

Chapter 4

The Domestic and the Silence/Voice of Laws Against Violence

Dealing with patriarchal oppression makes up a significant part of a woman's life, especially dealing with gender-based violence. According to the National Crime Report Bureau in the year 2021 alone total of 4,28,278 cases of crime against women were registered¹. The total number of crimes against women have seen a fifteen percent increase from the past year. Out of these the most reported crimes against women was under 'cruelty by husband or his relatives' which made up nearly 31.8% of the complaints.² The notion of guaranteeing equality and empowerment to women in a society where they are vulnerable to violence, both in the public and private sphere, seems difficult. Women's continuing experience with violence is perhaps one of the biggest contributors to their continuing condition of inequality and disempowerment. This chapter attempts to bring to light the subjugation of women through patriarchal violence in the domestic sphere. It also seeks to understand the need for laws and legal institutions in preventing this violence and the extent to which they can limit the influence of patriarchy in the domestic sphere.

The position of women in the domestic sphere forms a fundamental part of their lived experiences. Unlike the private sphere which can broadly include the civil society, the domestic sphere includes more personal relations found within the family. Squires calls it the personal sphere which is different from the private sphere³. Domestic sphere is the sphere of family, household, and intimacy. Most personal relationships are practiced within this sphere, due to which the presence of political and legal interference within the domestic sphere is almost negligible. This is also the sphere which politics does not traditionally prefer to concern itself with. But lately it has become difficult to ignore that the domestic space is also a site of oppression and violence against women.

Violence against women within the domestic sphere is a common occurrence and happens in a variety of ways. Women are vulnerable to violence like female feticide and infanticide, child marriages, dowry, *sati*, due to the influence of socio-cultural practices which justifies violence under the guise of customs and beliefs. Women are vulnerable to violence like wife beating, gaslighting and marital rape which committed due to their subordinated position in the domestic sphere.⁴ Women's experience in the domestic space can be considered as an

experience of violence. The State recognizes this vulnerability and frames laws to protect women from the violence which they experience within the domestic sphere.

In this chapter I attempt to understand the extent to which laws maintain their silence and / or speak up for the sake of preventing violence against women within the domestic sphere. The extent to which laws can enter the domestic sphere is limited, so there is a possibility that effect and efficiency of such laws for women may be impacted by these limitations. Through this chapter I seek to analyse the extent to which laws can efficiently constrain the violence which women experience within the family and households.

Social and cultural structures would call the domestic sphere a woman's space. Many theories all suggest that the domestic sphere is the natural space for women, to the extent that domestic is synonymous to women. One would assume that as men dominate in the public space, women also will dominate over the domestic sphere. But the reality is the opposite. In the public sphere men and women have legal equality due to the Constitutional provisions. Though women are not equal to men in the public, they have a claim to equality. Due to this discrimination against women is severely criticized and practices which oppress women are delegitimized through laws. But this access to legal equality is not always available to women in the domestic sphere even though women experience considerable inequality within the realm of the domestic.

The subordination and oppression of women due to patriarchy is continuous within the public and the domestic spheres. In the public sphere, the discrimination and oppression of women can be challenged through laws. Many corrective measures are applied for the sake of reducing the inequality which women experience in the public sphere. But these same measures cannot be applied to the domestic sphere which is considered to be governed by social and cultural norms rather than codified laws. This creates a form of judicial void, an empty space which laws cannot access.⁵ So achieving equality and empowerment through laws becomes difficult. The general belief is that violence against women is a social evil which can be eradicated through social transformation only. The role of politics and law is extremely limited within this sphere. But with the increasing cases of violence and brutality it has become impossible to ignore the subjugation of women within the domestic sphere.

In India, one of the most common experiences of patriarchy which women experience is that of male violence. Women experience eve teasing, harassment, sexual assault, domestic violence, dowry, honour killings and other forms of violence at least once during their lifetime

if not more. In the year 2021 itself there were 31878 cases of sexual assault, 6795 cases of dowry death, 510 cases of domestic violence, 137956 cases of cruelty by husbands and his relatives reported.⁶ For a country which claims equality and empowerment, ignoring violence is difficult. After many years of persistent social movements and campaigns against violence on women, the State and legal institutions have become proactive in framing legislation to prevent this violence. Sections against rape that is, Section 375, Section 498 A against cruelty towards women, Section 304 B against dowry death, Dowry Prohibition Act, 1961, Prevention of Domestic Violence Act, 2005 among other have come the foundations for criminalization of violence against women⁷. The State can no longer ignore the domestic sphere and has understood that empowerment of women also depends on their freedom from patriarchal violence.

Throughout the previous chapters I have emphasized on how empowerment of women is one of the major concerns of politics in India. The continuous violence against women which is perpetuated both in the public and domestic sphere is an example of the limits to women's empowerment. There is something so intrinsically wrong with our social and cultural systems that it has normalized the violence against women as a social practice which is both acceptable and legitimized as long as it is sanctioned by traditions. The most initial demands for women's equality did start as a demand to abolish *sati*, by the social reformer Raja Rammohan Roy, who highlighted that the society was justifying murder in name of tradition.⁸ Since the coming of Sati Abolishment Act, 1829 there have been countless laws which have challenged and criminalized the violence which women experience all spheres. While these laws contribute to punish those who are violent against women, do they challenge patriarchal violence?

Today, laws are no longer just a tool for punishing and penalizing perpetrators, but they also confront the social and cultural acceptability behind the violence which women experience. In order to do so, laws have started to look into the violence which women experience within the domestic sphere, which for a long time, was considered as beyond their purview. As time passed and more laws entered the domestic sphere to empower women, the issue of the oppression of women also became more complicated. As proven in the above chapters, delivering the promise of empowerment is a difficult task, because the experience of oppression and disempowerment is a complex one. Violence against women further complicates the matter.

In the first chapter I gave the example of Mathura and Roop Kanwar, both girls who suffered from horrendous acts of patriarchal violence. They were not only victims of custodial rape and *sati* but also victims of an incompetent system which justified the violence which they experienced. Both these cases were a rude awakening for all State and non-State institutions. The laws which were supposed to protect women failed to do, they became a tool for oppressing women. Violence against women is considered as such a routine experience that the system had become desensitized to it. It is assumed that responsibility of preventing violence is on women themselves. In these cases, the political, legal, and social system assumed that if women were experiencing violence, they probably were responsible for it. Going to the court meant that women had to spend more time to prove that they were the victims rather than the men having to prove that they were not the perpetrator. The unfortunate truth is that violence against women was an unwelcome topic, problematic to discuss in a democracy which otherwise proudly promises equality, freedom, and justice. It is an unwanted reality, meant to be hidden from the vision of the new and developing India. The political and legal institutions of that time and many even today, do not think that violence against women is a form of inequality and injustice. Such institution continues to treat male violence over women as normal.

This narrative which political and legal institutions about violence against women was challenged by the women's movement. Agnihotri and Mazumdar also observe,

‘Violence, however, is perpetrated through the given institutions of the State, community, the family, and society at large. It draws sustenance from prevailing ideologies which seek to propagate status quoism through advocacy of 'falling-in-line', be it in response to transgression of social norms or laws, which are defended in the name of age-old customs and tradition, religious or caste identities, or even political dissidence’⁹

Members of non-governmental organization took to the streets to highlight the absence or silence of laws against violence on women. Soon the public sphere became an arena where the continuous subordination and oppression of women was challenged. Laws and legal institutions became a major instrument to delegitimize violence against women. The desensitized system was replaced by a more active legal system which decided to use laws to transform the position of women in the society.

More laws and provisions are created to prevent the violence which women experience in the public and the domestic space. Despite the presence of laws and a legal system committed to empower women, the vulnerable position of women continues. The violence which women experience exists both in the public sphere and the domestic sphere and is a social-cultural rationale which is biased towards this violence. The violence in both spheres is a tool to continue the patriarchal oppression of women. Yet it is only violence in the public which has been the centre for serious debate in India. The violence against women within the domestic sphere has been noticed but there is more silence regarding it.

As Pratiksha Baxi has highlighted,

‘Our politicians have perfected the art of using sexual violence as a resource for politics. ... it is now the turn of raped women to be used in political rhetoric, which hides the historic humiliation of women, while evoking their raped bodies as evidence of the politician’s concern for them.’¹⁰

Modern political rhetoric displays women’s vulnerability as a major political concern. Politicians use women’s experience of violence, especially rape to show their commitment to women’s safety. As proven in chapter 2 women form a considerable number of voters and to ignore gender-based violence is a mistake which politicians cannot make. Through framing laws and policies for women, politicians show that they are willing to play the role of the protector to these vulnerable women. Unfortunately, this is the limit of their concern. Like Baxi points out, the sexually assaulted body of the women is used to evoke sympathy towards the politician who is concerned about raped women as this evoking guarantees them votes. The violence within the family is not as visible nor as evident as the violence within the public. A politician cannot claim to stop violence within the domestic sphere. This is perhaps why the violence which women experience in the domestic sphere does not get the criticism it deserves. The political and legal silence over violence in the domestic sphere despite its pervasive existence, stems from many factors, from traditional and cultural norms, social acceptance of violence, to political disinterest and legal limitations. Due to these facts women continue to experience inequality and are no closer to empowerment than before.

Through this chapter I attempt to understand the efficiency of laws as a tool to prevent violence against women in the domestic. I seek to present an argument that in order to prevent patriarchal violence against women in the domestic sphere, laws are unavoidable. I critically analyse select

provisions for violence on women and try to identify if they are able to challenge the patriarchal structure which perpetuates violence in the first place. Lastly, I seek to understand if the position of women within the domestic sphere can change or will it be prone to remain under patriarchal subjugation. This chapter is a modest attempt to contribute to the ongoing discourse on relationship between law and violence against women within the domestic sphere.

