.org> (accessed January 4, 2009).

32. *Ibid.*, 2.

33. S.M. Shahidullah, *Crime Policy in America: Laws, Institutions, and Programs* (Lanham, MD: University Press of America, 2008).

34. A. Browne, *When Battered Women Kill* (New York: Free Press, 1989); C. Gillespie, *Justifiable Homicide. Battered Women, Self-Defense, and the Law* (Athens, OH: Ohio State University Press, 1990); L. Walker, *The Battered Women Syndrome* (New York: Springer Publishing Company, 1999); and B.J. Whalen, *Justifiable Homicide* (New York: Ballantine Books, 2000).

defendants to pay to the victim, through appropriate court mechanisms, the full amount of losses incurred by the victim because of medical expenses, lost income, attorney's fees, and other costs as determined by the court. A provision was made for the suspension of federal benefits if the defendants fail to comply with the restitution laws. The VAWA also amended the Federal Rules of Evidence 412 and enacted a federal version of the 'rape shield laws'. The Amended Federal Rules of Evidence 412 made information about a victim's past sexual behavior and a victim's sexual predisposition inadmissible in federal criminal and civil trials for rape cases.³⁵

One of the major policy goals of the Act of 1994 was to improve the institutional and organisational capacities of the criminal justice system to respond effectively to problems of domestic violence. In order to accomplish this goal, the Act made provisions for a series of federal grants for state and local governments. Some of the important grants were related to (1) introduction of a National Domestic Violence Hotline, (2) encouragement of mandatory arrests policies, (3) effective law enforcement and prosecution strategies to combat domestic violence, (4) community-based domestic violence prevention programs, (5) youth education on domestic violence, (6) education and training of family court judges and court personnel, (7) improvement of federal, state, and local databanks on stalking and domestic violence, (8) improvement of safety for women in public transportation and public parks, and (9) rape prevention and education.

Another significant policy innovation made by the VAWA of 1994 is related to victim assistance programs. The Act made provision for grants to: (1) develop, expand, and strengthen sexual assault and domestic violence victim services programs, (2) develop and improve delivery of victim services to racially and culturally diverse groups of women, (3) provide domestic violence court advocates, (4) create programs for increased reporting of domestic violence, and (5) formulate strategies to reduce attrition rates for cases related to violence against women and crimes of sexual violence.

Through the VAWA of 1994, Congress also for the first time required the Department of Justice, Department of Health and Human Services, and the Department of Education to provide grants for research on sexual assault and domestic violence. The Act instructed the Department of Justice to develop, in collaboration with the National Academy of Sciences and the National Research Council, a research agenda to increase knowledge and understanding of the causes of domestic violence, rape and sexual assault behavior, as well as, ways to prevent them. The Attorney General was authorised to convene a panel of national experts to develop a national research agenda on domestic violence. The Act also required the Attorney General to fund studies for improvement of state databases on sexual and domestic violence, and to report annually to Congress on their development.

The VAWA of 1994 created for the first time a central federal organisation to be responsible for policy-making on domestic violence. This federal organisation is the Office of Violence Against Women (OVAW) created within the Department of Justice in 1995. Since its inception, the OVAW's discretionary grants have substantially grown. Some of the major grant programs administered by the OVAW include S-T-0-P Violence Against Women Formula Grants, Grants to Encourage Arrest Policies and Enforcement of Protection Orders, Legal Assistance for Victims Grants Program, Grants to Reduce Violent Crimes against Women on Campus, Grants to State Sexual Assault and Domestic Violence

35. Shahidullah, *Crime Policy in America*.

Coalition Programs, Transitional Housing Assistance Grants Program, and Supervised Visitation and Safe Exchange Grants Program.

Six years after passage of the first VAWA of 1994, Congress enacted the second VAWA in 2000 as a part (Division B) of the Victims of Trafficking and Violence Protection Act of 2000. The Act of 2000 increased and created new penalties for offences related to sexual and domestic violence, put more emphasis on rape and sexual assault prevention, provided more grants for women in underserved groups and areas, set up new national resource centres, and made increased appropriations for further improvement in the ability of the criminal justice system to deal with sexual and domestic violence cases. The Act of 2000 created new crimes and penalties by making amendments to the interstate domestic violence, interstate violation of protection orders, and national stalker and domestic violence reduction provisions of the Act of 1994. The new law in the Act of 2000 made it a felony to travel on interstate and foreign commerce 'with the intent to kill, injure, harass, or intimidate a spouse or intimate partner'. The Act also made it a felony for a person 'who causes a spouse or intimate partner to travel in interstate or foreign commerce . . . by force, coercion, duress, or fraud'. What is unique about the Act of 2000 is that it made stalking, harassment, intimidation, and attempt to use force, coercions, mails or any other interstate or foreign commerce facility to cause violence against the spouse, or intimate partner federal felony crimes punishable by imprisonment. Under the Act, not just violent acts, but also certain forms of behavior related to spousal and intimate partner relations came to be defined as crimes.

One of the important policy directions that came through the Act of 2000 was related to work place violence against women. New laws were enacted, through amendments in the Internal Revenue Code, to give tax incentives to employers to implement safety and education programs to address problems related to sexual assault and violence against women in the work place, and to provide unemployment compensation for victims of domestic violence. The Family and Medical Leave Act of 1993 was amended to make it eligible for persons, working in both federal and non-federal agencies, to take a leave of absence for reasons related to domestic violence and sexual assault victimisation. The Act made it easier for alien battered spouses to prosecute their abusers and stay in the United States with their children.

The Act of 2000 brought a series of amendments to include more federal energy and resources for the prevention of rape, date rape, and sexual assault violations. Subtitle F of Title III of the Act of 2000 instructed the Attorney General for rescheduling and reclassifying certain date-rape drugs. The Act instructed to transfer flunitrazepam from Schedule IV to Schedule I, and add ketamine hydrochloride (KH) to Schedule III, and Gamma Hydroxy Butyric (GHB) to Schedule I of the Controlled Substance Act. Under the Controlled Substance Act, any person convicted for the possession of GHB or KH receives at least 3 years of imprisonment.

Title II of the Act of 2000 made more provisions to strengthen the rape prevention and education program enacted under the 1994 Act. The Act of 2000 made it mandatory for the Attorney General to spend most of the rape prevention and education grants through local and state rape crisis centres and sexual assault coalitions. The Act authorised the spending of \$600 million, for a period of 5 years from 2001 to 2005, to further expand and strengthen the nation's rape and sexual assault prevention education. The Attorney General was also instructed to create a National Resource Center for Sexual Assault, as a central resource library within the federal government, to provide technical assistance and policy guidance to local and state agencies. In addition, the Act made reauthorisation of S-T-O-P grants, grants to increase mandatory arrests for domestic violence and protective order

violations, grants for National Domestic Violence Hotline, grants for increased use of televised testimony in child rape and sexual abuse cases, grants to include stalker and domestic violence data into state crime information databases, grants to schools to teach about domestic violence and sexual assaults, grants for training of judges, prosecutors and law enforcement, and grants for improvement in forensic training for sexual assault examination.

