

The COVID-19 Crisis, Domestic Violence and Indian Legal Shortcomings: An Examination of How the Pandemic Helped Reveal Structural Deficiencies in the Indian Legal Framework

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Introduction

Since the beginning of 2020, the COVID-19 crisis affected the lives and livelihood of millions, if not billions, around the world. This extremely public global pandemic was closely followed by a relatively private and less obvious 'shadow pandemic'.¹ The terminology of a 'shadow pandemic,' coined by the United Nations, refers to the sharp increase in gender-based crimes and violence against women since early 2020. Such an increase is especially seen in reference to cases of domestic violence, with many families forced to stay home together for most of 2020 and 2021. In fact, in April 2020, UN Secretary General Antonio Guterres requested for the declaration of a worldwide domestic violence 'ceasefire'.² While doing so, Guterres urged governments to 'put women's safety first as they respond to the crisis.'³ Despite the international community petitioning for such action relatively early, many governments still failed to account for gender-based violence in their COVID action plans, and the rates of domestic violence in countries all over the world continued to rise.

In 2020, India saw a 100% rise in emergency calls related to domestic violence.⁴ Recorded cases of sexual and gender-based violence doubled during the first nation-wide lockdown, from 24 March to 3 May.⁵ More specifically, the National Commission of Women faced a 94% increase in reported cases of violence against women in less than a month since the start

¹'COVID-19 Worsening Gender-Based Violence, Trafficking Risk, For Women And Girls' *UN News*, 2020) <<https://news.un.org/en/story/2020/11/1078812>> Accessed 8 February 2025

² *ibid.*

³ *ibid.*

⁴ Payal Seth, 'As COVID-19 Raged, The Shadow Pandemic Of Domestic Violence Swept Across The Globe' (*The Wire*, 2021) <<https://thewire.in/women/covid-19-domestic-violence-hdr-2020>> Accessed 8 February 2025. Similarly, there was a 30% rise in Cyprus, 40-50% rise in Brazil and 60% rise in the European Union.

⁵ Mysore Narasimha Vranda and Moorkath Febna, 'Response To Sexual And Gender-Based Violence Against Women During COVID-19' (2020) 42 *Indian Journal of Psychological Medicine* 582.

of the first lockdown (24 March 2020 to 16 April 2020).⁶ When it comes to domestic violence, the issue was not simply an increase in this form of abuse, but also the decrease in accessibility to services and support systems that previously curtailed or dealt with this ever-prevalent form of violence in India. Therefore, the above percentages are only in reference to the cases that do come to light, where the woman is able to access help.⁷ Sadly, many other women were forced to suffer in silence. Exacerbating factors, such as restricted mobility or limited services, resulted in the fact that ‘the rise in violence is often hidden.’⁸

Despite the specific characteristics of the COVID lockdown, increased violence faced by women is ‘a pattern repeated in many emergencies, whether conflict, economic crisis or during disease outbreaks.’⁹ In countries like India, by not sufficiently protecting women from domestic violence and providing justice for this crime, the law failed to ensure a sustainable and equitable response to the COVID-19 pandemic. Moreover, despite the 94% increase in reported gender-based violence during the first month of the lockdown, Shalu Nigam shares that ‘no political leader made any statement regarding stopping violence or providing support to women in need.’¹⁰ In learning lessons from the pandemic, it is as pertinent as ever for the government of this large and diverse country to make sure that women and girls are sufficiently protected from the increased threat to violence that they face during times of crisis. It is equally important that the structural legal inequalities highlighted during the pandemic are sufficiently addressed in order to provide substantive equality beyond the crisis.

This research seeks to understand how cases of domestic violence in India continued to skyrocket during the COVID-19 crisis, despite existing domestic

⁶Shalu Nigam, ‘COVID-19: India’s Response To Domestic Violence Needs Rethinking’ [2020] SSRN Electronic Journal.

⁷Many women who share their living space with their abusers are unable to make a phone call for help without the knowledge of the perpetrator.

⁸UNSDG | Shadow Pandemic: UN India Responds To Uptick In Violence Against Women And Girls During COVID-19’ (*UN Sustainable Development Group*, 2020) <<https://unsdg.un.org/latest/stories/shadow-pandemic-un-india-responds-uptick-violence-against-women-and-girls-during>> Accessed 8 February 2025.

⁹Ibid.