4.1 Understanding the ‘Inevitability’ of Law in Shaping the Domestic:

Liberal theory distinguishes between the public and the private sphere.¹¹ The public is the realm of politics and governance and the private is the realm of community and family. The domestic specifically is the sphere in which all family and marital relations exist. This distinction has been the core of the reason why laws hesitate to enter into the domestic sphere. As Nivedita Menon highlights, ‘... the distinction between ‘public’ and ‘private’ answers the legitimate extent of the authority of the law.’¹² Political and legal theory would limit the functionality of laws to the sphere of the public only. Only an exceptional circumstance can bring the laws within the private sphere to correct it. But this assumption that private sphere is independent from the jurisdiction of laws appears to be a false understanding. When analysed carefully the private sphere is both created and governed by laws.

In her book *Public Man, Private Woman*, J.B Elshatain highlights that the public and private spheres as we see today are a result of centuries of nurturing. She states,

‘To begin to differentiate between public and private spheres requires, minimally, a shared language and tradition and human subjects sophisticated enough to orient themselves in the world through categories of thought which allow for comparisons, contrasts, and the establishment of relationships between one thing and another.’¹³

From creating a vocabulary to systematically passing down specific set of practices, the commitment in creating the public and private has been enormous. And most of this was done on the basis of preconceived notions of the roles of men and women. As mentioned in chapter 3, men were considered as participants of public sphere and women were considered as part of the private sphere. But this idea has been maintained through traditions, customs, practices, and their subsequent codifications. Both the public sphere and the private sphere are ultimately dependent on a set of regulations or laws to exist.

Traditions, customs, beliefs, social structures which are the foundations of the domestic sphere acts as a framework of rules and regulations which structure and maintain the hierarchies found within the family. The idea that marriages can be only among heterosexual relations or that men are the head of the family are ideas which emerge from traditions and customs. The structure and hierarchy of the family is predetermined by social or religious customs. In a similar manner, even relationships between members of the family, division of labour in the household, lineage, inheritance, and other aspects of the domestic are determined by traditions and customs. So, the domestic sphere is not lawless or anarchical as assumed, but rather governed by a very different set of frameworks which may or may not be reflected in the laws of the public sphere. When the question of laws for equality and empowerment for women is raised, it is imperative to understand if these distinctions between public and private even stand.

In order to understand the oppression or empowerment of women, their subordinated position within the domestic sphere cannot be ignored. It is known that the domestic sphere is patriarchal in nature which allows for men to subordinate women. The hierarchy within the domestic is sex based, there creating the domestic as a site for gender injustice and inequality. For example, man is always the head of the family, so woman is automatically subordinated to men. In a marriage too, women lose their own identity as their identity merges with that of their husband. The loss of identity within the marriage or the subordination within the family is considered as a traditional social arrangement. The existence of patriarchal arrangements and practices are also considered as natural within the domestic sphere. Afterall the domestic sphere is constructed to match the needs of the patriarchal structure. These needs can also be fulfilled by completely oppressing women within the domestic sphere. Yet political and legal theory have been silent on this oppression and subordination. Actually, some very influential works of political theory have justified the subordination of women as necessary.

Aristotle, one of the most influential theorists in politics has justified the subordination of women in the private. In his version of the Just State, the State is distributed between the '*polis*' and the '*okios*' or the 'public' and the 'private'. For Aristotle, *polis* is the sphere where the free and male person exists while private was the sphere where the unfree, female person exist. He believed that the female was naturally inferior the male, and this natural inferiority did not make her an ideal candidate for the *polis* where only the highest good is attained.¹⁴ Men who were public persons, naturally fit for ruling controlled not only the public but as the private sphere. For Aristotle, women were similar to foolish beings who needed to be kept away from

the public and subordinated in the private and this subordination was necessary.¹⁵ The notion of subordinated position of women in the private sphere not only influenced Aristotle's idea of the State, but also the thought process of many theorists down the line.

It was Filmer who separated from this frame of thought and contributed differently to the idea of the private sphere. Filmer makes both men and women private persons who only follow the supreme authority of the Monarch. By privatizing both men and women, they were essentially silenced in front of the Monarch¹⁶. For Filmer the public, that is the Monarch represented absolute power and natural authority, whereas the private represented obedience and subjugation. Since men and women were both private individuals, they were expected to be obedient and subordinated to the King. The family, according to Filmer, is then automatically constructed to obey and follow. In the family, the man will be the head, who will emphasize on the absolute obedience and subordination of all members. While the woman would continue to remain subordinated both in the public and the private. For Filmer political rights is patriarchal right which emerges from fatherhood. It is by holding the position as the head the family that men derive political rights.¹⁷

Thomas Hobbes also contributes to this idea of the family and the absolute obedience of the private. It is known that the central concern of Hobbesian theory was order, and to large extent the social contract was written so that the Monarch can create an ordered political system. But for Hobbes the family is also an artificially constructed institution in which father's right is a purely contracted right.¹⁸ This is why he emphasises on the absolute obedience of sons towards their fathers. For Hobbes, in the private realm, consent means to be ruled arbitrarily by the father. The position of the head, that is, the patriarch, is the position which orders the family within the private realm.

Today we can see a unique combination of the ideas presented by these political theorists who lived in very different times. The modified version of Aristotelian notion of public and private continues even today. Women are still considered as private persons, who should not have a say in politics unlike men who are naturally predisposed to political activity. Even though this theory has been questioned, and citizenship is granted irrespective of gender in India, the belief system that women's position is within the household is yet to change. The domestic sphere appears as a natural space for women. This space is not a free or empowering space but rather a space where obedience is taught. Filmer and Hobbes both construct the family as a strict structure meant to dispel the lessons of absolute obedience to the Monarch. In the family instead

of the Monarch, the obedience is given to the Father who is the head of the household. The family is a space where there is no free will, no affection but rather only obedience to absolute authority for the father. This strict and unfree structure of the family has played an important role in silencing the laws within the domestic sphere.

The silence comes from the idea that within the domestic sphere the notions equality and justice do not function as they do in the public. They are more or less obsolete as the domestic is the place governed by rigid social hierarchies. The hierarchy within the domestic is rigid and based on the subordination of sons/daughters to father, wives to husbands, child to parent. These hierarchies are considered as natural and essential for the functioning of the domestic sphere. To challenge these hierarchies is to create a sense of disorder within the domestic. Maybe that is why, the State is so hesitant in entering the domestic sphere despite the claim that the personal is political. So even though the State is aware about the discrimination and subordination of women in the domestic, it chooses to minimize its interference in this realm.

The States choice to empower women in the public sphere but at the same time, to ignore their position within the domestic sphere creates an array of issues. The most problematic being that women are now maintaining a 'schizoid' identity. It can be assumed that women are equal and free and at the same time be subordinated and oppressed. They can enjoy the equality and freedom of the public sphere, while at the same time, they continue to experience oppression within the domestic sphere. As if their experience in the domestic sphere does not influence their position in the political sphere. But this situation is impossible, as the subordination of women within the domestic will determine the extent of their agency within public sphere. For men of course, this is not the condition. They dominate within the public and within the domestic sphere too. Both public and domestic sphere are male centric, so the experience and demands of men are privileged in both spheres¹⁹. They do not need to suffer under the framework of dual experiences. Men have agency in all spheres, while women can claim agency in the public sphere. The assumption that equality in the public sphere will automatically eradicate inequality within the domestic sphere has already been proven wrong. Actually, there is no basis of this assumption as the private and domestic spheres have always been considered as the realm of the 'patriarch.'

Carole Pateman highlights this fact in her book *The Sexual Contract*. She states that due to the original contract the position of women was fixed within the private sphere, but men continued to dominate within the public and private sphere.

‘Patriarchy is not merely familial or located in the private sphere. The original contract creates the modern social whole of patriarchal civil society. Men pass back and forth between the private and public spheres and the writ of the law of male sex right runs in both realms.’²⁰

The original contract creates a legal system that defines men’s position as the head within the public and domestic sphere. The experiences of women, their identity and agency are all subordinated to men. She goes on to explain that in order to strengthen the position of men in the public, women are completely removed from this sphere. Women are related to the private sphere of subordination to men. Any change in their position can be attributed to women signing contracts like the employment contract or marriage contract in order to get some access to the public place. She goes on to state that,

‘Men create patriarchal civil society, and the new social order is structured into two spheres. The private sphere is separated from civil public life; private sphere both is and is not part of the civil society- and women are both a part and are not a part of the social order...men can receive acknowledgment of their patriarchal right, only if women’s subjugation is secured in civil society’²¹

Pateman emphasizes that the privilege which men enjoy in the public and the private is a result of the subordination which women are meant to experience according to the sexual contract. Without women’s subordination the original contract is meaningless. The only reason men gave up their authority to the State was so that they could continue to impose their patriarchal right over women in the private sphere. As she rightly emphasizes, women are visible in both public and domestic spheres, yet they are not completely a part of any of these spheres. Their position is dependent completely on men and any access to rights especially in the private is coming through the marriage contract. According to Pateman, this contractual relationship is the reason why the State acts patriarchal even though it criticizes patriarchy. State through laws and limits on laws controls the lines of the public, private and domestic.