In 2005, Congress passed the Violence Against Women and the Department of Justice Reauthorization Act. The 2005 Act further increased penalties for interstate domestic violence, interstate violation of protective orders, and reauthorised most of the grant programs mandated by the Act of 2000. Title 1 of the 2005 Act 'Enhancing Law Enforcement and Judicial Tools to Combat Violence Against Women' extended the scope of technical assistance and training for a wide variety of domestic violence service providers. Included are law enforcement officers, judges, prosecutors, court personnel, human and community service providers, educational institutions, and health care providers. Title I of the 2005 Act created a new S-T-O-P funding stream, described as the Crystal Judson Domestic Violence Program, to develop in different states and localities trained domestic violence service providers who can closely work with law enforcement and the judicial system. Title I put more emphasis on providing grants to underserved groups and areas and to enhancing culturally and linguistically specific services for victims of domestic violence.³⁶

One of the new policy directions of the Act of 2005 is that the definition of domestic violence is extended to include dating violence, sexual assault, and stalking. Another new direction is more emphasis on the understanding of the nature of youth offending and youth victimisation in domestic violence. Title II of the Act requested the Attorney General to provide more grants to schools and institutions of higher education to train school administrators, faculty, counsellors, coaches, security personnel, and other staff on issues of youth victimisation and youth offending in domestic violence, dating violence, sexual assault, and stalking. The Secretary of the Department of Health and Human Services and the Director of the Office of the Domestic Violence against Women were instructed to provide policy guidance to the nation's educational institutions on domestic violence.

Through the VAWA of 1994, the Victims of Trafficking and Violence Protection Act of 2000, the Violence Against Women and the Department of Justice Reauthorization Act of 2005, and other related legislations such as the PROTECT Act (Prosecutorial Remedies and other tools to end the Exploitation of Children Today) of 2003 (PL 108-021) and the Unborn Victims of Violence Act of 2004 (PL 108-212), there has emerged a number of federal statutes that govern crimes of violence against women (see Table 1). In addition, there are separate statutes in all fifty states that criminalise domestic violence.³⁷ The American courts are also increasingly becoming open to such domestic violence defences as 'battered women syndrome' and 'justifiable homicide'.³⁸

36. Shahidullah, *Crime Policy in America*.

37. American Bar Association Commission on Domestic Violence, 'Domestic Violence Arrest Policies by State' (2008), <http://www.abanet.org> (accessed January 15, 2009); American Bar Association Commission on Domestic Violence, 'Statutory Summary Charts' (2009), <http://www.abanet.org> (accessed January 15, 2009).

38. Browne, *Battered Women Kill*; Whalen, *Justifiable Homicide*; and Gillespie, *Justifiable Homicide*.

Table 1. Federal violence against women statutes and elements for federal prosecution.

Violence against women offences	
Interstate travel to commit domestic violence	18 U.S.C 2261
Interstate stalking	18 U.S.C 2261 A
Interstate travel to violate a protection order	18 U.S.C 2262
Firearms offences	
Possession of a firearm while subject to a protection order	18 U.S.C. 922 (g) (8)
Transfer of a firearm to a person subject to protection order	18 U.S.C. 922 (d) (8)
Possession of a firearm after misdemeanour domestic violence conviction	18 U.S.C. 922 (g) (9)
Transfer of a firearm to a person convicted of misdemeanour domestic violence	18 U.S.C. 922 (d) (9)
Official use exemptions from firearms offences	18 U.S.C. 922 (a) (1)
Other related statutes	
Full faith and credit	18 U.S.C. 2265
Brady statement	18 U.S.C. 922 (s)
Rights of victims to be heard at bail hearing	18 U.S.C. 2263
Crime victims rights act	18 U.S.C. 3771
Restitution	18 U.S.C 2264
Self-Petitioning for battered immigrant women	18 U.S.C. 1154

Source: United States Department of Justice.

Globalisation of domestic violence: the evolution of the rights perspective

A large number of international reports and studies has recently documented that domestic violence is widespread in all societies of the world.³⁹ In 2002, the World Health Organization published a major world report on violence and health with the help of 160 experts from around the world. 'In 48 population-based surveys from around the world', the report found that 'Between 10% to 69% of women reported being physically assaulted by an intimate male partner at some point in their lives'.⁴⁰ The report also found that the

percentage of women who had been assaulted by a partner in the previous 12 months varied from 3% or less among women in Australia, Canada, and the United States to 27% of ever-partnered women . . . in Nicaragua, 38% of currently married women in Korea, and 52 percent of currently married Palestinian women in the West Bank and Gaza Strip.⁴¹

The widespread prevalence of domestic and intimate partner violence was reported also by the World Health Organization's 2005 report on *Multi-Country Study on Women's Health and Domestic Violence against Women*. The report, based on the interviews of 24,000 women in ten countries – Bangladesh, Brazil, Ethiopia, Japan, Peru, Namibia, Samoa, Serbia-Montenegro, Thailand, and Tanzania – found that

39. European Women's Lobby, *Unveiling the Hidden Data on Domestic Violence in the European Union* (Brussels: European Women's Lobby, 1999); Council of Europe, *Violence against Women in Europe* (Brussels: European Union, Parliamentary Assembly, 2000); R.W. Summers and A.M. Hoffman, *Domestic Violence: A Global View* (Westport, CT: Greenwood Press, 2002); World Health Organization, *World Report on Violence and Health* (Geneva: World Health Organization, 2002); World Health Organization, *WHO Multi-Country Study on Women's Health and Domestic Violence against Women* (Geneva: World Health Organization, 2005); and United Nations Division for the Advancement of Women, *Violence against Women in Brazil: Overview, Gaps and Challenges* (New York: United Nations, 2005).

40. WHO, *Violence and Health*, 89.

41. *Ibid.*

violence by a male intimate partner (also called ‘domestic violence’) is widespread in all of the countries included in the Study For ever-partnered women, the range of lifetime prevalence of physical or sexual violence, or both, by an intimate partner was 15% to 71%.⁴²

The study noted that the ‘proportion of women reporting either sexual or physical violence, or both, by a partner ranged from 15% (Japanese cities) to 71% (Ethiopian provinces), with most sites falling between 29% and 62%’.⁴³ Ethiopia, Peru, and Tanzania, the study observed, had the highest prevalence of intimate partner violence. ‘In Australia, Canada, Israel, South Africa, and the United States’, according to another United Nations study, ‘40%–70% of female murder victims were killed by their partners’.⁴⁴ Similar observations are made by the International Violence against Women Surveys (IVAWS) conducted by the European Institute of Crime Prevention and Control in collaboration with the United Nations and Statistics Canada. IVAWS has so far interviewed about 23,000 women in 11 countries: Australia, Hong Kong, Costa Rica, the Czech Republic, Denmark, Greece, Italy, Mozambique, Poland, Philippines and Switzerland.

These and similar international surveys that have been growing since the 1990s contributed to the globalisation of the agenda for the criminalisation of domestic violence. It began, however, not merely as a research agenda but also as a movement for a fundamental shift in the understanding of global economic growth, democracy, and governance. There are three major processes that played a crucial role in globalising the domestic violence agenda in the 1990s: internationalisation of the women’s movement, global social and economic transformations, and a change in international development perspective.