¹⁰Nigam, ‘COVID-19: India’s Response To Domestic Violence’ (n6).

violence laws criminalising this offense, as well as campaigns tailored to respond to the increase in violence. Along with revealing weaknesses in the government's COVID response, this incongruity also reveals a larger structural deficiency and lack of equity in the Indian legal framework surrounding domestic violence. As Maji, Bansod and Singh highlight, the increase in domestic violence during lockdown 'is a clear indication of the trend that the domestic space is still unsafe for a majority of women.'¹¹ Beginning with a discussion on domestic violence in India during COVID-19, this paper seeks to understand the reason behind a high rate of cases – both before and during the pandemic – by looking at scripts and perceptions prevalent in India's private, social sphere, which influence the public, social and legal sphere as well.¹²

Although these scripts and perceptions are not indicative of every individual Indian experience, they are largely predominant in Indian society as a whole. The research argues that social perceptions on marriage and gender roles help explain the weaknesses in India's laws surrounding domestic violence. These weaknesses, in turn, are highlighted and exacerbated by the increase in domestic violence during COVID-19. Finally, the paper concludes with a brief discussion of actions that the government can take in order to begin a conversation on creating equitable and long-lasting protection for victims of domestic violence.

COVID 19 and Domestic Violence in India

Existing Laws and Efforts Made during COVID

In order to understand the ways in which domestic violence laws and campaigns have been ineffective, it is important to begin by looking at what these provisions aimed to address. Even prior to the pandemic, the Indian legal

¹¹Sucharita Maji, Saurabh Bansod and Tushar Singh, 'Domestic Violence During COVID-19 Pandemic: The Case For Indian Women' [2021] *Journal of Community & Applied Social Psychology* 6.

¹²The public-private divide is a social divide where certain relationships and offences are placed in the public sphere and therefore under more protection and scrutiny while others are left in the private where the state has minimal intervention. Legally, this is most obviously seen in the division between the predominantly public sphere of criminal law and the private sphere of civil law.

system included domestic violence laws that were tailored to specific forms of abuses,¹³ as well as laws that covered domestic violence as a whole. The two most prominent provisions under the latter category included the Protection of Women from Domestic Violence Act (PWDVA),¹⁴ within India's civil law, and Section 498A of the Indian Penal Code (IPC),¹⁵ within India's criminal law. India is often congratulated for its ground-breaking creation of IPC Section 498A in 1983, making it one of the few countries to criminalise domestic violence at the time. However, this definition of domestic violence – under the heading of cruelty by the husband or his family – has a high threshold to cross, as the violence should be 'likely to drive the women to commit suicide', 'cause grave injury or danger to life, limb or health (whether mental or physical)' or be related to a dowry demand.¹⁶ Promisingly, the PWDVA also provides a definition for domestic violence – with a more realistic threshold – which includes emotional and economic, as well as sexual and verbal abuse.¹⁷ However, violation of PWDVA does not hold any criminal consequences.

In addition to these existing laws, the onset of COVID-19 restrictions and the public outcry for protection from domestic violence led to the creation of a few public campaigns and action by states. In April 2020, soon after the first lockdown began, the National Commission for Women (NCW) launched their WhatsApp-based helpline in order to provide a covert method for reporting domestic violence.¹⁸ Similarly, governmental provisions for victims of domestic violence that already existed¹⁹ continued to operate.²⁰ However, during the same time, the national government had still not made domestic violence services essential – despite the lockdown.²¹ Where the national government fell short, a few individual states created their own initiatives in order to try and fill the gap.

¹³Such as dowry-related death.

¹⁴Protection of Women from Domestic Violence Act 2005

¹⁵Indian Penal Code 1860, Chapter XXA, Section 498A

¹⁶ibid.

¹⁷Protection of Women from Domestic Violence Act 2005, Chapter II, Article 3

¹⁸Mitali Nikore, 'With Covid-19, Comes The "Shadow Pandemic": How The Surge Of Domestic Violence Gripped India's Women In 2020' (*Times of India Blog*, 2020)

¹⁹Such as the One Stop Centres and the Emergency Response Support System.

²⁰Nikore(n18)

²¹Nigam, 'COVID-19: India's Response To Domestic Violence'(n6)

Perhaps most famously, the state of Uttar Pradesh created a 'Suppress corona, not your voice' campaign, which included awareness spreading, a new domestic violence helpline and the assurance that a female officer would address each complaint.²² Similarly, Kerala's State Commission for Women introduced a tele-counselling facility and a WhatsApp number,²³ while the Maharashtra government's initiatives included a #LockdownOnDomesticViolence campaign.²⁴

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Increase in complaints

Despite existing laws and individual state efforts, domestic violence complaints remained at an almost steady increase throughout 2020, following its sharp rise during April and May 2020.²⁶ Regarding the domestic violence cases registered in 2020, Chandra et. al. mention how, 'such a spurt in complaints has never been documented by the NCW in the last decade.'²⁷ Similarly, the first half of 2021 maintained these high rates of reported domestic violence.²⁸ Overall, in the first six months of 2021, the NCW had already received 13,337 complaints of crimes against women as a whole, which was more than half of the 23,722 crimes reported during all of 2020 – and certainly higher than the 19,730 crimes reported prior to the pandemic in 2019.²⁹ Many speculate that 'the increased number of complaints may not be due to new incidents but are rather from repeatedly abused victims.'³⁰ This theory is corroborated by an online survey on the 'prevalence and characteristics of spousal violence experienced by Indian

²²Nikore(n18);Nigam,'COVID-19:India's Response To Domestic Violence'(n6); Emma Graham-Harrison and others, 'Lockdowns Around The World Bring Rise In Domestic Violence' (*The Guardian*, 2020)<<https://www.theguardian.com/society/2020/mar/28/lockdowns-world-rise-domestic-violence>> Accessed 8 February 2025.