We can take the example of India here, where sexual assault is a criminal offence. In India sexual assault is defined under Section 375 of the Constitution. The maximum imprisonment for sexual assault is life imprisonment and the minimum is ten years²². Since 2013, sexual assault has been recognized as a heinous crime in India. But according to the law, sexual assault

cannot take place within the family. Within marital relations, sexual assault cannot happen because the consent of women is taken to be perpetual. But the law on domestic violence, which is not within the Indian Penal Code, identifies, sexual violence as a form of domestic violence. Since it's not a part of the IPC it is not recognized as a criminal offence. If a woman wants to take criminal action against domestic violence, she will have to address it under section 498 A which deals with cruelty towards wife.

All these myriads of laws to prevent violence against women perform one very important function, that is, that they create a space, which is recognized by laws, where sexual assault can take place. According to the legal provisions, sexual assault is a purely public experience and can never happen in the sphere of the domestic, especially in marital relations. This is an example of how laws play a role in constructing a distinction between the public and the domestic sphere. Sexual assault which is a heinous crime within the public sphere is rendered invisible in the domestic sphere. Pateman would argue that men's control over women stems from the marriage contract, where the consent of women to be subordinated to men is fixed. This is why the laws assumes that the lack of consent or coercion cannot exist within the private sphere.²³

The laws, hence, plays a very important role in the creation of a domestic sphere. If not for laws, then the distinction between the public and the private sphere will become blurred. Ultimately, the State depends on laws to separate the public from the private, so that the patriarchal right of men can continue. Perhaps that is why the domestic sphere is major site of patriarchal violence. It seems as if the entire sphere has been created so that men can enjoy a limitless domination over women even if it's through violence. That is why violence within the family is considered as a part of the structure and normalized within marital relations.

Violence in the family emerges as an instrument to construct a rigid structure of patriarchal hierarchy within which men get the ability to dominate over women. Violence in forms of female infanticide, dowry, domestic abuse, marital rape emerges from the belief that men have an innate right to be violent with women within the family. It is a means of controlling, dominating, and/or disciplining the person who is subordinated to them. Violence is an oppressive tool to discriminate women from men and to ensure their subordination. The domestic sphere where this violence takes place is traditionally protected from the interference of laws. Rajeshwari Sundar Rajan points out, 'Violence within the home is a phenomenon that has only with difficulty achieved recognition as socially unacceptable behaviour, whether as

crime, pathology or human rights violation.’²⁴ But in India legal provisions like Section 498A, Section 304 B, The Protection from Domestic Violence Act and the Dowry Prohibition Act make violence against women a criminal offence.²⁵ The reception towards these laws has been two-fold. Some groups have welcomed these laws, stating that they will transform the position of women within the domestic sphere and remove the subordination and vulnerability which they experience. Other groups believe that these laws interfere in the intimate relation of the household and family, thereby disturbing the public-private sphere which the legal system has set up. This section assumes that the interference of laws is unnatural in the private or domestic sphere. However, we look at it the recourse to law is unavoidable within the domestic sphere.

Feminists particularly rely on laws as an instrument to confront the continuous violence which women experience in the domestic. Patriarchal violence is very common especially in the domestic sphere and is normalized by social-cultural norms. The family is not beyond the realm of the law, after all it has a legal identity²⁶ so addressing oppression of women is the function of law, especially violence. The fact that any person or institution except the State has access to violence is a threat to the State maybe that is one of the reasons the State is involved in addressing violence. As Menon highlights, ‘family is inherently violent institution that is gendered to the core.’²⁷ In order to delegitimize this violence, the recourse to law is inevitable.

As MacKinnon states, that laws against violence are designed to understand the experience of the victim, ‘the idea that the law should see it the way its victims see it’²⁸ became the fundamental reason why feminists depended on laws to address the subordination within domestic. For women, violence in form of domestic abuse or marital rape is equivalent to the violence of battery or sexual assault which happens in the public sphere. Yet politics will define one as more acute an issue than the other. The violence in the domestic sphere is as harmful and humiliating as any other form of violence. It is made even worse if women have not access to laws to complain against this violence. Ultimately laws are the only legitimizing discourse available to address the issue of violence within the political space. From deciding who is the perpetrator and who is the victim and what exactly constitutes as a crime, law transforms personal experiences to be legally cognizable.²⁹ It authenticates the experience, making them visible and condemnable within all spheres. The silent injustice which women had to experience before is replaced with a claim to justice. But is this claim enough? Is law a fool proof mechanism to address violence in the domestic sphere?

Feminists have often depended on law as a source of equality and empowerment for women.³⁰ Especially in India where the law is an important source of social transformation. Since the domestic sphere is governed by patriarchal rules and norms, laws became the source of empowerment and justice. As discussed in the previous chapters, the approach taken by law to address women's inequality changes according to the situation. While in the political and economic sphere, laws can choose between the protective approach, sameness approach and corrective approach, in the domestic sphere laws rely mainly on the protective approach. Since patriarchal discrimination is the basis of domestic relations, the law cannot depend on the sameness approach. For example, there are many sections in the personal laws, which discriminate between men and women on the basis of traditional or religious norms. In a similar manner, the corrective approach while desirable is difficult to apply within the domestic sphere. The experiences of violence within the domestic sphere are too subjective to be determined within the umbrella of one single law. Politics and laws cannot freely access the household and family relations, and so correcting the discrimination through laws alone is a vain attempt. Protective approach is the only approach left viable to address the issues of inequality in the domestic sphere.

This means that the State plays an important role in deciding how to interpret equality and oppression within the domestic sphere. The State addresses inequality which women experience within the public by constructing laws and policies which delegitimize the subordination of women. Especially since women are granted equal citizenship as men, their access to political, civil, and economic rights has increased phenomenally. Women can demand equality and if denied, legal institutions play an active role in correcting the situation. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 a testament to the rigour with which Indian State has attempted to address the question of women's equality. But this same clarity does not extend to the discrimination which women experience within the domestic sphere, particularly as victims of patriarchal violence.

Nivedita Menon highlights that there are four ways through which laws interpret the position of women³¹. Firstly, laws can discriminate between men and women and deny women basic rights. Secondly, laws are interpreted in a patriarchal manner. Thirdly, laws treat men and women equally in a system which privileges men. Fourthly, the laws are unable to interpret the experiences of women as the law is essentially male.³² Menon highlights that even though laws are an instrument for equality and empowerment, some laws are discriminatory in nature while

other laws are unable to challenge the patriarchal structure. This is especially true for laws in the domestic sphere which are already limited due to the public private dichotomy which assumes that domestic sphere is the space free of legal intervention. So, the inequality which women experience within the domestic is rendered invisible to the State³³. So why is it necessary for feminism to rely on legal interventions for equality and empowerment?

I choose to argue that the recourse to law is inevitable when addressing violence against women in the domestic sphere. Firstly, laws are looked upon as a substitute mechanism till a better solution is figured out. As laws have the ability to recognize, legitimize and delegitimize experiences, it is the only available tool to prevent violence against women in the family. Wife beating, for example, is normalized within marriages as a form of personal relationship between husband and wife. But in the public place, a man beating a woman would be a punishable offence. Since abuse and battery is offensive in the public, it makes sense that it is offensive within the domestic sphere too. But this is not the case most of the times. Referring back to the notion of women having a schizoid identity, it seems that the logic of violence changes within the boundaries of the family. This is why efforts for preventing violence against women in the public sphere may be rendered ineffective within the domestic sphere. Laws to prevent violence against women within the domestic sphere will act differently when compared to the laws made for the public sphere. Rajeshwari Sundar Rajan observes,

‘A law that addresses violence in the home – which assumes as much as it asserts this violence – raises a number of questions, implicitly or explicitly challenging received ideas about the family as social structure and ideological system.’³⁴

The idea that family is a private space and automatically safe and consensual for women as opposed to the public space, which is a space of danger for women, is contested through laws. The popular ideas on family and marriage where the gender-based hierarchies are celebrated are also challenged. Irrespective of the social support towards the practice of domestic abuse, laws can be constructed to contest the social approval to violence against women. The laws may not be enough, but it definitely gives women an opportunity to escape this violence. It also sets the basis of social transformation which the Indian Constitution promises.

Secondly, laws can be modified and amended, due to which an insufficient law can be transformed to be more effective. Vina Mazumdar who studies the contribution of women's movement in the formation of laws for women highlights that the failure of laws at a given

time should not be held against the State³⁵. The laws can be remade or reconstructed to be much more effective with time, but the absence of laws can allow violence to continue indiscriminately. In the Roop Kanwar case, we observed the horrible failure of State and legal institutions in preventing the practice of *sati*, which was banned since 1829. The political and legal limitations towards women's rights were blatantly displayed for the world to criticize. But does that lessen the relevance of Sati Abolishment Act, 1829? The immolation of widows has drastically come down since the time the law was made. In the past century, the social sanction and cultural relevance of the practice of *sati* has weakened considerably and today this practice is criticized greatly. While the Roop Kanwar case highlights that despite laws violence against women is a continuous threat, it does not justify the removal of laws which prevent the violence from taking place.

Nandita Shah and Nandita Gandhi make a compelling argument regarding the need of law. They state,

‘if we are to perceive women's lives from different, moving vantage points, from issues such as violence, health, work, from within different structures, we begin to glimpse that there is nothing, no framework or basis, which can create a ‘sense’ of right, a faith in law and the judicial process’ This becomes further evident when we see how each of the universally accepted Fundamental Rights are violated at every stage in woman's lives’³⁶

Outside of laws, there is no framework which criticized the violence which women experience throughout their lives. Rights which men enjoy are denied to women constantly and there is little acknowledgement of this. Laws acknowledge the violation of women's rights. It acknowledges the injustice which this violation brings with it and sensitizes women's regarding the need to undo this condition. Laws however flawed play an important role in uncovering the acute patriarchal oppression which makes up a large portion of women's lived experiences.