The International Women’s Movement, started through the formation of the International Council of Women in 1888, Feminist International Alliance of Women for Suffrage and Equal Citizenship in 1904, and the Women’s International League for Peace and Freedom (International Congress of Women) in 1915, has largely shaped the globalisation of the human rights movement in general and the women’s rights movement in particular.⁴⁵ The 1948 United Nations Universal Declaration of Human Rights, the 1966 United Nations International Covenant on Economic, Social, and Cultural Rights, the 1976 United Nations International Covenant on Civil and Political Rights, the 1979 United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the 1985 United Nations Decade for Women: Equality, Development and Peace Conference held in Nairobi, the 1993 World Conference on Human Rights in Vienna (Vienna Declaration and Program of Action), and the United Nations World Conference on Women in Beijing in 1995 – all contributed to the bringing of domestic violence into the agenda for law and policy-making by the Member States. By the 1970s, under impact of the International Women’s Movement and various United Nations initiatives, a gender discourse began to rapidly enter into development discourses. The central theme of the emerging discourse was the global achievement of equal rights for women. By the end

42. WHO, *Multi-Country Study*, p. XIII.

43. *Ibid.*, 28.

44. United Nations General Assembly, *In-Depth Study on All Forms of Violence against Women*. Report of the Secretary General (New York: United Nations, 2006), 1.

45. R. Morgan, *Sisterhood Is Global: The International Women’s Movement’s Anthology* (New York: Feminist Press at CUNY, 1996); M.D. Molyneux, *Women’s Movement in International Perspective: Latin America and Beyond* (UK: Palgrave Macmillan, 2000); B. Anderson, *Joyous Greetings: The First International Women’s Movement, 1830–1860* (New York: Oxford University Press, 2001); and H. Johnson, N. Ollus, and S. Nevala, *Violence against Women: An International Perspective* (New York: Springer Publishing Company, 2007).

of the 1990s, there was hardly a country in the world where there were no women's organisations representing the issues of women's rights including issues of crimes against women.

The globalisation of the International Women's Movement, however, is also related to the progress of modernisation. The countries that achieved significant progress in democracy and economic growth, and extended legal opportunities for women to enter into the modern sectors of education, work, politics, and culture have seen more intensified demands for equal rights for women and legislation to control crimes against women. The World Health Organization's *Multi-Country Study on Women's Health and Domestic Violence against Women* shows that countries with a slower pace of modernisation (Bangladesh, Ethiopia, Peru, and Tanzania)⁴⁶ are the countries with higher rates of victimisation of women from domestic violence.

The globalisation of the domestic violence agenda came also in the context of the growth of a human rights-based approach to development. Beginning in the 1980s, a new human rights-based approach began to enter into development discourses. It began to be increasingly recognised that development is not merely an economic process. Development is also a process of extension of fundamental rights for all groups of people including the right of access to justice, fairness, and freedom from violence and exploitation.⁴⁷ By the 1990s, the human rights-based approach to development became a central theme for development assistance by the United Nations (United Nations Development Program), the European Commission, the World Bank, the United States Agency for International Development (USAID), the Canadian International Development Agency (CIDA), and other international development assistance organisations.⁴⁸

Domestic violence as a human rights issue has evolved through three distinct phases.⁴⁹ In the first phase, beginning particularly from the creation of the Feminist International Alliance of Women for Suffrage and Equal Citizenship in 1904, and the International Congress of Women in 1915, the dominant issue was the legal extension of equal rights for women. The Nineteenth Amendment to the US Constitution that granted women the right to vote is one of the most significant achievements of this period.

The second phase is characterised by the emergence of a movement for the internationalisation of human rights in general. The second phase began with the United Nations Universal Declaration of Human Rights in 1948, the United Nations International Covenant on Economic, Social, and Cultural Rights in 1966, and the United Nations International Covenant on Civil and Political Rights in 1976. With the United Nations Declaration of Human Rights in 1948, the women's movement was broadened and internationalised. The birth of the UN CEDAW in 1979 is one of the major achievements of this period. Through CEDAW, women's issues were defined not only as the extension of political and economic opportunities, but also as domination and exploitation of women through domestic violence,

46. WHO, *Multi-Country Study*.

47. S. Fakuda-Parr and A.K.S. Kumar, eds., *Readings in Human Development: Concepts, Measures, and Policies for a Development Paradigm* (Oxford: Oxford University Press, 2005); A.K. Sen, *Development as Freedom* (Oxford: Oxford University Press, 2001).

48. United Nations, *Preventing and Eliminating Violence against Women: An Inventory of United Nations System Activities on Violence against Women* (New York: United Nations, 2007).

49. R.J. Cook, ed., *Human Rights of Women: National and International Perspectives* (Philadelphia: The University of Pennsylvania Press, 1993).

and those issues were brought into the political agenda of the Member States.⁵⁰ Currently, there are 185 member countries who are party to the CEDAW.

By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms. Countries that have ratified or been accepted to the Convention are largely bound to put its provisions into practice.⁵¹

The CEDAW is ‘a legally binding international agreement to protect and promote women’s human rights’.⁵²

The third phase of the evolution of the rights perspective related to domestic violence began from the middle of the 1990s, particularly with the United Nations World Conference on Women in Beijing in 1995. From that time, demands for legal interventions to stop violence against women became more widespread and international.⁵³ In the United States, the enactment of the VAWA of 1994 is a significant achievement of this period. From the mid-1990s, addressing domestic violence became a legal obligation for the Member States of the United Nations. As one of the recent UN reports noted:

States have concrete and clear obligation to address violence against women, whether committed by state agents or by non-state actors. States are accountable to women themselves, to all their citizens and to the international community. States have a duty to prevent acts of violence against women; to investigate such acts when they occur and prosecute and punish perpetrators.⁵⁴

The issue of a state’s affirmative obligation to address domestic violence has entered into international discourses recently with the case of Jessica Lenahan in the United States. In 2007, Jessica Lenahan filed a case against the United States in the Inter-American Commission on Human Rights – an autonomous commission of the Organization of the American States. Jessica’s three daughters were killed in June 1999 by her ex-husband, Simon Gonzales, who was under a restraining order in connection with domestic violence. Jessica called 911 immediately after her daughters were abducted. Police from the Castle Rock Police Department in Colorado did not immediately respond, and the daughters were killed about 9 hours after abduction. Jessica filed a law suit against the Castle Rock Police Department claiming that immediate police interventions could have saved the lives of her daughters and her due process rights were violated. The federal District Court in Colorado dismissed the case. On appeal, the Tenth Circuit Court gave an opinion that Colorado had mandatory arrest provisions and since the police did not act according to those provisions, Jessica’s due process rights were violated. The US Supreme Court in *Castle Rock v. Gonzales* in 2005, however, overturned the 10th Circuit Court decision, and gave an opinion that the police department of Castle Rock cannot be held accountable for failing to enforce the restraining order. Jessica Lenahan then took the case to the Inter-American Commission of Human Rights.⁵⁵ The Inter-American Commission’s Human Rights

50. United Nations, ‘Ending Violence Against Women: From Words to Action’. Study of the Secretary General (2006), <http://www.un.org/womenwatch> (accessed February 20, 2009).

51. United Nations, *Preventing and Eliminating Violence*, 2.

52. United Nations Development Fund for Women, ‘Domestic Violence in Japan’ (2008), <http://www.unifem-eseasia.org/resources/others/domesticviolence> (accessed August 2, 2008).

53. A.M. Roberts, ‘Domestic Violence as Human Rights Violation’ (2009), <http://www.huffingtonpost.com> (accessed March 11, 2009).