²³ Rukmini Sen, 'Stay Home, Stay Safe: Interrogating Violence In The Domestic Sphere' (*Economic and Political Weekly Engage*, 2020);Nikore(n18).

²⁴Nikore(n18).

²⁵Other researched state efforts include a police phone-up programme in Odisha (Nikore(n18)) and allowing movement of PWDVA protection officers in Tamil Nadu (see Nigam,'COVID-19: India's Response To Domestic Violence'(n6))

²⁶ 'NCW: Report' (*ncwapps.nic.in*, 2020)
<<http://ncwapps.nic.in/frmReportNature.aspx?Year=2020>>

²⁷Prabha S Chandra et. al., 'Domestic Violence During the COVID-19 Pandemic: Lessons To Be Learned' (2020) 36 *Indian Journal of Social Psychiatry* S121.

²⁸ 'NCW: Report' (*ncwapps.nic.in*, 2021)
<<http://ncwapps.nic.in/frmReportNature.aspx?Year=2021>>

²⁹ *id.* for 2021, 2020 and 2019. Within these crimes, the category of domestic violence held the most complaints.

³⁰Chandra et. Al(n27)

women during the lockdown.’³¹ In the results, 77.6% of respondents who had previously faced spousal violence shared that the violence had increased since the COVID lockdown.³² This shows us two things. First, it reveals that there were certain unique characteristics of this pandemic, and the lockdown it requires, which ‘helped’ perpetrators create, maintain and exaggerate an environment of domestic violence.

Second, it supported the fact that domestic violence was a widespread problem with insufficient solutions – and limited reporting – prior to the lockdown as well. Nigam explains; ‘it is not that women are not being abused in homes earlier, but during the lockdown, the virus is mirroring and magnifying the discrimination, inequalities, oppressions, privileges and patriarchal violence, all of which already existing in the male-dominated hierarchical and layered society.’³³ Relatedly, Phumzile Mlambo-Ngcuka, the Executive Director of UN Women, describes the global pandemic as ‘a perfect storm for controlling, violent behaviour behind closed doors.’³⁴ This apt analogy showcases how certain characteristics and consequences of COVID-19 ‘contribute to an environment that triggers violence on women.’³⁵ Most prominently, these factors included the loss of an income and the particularities of lockdown, such as isolation and proximity to the perpetrator, as well as limitations in seeking support or help.³⁶ The following section dissects the factors that exacerbated domestic violence during the lockdown, before examining the ways in which domestic violence was maintained and sanctioned even outside of the pandemic.

COVID 19 Factors and Domestic Violence

Loss of Income

³¹Amrit Pattojoshi et. al., ‘Staying Home Is NOT ‘Staying Safe’: A Rapid 8-Day Online Survey On Spousal Violence Against Women During The COVID -19 Lockdown In India’ (2020) 75 *Psychiatry and Clinical Neurosciences* 64.

³²Ibid.

³³Nigam, ‘COVID-19: India’s Response To Domestic Violence’ (n6).

³⁴UN Chief Calls For Domestic Violence ‘Ceasefire’ Amid ‘Horrifying Global Surge’ (*UN News*, 2020) <<https://news.un.org/en/story/2020/04/1061052>>

³⁵Vranda and Febna(n5) 582.

³⁶These factors, among others, are mentioned by Vranda and Febna(n35) 582; Akshaya Krishnakumar and Shankey Verma, ‘Understanding Domestic Violence In India During COVID-19: A Routine Activity Approach’ (2021) 16 *Asian Journal of Criminology* 25.

The COVID-19 pandemic resulted in the loss of numerous jobs and incomes around the world. In India, more than 90% of working Indians – and 94% of working women – are employed in the informal sector.³⁷ This meant that many Indians faced a high probability of losing their jobs during the lockdown, and that many women bore 'the brunt of going incomeless.'³⁸ Both within and outside the pandemic, such a lack of income can lead to distress and deprivation of basic needs, as well as constant dependency on the earning spouse – usually the man – which, in turn, can increase vulnerability and exacerbate domestic violence.³⁹ A husband's loss of income can also be interpreted as a loss of security or control, and can lead to an increased exertion of control over the wife – including her finances or savings.⁴⁰ This form of economic abuse is especially damaging for women who have been saving money to leave a violent domestic situation.⁴¹

Lockdown Restrictions

Due to the particular nature of domestic violence as well as the particular nature of the lockdown, the abuser and victim were in constant, isolated contact. Such social isolation resulted in an increased risk of victimization.⁴² In this context, victimization can entail, 'increased rates and intensity of threats, physical, sexual, and psychological abuse, humiliation, intimidation, and controlling behaviour.'⁴³ Interestingly, the rise in domestic violence complaints, recorded by organisations such as the NCW, was also accompanied by a decrease in

³⁷Anusua Singh Roy, Nandini Sen and Subrata Sankar Bagchi, 'Gender-Based Violence In India In Covid-19 Lockdown' (2021) 44 *Journal of Comparative Literature and Aesthetics* 52.