The silence on the violence in the domestic is contested through laws. Laws claim that the violence with the domestic sphere, with marital relation, within families is a cause for inequality and injustice is the first step in delivering empowerment. I am not under the illusion that laws are the ultimate solution to eradicate inequality and injustice which women experience. But I do acknowledge that they possess the potential to create a conflict within the popularly believed patriarchal narrative that women are subordinated. Laws provide a picture

of an alternative way of life to women where their subjugation within the domestic sphere is not normalized. Laws provide a claim to a life where women are free from violence and have equal position. This claim to an alternative life free from inequality and violence acts as a massive challenge to the belief that women's subordination is necessary within the family. It contests the patriarchal conditioning that men and women are not equal and paves way for a more equal system. Nandita Shah and Nandita Gandhi highlights, 'Theoretically, family relationships are governed by personal laws based on religion and customs and constitutional laws. In practice they are based on the premise: we your blood relatives, know what is best for you'.³⁷ The idea that women have any control within the domestic sphere is challenged by laws which gives women access to basic rights.

Still, only letting laws define the violence in the domestic sphere is a tricky affair. There are many questions and doubts regarding laws as strategy to challenge violence, especially looking into how male biased the laws are. The concerns over laws as a capable system to address the issues of women's subjugations is very serious. But laws as limited as they are are inevitable in their struggle to weaken patriarchy in the domestic. The limit on laws is set by the manner in which we interpret them. A law can be interpreted in a patriarchal manner, or it can be interpreted to oppose patriarchy. The understanding of legal and political system on issues of violence decides on this manner. Since the domestic sphere traditionally exists within a judicial void, laws for women are more difficult to interpret.

But if not through law, then the inequality within the domestic sphere cannot be addressed effectively. Prevention of violence against women is a struggle to achieve in the public sphere, so the inequality of domestic sphere has to be addressed urgently. As stated by Pateman, in the domestic sphere there exists a male sex right to dominate over women. Women's subordination is not only the key to maintaining the distinction between public and private but also the dominant factor in the continuation of patriarchy in both spheres.³⁸ Laws aid in challenging this subordination. They bring in the idea of equality and justice within the domestic sphere where it is ignored, thereby allowing the domestic sphere to move beyond subordination of women. In doing so, laws are giving an opportunity to rearrange the hierarchy within the domestic sphere. Elimination of violence within the domestic has definitely been the core focus of laws in recent years.

Feminist demand for laws against violence has been the longest and loudest demands. It has also been the demand which is difficult to achieve. Violence is a complicated issue as the

violence which women face is done because they are women. It is a cruel form of sex-based oppression which has been justified for centuries in social and cultural systems. Laws help in raising awareness against violence, they delegitimize this violence and challenge the social beliefs which support this form of oppression. In India we have some laws which challenge the presence of oppressive practices in the domestic sphere. But till what extent are these practices able to challenge the patriarchal influence over the domestic sphere needs to be critically analysed.

4.2 A Critical Reading of Select Provisions of Violence Against Women in India

The violence which women experience due to their subordinated position in the domestic sphere has been an area of concern for Indian political system. The focus is on the empowerment of women, but the continuing cases of violence against women both in the public and domestic sphere raises question on the competency of the women's empowerment. Granting empowerment has not been the only challenge which the Indian State has experienced in recent times. Creating and sustaining efficient laws and policies for the sake of empowerment has proven to be a great challenge too. Women are oppressed in all spheres of life, and when granting empowerment, the State has to enter all spheres of oppression. Maybe that is why in India it is not uncommon to see laws against violence on women in both the public and the domestic sphere. Laws are definitely a very important tool for empowerment of women, but till what extent are they efficient enough to confront the patriarchal nature of violence which women experience? Laws are constructed either to punish or penalize the perpetrator and prevent acts of violence in the future. The presence of laws itself aims at discouraging acts of violence against women and at the same time sensitize women to acknowledge the laws meant for their safety. Without a doubt, laws help in creating a strong foundation of an equal and safe society. But is this enough?

The Indian social system considers many forms of violence as natural instruments to maintain order of the domestic sphere. Dowry is a social practice which determines the worth of a woman and honour of the family during marriage. Domestic violence is justified as a means to control an 'unruly' wife. Female infanticide like *dudhpiti*³⁹ is a method to reduce the burden which a family faces due to the birth of a girl child. I can give countless examples of how the social system justifies violence against women. The entire domestic sphere is constructed to uphold these practices and not question them. Oppression of women within the domestic sphere is both structural and systematic. Men and women both grow up in a system which justifies

violence against women as normal to maintain the social order. Women are conditioned to believe that their lives are only valuable in context to men, especially their husbands. Because of this they rarely choose to walk out of oppressive situations and seek legal help. In such conditions, can laws successfully intervene and stop these acts of violence against women? Or do laws just act as a mere band aid to a serious malaise which afflicts the domestic sphere? To understand this better we need to critically look into some provisions which prevent violence against women in the domestic sphere.

The first provision I choose to analyse is the Dowry Prohibition Act, 1961. The exchange of wealth at the time of marriage is called as dowry. It is an age old and much accepted practice which is found across communities, caste and religions in India.⁴⁰ Shah and Gandhi highlight that originally dowry was called as *streedhan* or women's property and was a form of inheritance for women in a land-dominated, agricultural economy.⁴¹ But as time passed dowry became any type of object which signified wealth. Land, jewellery, cars, scooters, refrigerators could be given as dowry. Dowry has become such an essential part of marriages that the entire marriage depended upon the amount of dowry.

As a practice dowry has been criticised since before independence. The social reforms movement played an important role in highlighting the evils of dowry system and set the foundations of a long struggle against it. The practice of dowry is considered as a social evil because it reduces the position of women to an object which can be bought for a certain prize within the institution of marriage. As society sanctions and normalizes dowry as an essential part of marriage, it also normalizes the degradation of a woman's position as an object through which her marital family can demand money and assets from her maternal family. If dowry is denied, then usually the girl suffers the consequences of it. She is either removed from her marital home or becomes vulnerable to physical and psychological abuse until she is able to secure the amount required. The practice of bride burning is also common in cases when the girl either refuses or cannot pay dowry. In most cases, brides are burnt alive as punishment or not getting dowry, and this is made to look like either suicide or accident. While dowry-based violence directly affects women, it is also a contributing factor in the abandonment and killing of the girl child, as many people refuse to raise a daughter as they cannot afford dowry. The ability to give dowry at daughter's marriage is also closely related to the family's honour. Due to this, dowry has become a deep-rooted social evil in India.

After decades of campaigning and raising awareness, the practice of dowry was prohibited in 1961 under the Dowry Prohibition Act. This Act defines dowry as,

‘dowry’ means any property or valuable security given or agreed to be given either directly or indirectly;

a. by one party to a marriage to the other party to the marriage; or

b. by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies’⁴²

This act defines dowry very broadly and allows penalizing and punishing those who participate in exchange of dowry. Before 1961, the law was silent on the issue of dowry due to which this practice continued quite rampantly. But after a series of interventions from the civil society and the rising concerns over the commercialization of marriage⁴³, the State had no choice but to prohibit dowry. The complete objectification of women and the constant violence which was perpetuated due to dowry was condemned by the law. This was perhaps the first time the State intervened objectively within the domestic sphere to prevent violence against women. The Indian State has always supported equality but had turned blind eyed to the discrimination against women in the domestic sphere. through the Dowry Prohibition Act, the State clarified its position. The Indian State was in favour for women’s empowerment and safety and opposed all forms of violence against women even if they were backed by social structures. Once the Indian State announced its position, the law against dowry became a tool to not just penalize the perpetrators but also raise awareness against social evils which continued to prevail within the society.

One of the most important aspects of this law is that it holds both the person giving dowry and accepting dowry responsible for their actions and so adequate punishment can be extended to them. According to the law, any person who gives or takes dowry can be punished for not less than five years and can be fined for not less than fifteen thousand rupees, unless the court has special reasons to not do the same. If a demand for dowry has been made then, the person making the demand can be imprisoned for minimum of six months which may extend to two years and a maximum fine for ten thousand rupees.⁴⁴ The law also states that any agreement on giving and taking dowry will be void. The law is very clear about the severity of the

punishment and penalty for all those who practice dowry. Despite having a clear law which strongly opposed the practice of dowry, the problem continued.

As mentioned before, the law can do very little in a system which upholds violence against women as a necessary practice and this was proven due to the continuous raise in the number of dowry death. It was in 1978, more than fifteen years after the legislation that major protests emerged across India due to dowry related deaths. Death of newly married women was a very common occurrence in the society. The unspoken truth was that women were being murdered or forced into suicide for the sake of dowry. The entire social and political system was aware of this and chose to remain silent. After a continuous spate of dowry related deaths women's organizations like *Stree Sanghatan* and *Nari Raksha Samiti* among many others began protesting against dowry related deaths.⁴⁵ The lack of investigation in the deaths was a major area of concerns for these protests. Even when dying women claimed that they were attacked for dowry, the dying declarations were ignored, and dowry related deaths were either registered as suicides or accidental deaths and no further investigation was done. After interventions and deliberations in the parliament on dowry related murders, it was concluded that investigation should be done if women commit suicide or die in accidents in the first seven years of their marriage. The dying declarations were also to be considered as important statement to issue an investigation against dowry. Anti-dowry cells were also created so that women could resolve dowry related issues. On paper these provisions seemed like a good idea but in practice they were unfortunately somewhat incompetent.⁴⁶

The investigations on the death of women within seven years of marriage even when conducted barely resulted in adequate results. Most of the time these cases were closed due to insufficient evidence to blame and punish the concerned family. Even the statements of dying women when recorded by the police were considered as insufficient evidence. Despite cases being registered and full-scale investigations being conducted by police, most cases reached a dead end. The situation with the Anti Dowry cells was not very encouraging either as most cells acted as marriage counsellors instead of legal aid institutions. Women who wanted to protect themselves from dowry were trapped in a system which was not equipped enough to address the issue. By the end of the nineteen seventies', the Dowry Prohibition Act was considered as superficial since it did very little to punish those who killed women for dowry.