54. UN, *Ending Violence*, 2.

55. A. Gardella, ‘Domestic Violence Case Makes International Claim’ (2007), <http://www.womennews.org> (accessed January 10, 2008).

Tribunal ruled that ‘the United States has an obligation to protect its citizens from domestic violence under the American Declaration on the Rights and Duties of Man’.⁵⁶

In the first and second phases of the evolution of the rights perspectives on domestic violence, the women advocates and liberal feminists pushed forward the agenda for the criminalisation of domestic violence as a part of the agenda for the general extension of political and economic rights of equality for women. In the third phase, however, the criminalisation of domestic violence emerged as a dominant agenda. The radical feminists from the middle of the 1990s particularly began to argue that domestic violence is rooted in unequal power relations between men and women within the structure of patriarchy; hence new laws are needed to stop the specific forms of domination and exploitation of women not just within the structure of family but in all forms of intimate partner relationships. The recent rise of feminist jurisprudence has vastly impacted this particular phase in the evolution of laws against domestic violence, and this specific notion about the criminality of domestic violence is now spreading into all countries of the world.⁵⁷

Criminalisation of domestic violence in Brazil

In 2001–2002, the School of Medicine of the University of Sao Paulo conducted one of its most comprehensive studies on the nature and incidence of violence against women in Brazil as a part of the World Health Organization’s *Multi-Country Study on Women’s Health and Domestic Violence*. The study was based on interviews of 2645 women of reproductive age. The study found that

Among the 2,128 women who had ever had a partner, 27.2% in the city of Sao Paulo said that they had suffered physical violence committed by a partner at least once in their lives With regard to sexual violence committed by an intimate partner, the prevalence was 10.1% in Sao Paulo and 14.3% in Pernambuco.⁵⁸

A similar study in Brazil, conducted in 2003, interviewed 3193 women aged 15–49 years using the World Health Organization’s Multi-Country study questionnaire. The study found that

Among the 3089 women who had a partner during their lives, 52.8% reported having suffered psychological violence, 40.4% physical violence and 21% sexual violence. Overall, 61.1% of this sample of women reported suffering one form of violence or another.⁵⁹

In 1985, the Federal Constitution of Brazil made explicit provisions to control and criminalise domestic violence.⁶⁰ Between 2001 and 2005, Brazil enacted three major legislations to address the problem of violence against women.⁶¹ The first enactment was

56. A. Kain, ‘International Human Rights Tribunal to Hear Jessica Lenahan Case’ (2007), 1, <http://www.associatedcontent.com> (accessed January 15, 2009).

57. Waldorf, Arab, and Guruswamy, *Human Rights-Based Approach*.

58. L.B. Schraiber et al., *Prevalence of Intimate Partner Violence in Regions of Brazil*, 5 (School of Medicine of the University of Sao Paulo, 2007), <http://www.scielosp.org> (accessed January 17, 2009).

59. *Ibid.*, 4.

60. S.E. Alvarez, *Engendering Democracy in Brazil: Women’s Movement in Transition Politics* (Princeton, NJ: Princeton University Press, 1990).

61. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), *Sixth Periodic Report of State Parties: Brazil* (New York: United Nations, 2005).

made to establish a National Toll-Free Domestic Violence Hotline (Law No. 10.714.2003). The second enactment made it a legal requirement for health care service providers to notify cases related to violence against women to law enforcement (Law No. 10.778/2003). The third enactment amended the penal code of Brazil and made violence against women a federal crime (Law No. 10.886.2004). Brazil established the first police station for women in early 1980, and currently there are more than 250 women's police stations in Brazil staffed mostly by women police officers. These women policy centres facilitate the reporting, investigation, and prosecution of cases related to violence against women.⁶² In 2001, Brazil criminalised sexual harassment. In 2002, a new law was enacted to 'authorise judges to issue restraining orders against perpetrators or suspected perpetrators of domestic violence'.⁶³

In 2006, Brazil enacted one of the most comprehensive domestic violence legislations found in the countries of Latin America. The law made new provisions for preventive arrests of domestic violence perpetrators, protection of women who are under the threat of death or serious risk of violence from intimate partners, trials of domestic violence cases in special courts, delivery of social services and public assistance for victims of domestic violence, domestic violence victims restitution, introduction of domestic violence education curricula in schools, and increased fines and prison terms for perpetrators of domestic violence. The new law – Domestic and Family Violence Law of 2006 – is referred to as the 'Maria de Penha Law' named after Maria de Penha who wanted to kill herself to get out of her existence of continuous beating by her husband. She shot herself in the spine and became permanently paralysed.⁶⁴ These laws and legal developments in Brazil to criminalise violence against women came both in response to the strong presence and lobbying of the Feminist and Women's Rights Activists in Brazil⁶⁵ and the globalisation of the domestic violence policy agenda, particularly by the UN CEDAW.

Criminalisation of domestic violence in India

Although India has a strong tradition of empirical research from colonial times, systematic data on the nature and prevalence of domestic violence are still very scanty partly because of the vastness of the country and the peculiar nature of the problem of domestic violence in India.⁶⁶ The estimated population of India in 2008 is 1.14 billion. Out of 1.14 billion, the estimated number of women between 15 and 64 years old is 353 million – a number much higher than the total population of United States in 2009. These 353 million women live in disparate regions and belong to different races, ethnic groups, and religions (Hindus 80.5%; Muslims 13.4%; and Christians 2.3%). They also speak different languages (Hindi is the official language but there are 21 other official languages). The literacy rate among Indian women in 2008 is 47.8%, and about 25% of the Indian population – roughly about

62. M. Htun, 'Puzzles of Women's Rights in Brazil', 4 (2002), <http://www.findarticle.com> (accessed August 2, 2008).

63. Ibid.

64. United Nations Development Fund for Women, 'Brazil Enacts Law on Violence against Women' (2008), <http://www.peacewoman.org> (accessed August 4, 2008).

65. VAWnet, 'Working to End Violence against Women in Brazil' (2004), <http://new.vawnet.org> (accessed August 4, 2008).

66. International Center for Research on Women (ICRW) and the Center for Development and Population Activities (CEDPA), *Domestic Violence in India: A Summary Report of Three Studies* (Washington, DC: International Center for Research on Women, 1999).