³⁸Ibid.

³⁹Maji, Bansod and Singh (n11) 6; World Health Organization, 'What The Health Sector/System Can Do' (World Health Organization 2020); Mansi Vora et. al., 'Letter To The Editor: COVID-19 And Domestic Violence Against Women' (2020) 53 *Asian Journal of Psychiatry*.

⁴⁰Vora (n39); World Health Organization, 'What The Health Sector/System Can Do' (World Health Organization 2020), Akshaya Krishnakumar and Shankey Verma, 'Understanding Domestic Violence In India During COVID-19: A Routine Activity Approach' (2021) 16 *Asian Journal of Criminology* 25.

⁴¹India Development Review, 'How Is Domestic Violence Linked To The COVID-19 Lockdown?' (*Feminism In India*, 2020) <<https://feminisminindia.com/2020/04/23/covid-19-lockdown-domestic-violence-linked/>> Accessed 2023.

⁴²Somayyeh Naghizadeh, Mojgan Mirghafourvand and Roghaye Mohammadirad, 'Domestic Violence And Its Relationship With Quality Of Life In Pregnant Women During The Outbreak Of COVID-19 Disease' (2021) 21 *BMC Pregnancy and Childbirth* 12, also mentioned in World Health Organization, 'What The Health Sector/System Can Do' (World Health Organization 2020).

⁴³India Development Review (n41).

complaint calls to some non-governmental organisations, such as Shakti Shalini and Jagori.⁴⁴ Krishnakumar and Verma speculate how such a discrepancy could be attributed to the particularities of the lockdown, including: 'confinement at home, constant monitoring and controlling decision-making by the abuser, social isolation of victims from friends and family members, and reduced options for support.'⁴⁵ ⁴⁶ Most of these factors can be attributed back to the proximity of the abuser, which acts as a barrier for the victim to seek help.⁴⁷

During the lockdowns in India, many women facing domestic violence were no longer able to access their support systems, even as the risk of violence at home continued to increase. When domestic violence did occur, the lockdown prevented women from leaving the house to find safety, and it often prevented her family members and friends from supporting or intervening for the victim.⁴⁸ Research also found that the police, who were tasked with enforcing the lockdown, held an increasing apathy towards victims of domestic violence.⁴⁹ Relatedly, women hesitated to file a complaint as, if and when their husbands were released, they were still isolated with him – which could lead to an increase in violence.⁵⁰ After considering these realities, it is clear to see that the absolutes within the instructions of the lockdown did not take the plights of many Indian women into consideration. Within the parameters of the lockdown, perpetrators further reduced a victim's 'access to services, help and

⁴⁴Krishnakumar and Verma(n40) 21.

⁴⁵Ibid. Also shared in India Development Review(n41).

⁴⁶Particularly pertinent to health and safety during the pandemic, forms of victimisation also include restricting access to soap or hand sanitizer and/or spreading incorrect information about COVID-19, as mentioned in World Health Organization, 'What The Health Sector/System Can Do' (World Health Organization 2020).

⁴⁷Krishnakumar and Verma(n40).

⁴⁸World Health Organization, 'What The Health Sector/System Can Do'(n40); Aviva Parvez Damamia, 'Lockdown And Rise In Domestic Violence: How To Tackle Situation If Locked With An Abuser' (*The Indian Express*, 2020)<<https://indianexpress.com/article/lifestyle/life-style/lockdown-rise-of-domestic-violence-how-to-tackle-situation-if-locked-with-abuser-national-commission-for-women-6406268/>> Accessed 8 February 2025; Krishnakumar and Verma(n44).

⁴⁹Krishnakumar and Verma(n44).

⁵⁰India Development Review(n41);Esha Roy, 'Domestic Violence, Abuse Complaints Rise In Coronavirus Lockdown: NCW' (*The Indian Express*, 2020) <<https://indianexpress.com/article/india/domestic-violence-abuse-complaints-rise-in-coronavirus-lockdown-ncw-6344641/>> Accessed 8 February 2025; Or those living in joint families may face abuse from their in-laws in the meantime.

psychosocial support from both formal and informal networks,' as a way to exert control over their spouses.⁵¹ As a double-edged sword – even as extreme isolation was used as a form of domestic violence – a victim's separation from support networks and formal institutions also increased her chances of facing domestic violence during the lockdown.⁵²

Examining the particularities of domestic violence during the pandemic reveal something beyond an inefficiency in the government's COVID response. The constant increase in domestic violence, despite established laws and local campaigns, pointed towards a structural shortcoming in the existence and execution of the laws addressing forms of violence against women in India's private social sphere. As the government's lack of acknowledgement of a woman's particular struggles within her home is made more clear, it creates a need to 'rethink and restructure patriarchal assumptions and the notions relating to stereotypical gender norms.'⁵³ The following section aims to expose some of the social scripts and perceptions that underly the acceptance and apathy towards private forms of violence against women, before examining the broad consequences of these perceptions on the Indian legal system.