In 1983, Section 498 A was introduced under the Criminal Law (Second Amendment Act) within the Indian Penal code. Cruelty towards wife is considered as a cognisable offence which

is non bailable in nature and a person can serve up to three years in prison.⁴⁷ Changes were introduced under the Section 113-A of the Indian Evidence Act, 1872 due to which the burden of proof was shifted from the complainant to the accused. Section 174 of the Criminal Procedure Code, 1973 was amended, and post-mortem examination is compulsory if death takes place within seven years of marriage.⁴⁸ A few years later, in 1986 Section 304 B was introduced in the Indian Penal Code which registered dowry deaths under a separate section from dowry prohibition and cruelty towards wife. Nearly twenty-five years after the dowry prohibition act was established, dowry deaths were registered as a criminal offence.

All these amendments proved the absolute stand of political and legal institution against dowry and dowry violence. Yet in the year 2021, 13776 cases of dowry⁴⁹ and 6795 cases of dowry deaths were registered in India⁵⁰. Dowry as violence against women continues even today, which indicates that despite the presence of strong laws the social acceptance of dowry has retained itself which has continued the vulnerable position of women within the domestic sphere. So, can we call the anti-dowry legislations as effective?

Firstly, dowry prohibition legislations recognized the violence which women experience within the family especially within marital relations. While dowry was already recognized as a social evil, making laws to not only prohibit it but also punish and penalize the perpetrators indicated that the Indian State was willing to take a stand against the patriarchal oppression which influenced marital relations. The image of the family as sacrosanct and perfect was slowly being challenged. As the protests against dowry grew, the government had no choice but to acknowledge that sometimes the family can be a site of violence against women. The political and legal institutions realized that the violence which women experienced within the public was rooted within the domestic sphere. If violence against women which was ignored within the domestic sphere, then how could women be equal and safe in the public sphere? Anti-dowry legislations become one of the first legislations where the Indian political and legal system realized the potential of laws to act as instrument to delegitimize patriarchal violence against women.

The issue of dowry could have been set aside as a social issue with a mediocre law to control the number of incidents. Instead, the legal and political system created a set of provisions which empowered the legal institutions to punish those who are practicing dowry. It also allowed police to conduct investigations around the cases of dowry. Legal intuitions were modified for the sake of preventing violence against women. The State assumed responsibility to stop the

dowry and especially prevent dowry deaths. The State took up the role of a protector of women against this depraved social custom which legitimized the maltreatment and subordination of women. Legal institutions bore the burden of delivering justice to women who were experiencing physical, emotional, and psychological abuse within their homes. Women who were taught to normalize violence as a part of their marital and family life could now turn to the State for protection and justice. While the State did take over the role of the ‘masculinist protector’⁵¹, the State set the foundation for future legislations to prevent the various types of violence and injustices within the family.

The construction of legal provisions against dowry has not just taken away the social and cultural backing of dowry, but it also exposed the nefarious influence of patriarchal oppression on women. The subjugation of women within the family and the domestic sphere became an issue which never died down. No report, legislations or policies for women could be made without referring to the position of women within the family. The domestic sphere which was for long criticized by feminists and social workers as oppressive now came under the critical gaze of the State too. Debating women’s position within the family under the context of violence is an extremely challenging task, especially considering that the State believes the domestic is free from legal interference. The Indian State had to overturn not just this belief but also carefully look into all sites of violence which oppression women.

One of the important outcomes of anti-dowry protests was that the political system became sensitized towards the many forms of violence which women experience. In order to guarantee the rights given by the Constitution to women, preventing violence became inevitable. One of the most serious yet recurrent cases of violence against women within the domestic sphere is domestic violence. Within the marriage, physical, emotional, and psychological violence is commonly used to control or assert authority over women. It is tool to subordinate women, mainly, wives within her marital home. Since patriarchy uses violence as a method to oppress women, domestic abuse is mostly acceptable within the family.

According to the NRCB report for 2021, thirty-one per cent of the crimes against women were related to cruelty of husbands and his relatives towards women.⁵² These numbers were only those which were reported. It is not too presumptions to think that the numbers should be higher than that reported. Domestic abuse is unfortunately a very common incident of violence which women experience. Like dowry, domestic violence is backed by social norms which consider it to be too private an issue to be discussed. Shah and Gandhi refer to domestic violence as an

‘invisible’ form of violence, as it is hidden under many complex layers of relationship between husband and wife which is influenced by patriarchy.⁵³ When women’s organization were protesting dowry deaths, they also raised awareness on the issue of domestic violence. The protests encouraged people to break their silence on the issue of domestic violence and intervene when they witness their family members or neighbours using violence on their wives. After Section 498-A was introduced women and their family members were encouraged to report the cruelties which they experienced within the family. But the absence of a proper law against domestic violence continued to be a cause of concern.

Why is there a need for a law against domestic violence in the first place? The domestic sphere is traditionally seen beyond the control of legal institutions. The family, especially relationship between spouses is considered as intimate and romantic, so interference is usually looked down upon. For the State to enter and define relations within the marriage as lawful or unlawful is a problem and so there is hesitance regarding the framing laws within the family. Secondly, it assumed that within the marriage women is subordinated to her husband and so she consents to all actions of her husbands. Even violence in form of wife beating will be considered as consensual.

Women’s independent identity within the marriage does not exist which means that she has no say or claims which can be in opposition to her husbands. She also has no ownership, especially over her body which is given up during marriage. So, claiming that she was beaten against her wishes is impossible because she has none. Also, in the family structure the position of woman is fully subordinated to the man. This patriarchal arrangement conditions women to accept all forms of domination, even violent one as normal within the family. Most women consider physical abuse as a part of marital relations are rarely sought to challenge it. Patriarchal families place men as head of the family which means that women do not have any decision-making ability. In order to prevent violence, women ought to have an agency, they ought to be independent from their husbands. Independence and agency are taken away within the traditional idea of a marriage. This is why the existence of laws become so important because they grant women agency independent from that of her husband.

The family is a site of violence and subordination because it is created to maintain a patriarchal hierarchy. This does not mean that the law cannot intervene and remove the violence experienced within the family. For the sake equality and empowerment, framing laws against domestic violence became imperative for the political sphere. The increasing demand for

political action against violence led the government to create a new law called as The Protection of Women from Domestic Violence Act, 2005. This act not only defined domestic violence but also created a system where victims of violence could rely on their complaints and seek protection from the abuser.

This law is meant to provide protection to women who suffer from any form of violence within the family. The law domestic violence as any harm or injury to physical, mental, sexual, or economic wellbeing. Any form of harassment, injury, coercion, threat, or endangerment can be called as domestic abuse. As stated in the law, domestic violence is,

‘(a) harms or injures or endangers the health, safety, life, limb, or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures, or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person.’⁵⁴

This law explains domestic violence in a very comprehensive manner which allows legal agencies to address the different forms of domestic abuse. The law highlights four major forms of violence, that is, physical, sexual, verbal, emotional, and economic abuse. It explains physical violence as harm or danger of harm to one’s body or health. Even harm to the physical development of the aggrieved person is considered as physical abuse. Sexual abuse is defined as abuse, humiliation, degradation to the dignity of women in a sexual manner. Verbal and emotional abuse is explained as insults, ridicule, humiliation, or threat to cause physical pain. It also highlights that ridicule towards a woman for not having a child, especial male child will be considered as domestic violence. Economic abuse is explained as the deprivation of economic and financial resources which are entitled under a law or custom.

The most important contribution of this law is that it acknowledges that domestic violence can manifest itself in a variety of ways. For a long time, physical abuse with evident injuries were only categorized as domestic violence. Through this law, the physical, emotional, and mental trauma which is perpetuated on the victims is also brought forward. The idea that violence can be carried out in multiple manners was also acknowledged. Ridicule, humiliation, threats, coercion, and deprivation are all forms of domestic abuse.⁵⁵ Domestic abuse requires an ecosystem to continue within the family. Physical, mental, and emotional abuse combined with economic dependency of the woman aid in creating an abusive system. This system is used to control women or ensure their obedience within the family. By acknowledging this, the laws against domestic violence have taken into account the various form of violence which women experience within the marital relations. It is not the same as cruelty of husbands on their wives as given under Section 498 A, but an attempt to prevent the violence which forces women to remain in a subordinated position within the family.

This law also provides that a complaint can be made to police, protection officers, service providers or the magistrate. The aggrieved women will be extended protection from her husband, she can stay in a shelter home and can access medical facilities which will be provided to her at the time of complaint. ⁵⁶The law gives the magistrate powers of counselling, deciding to protect the aggrieved women from her husband and compensating monetary reliefs when necessary.⁵⁷ This law cannot penalize or punish those who commit domestic abuse. The intention of the law is to protect women from domestic violence and makes arrangements in order to prevent her from becoming a victim of violence again.

The approach of this law is clearly protectionist. It seeks to address the violence which women experience within marital relations, but it does not seek to correct the structure which can led to the routinization of domestic violence. Women are conditioned to believe that domestic violence is part of marital relations. While physical abuse is frowned upon today, emotional, verbal, and economic abuse is barely recognized as a form of violence. But to create a safe domestic sphere, there is a need to acknowledge the criminality of violence. Even if violence occurs within the domestic sphere, within the most intimate relations, it is still a criminal act.