250 million – live below the level of poverty. These local peculiarities pose significant challenges to understanding the nature and prevalence of domestic violence in India.⁶⁷

One of the recent empirical studies on domestic violence in India was done in 1999 by the International Center for Research on Women and the Center for Development and Population Activities. The Study, funded by India and the United States Agency for International Development (USAID), was based on empirical data produced by three studies locally conducted by the Gujarat Institute of Development Studies, the Tata Institute of Social Sciences in Mumbai, and the Research Center for Women's Studies in Mumbai.⁶⁸ The study observed that 'physical abuse of Indian women is quite high, ranging from 22 percent to 60 percent'.⁶⁹ The National Crime Record Bureau's (Ministry of Homes) data reveal 'a shocking 71.5 percent increase in cases of torture and dowry death during the period from 1991 to 1995 In 1995, torture of women constituted 29.2 percent of all reported crimes against women'.⁷⁰

In 2007, the Ministry of Health and Family Welfare of India released its final report of 2005–2006 National Family Health Survey. The Ministry claimed that the 2007 report contained a 'comprehensive picture of health and well being of India's men, women, and children'.⁷¹ The survey was based on interviews of 230,000 women (between the ages 14 and 49) and men (between the ages 15 and 54) from different states of India. The study reveals that

Overall, 40% of ever married women have experienced violence, with large variations among the states. The experience of spousal violence ranges from a low of 6% in Himachal Pradesh to a high of 59% in Bihar. Married women with no education were much more likely (at 46%) than other women to have suffered spousal violence.⁷²

The first set of legal developments related to domestic violence in India came through the enactment of the Criminal Act of 1983 (No. 46) that amended the Indian Penal Code by adding a new Section to criminalise marital violence, related particularly to dowry harassment – the Section of 498A. The new law made it a crime for a husband, including his relatives, to subject his wife to cruelty. The law describes that: 'Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine'. The offence 'is cognisable, non-bailable, and non-compoundable'. The law further states that 498A can only be invoked by the women victims of cruelty or her relatives. Some of the forms of cruelty recognised by the courts include persistent denial of food, physical violence, bodily injury or danger to life, psychological and emotional torture, verbal abuse, home confinement, intentional abuse of children in front of their mother, harassment for dowry, and demands for excessive sex, and perverse sexual conduct.⁷³

67. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), *Initial Reports of State Parties: India* (New York: United Nations, 1999); National Alliance of Women, *India: Second NGO Shadow Report on CEDAW* (New Delhi: UNIFEM South Asian Office, 2006).

68. ICRW and CEDPA, *Domestic Violence in India*.

69. *Ibid.*, 1.

70. *Ibid.*

71. Government of India, *Final Report of National Family Health Survey Released Today* (Delhi: Ministry of Health and Family Welfare, 2007), 1.

72. *Ibid.*, 3.

73. Manushi, 'Laws against Domestic Violence' (2003), <http://www.Indiatogether.org/manushi/issue137/laws.htm> (accessed August 3, 2008).

The Section 498A ‘takes a particular cognisance of harassment, where it occurs with a view to coercing the wife, or any person related to her, to meet any unlawful demand regarding any property or valuable security’.⁷⁴ It made provisions for mandatory arrest and investigation of 498A offences by law enforcement. Judges are also authorised to refuse bail for 498A offenders.

Laws against domestic violence in India were further extended through the enactment of the Protection of Women from Domestic Violence Act of 2005 (PWDVA). Many observe that PWDVA, which made a series of provisions of a civil nature, ‘for the first time recognize women’s right to a violence-free home Section 498A of the Indian Penal Code has been retained and the new law provides options of a civil nature’. Section 498A is primarily punitive in nature and ‘it does not protect women from violence in relationships that are not matrimonial in nature There was no definition of the term “domestic violence” that comprehensively reflected a woman’s experience of violence in intimate relationships’.⁷⁵ The Protection of Women from Domestic Violence Act of 2005 (PWDVA) was enacted primarily to ‘equalize skewed power relations within the home by first providing a violence free space to negotiate from’.⁷⁶ The Act of 2005 provided a much broader definition of domestic violence (Section 3) that includes physical, psychological, sexual, economic and emotional abuse in intimate partner relationships. The Act ‘recognizes a woman’s right to live in a violence free home. The right to reside has been given statutory recognition under the law. This guards against the illegal dispossession of women from the shared household’.⁷⁷ Some of the key provisions and remedies provided by the new law include protection order (Section 18), residence order (Section 19), monetary relief (Section 20), custody order (Section 21), compensation order (Section 22), and *ex parte* and interim orders (Section 23). The new law created provisions also for a Protection Officer as an implementation authority, registered service providers for domestic violence victims, mandatory access of domestic violence victims to state medical facilities and shelter homes, and mandatory requirement for law enforcement to inform the victims about the availability of domestic violence legal services.⁷⁸

Criminalisation of domestic violence in Japan

The World Health Organization’s *Multi-Country Study on Women’s Health and Domestic Violence against Women* found that 15% of women in Japan who had ever-partnered had experienced physical or sexual violence or both.⁷⁹ The Japanese women who had ever-partnered had experienced more physical (13%) than sexual violence (6%). In 2002, The Cabinet Office of Japan published its first major survey on the nature and prevalence of domestic violence in Japan. The survey was based on mailed questionnaires sent to 4500 people randomly selected for participation. In the survey, 2888 or 64.6% of females responded. The survey shows that

74. *Ibid.*, 3.

75. The Lawyers Collective Women’s Rights Initiative (LCWRI), *Staying Alive: First Monitoring & Evaluation Report 2007 on the Protection of Women from Domestic Violence Act of 2005* (New Delhi: UNIFEM, South Asia Office, 2007), 4.

76. *Ibid.*, 1.

77. *Ibid.*, 8.

78. LCWRI, *Staying Alive*.

79. WHO, *Multi-Country Study*.

15.5 percent of women have suffered physical assault from their spouse or boyfriend, 5.6 percent have suffered frightening threats from their spouse or boyfriends, and 9 percent have suffered sexual coercion from their spouse or boyfriend in their life time 4.4 percent of female respondents 'felt their lives were in danger' due to violence from their spouse or boyfriend.⁸⁰

In 2005, Japan's National Policy Agency reported that domestic violence was rising in Japan. The report found that

domestic violence cases in Japan jumped 17.2 percent in 2005 to a record 16,888 incidents, with nearly all of the victims being women The figure was up from the previous record of 14,140 cases set in 2004. A total of 87 murder [intimate partner] and attempted murder cases were filed during the year, compared with a total of 75 in 2004.⁸¹

Japan's first domestic violence law described as the Prevention of Spousal Violence and the Protection of Victims Act was passed in 2001 (Law No. 31). The law does not clearly criminalise domestic violence. It rather created some legal measures to prevent domestic violence and provide some public assistance to the victims of domestic violence.⁸² The law 'has been framed to prevent spousal violence and protect victims through the establishment of a system to deal with spousal violence providing for notification, counselling, protection, and support for self reliance'.⁸³ The law made provisions for Spousal Violence Counseling Centers (Article 2), Counseling of Women Consultants (Article 4), and victims' protections at Women's Protection Facilities, Police Protection for Victims of Domestic Violence (Applications of the Law No. 162, 1954; Law No. 136, 1948), and the extension of welfare benefits for self reliance. Provisions for court mandated 6-month protection orders were made only in cases of serious physical injury or threat of physical violence (Article 10). Those protection orders, however, are to follow the Code of Civil Procedure (Law No. 109, 1996). Under the law, courts can force a perpetrator to stay away for 2 weeks (Article 10). The law provided a penalty of not more than 1 year in prison and a fine of not more than one million yen (approximately \$8450) for the violation of protection orders (Article 29). Many observe, however, that the

new law does not make domestic abuse a crime in a society in which, by tradition, men are considered superior to women, violence is a man's prerogative, and domestic abuse is a private affair and no business of the policy and the criminal justice system.⁸⁴

Criminalisation of domestic violence in Bangladesh

The World Health Organization's Multi-Country Study ranked Bangladesh as one of the countries with high incidence of domestic violence,⁸⁵ particularly in rural areas. The study

80. Government of Japan, *Domestic Violence in Japan* (Tokyo: The Cabinet Office, 2002), 1, <http://www.unifem-eseasia.org/resources/others/domesticviolence/PDF/Japan.pdf> (accessed August 1, 2008).