Social Scripts, Perceptions and Domestic Violence

Although the nationwide lockdown was mostly a novel concept, women in India's patriarchal society 'have been contesting the boundary of 'public' and 'private' or ghar and bahar since ages.'⁵⁴ With the pandemic in particular, the existing gender roles of some communities – which only allow women to leave the private, domestic sphere for work or school – meant that women were entirely unable to leave during the lockdown.⁵⁵ However, men, who are able to travel between public and private social spheres with greater ease, were still allowed – by the state and by the society – to leave the house for essential

⁵¹World Health Organization, 'What The Health Sector/System Can Do'(n40).

⁵²Damamia(n48).

⁵³Shalu Nigam, 'COVID-19, Lockdown And Violence Against Women In Homes' [2020] SSRN Electronic Journal.

⁵⁴Nigam'COVID-19: India's Response To Domestic Violence'(n6).

⁵⁵Maji, Bansod and Singh(n11) 6.

purposes.⁵⁶ This shows the importance of understanding and reacting to social perceptions and practices when creating equitable laws – both in the short term and for longer lasting change. In order to learn the necessary lessons from the government’s lack of a gendered approach to this pandemic, Nigam says that,

The situation calls for a need to rethink and restructure the class inequalities widened due to impact of globalization and to reconsider the stereotypical patriarchal assumptions and the notions relating to gender norms. A crisis situation provides a platform to rekindle the collective imagination to alter the pre-existing ideas about the gender discourse.⁵⁷

In India, given that a woman was subjected to domestic violence every 4.4 minutes even before the pandemic,⁵⁸ there is also a need to reconsider the connections between the ‘stereotypical patriarchal assumptions’⁵⁹ in much of Indian society and the existing legal mechanisms on domestic violence laws.

Stressing this connection between India’s patriarchal system and domestic violence, Maji. Bansod and Singh share how, ‘feminist scholars contend that the patriarchal system’s gender-power dynamics is at the core of domestic violence.’⁶⁰ Social elements, such as patrilineal descent and strongly prescribed gender roles, play a prominent part in enforcing both the patriarchal system and domestic violence.⁶¹ These elements, in turn, are often reinforced and validated through scripts and perceptions, which are passed down across generations within India’s private social sphere. These patriarchal scripts and perceptions are also reproduced and strengthened during times of crisis, such as the COVID-19 pandemic. Taking all this into consideration, this research explains much of the systemic deficiencies and lack of equity in the Indian legal framework surrounding domestic violence through the fact that the legal system fails to take the effects of social scripts and perceptions into consideration. This, in turn, affects the creation of a law, the execution of justice and the outcome

⁵⁶Ibid.

⁵⁷Nigam, ‘COVID-19: India’s Response To Domestic Violence’ (n6).

⁵⁸Data from National Crime Research Bureau, ‘Crime In India 2018’ (National Crime Research Bureau 2018).

⁵⁹Nigam, ‘COVID-19: India’s Response To Domestic Violence’ (n6).

⁶⁰Maji, Bansod and Singh (n11) 2.

⁶¹Ibid; Linda Stone and Caroline James, ‘Dowry, bride-burning, and female power in India’ (1995) 18 *Women’s Studies International Forum* 2, 129.

of a case. This section briefly examines two sets of social scripts and perceptions relating to marriage which, both separately and together, contribute towards a social and legal acceptance of domestic violence in India.

Marriage as Necessary and Permanent

The first social perception examined, which cites marriage as necessary and permanent, provides context on Indian society's conceptions of marriage in general. In much of the country, a woman's marriage is inevitable and, 'traditionally, an unmarried daughter is considered not only a financial and social burden but a source of damnation for her family and ancestors.'⁶² Such pressure on the natal family to get their daughter married also gives the potential groom and his family a social pedestal from the very start of the marriage negotiations. Additionally, the burden placed on a woman's family to get her married – for fear of social or religious dishonour – often removes, or at the very least limits, a bride's own say in her marriage discussions. The combination of such strong societal pressure regarding the necessity of marriage, along with the limited role a woman often plays in this life decision, results in further undermining the agency of women within the marital relationship.