If women are recognized as individuals who have their own agency within marital systems, then it is normal for the law to criminalize domestic violence. But if women are considered as subordinated to man, or men are considered to have ownership over women, then the law will only attempt to negotiate with domestic violence, not eliminate it. The Protection of Women

from Domestic Violence Act, 2005 does not criticize the structure which oppresses women. It problematizes domestic violence and suggests for preventive measures, but it does not make a serious attempt to address the source of the problem. The Report of the Committee on Amendments to Criminal Law highlights this in its report on changes in criminal law and states,

‘While the enactment of this statute was a welcome measure, it has not led to a reduction in instances of domestic violence. This is primarily because there has been no change of fundamental attitudes towards women.’⁵⁸

The position of women within the domestic sphere continues to remain subordinated as laws do not question the oppressive nature of the family. Women are not subordinated in the domestic sphere only due to male violence but are subordinated due to the presence of hierarchies which exist due to the support of violence. To contest domestic violence without challenging the structure which supports it indicates a cosmetic effort on part of legal institutions. As we observed in the previous chapter, when dealing with violence against women, it is necessary to weaken the structure which justifies violence. The influence of patriarchy and the assumption that laws cannot freely enter the private sphere creates an excuse for the continuation of violence within the family.

One must not look at the family as a sacrosanct institution but rather as site for patriarchal oppression. The anti-dowry legislations did create the foundations through which the violence within the family could be challenged. Yet the laws against domestic violence continued to be weak. In case of dowry, the State assumed that their oppression is systematic in its nature. The demand for dowry, combined with constant cruelty in the marital home, creates an unsafe environment for women. Hence along with the Dowry Prohibition Act, Section 498-A, Section 304 B were also added. In case of dowry, the State refuses to tolerate the system which supports such violence. It attempts to address the root cause of dowry which is the oppression of women. The campaign against dowry has continued to be consistent, with the government even relaying on media and other awareness programmes to remove dowry from the social system. Despite this, there have been many reported cases of dowry.

The issues of domestic violence have not received the same seriousness. Though the political system disparages all forms of violence against women, the violence within marriage has been a site of hesitance. The law is constructed to provide women who want to be rescued from domestic violence a way out. Since our social system, does not provide any care for the

aggrieved woman, she can only rely non-governmental organizations or State institution. The State through this law attempts to offer women a recourse. A chance to walk away from the domestic violence which she experiences and have some claim to compensation and/ or counselling. This law does not challenge the system which allows violence to take place within the family.

Domestic violence is unfortunately still a taboo subject which is rarely discussed within public domain. Even though Section 11 of the law mentions that the government needs to raise awareness against the evils of domestic violence and the presence of laws, very little is done to address this issue⁵⁹. The intention of the law is to stop violence, and not to break the marriage. It thinks too much interference can lead to the disturbing the stability of the family. The law is unclear to what extent can it interfere within the family. There is a public-private difference which legal sphere needs to maintain. Without it the State will have complete access to the private and the domestic which is also an undesirable consequence. So how does the State effectively address domestic violence?

Firstly, the State will have to consider the experience of women during the framing of laws for women. Domestic violence laws clearly use the protectionist approach through which the state acts as a benevolent benefactor for aggrieved women. State institutions and representatives work for the resolving issues within the husband and wife and do not question the reasoning behind the violence. The lack of effective punishment or penalty makes it likely that the violence will be repeated again. Domestic violence is one of the most insidious forms of violence because it starts by assuming that women is subordinated within the family and violence is normal to fix her position. The domestic violence laws continue with this assumption and the State's role is reduced to make sure that this subordination is not coerced through violence. Correcting the position of subordination and asserting equality within the marital relations is not the concern of laws against domestic violence. The law actually ignores its own potential in changing the discourse on domestic violence and mutely looks on towards the injustice which women experience.

Domestic violence laws do not even consider marital rape as a form of violence. Here the concept of perpetual consent is used through which it is assumed that women cannot be forced to have sexual relations with their husbands or that her consent is perpetual. This understanding comes from the outdated common law which assumes that wives are like property of a husband and hence women's consent is constant. Sexual assault and violence should be considered

heinous and a punishable offence irrespective of the perpetrator's relationship with the victim. Marital relations should not act as a shield which defends the perpetrators or allows them to receive a lesser punishment. In cases of domestic violence, husband's actions are not treated as criminal simply because he is married to the aggrieved women. The same kind of violence if conducted outside of marital relations will yield into strict investigation and punishment.

Laws are completely silent on marital rape as it is too uncomfortable to discuss at the moment. When asked in the parliament, Smriti Irani, the Minister of Women and Child Development mentions, '...let me say, to condemn every marriage in this country as a violent marriage, and to condemn every man in this country as a rapist is not advisable in this august house', ⁶⁰This clearly shows marital rape as a crime is considered as a condemnation of man and threat to the institution of marriage. Women's subordinated position nor the vulnerability in marriage is a cause of concern for the minister.

After analysing these provisions, it appears that the legal system still holds on to patriarchal assumptions about marriage and family. Very little attempt has been made to undo the patriarchal oppression which women experience within the family. While the law sympathizes with women's condition and attempts to protect them, it does not deliver empowerment and equality. There is no equality within the marital and familial relations. The laws choose to remain superficial to violence which women experience within the family. Then is there any change in the women's position in the domestic sphere?

4.3 The Domestic and/as the Continuing Logic of Patriarchy

Laws are inevitable within the domestic sphere and their presence does cause a shift in the way we accept or reject patriarchy. The family and household are the site of patriarchy which the one of the reasons for the continuous disempowerment of women. Despite the presence of laws, the position of women in the domestic sphere continues to be subordinated. Just a glance at the number of reported incidents of dowry, cruelty against wives, domestic violence explains the seriousness of this issue. I must emphasize that the reported number is just a fraction of the incidents of violence in the family which are taking place on a daily basis. These reports are rarely made over one or two cases of violence but only after violence suffered by the aggrieved women becomes repetitive and intolerable. Women who report these cases could have suffered in silence for years which goes unreported. The numbers do not represent the seriousness of

issues that is violence within the family. Then why is it that laws appear to be so ineffective in when addressing laws within the domestic sphere?

It has a lot to do if the hierarchy of the family being patriarchal. Walby states that there are two kinds of patriarchy: public and private. She identifies private patriarchy as 'based upon the relative exclusion of women from the arenas of social life apart from the household with a patriarch appropriating women's service individually and directly in the apparently private sphere of the home.'⁶¹ According to Walby, the manner in which patriarchy functions within the home is significantly different from the public sphere. Within the home women are excluded from social activity, decision making, control over means of production and their own labour. Through exclusion, women become constantly dependent on the man and lose their own identity. They are discriminated because they are women, and this discrimination is patriarchal. Marriage which forms the basis of domestic has been specially criticized by feminists.

Pateman highlights that marriage contract, unlike any other contract is an unfair contract. She observes, 'If marriage were a proper contract, women would have been brought into the civil life on exactly the same footing as their husbands.'⁶² In usual contracts the benefits of both parties are taken into account, but within the marriage contract the woman is subordinated to men. This skewed contract makes women subordinated within the civil society too. The unfair arrangement of marriage is the foundations of the unfair arrangement in the public life⁶³.

If family is the core social unit, the very foundations of the domestic sphere are unfavourable to women. The male sex right which men enjoy silences women's demands for equality and defines the entire domestic sphere from a masculine point of view. Men either protect women, or they victimize women, in both cases women are subordinated to men. Within the family there is no place or arrangement for women to be free from male control. Both within the maternal home and marital home, a women's life is governed by men. The entire experience of the family is from the male's point of view. As long as the hierarchies, arrangements, practices, and power suits the needs of men there is no need to question the domestic sphere. It is only when we start looking at domestic sphere from the woman's point of view, we are able to see the injustice and oppression. But this is easier written than done.

Since the domestic sphere is patriarchal, the entire system is male centric. Men's experiences are privileged and on the basis of these experiences' practices are legitimized or delegitimized.

Within a marriage the subordination of women is considered as natural for men's authority to continue, so they do not question the oppression of women. Within a marriage obedience and consent of women is taken for granted, so it is assumed that all acts within the domestic sphere, as long as defined by men are normal. MacKinnon points out,

‘Rape is defined according to what men think violates women, and that is the same as what they think of as the *sine qua non* of sex. What women experience as degrading and defiling when we are raped includes as much that is distinctive to us as is our experience of sex...’⁶⁴

What maybe pleasure to men may be rape to woman. What may be consent to men might be violation to women. What maybe violence to women maybe obedience to men. The problem starts with the who defines these notions. MacKinnon states that definitions of what constitutes as violations are defined as men and that is why defines rape becomes so difficult. This is true even in the domestic sphere where the men's experience is the only recognized. Since women lose their selfhood to men, men decide in place for women. Patriarchy would take away the ability to defines experiences from women. This is also why male violence in the family is so common. Because men think violence is an essential part to maintain their patriarchal position within the family. Violence becomes a tool to assert their domination over women. They never consider domestic abuse or marital rape as oppressive practices but rather assume it is their right as male members of the family.

When laws are framed for the domestic sphere, they have to be framed from the women's point of view and not from the man's point of view. The subordination which women experience through violence has to be legislated from their experience of being the victim. But it seems as if the position of the law is from the man's point of view. This is why during the hearing of cases on domestic violence magistrates and lawyers focus on the possibility of conciliation. It seems as if the law needs to give the perpetrator a chance to redeem themselves even before they are punished for the violence. Legislations for violence against women have played an important role in raising awareness against the cruel and unjust nature of the domestic sphere. But as MacKinnon highlights, laws need to stop using the female voice to articulate men's interests and start articulating women's interest.⁶⁵ The entire language of rights needs to be modified to prevent the violence which women experience within the household.