81. Japan Mental Health Blog, 'Domestic Violence Cases Rise 17.2%' (2006), 1, <http://www2.gol.com/uses/Andrew/mentalhealthnews.html> (accessed August 4, 2008).

82. Y.-N. Ken, 'Domestic Violence in Japan: What Japan Thinks' (2006), <http://whatjapanthinks.com> (accessed July 23, 2008).

83. Japan House of Councillors, 'Law for the Prevention of Spousal Violence and the Protection of Victims', 2, (2005), <http://www.danjyo.pref.kumamoto.jp/C/C-001/sv.pdf> (accessed August 2, 2008).

84. M. Rice, 'Japan Adopts Tough Domestic Violence Law', 1-2, (2001), <http://www.womensenews.org> (accessed July 2, 2008).

85. WHO, *Multi-Country Study*.

found that about 62% of rural and 53% of urban ever-partnered women had experienced physical or sexual violence, or both. About 42% of rural women and 40% of urban ever-partnered women had experienced physical violence. About 53% of rural women and 37% of urban ever-partnered women had experienced sexual violence. The study also found that in Bangladesh, 19% of both rural and urban ever-partnered women had experienced serious physical violence from their intimate partners. The study also observed that

While sexual violence was considerably less frequent than physical violence in most settings, it was more frequent in rural areas of Bangladesh. Approximately 21 percent of urban and 15 percent of rural women who had experienced physical or sexual violence, or both, had suicidal thoughts

The high incidence of domestic violence in Bangladesh has been recorded also by a number of other empirical studies done by local women's rights groups, international development assistance organisations, and Non-Governmental Organisations.⁸⁶ The 2001 Asian Development Bank's study on Women in Bangladesh reports, on the basis of data collected from local newspapers (1996–1999) by Ain-O-Shalish Kendra, a local women's right advocacy organisation, that domestic violence has grown 81.7%, acid-throwing has grown 78.3%, rape has grown 67.8%, and dowry related violence has grown 48.7% in Bangladesh between 1996 and 1999.⁸⁷ The 2001 International Center for Diarrheal Disease and Research, Bangladesh (ICDDRDB) study on domestic violence in Bangladesh, conducted on the basis of survey of 3130 urban and rural women of reproductive age (15–49 years), found that about 60% of women 'had been sexually abused during the lifetimes. Two-thirds of the women never talked about their experience of violence and almost none accessed formal services for support'.⁸⁸

Bangladesh ratified the UN CEDAW in 1984. Through the ratification of CEDAW, Bangladesh is committed to the global community to legally address the issues of violence against women.⁸⁹ The legal framework of dealing with domestic violence in Bangladesh includes a number of statutes and ordinances.⁹⁰ Some of these include the Child Marriage Restraint Act of 1929 (as Amended in 1984), Muslim Family Law Ordinance of 1961, Dowry Prohibition Act of 1980, Cruelty to Women's Ordinance of 1983, Family Court Ordinance of 1985, Prevention of Repression of Women and Children Act of 2000, Acid Crime Control Act of 2002, and the Acid Control Act of 2002.

The Prevention and Repression of Women and Children Act of 2000 (Nari–Shishu Nirjaton Domon Ain) and the Acid Crime Control Act of 2002 have been enacted particularly to criminalise domestic violence, as well as to provide legal and social services to the victims of domestic violence. The Prevention and Repression of Women and Children Act of 2000 provided the death penalty for 12 offences including causing death by corrosive substance, causing permanent bodily injury by corrosive substance, rape, rape with murder,

86. Asian Development Bank (ADB), *Women in Bangladesh: Country Briefing Paper* (Manila: Asian Development Bank, 2001).

87. *ibid.*

88. United Nations Integrated Regional Information Network (UNIRIN), 'Bangladesh: Gender – Based Violence Still Rampant', 1 (2009), <http://www.irinnews.org/Report> (accessed March 2, 2009).

89. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), *Bangladesh: Third and Fourth Periodic Reports of State Parties* (New York: United Nations, 1997).

90. S. Khan, 'Violence against Women: Bangladesh Context' (2005), <http://www.humanrights.or.jp/asia-pacific/040/02.htm> (accessed July 5, 2008).

rape with attempted murder, gang rape, gang rape with murder, dowry death, and women trafficking.⁹¹ The Act of 2000 provided ‘that if death is caused as a result of rape or post-rape acts, the sentence is death or life imprisonment’.⁹² The Act of 2000 also made provisions for the creation of Special Courts and Tribunals in each district (county) for the speedy trial of domestic violence cases. The Act also made sexual harassment a crime punishable by law.⁹³ The Act was amended in 2003 to include more specific provisions to deal with the criminal procedures in domestic violence cases. The 2003 Amendment required the Special Courts and Tribunals to complete their trial procedures within 180 days from the submission of the cases.

The Acid Control Act of 2002 increased penalties for acid-related domestic violence (Section 326A). The new law imposed ‘death penalty or life imprisonment for permanent damage of both eyes and permanent disfiguration of face or head by means of any corrosive substance’.⁹⁴ The Act created a National Acid-Crime Control Council, local acid-crime control committees, and rehabilitation centres for victims of acid-related domestic violence. The Act also provides for legal assistance to the victims and control of the import, manufacture, distribution, storage, sale, and use of acid.⁹⁵

Criminalisation of domestic violence in Ghana

Africa, in general, has the highest rate of prevalence of domestic violence among all the world’s continents.⁹⁶ The World Health Organization’s Multi-Country Study found that 71% of Ethiopian and 56% of Tanzanian ever-partnered women had experienced both physical and sexual violence from their intimate partners.⁹⁷ About 36% of Ethiopian and 25% of Tanzanian ever-partnered women had experienced severe physical violence. About 59% of ever-partnered women in Ethiopia had experienced sexual violence from their intimate partners – the highest rate of sexual violence reported by all the countries included in the 2005 Multi-Country study of the World Health Organization. Data from Amnesty International show that

In South Africa . . . about one woman is killed by her husband or boyfriend every six hours. In Zimbabwe, six out of ten murder cases tried in the Harare High Court in 1998 were related to domestic violence. In Kenya, the attorney general’s office reported in 2003 that domestic violence accounted for 47 percent of all homicides.⁹⁸

Ghana is a West-African country of about 23 million people, of which about 51% are females. One of the first comprehensive surveys on domestic violence in Ghana was

91. T. Monsoor, ‘Justice Delayed Is Justice Denied: Women and Violence in Bangladesh’ (2006), <http://www.thedailystar.net/law/2006.03/02/index.htm> (accessed June 10, 2008).

92. Odhikar, ‘Ending Impunity to Acid Violence and Rape: A Project by Odhikar and Action, AID-Bangladesh’, 4 (2008), <http://www.omct.org/pdf/VAW/2008/ODHIKAR> (accessed July 10, 2008).

93. Naripokkho and Bangladesh Mahila Parishad, *Baseline Report: Violence against Women in Bangladesh* (Kuala Lumpur, Malaysia: International Women’s Rights Action Watch Asia Pacific, 2002).

94. Odhikar, *Ending Impunity*.

95. S. Rahman, ‘Shattered Reflection – Acid Violence and the Law in Bangladesh’, *Human Rights Solidarity* 15, no. 3 (2005): 1–2.