With marriage presented as 'the ultimate goal for women,'⁶³ many women face pressure from their family, relatives and society at large to get married – and get married fast. Once wedded, and in response to their 'accomplishment' of getting married, women are finally welcomed into society as full and participative members. Additionally, marriage in India is not only about the bride and groom but is instead considered to be 'an alliance between two families'⁶⁴ – with some women only meeting their future husbands at the proverbial alter. The combination of the importance of marriage in a woman's life and her lack

⁶²Priya R. Banerjee, 'Dowry in 21st Century India: The Sociocultural Face of Exploitation' (2014) 15 *Trauma, Violence and Abuse* 1 34.

⁶³Anshu Nangia, 'The Tragedy of Bride Burning in India: How Should the Law Address It' (1997) 22 *Brooklyn Journal of International Law* 3, 650.

⁶⁴Sonia Dalmia and Pareena Lawrence, 'The Institution of Dowry in India: Why It Continues to Prevail' (2005) 38 *The Journal of Developing Areas* 2, 77.

of agency in the decisions associated with marriage work together to hinder the rights of women and undermine their role in society.

Scripts that deem marriage as necessary go hand in hand with scripts stating the permanence of marriage – even with the presence of domestic violence. Despite existing civil provisions for divorce, the dissolution of marriage is discouraged socially and religiously – and often strips women of any social status that they may have gained through marriage. This perceived permanence of marriage in Indian society has strong connections with ancient scripts⁶⁵ along with the Hindu belief of marriage as an insoluble sacrament.⁶⁶ B.R Sharma et al. discuss how, ‘the tendency among most Indian women, even though they may suffer and die, is to stay with the husband and in-laws, since they have been trained to be part of their newly acquired family.’⁶⁷ Similarly, Laurel Remers Pardee writes that ‘society’s mandate of obedience extends so far that often Indian wives will refuse to implicate their husbands in their murders even on their death beds, blaming their in-laws instead.’⁶⁸ This accompanies the permanence of marriage with an expectation of suffering as well as the keeping family affairs – including affairs of violence – private.⁶⁹

A Husband Can and Should Discipline His Wife

Adjacent to the permanence of a marriage, other social scripts from ancient authorities encourage and expect a husband to ‘discipline’ his wife – some even claim that a wife is a slave to her husband.⁷⁰ Portraying that a woman can only be controlled when a man is in charge, these perceptions are used as a

⁶⁵ Such as in the later mentioned Code of Manu.

⁶⁶ Mudita Rastogi and Paul Therly, ‘Dowry and its Link to Violence against Women in India’ (2006) 7 *Trauma, Violence and Abuse* 1, 70.

⁶⁷ B.R. Sharma et al, ‘Dowry – A Deep-Rooted Cause of Violence Against Women in India’ (2005) 45 *Medicine, Science and the Law* 2, 167. They go on to say that, ‘The woman is brought up to sacrifice her existence for her husband and her children and to keep them happy. These traditional barriers compel her to suffer in silence even though she has a good cause to complain.’

⁶⁸ Laurel Remers Pardee, ‘The Dilemma of Dowry Deaths: Domestic Disgrace or International Human Rights Catastrophe’ (1996) 13 *Ariz. J. Int'l & Comp. L.* 495.

⁶⁹ Rastogi and Therly(n66) 1, 69 and 70.

⁷⁰ Judith Greenberg, ‘Criminalizing Dowry Deaths: The Indian Experience.’ (2003) 11 *American University Journal of Gender, Social Policy & the Law* 2 822.

justification for the inferiority that women often face within the domestic space.⁷¹ Therefore, a husband is socially sanctioned to dole out discipline for any real or perceived slights. Although originating in ancient times, this social perception – which renders domestic violence as sanctioned and acceptable – is also widely present in society today. In fact, India's 2015-2016 National Family Health Survey found that 49% of women considered violence to be an acceptable 'wear and tear' of marriage.⁷² This shows the extent to which patriarchal scripts and perceptions are internalised by members of society.

Pardee observes how 'Indian society conditions females from childhood to be subservient to their husbands. Men, on the other hand, are taught that they may beat or even kill their wives.'⁷³ Nigam also mentions how, 'she is obliged to obey and serve selflessly, and he gets the right to chastise her. This authority is not questioned even if the husband is a drunkard, gambler or criminal.'⁷⁴ This is further supported by Melissa Spatz's elaboration of 'a widespread belief in Indian society that women must serve their husbands and not cause them any harm, whereas men, as their protectors, may beat or even kill their wives if they choose.'⁷⁵ Affecting the lives of women both before and after marriage, such expectations particularly translate into the marital relationship by making it 'hierarchical and inegalitarian.'⁷⁶ Additionally, as 'Indian culture is characterized by patrilineal descent, patrilocality, the joint family, and strongly prescribed subservience of wives to husbands and in-laws'⁷⁷, a new bride is given the lowest position within family as soon as she enters. On this point, Shalu Nigam write that, 'being a new entry in the marital home, a woman is powerless and vulnerable. She occupies the lowest rung in the hierarchy of relationships; therefore, the prerogative of chastisement rests with those who hold seniority

⁷¹A similar concept is discussed in Jane Rudd, 'Dowry-murder: An example of violence against women' (2001) 24 *Women's Studies International Forum* 5, 517.