The relationship between patriarchy and the domestic sphere is sealed through the roles which men and women perform in the family. If we explore the position of women within the domestic sphere, we can get an idea of the extent till which patriarchy still influences this sphere. In order to subordinate women, the first thing which is taken away is their position of the 'self'. The visibility or invisibility of women's experience in public and the domestic sphere has a lot to do with their recognition within the law. Susan Moller Okin highlights that in the public sphere, men were recognized as a 'person' who has a legal identity and therefore, access to rights and benefits. This notion of personhood never extended itself to women. Rather this 'person' recognized by the law, are mainly male heads of the family who represented the interests of patriarchal system.⁶⁶ Within the family since there is no recognition of women as the self unless legislated otherwise.

Within the domestic sphere, women are unable to identify themselves as independent from the identity of their fathers, husbands, and sons within the domestic sphere. Their experiences are merged with the experiences of their male relatives. This lack of identity and invisibility of a 'self' is particularly problematic when framing laws. As the domestic system is predisposed to ignore women's separate identity, in order for law to acknowledge women as different from men, they will have to contest this predisposition. A good example is the law which was found in the English common law called as 'coverture', which assumes that once married a woman loses her own identity and becomes the property of her husband. Such laws have now been amended now, but these amendments have not challenged the belief that men are independent to women.

Even though India does not follow this system, our English influenced legal system definitely reflects the presence of this philosophy within the legal system. In situation of violence, only extreme cases of violence are recognized as domestic violence. For example, even though there is a provision for mental and emotional abuse in the Domestic Violence legislations they are rarely taken seriously. The violence which is condemned is the violence on the body. So physical abuse as long as it is evident is considered as violence. The body becomes a site for violence and also the site from which women can start negotiating their self-hood.⁶⁷ Here lies the problem with such legislations.

The issue of violence in the family is that it is considered as normal as long as women are at the receiving end of it. Marriage contract and conjugal relations are unable to see the problem on the issues of domestic violence. Even when the law intervenes, it becomes difficult to define

which violence is allowed and which is not. While domestic violence is condemned, marital rape is not even recognized as violence even both are means of oppression. Young offers a lucid explanation for the this. She states

‘Violence is a social practice. It is a social given that everyone knows happens and will happen again. It is always at the horizon of social imagination, even for those who do not perpetrate it. According to the prevailing social logic, some circumstances make such violence more “called for” than others.’⁶⁸

Within the domestic sphere violence on women is a ‘social given’ which is repetitive in nature. Domestic violence nor marital rape happens once only but are routine experiences. This routineness is what makes this violence so acceptable in the society. Even in families which do not experience domestic violence or marital rape, the possibility of this is always there. The domestic sphere exists within a spectrum on continuing violence. The position of women is located within this spectrum, so violence is inevitable. The only thing the law can do is decide which form of violence can be prevented and which cannot. Rajeshwari Sundar Rajan states that, domestic violence is welded into everyday reality of women’s lives.⁶⁹ Domestic violence, either mental, emotional, or physical has becomes a routine experience for most women. If women do not experience violence within the domestic sphere, they will face it in the public sphere. Patriarchy will make violence like domestic abuse a part of women’s life, a male sex right. Violence within the family and women’s position are so closely meshed together that it is very difficult to separate them from women. Women’s identity within the domestic sphere is about her dealing with violence or the threat of it.

Then how does law change anything? In beginning of the chapter, I highlighted that laws are inevitable to address the violence in the domestic sphere as there is no other method. But the critical analysis of some of the available legislations on violence against women, it has become clear the law is not enough. Even if laws and provisions are made the political and legal mentality plays a very important in preventing violence. The law can be interpreted in a patriarchal manner or can be interpreted to challenge patriarchy. Legislations of their own can do very little to modify the position of women in the domestic sphere. If we look at the provisions against dowry and domestic violence, they seem to be elaborate enough for legal institutions to deal with them adequately. Even though there are some loopholes the law through changes in procedure can actively prevent violence within the domestic sphere. Yet, the laws effectiveness has been questionable so far. Is this a problem with the laws, or is there

an inherent patriarchal bias within the political and legal system which prevents the laws to be applied effectively?

The approach which such laws consider is the protective approach. This approach 'essentializes difference' by assuming that women are weak and subordinated and need the States protection. Because of their difference, they are given differential treatment⁷⁰. Both anti-dowry laws and anti-domestic violence laws, use this approach and essentialize that women are always subordinated within the domestic sphere. The aim is not to transform the position of women in the domestic sphere but only to protect them till the extent the structure of the family is not harmed. The primary concern of political and legal institutions is to prevent the family from being disturbed due to repetitive violence within the domestic sphere. Repetitive violence causes the breakdown of families. In cases of dowry, many marriages are broken through divorce or separation which impacts the family negatively. Domestic violence and cruelty of husbands also led to the breakdown of the ideal family. Due to awareness of such social evils the structure of the family is threatened. Such laws are aimed to prevent situations and actions which can reflect poorly on the family. Women's equality and freedom is a by-product of saving the family. Some judgements of The Supreme Court on cases of dowry and domestic abuse illustrate this point

In 2003, in *Hira Lal and Ors V State (Govt of NCT) Delhi* a case regarding the suspicious death of a young bride, the Supreme court commented,

'A bride leaves the parental home for the matrimonial home, leaving behind sweet memories therewith a hope that she will see a new world full of love in her groom's house. She leaves behind not only her memories, but also her surname, gotra and maidenhood. She expects to be a daughter in law. The alarming rise in the number of cases involving harassment to the newly wed girls for dowry shatters their dreams. In-laws are characterized to be outlaws for perpetrating a terrorism which destroys matrimonial home. The terrorist is dowry, and it is spreading tentacles in every possible direction.'⁷¹

While deliberating over the social issues of dowry and cruelty of husbands on wife, one the judges made these patriarchal toned observations. He talks about the hopes and dreams of a woman when she leaves her family and gets married. He paints a picture of a wonderful married life which is disrupted due to the problem of dowry. Dowry here is interpreted as an issue in

continuation of a peaceful matrimonial home and not as an act of violence against women. The judge goes ahead and compares dowry to a terrorist act which breakdown a matrimonial home. Again, the patriarchal structure which promotes practices like dowry are ignored by the court. The idea presented here is that dowry should be punishable because it threatens the marriage and not because it threatens and devalues the safety of women. The patriarchal oppression which subordinates women through such practices is not contested in this judgement.

The Supreme Court here takes up the role of a benevolent patriarch who protects the sanctity of marriage and the people in it by removing the evils of dowry. The protectiveness which the Supreme Court experienced in this case indicated its dependency on structured patriarchal bias. Even though the Supreme Court punished the culprits in this judgement, they did it to set an example of the consequences of breaking or threatening the marriage institution. Women's subordinated position in the family and the threat of constant violence was ignored. They could have used this case to problematise the construction of family as a patriarchal hierarchy and the continuous disempowerment of women. But they choose to ignore it.

A few years later in 2017. In *Rajesh Sharma & Ors vs State of UP* new guidelines were created to prevent the misuse of Section 498A for the Code of Criminal Procedure, 1898. In this particular judgement, the Supreme Court made many implications about women's being irrational and harming the family in lieu of fake complains. Most of the judgement was about the damage done to the family structure due to such false complaints. The court observed,

‘It must also be borne in mind that the object behind the enactment of Section 498-A IPC and the Dowry Prohibition Act is to check and curb the menace of dowry and at the same time, to save the matrimonial homes from destruction.’⁷²

Once again while reviewing the procedure of arrests made under Section 498 A, the court openly states that the provisions meant for saving the matrimonial home. They particularly comment on how the arrests family members instead of husbands only hamper the efforts for reconciliation of the family. Eradicating the oppression of women or undoing the patriarchal bias is not a concern of these provisions at all.

The courts are not the only ones whose assume that the family should be put before women. In 2021 when questioned in the Rajya Sabha as to when marital rape will be made a criminal offence as stipulated by the Report on Criminal Amendments Act, 2013 the ruling government argued in favour for marriages and maintenance of family. Minister of Parliament Sushil

Kumar Modi stated that ‘criminalising marital rape would be destructive to the institution of marriage as it is very difficult to prove whether the wife consented or not’.⁷³ Once again the focus is on maintaining the family institution over the safety of women. It is almost assumed that due to marriage men get some kind of immunity through which the logic of consent or non-consent change. The usual rules do not apply to men and women within a marriage.

The Report on Criminal Amendments Act, 2013 clearly states, in cases of marital rape, ‘The relationship between the accused and the complainant is not relevant to the inquiry into whether the complainant consented to the sexual activity.’⁷⁴ Marriage and family have become a shield through which patriarchal oppression in the domestic sphere is justified. It is indeed a sad state of affairs that laws which are projected to protect and empower women actually enable the system which oppresses them in the first place. The narrative that maintaining the family is more important than changing the position of woman in the domestic sphere is problematic. Yet somehow the courts seem to rely on this narrative more than ever.

As MacKinnon highlights, ‘The idea that opposing battering is about saving the family is, similarly, abstracted, gender-neutral.’⁷⁵ The laws which are meant to empower women end up enabling men. Laws which are supposed to oppose all form of violence end up supporting some forms of violence. Laws which are meant to challenge the oppression within the private end up silencing it. This is huge set back to the demand for equality and empowerment for women as the instrument for the same is misconstrued to favour male domination. Some of the recent judgements have reflected the States position to focus on protecting the male centric family. This has greatly reduced the ability of laws to address the subordination of women in the domestic sphere.