96. A. Rotimi, ‘Violence in the Family: A Preliminary Investigation and Overview of Wife Battering in Africa’, *Journal of International Women’s Studies* 9, no. 1 (2007): 234–52.

97. WHO, *Multi-Country Study*.

98. M. Kimani, ‘Taking on Violence against Women in Africa’, *Africa Renewal* 21 (2007): 1–9.

completed by the National Council on Women and Development in 1998. The survey, sponsored by the United Nations Development Program and the World Health Organization, was based on interviews of 3047 people between 15 and 72 years of age, of which 66% were females. The samples were randomly selected from households in 30 districts throughout the country. The survey found that wife-beating was a 'common act in all communities studied. Seventy-two percent of the respondents reported that it is a common practice in their communities'.⁹⁹ The survey showed that

33% of women have experienced physical violence (beating, slapping, or other physical punishment) at the hands of their current or previous partners In terms of sexual violence, 20% of women had their first experience of sexual intercourse by force while 33% had been fondled or touched against their will.¹⁰⁰

The study concluded that 'Women are most at risk of sexual violence in all its forms between 10–18 years. Women experience different forms of abuse. It is seen as a private matter. Violence against women is not seen as a crime.'¹⁰¹

The interplay of patriarchy even within matrilineal households and poverty explains this perception of domestic violence in Ghana. Ghana is predominantly a patrilineal society with the exception of the Akan tribes that are found in the Ashanti, Eastern, Brong Ahafo and Central Regions of Ghana. Traditionally, the Ghanaian 'woman must always be under the guardianship of a man, and when she marries, her original guardian hands over some or all of his responsibility for her to her husband'.¹⁰² The probability for some men to abuse this transfer of power, and the Ghanaian woman's subservience to such 'powerful' men in their lives explain their reluctance to perceive such abuses as criminal behaviours. The implication of this is the freedom with which men abuse their wives or partners without any fear of criminal investigation. The fear of losing their husbands and the potential loss of financial support from them, particularly if they have children, also prevented women from reporting domestic violence to law enforcement. In Ghana, the traditional successors to men were the sons of their maternal sisters. Until 1985 when the Rawlings Administration enforced the Interstate Succession Law (PNDC Law 111), widows were legally stripped of their husbands' properties including their dwelling places, by the husbands' extended families.¹⁰³

Ghana enacted a number of laws beginning in the 1990s to conform to international standards. They include the criminalisation of 'female genital mutilation, customary or ritual enslavement of any kind, harmful traditional widowhood practices and defilement to cover boys and girls'.¹⁰⁴ One of the most significant legal developments on domestic violence in Ghana was the establishment of the Women and Juvenile Unit (WAJU), now described as Domestic Violence and Victim Support Unit (DOVVSU) of the Ghana Police in 1998. DOVVSU was established in the wake of a major social movement organised by

99. E. Ardayfio-Schandorf, *Violence Against Women: The Ghanaian Case* (Geneva: United Nations Division for the Advancement of Women, 2005), 7.

100. *Ibid.*, 3.

101. *Ibid.*, 8.

102. G.K. Nukunya, *Tradition and Change in Ghana: An Introduction to Sociology* (Accra: Ghana Universities Press, 1998), 43.

103. Nukunya, *Tradition and Change in Ghana*.

104. Women in Law and Development in Africa, 'Shadow Report to the Ghana's Third, Fourth & Fifth Reports on the Implementation of the CEDAW in Ghana', 3 (2006), <http://www.iwraw-ap.org/resources.pdf/Ghana> (accessed August 5, 2008).

several women's organisations in Ghana in the 1990s¹⁰⁵. These organisations included the National Commission on Women and Development (NCWD), the African Women Lawyers Association (AWLA), the United Nations Children's Emergency Fund (UNICEF), the International Federation of Women Lawyers (FIDA), and the Association of Market Women. Domestic Violence and Victim Support Unit (DOVVSU) 'aimed at the overall prevention of violence, protection of vulnerable members of society and the prosecution of domestic violence and child abuse'.¹⁰⁶ The DOVVSU made provisions to make arrests and prosecute domestic violence offenders, to launch an educational campaign to prevent domestic violence, and establish an effective domestic violence database.¹⁰⁷

In February 2007, Ghana became one of the few African countries to pass legislation to criminalise domestic violence,¹⁰⁸ and to conform to the international standards of human rights in general, and to uphold by the UN CEDAW in particular. The new legislation – Domestic Violence Act of 2007 – signed into law by President John Agyekum Kufuor in April 2007, made provisions for the prosecution of all forms of domestic violence – physical, sexual, psychological, emotional, and economic. 'Following a broad and gender-neutral definition of domestic violence, the Act criminalises physical, sexual and psychological abuse, intimidation, threats and harassment between spouses and other intimate partners, former partners, family members and co-tenants'.¹⁰⁹ The Act further stipulated 'that the use of violence in the domestic setting is not justified on the basis of consent, thereby ensuring that the crime of marital rape can now be prosecuted in Ghanaian courts'.¹¹⁰ Provisions were made for protective and restraining orders, and even mandatory arrest without a warrant. Under the law,

courts may order a perpetrator of domestic violence to seek counselling or treatment, pay his victim's medical expenses, and relocate from the common domicile, while continuing to pay rent. If a protection order is breached, courts are to impose fines and/or imprisonment of up to two years.¹¹¹

Provisions were also introduced to create family tribunals for dispute resolution, and the establishment of a Victims of Domestic Violence Support Fund for victims' assistance and rehabilitation.

What is thus observed is that all six countries examined above – United States, Brazil, India, Japan, Bangladesh, and Ghana – have enacted a series of laws and statutes to criminalise domestic violence, particularly from the middle of the 1990s. There is a broad range of similarities among these countries in terms of the evolving criminal laws related to domestic violence (see Table 2). In all these countries, a movement for the criminalisation of domestic violence began in response to the notions of human rights in general and

105. C.N. Derby, *Contemporary Slavery: Researching Child Domestic Servitude* (Lanham, MD: University Press of America, 2009).

106. C.N. Derby, 'Domestic Servitude in Ghana: Conflicts between Tradition and Social Reforms', *Virginia Social Science Journal* 43 (2008): 1–20.

107. Derby, 'Domestic Servitude in Ghana'.

108. T. Manuh, 'The Passage of Domestic Violence Legislation in Ghana' (2008), <http://www.pathways-of-empowerment.org> (accessed July 2, 2008).

109. Y. Erturk, *Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences: Mission to Ghana* (New York: United Nations, 2008), 21.

110. *Ibid.*

111. *Ibid.*

Table 2. Major domestic violence legislation: USA, Brazil, India, Japan, Bangladesh, and Ghana.