⁷²National Family Health Survey 2015-2016. Also cited in Nigam, *Women and Domestic Violence Law in India: A Quest for Justice* (Taylor and Francis 2020) 31.

⁷³Laurel Remers Pardee(n69).

⁷⁴Shalu Nigam, *Women and Domestic Violence*(n72) 25.

⁷⁵Melissa Spatz, 'A Lesser Crime: A Comparative Study of Legal Defenses for Men Who Kill Their Wives' (1991) 24 *Columbia Journal of Law and Social Problems* 4, 614

⁷⁶Nigam, *Women and Domestic Violence*(n72) 245.

⁷⁷RG Menezes et al, 'Deaths: Dowry Deaths' in *Encyclopaedia of Forensic and Legal Medicine* (Elsevier 2016) 69.

in a graded arrangement.’⁷⁸ The joint family household also prioritises a husband’s loyalty to his parents over loyalty to his wife.⁷⁹ With such socio-cultural norms in play, women in Indian society face many spoken and unspoken barriers as they enter a marital relationship.

The Results of Social Scripts and Perceptions

Though such scripts are not representative of Indian society as a whole, the prevalence of domestic and gender-based violence in particular, as well as its increase in times of crisis, clearly shows the importance of addressing these perceptions as something affecting the nation at large. Additionally, the National Family Health Survey also found that 76% of women did not seek help after having experienced domestic violence – which further showcases the entrenched nature of such social scripts and perceptions.⁸⁰ Therefore, conditioned to expect and endure abuse, combined with the permanence and necessity of a marriage, women often do not reach out for help. On this point, B.R Sharma et. al. share that, ‘the tendency among most Indian women, even though they may suffer and die, is to stay with the husband and in-laws, since they have been trained to be part of their newly acquired family.’⁸¹ It does not help that all of the aforementioned scripts are also attached to an overall perception that the occurrences within the private, familial sphere should be kept as just that – private. A discrepancy in the laws on marriage and marital violence between the public, criminal sphere and the private, civil sphere also reinforce the idea that issues within the family are private matters and should

⁷⁸Nigam, *Women and Domestic Violence*(n72) 24; Purna Manchandia, ‘Practical Steps towards Eliminating Dowry and Bride-Burning in India’ (2005) 13 *Tulane Journal of International and Comparative Law* 315.

⁷⁹Greenberg(n70) 810. Interestingly, there lies an argument to the contrary which shares that it is the break-up of joint families and the creation of nuclear families in the 1980s that resulted in husbands losing ‘sight of the rights and well-being of their wives.’ This is shared in Vineeta Palkar, ‘Failing Gender Justice in Anti-Dowry Law’ (2003) 23 *South Asia Research* 2 185. Regardless, it is the wife who finds herself at a disadvantage.

⁸⁰The same National Family Health Survey found that 76% of women did not seek help after having experienced domestic violence

⁸¹B.R. Sharma et al, ‘Dowry – A Deep-Rooted Cause of Violence Against Women in India’ (2005) 45 *Medicine, Science and the Law* 2, 167. They go on to say that, ‘The woman is brought up to sacrifice her existence for her husband and her children and to keep them happy. These traditional barriers compel her to suffer in silence even though she has a good cause to complain.’

be dealt with by the family themselves, rather than any outside party.⁸² This 'culture of silence' surrounding domestic or marital violence often results in 'an apathetic insensitive criminal justice system response to victims.'⁸³ Many cases remain unreported as married women reside in the midst of social expectation to both suffer in their marriage and keep the family secrets – including instances of violence – contained.⁸⁴ The combination of these expectations highlights the detrimental nature of India's division between the public sphere and the private sphere for victims of domestic violence; women must expect to face cruelty in the private social realm, but they are not socially allowed to address or discuss their suffering in the public social or legal realm either. This secrecy also allows for scripts and perceptions to be continually reinforced and minimally challenged.

This research addresses two main ways in which the effect of social perceptions can be seen in the legal process. First, scripts often prevent many cases from being reported or reaching the police to begin with, as women may choose not to look for help or are pressured not to. Many women who do try to invoke legal provisions face a difficult time of it as they are, directly or indirectly, accused of bringing the public (the state) into the private, family realm. Despite domestic violence laws, 'it is not easy for the judicial system to break into the stranglehold of the patriarchal family.'⁸⁵

Second, cruelty or violence that does get reported is often tainted through multiple, intersecting perceptions and behaviours propagated by society. The classifications and judgements on cases of domestic violence are made by police or judicial officers, who themselves are members of society and, pertinently, members of family units within society as well. This allows them to influence, but also be influenced by, social perceptions themselves. For example, the aforementioned scripts regarding a wife's duty to obey and a

⁸² Meghna Bhat and Sarah Ullman, 'Examining Marital Violence in India: Review and Recommendations for Future Research and Practice' (2014) 15 *Trauma, Violence & Abuse* 1

⁸³ *ibid.*

⁸⁴ Rastogi and Therly(n66) 1, 69 and 70.