Even though we have laws, there is a need to critically review them to understand their level of effectiveness. Yet in the past few years there has been very little criticism on the inability of legal institution to reduce the cases of violence. The patriarchal mentality and the absolute desensitized process of handling cases of domestic violence by lawyers, social workers, protection officers and even district magistrates have been ignored. The delay in handling cases, the destitution which women experience, the societal shame to women who choose to speak up all contribute to the disempowerment of women. As mentioned before, for laws to function effectively there needs to be an ecosystem of which supports such laws. But looking at the manner in which the political legal system functions, it seems like a difficult task to complete.

Domestic sphere has become a site for the continuation of patriarchy. Laws to curb violence against women can act as an important tool to weaken patriarchy as long as they are interpreted to remove the subordination of women. If they are interpreted as a tool to maintain and protect the family and household as it is, then they aid in the subordination of women. The intention of laws is as important as their existence, especially when addressing the domestic sphere. At the moment it seems like laws against violence in the domestic sphere are not effective in preventing violence but only act as a redressal mechanism to women who choose to access them. Despite legal provisions the patriarchal influence over domestic sphere continues to retain itself.

4.4 Some Concluding Remarks

This chapter is an attempt to understand how the position of women in the domestic sphere impacts their position in the public sphere. It seeks to investigate of the idea of empowerment and equality for women be achieved independent of her position of subordination in the domestic sphere. I believe that it is impossible for women's empowerment to be secured in India without changing her position in the domestic sphere. The domestic is such an important site of patriarchy that not acknowledging its presence will prove detrimental to women's empowerment and equality. While India legal system has shown its ability in framing laws for women, weakening the patriarchal structure is still a long road.

The political and legal narrative displays much concern of the vulnerable position of women within the domestic sphere. Women as a victim dependent on the State is a popular image within the political echelons. The status of women in India acts an instrument to measure the States success or failure. This is a result of the colonial thought which sought to justify its rule by improving the status of women in India. In contemporary India women's access to legal rights has become a method of measuring their position. This is why there are a number of laws for women in the public and the domestic sphere. the efficiency of these laws is a matter which rarely raises any alarm. The existence of laws and policies presents an image of the States benevolence towards it marginalized citizen, the woman. The laws which were created against violence towards women in the domestic sphere also unfortunately seem to perpetuate this image of the State. Once this image is achieved, then the State becomes lax in dealing with the violence.

Law against violence on women have often been accused of being superficial in nature. The dowry prohibition laws are a good example of it. Though the law prohibiting dowry was achieved in 1961 it was only in 1986 that the investigation for dowry deaths were added. Even though the state was aware of the deaths of women due to the demand of dowry, they chose to ignore this while making the law. Through unrelenting agitation, women's organization were able to secure a criminal action against dowry deaths. The loopholes of the incomplete law were overcome through agitation. Without Section 498 A and Section 304 B, the anti-dowry legislations would have been mere token laws. I believe that overcoming tokenism is the greatest challenge which laws for women have to face. The idea that superficial laws are enough to eradicate the violence which women survive has to be done away with.

Along with the laws, the legal process also has many shortcomings especially when the legal process gets involved in the discussion over true reports versus false reports. While false reporting in case is problematic and goes against human rights, the continuous criticism given to Section 489 A is very surprising. To imagine the removal of a law due to some false reporting is unheard of in most circumstances. In cases of Section 498 A many times courts have harshly questioned the relevance of these laws. In Rajesh Sharma case, the judge even mentioned that false reporting leads to the breakdown of matrimonial homes⁷⁶. As this provision presents as a threat to family and domestic life, it is recommended that it should be removed. This is a very surprising position which the legal system often represents. Legal system assumes that men are at a disadvantage due to the draconian laws which surround the family. The suggestion that a law for women is a bad law and should be removed is extremely short sighted on the part of the court.

The fact that many lawyers representing aggrieved women in order to strengthen their case complain under this section without explaining to their client what the consequences are is ignored. These same lawyers many times encourage women to deliver false statements so that the punishment is stricter than what it otherwise could be. Even if the case is proven as false, the lawyer will still be able to get their fees, thereby fulfilling the purpose of making it to court. The judiciary's ignorance towards the unethical conduct of its own members is also very surprising. It is possible that the blind trust which women place on their lawyers could lead to false complaints. The lack of awareness on part of women regarding the legal measure to escape violence combined with her dependence on State institutions may make her vulnerable to complaint falsely against her family.⁷⁷ But this is only an assumption which we can make.

Since the courts are interested in protecting the family over protecting the aggrieved women, it is possible that they are unconsciously supporting the patriarchal structure in the domestic sphere. More than often the police and court become a space which furthers the marginalization of victims instead of giving them access to justice.

Nivedita Menon presents a unique observation regarding false complainants. She says that the language of laws is male centric and so women have no language to express the violence which they experience.⁷⁸ If a woman is being emotionally and mentally harassed, she automatically relies on Section 498-A but if she is not able to prove this, then her complaint will become false. The parameters of emotional and mental violence are so vague and vast that the language of law has barely started defining it. What is defined as misuse or fake could be limitation of legal language in defining the experience. Also, she highlights,

‘The misuse argument made by men, in this sense, ironically correct in terms of how patriarchy is supposed to work. These men actually believe they are ‘falsely accuses’ because what they are saying in effect is: ‘This is what a family is supposed to be;...’⁷⁹

Male centric viewpoint will state that the patriarchal family is supposed to be violent, and men are only maintaining this family. Women who choose to protest this violence, choose to protest against the continuation of the patriarchal family. They assume that they have done no wrong and women are creating a problem by not following this set structure. David J Glaucoma’s and Karen R Wilkinson also comment, ‘The legal history of rape is the history of male domination. Definitions offense, evidence, legal defences, and appropriate penalties were passed in accordance with traditional perspectives of propriety and the nature and character of females.’⁸⁰ The judiciary needs to break away from the real vs fake complaint narrative. There is a need to develop the language of rights to the extent that it can accommodate all forms violence which women experience. While this cannot happen overnight, there is a need for deliberations not dismissal over such provisions.

There is also an immediate need to establish a law against marital rape. Women’s organization have so far faced an uphill battle in getting legal recognition to marital rape. Economic and Political Weekly in its editorials mentions, ‘Sexual coercion is an indistinguishable part of the entire spectrum of unfreedoms and coercions which define family structure in India and whose main targets are its women and children.’⁸¹ The idea of consent and coercion are so closely linked within the domestic sphere that it has become difficult for the judiciary or parliament to

conceptualize a law against marital rape. A law against marital rape would shift the focus of laws from family to the woman. Securing woman's safety, equality and empowerment will be the only intention of the law. But since the focus of the political and legal system at the moment is the family, it is hesitant to explore laws against marital rape. The exception of husbands from rape charges is an example of political dominant male deciding the scale of equality and empowerment which women deserve.⁸² Marital rape laws will be an attempt to break this male centric understanding of violence and violation within the domestic space. They will also play an important role in reducing the influence of patriarchy in family and give women an opportunity to be equal.

The absence of marital rape laws and the political silence over women's subordinated position highlights that the equality women have access to is just a cheap imitation of the equality which men enjoy. Observing the position of women in the domestic sphere and the failure of laws to address them acts a grim reminder of the fact that women's equality has a long way to go. It is a promise which government will deliver as long it suits their own agenda. The benign State will protect women when it deems important under conditions it determines as tolerable or intolerable. But if the State itself is patriarchal then who exactly helps women in attaining empowerment.

Laws against violence like dowry and domestic abuse are a good example of the opposition of Indian political and legal system against violence. But at the same time the absence of laws against marital rape shows the hesitance of the Indian State to challenge all forms of violence. When it comes to violence against women in the domestic sphere, there laws are both silent and outspoken at the same time. The State commitment to equality and empowerment forces it to make laws for women. The continuous demand for laws against violence in the civil society makes the State unable to escape its commitment. But the State institutions are yet to move beyond their own patriarchal bias. The idea that women being subordinated is so normal in our social system that even those are supposed to uphold the notions of equality turn blind eye to this oppression. In such a condition the concept of women's empowerment falls short of its promise. The political and legal institutions in India have been unable to address the patriarchal influence within the domestic sphere.

I believe that system of empowerment has become a victim of its own bias and is struggling to overcome it. The presence of laws acts as a hope that in the future through conscious decision making there is a possibility that laws will have the potential to change the position of women.

At the moment it appears that the domestic sphere is overrun by patriarchal influence. The existence and subsequent failure of laws to weaken patriarchy needs to act as a wake-up call for all institutions to reflect on its own weakness to bring in equality. Patriarchal structure is dependent on the subordination and oppression of women especially in the domestic sphere. To achieve women's empowerment, it is imperative to prevent the experience of violence in the family.

The laws have adopted the social idea that families, however, they function are the core of society. The general idea is 'To disturb the family is to disturb the society.' This kind of bias is what prevents laws from being effective. At the moment despite the presence of many laws and judgements which challenge violence in the domestic sphere the patriarchal oppression continues. The domestic sphere has emerged as an ecosystem for patriarchy to flourish within. The protectiveness which laws have shown towards maintaining the family and household has contributed greatly to the domestic sphere being a continuing site for patriarchy. Through this chapter, we can see that laws, political and legal institutions play an important part in supporting the continuation of patriarchal oppression despite being committed to women's empowerment as they are silent on the position of women in the domestic sphere.

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