Countries	Major domestic violence legislation
United States	VAWA of 1994 Victims of Trafficking and Violence Protection Act of 2000 Protect Act of 2003 Unborn Victims of Violence Act of 2004 Violence Against Women and the Department of Justice Reauthorization Act of 2005
Brazil	National Toll-Free Domestic Violence Hotline (Law No. 10.714.2003) Notification of Violence against Women to Law Enforcement (Law No. 10.778/2003) Violence against Women a Federal Crime (Law No. 10.886.2004) Domestic and Family Violence Law of 2006 (Maria de Penha Law)
India	Criminal Act of 1983 (Criminalization of Dowry Harassment – Section 498-A) Protection of Women from Domestic Violence Act of 2005 (PWDVA)
Japan	Prevention of Spousal Violence and the Protection of Victims Act of 2001 (Law No. N. 31)
Bangladesh	Muslim Family Law Ordinance of 1961 Dowry Prohibition Act of 1980 Cruelty to Women's Ordinance of 1983 Family Court Ordinance of 1985 Prevention of Repression of Women and Children Act of 2000 Acid Crime Control Act of 2002
Ghana	Interstate Succession Law, 1985 Domestic Violence and Victim Support Unit (DOVVSU), 1998 Domestic Violence Act of 2007

Source: Compiled by the authors.

women's rights in particular. The constitutions of all these countries have adopted the notion of human rights and prohibited discriminations on the basis of gender, race, ethnicity, religion, and nationality. However, the translation of the constitutional principles into laws and statutes, particularly with respect to women's rights has been a long process of modernisation and globalisation.

For example, in the United States, the process did not start until the Nineteenth Amendment ratified in 1920 that legalised the voting rights of women. After that a number of statutes passed by Congress (Civil Rights Act of 1964, the Civil Rights Act of 1991, the Violence against Women Act of 1994 and the Violence against Women and the Department of Justice Reauthorization of Act of 2005), and a number of decisions made by the US Supreme Court (*Griswold v. Connecticut* in 1965, *Eisenstadt v. Baird* in 1972, *Meritor Savings Banks v. Vinson* in 1986, *Harris v. Forklift Systems, Inc.* in 1993, *Faragher v. City of Boca Raton* in 1998, and *Crawford v. Nashville* in 2009) vastly expanded the boundaries of women's rights in public spheres. The VAWA of 1994 brought for the first time a series of statutes in the United States that significantly changed the English Common Law notions of family, marriage, husband, wife, love, and intimacy. The VAWA of 1994 for the first time made it legal for law enforcement to enter into the private domain of family and intimacy for investigating and prosecuting issues related to domestic violence.

The advance of gender rights in the private spheres of family and intimacy is a progress towards modernisation, and this process has now become a global phenomenon. The rise of the International Women's Rights Movement, the feminist movement, and the development of feminist jurisprudence have been the driving forces behind the globalisation

of the women's rights movement and the global movement for criminalisation of domestic violence. In the spheres of governance and policy-making for women's rights, significant roles were also played by the United Nations' Development Fund for Women, the World Health Organization, and the UN CEDAW. Significant roles in research and data gathering were also played by other International and Regional Development Assistance Organizations such as the World Bank, European Commission, Inter-American Commission on Human Rights, Asian Development Bank, and the Organization of African Union (OAU). Beginning in the twenty-first century, women's rights issues became too compelling for the nation-states to ignore.

By the year 2007, out of 185 signatories of the United Nations CEDAW, about 87 countries have adopted legislation to criminalise domestic violence. What is more compelling also is that global laws and statutes against domestic violence are becoming increasingly similar. Domestic violence in all the countries studied is specifically defined as intimate partner violence different from child abuse, elderly abuse, and abuse by non-intimate partners. Intimate partner violence is also broadly conceived from multi-dimensional perspectives – physical, sexual, psychological, emotional, and economic. There are similarities also in terms of the role of law enforcement. The domestic violence statutes of all the countries included provisions for mandatory arrest, investigation, protection, and restraining orders. Legal provisions were also introduced for victim assistance, rehabilitation, and special training on domestic violence for law enforcement, judges, and court personnel.

There are, however, some differences in the countries studied in terms of the nature and the extent of their laws against domestic violence. In the United States, Brazil, India, Bangladesh, and Ghana, the laws are more punitive in nature and they are more formalised in their criminal justice systems. Bangladesh's Prevention and Repression of Women and Children Act of 2000 is probably one of the most punitive legislations of all the countries studied. The law provided the death penalty for 12 offences related to domestic violence. Japan's Prevention of Spousal Violence and the Protection of Victims Act of 2001, on the other hand, is more informal and preventive in nature. The Act, for examples, requires law enforcement to maintain confidentiality of domestic violence cases and investigations. In the United States, unlike in other countries, there is a separate organisation within the government for policy-making on domestic violence – the VAWA established within the Department of Justice after the enactment of the Domestic Violence Act of 1994. The need for scientific research for policy-making on domestic violence is also congressionally mandated in the United States.

Conclusions

In the literature on criminology and criminal justice, there is a debate about the gradual expansion of the boundaries of criminalisation in almost all advanced countries of the West. Many scholars have defined this process as an advancing 'culture of control',¹¹² the rise of a new 'surveillance society',¹¹³ or the growth of a 'politics of control'.¹¹⁴ This article has addressed this debate in terms of the hypothesis that criminalisation, modernisation, and globalisation are intimately connected. The societies that are

112. Garland, *Punishment and Modern Society*; Garland, *Culture of Control*.

113. D. Lyon, *The Electronic Eye: The Rise of Surveillance Society* (Minneapolis: University of Minnesota Press, 1994); K.D. Haggerty and R. Ericson, *The New Politics of Surveillance and Visibility* (Ontario: The University of Toronto Press, 2006).

undergoing modernisation and globalisation are bound to enlarge their boundaries of criminalisation. The expansion of the process of criminalisation is not necessarily a process of contraction of human rights and freedom. In fact, the expansion and protection of human rights and freedom and the need for governance through justice and due process necessitate the expansion of the boundaries of criminalisation.¹¹⁵ This necessity seems to be an irreversible process because modernisation demands that new rights and freedom become inclusive and universal. In the process of modernisation, traditional ideas, values, and institutions are challenged and changed. In the 1960s and 1970s, this theme was at the core of the ideas of a number of modernisations theorists. They argued and hypothesised that with the increase of modernisation and globalisation, the world societies would become increasingly homogenous in terms of the nature and articulation of their core institutions of growth, law, and governance. The present study has shown that criminalisation of domestic violence in the United States, Brazil, India, Japan, Bangladesh, and Ghana came in response to a number of issues related to human rights, women's rights, gender equality, and the role of women in development – the issues that are broadly related to modernisation and globalisation. The societies that are undergoing modernisation and globalisation are bound to expand their boundaries of criminalisation because of the inclusive, universalistic, and reflexive nature of modernity.¹¹⁶

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114. J. Simon, *Governing Through Crime: How the War on Crime Transformed American Democracy and Created a Culture of Fear* (New York: Oxford University Press 2007).

115. S.M. Shahidullah, 'From Classical Sociology to Contemporary Criminology: Confronting Crime in Postmodern Societies' (paper presented at the annual meeting of the Eastern Sociological Society, February 21–24, 2008).

116. Beck, Giddens, and Lash, *Reflexive Modernization*.

recent publications include Domestic Servitude in Ghana: Conflicts between Tradition and Social Reforms. *Virginia Social Science Journal*, 43, no. 1–20 (2008); The Case against the Medicalization of Female Mutilation. *Canadian Woman Studies*, 24 (1) 95–100, 2004; and Causes and characteristics of 'Contemporary Slavery': Impact on women and children. *Canadian Woman Studies*, 22 (3, 4), 60–65, 2003.

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