⁸⁵ COVID-19, Domestic Abuse And Violence: Where Do Indian Women Stand?' (*Economic and Political Weekly Engage*, 2020) <<https://www.epw.in/engage/article/covid-19-domestic-abuse-and-violence-where-do>> Accessed 8 February 2025.

husband's right to discipline, can often result in a misunderstanding of domestic violence as maladjustment to the marriage.⁸⁶ This not only turns the victim into the accused, but it also creates a push for reconciliation when women approach a police station or a courtroom with claims of domestic violence.⁸⁷ In fact, 'when a battered wife complains under 498A, the violent husband is called upon and the counsellor or the police negotiate on behalf of the woman.'⁸⁸ Courts, too, often refer cases under IPC Section 498A to mediation, in hopes of achieving a 'settlement' and 'compromise' between the parties.⁸⁹

In failing to consider social dynamics, Indian criminal law expands the aforementioned scripts operating in the private sphere into action in public spaces as well. This becomes problematic when the influenced public spaces were designated as spaces for the protection of women – such as police stations and courtrooms. In this example, the patriarchal influence of scripts and perceptions is clear to see given that, 'courts and police often fear that intervention will exacerbate adjustment difficulties. They put the continuation of the marriage above the safety of the victim.'⁹⁰ This shows how the intent and implementation of the law is affected by the reality of domestic violence being social categorised as a private matter. Such a categorisation gives the crime of domestic violence a high level of immunity from interference by the state – despite existing legal provisions. Although the aforementioned scripts and perceptions require an understanding and unpacking in much further detail, the rundown provided in this section can already reveal necessary policy and legal changes on domestic violence, discussed in the section below.

Learnings from COVID 19

With a plethora of social scripts and perceptions, as well as the particularities of COVID-19 to consider, the legal provisions and social campaigns against

⁸⁶Greenberg(n79) 812.

⁸⁷ *id.* at 811. This push for reconciliation is also seen in the government established counselling cells as well as the few government shelters that exist for women.

⁸⁸Shalu Nigam, *Women and Domestic Violence*(n72) 57.

⁸⁹Human Rights Law Network, 'Leading Cases on Dowry' (New Delhi 2011) 295

⁹⁰Greenberg(n70) 812.

domestic violence during the pandemic fell short of the mark. In this final section, the research will briefly consider some learnings and future actions to help pave the way for an effective and long-lasting addressal of this form of violence. To begin with, the increase in cases during the pandemic clearly showed that having scattered, local campaigns against domestic violence is not enough. Instead, there is a need for nationwide, 'accessible, diversified and proactive systems to alert authorities and protect victims.'⁹¹ This includes declaring all domestic violence related services as essential,⁹² providing easy and immediate access to temporary women's shelters,⁹³ and training all current essential services to recognise and assist victims of domestic violence⁹⁴ - both during and outside national emergencies. Similarly, it is also important to train police and judicial officers to make sure that 'the perpetrators are not just sent off with a warning and that women's domestic violence complaints are treated with high priority.'⁹⁵ The presence of strong nationwide action also symbolises a resistance against social scripts and perceptions and hopes to counter their widespread and entrenched nature with its own widespread and entrenched campaigns.

Another promising development would be the extensive and robust utilisation of media platforms in order to spread awareness about domestic violence throughout the nation.⁹⁶ Roy, Sen and Bagchi share how, 'the COVID-19 pandemic has clearly demonstrated the information-dissemination power of the state machinery.'⁹⁷ Employing similar methods, various forms of media can also be used for nationwide campaigns that would correct and fight harmful scripts and perceptions while encouraging public discussions about domestic violence and providing information on filing reports. After understanding the

⁹¹United Nations Human Rights Office of the High Commissioner, 'COVID-19 and Women's Human Rights: Guidance' (United Nations Human Rights Office of the High Commissioner 2020).

⁹²Anusua Singh Roy, Nandini Sen and Subrata Sankar Bagchi, 'Gender-Based Violence In India In Covid-19 Lockdown' (2021) 44 *Journal of Comparative Literature and Aesthetics* 50.

⁹³Vranda and Febna(n5) 583.

⁹⁴India Development Review(n41); Many other recommendations are also provided within Aman, 'Urgent Recommendations On Addressing Domestic Violence During The COVID-19 Pandemic' (Aman - Global Voices for Peace in the Home 2020).

⁹⁵Seth(n4).

⁹⁶India Development Review(n41).

⁹⁷Roy, Sen and Bagchi(n92).

influence of the domestic scripts on domestic violence, both within and outside COVID-19, these simple yet powerful strategies can pave the way towards a safer future for women all over the nation as we continue to emerge on the other side of the pandemic.

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