



Of Women and Myths: Revising Analytical Approaches to Gender Issues in India

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In this essay, I will draw upon law and society theories to discuss how laws regulating women's rights in India are shaped and effected through societal processes. In particular, I will present the ongoing debate in India about the ambiguous role of state laws in advancing or hampering women's rights. I will enrich this point by discussing the rough path of the Indian legislation against dowry and the theoretical and factual problems lying behind it.

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More broadly, I will also unpack the aetiological discourse about gender subordination in India, analysing which factors may come into play in bringing about gender violence and oppression. Since "tradition" is often used as scapegoat to account for episodes of violence in Global South contexts, I will borrow analytical lenses from history, legal theory and economics to suggest that oppressive patriarchal mechanisms may have developed along a multiplicity of different lines. I will theoretically frame this point by drawing on postcolonial feminist analyses and the concepts of positionality and intersectionality. This allows me to provide inputs to complicate discourses about gender in India and to reconsider the influence of colonisation, law and the contemporary state in fostering inequalities.

Postcolonial feminism: the theoretical background

Following the gruesome rape of Jyoti Singh by six men on a Delhi bus and the subsequent death of the girl due to the wounds received, several protests burst out all over India.¹ A controversial contribution to the debate was provided by Leslee Udwin, who filmed the well-known documentary *India's Daughter* (2015) to report the facts of



Jyoti's death. The film deeply divided the national and international public opinion, triggering episodes of resentment and public demonisation of Indian culture and Indian men.² According to some intellectuals and activists, the documentary was in fact strongly oriented towards conveying a blatantly backward image of India, depicting Indian men as part of a savage, indefinite "rape culture" without historical or socio-economic explanatory context.

Kavita Krishnan, Secretary of the All India Progressive Women's Association, deplored the conceptual premises on which the film was based. She argued that the documentary was not only harmful to feminist campaigns in India, but also racist since it implicitly profiled rape as a specifically Indian problem. Further, she stressed the validity of the ban imposed by the Indian government on the broadcasting of the movie, which she considered violative of the offenders' procedural rights. In contrast, other feminist scholars argued that any ban on the film would merely support conservative attitudes about gender and sexuality, which rather needed to be challenged and discussed. According to them, Indians have to have "their own reactions and responses to the film—to like it, to hate it and to criticise it—rather than being fed vicariously the views and opinions of those who have seen it and have the right to see it."³

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In spite of these debates, most feminists stand united in deploring the authoritarian stance taken by state institutions which have subordinated women's rights to security discourses, by either stressing the need for harsher penalties and closer CCTV surveillance or advising women not to roam alone at night.⁴ According to several feminist scholars, this caused the focus to shift from protecting the rights of women to live without fear to sexual surveillance and stricter law and order, diverting attention from the social and educational factors lying behind violence and the responsibility of the state in fostering an unsafe environment for women.⁵ The domestic analysis of women's issues in India runs therefore the risk of being limited and tied to securitarian or Western, ill-informed arguments that stop short of grasping the complexities that imbue women's lives in India.

In a recent article published in *The Guardian*, Priyamvada Gopal stresses the systemic and universal nature of sexual violence, and more broadly gender violence, which may take different shapes according to the contexts in which it develops. Social, economic and historical factors can mingle with patriarchal dynamics to create specific sets of inextricable oppressions occurring simultaneously to the same



individual, so-called multiple interlocking oppressions, and shape multidimensional and complex social identities ("intersectionality"). As Gopal underlines, rape can be a modern weapon mingling with other systems of oppression and privilege. In the Indian context, it can be closely connected to caste abuses, religious fanaticism and the economic inequalities brought about by aggressive capitalist policies.⁶ Given this complex interplay of factors, reducing rape and violence against women in South Asia to a generic Indian cultural illness therefore does not do justice to victims of violence.

Postcolonial feminist analyses accuse Western feminism of having carried out a white, middle-class colonisation of gender issues, ignoring racial, cultural and historical specificities marking the condition of non-Western women. These differences have been erased in the Western feminist analysis, in favour of a supposed "universal sisterhood"⁷, with the consequence of imposing models of White feminism on Global South contexts. These models are put forward as universal antidotes against gender oppression. This approach meets the wider goals of the so-called gender essentialist theories, according to which certain natural, biological or psychological features are attributed to women, as if they were fixed and universal. Hence, there arises the assumption that tools and discourses which may be valid for one group of women are valid for every woman.

Feminist postcolonial analyses provide critical challenges to explanations and systems of knowledge about women's subordination shaped by liberal and Western feminist positions, particularly those which have occupied the international human rights arena (Kapur 2005: 4).⁸ Likewise, postcolonial feminism warns against the move of integrating cultural diversity to offset gender essentialism. The risk inherent in this approach, labelled as "cultural essentialism", is to reinforce a view of the "other" as backward and uncivilised and of the developing world woman as tradition-bound, poor and illiterate (ibid.: 115).

When discussing the Orientalist construction of knowledge about women on the part of British colonisers, Chandra Mohanty draws attention to the so-called "colonialist move" which consisted in outlining the "Third World woman" as a singular and monolithic subject (Mohanty, C. cit. in Tyagi 2014: 48). This set up false homogeneity which still informs several discourses and serves to obscure "the historically specific material reality of groups of women" (Mohanty, C. cit. in Cossman & Kapur 1993: 283). Further, they were described as helpless individuals in need of being rescued from backward and barbarous



social practices (Carby, H. cit. in Tyagi 2014: 47), an attitude that often recurs in some parts of Western feminist literature and which is, according to the Italian philosopher Valeria Ottonelli, a form of violence in itself. She identifies the risk inherent in claiming freedom on behalf of third parties, stressing that

violence begins at the very moment in which one substitutes one's own voice for another's to ask for her emancipation and, as a first step, depicts her as being "non-free". Emancipation claims on behalf of third parties are violent and harmful since saying to somebody or about somebody that she is not free amounts ipso facto to diminishing her agency. (2013: 112; author's translation)

Another target of criticism is the adoption, on the part of Western and liberal feminism, of inadequate, limited dichotomies and a universal binary notion of patriarchy (men vs. women, oppressors vs. oppressed) which overlooks more complex relations (Mohanty, C. cit. in Tyagi 2014: 49). The need to further elaborate on the sides of both oppressors and oppressed implies considering as potential agents of violence also women who might decide to exploit power hierarchies within the household and engage in what Deniz Kandiyoti calls "patriarchal bargaining" (Kandiyoti, D. cit. in Reddy 2014: 33). Female subordination to men is offset by the control they attain as older women over younger women, negotiating their space and privileges in the family to the detriment of more vulnerable subjects.⁹

The *Verma Committee Report*, submitted to the government one month after Jyoti's death to recommend amendments to the existing laws on rape, stresses the role of the so-called "culture of replication and consensus" in perpetuating violence and patriarchy. According to this concept of replication and consensus, some practices, having been normalised in a society, are accepted and then replicated by women on their children.¹⁰

Indeed, some studies show that between 33 and 40 per cent of violent domestic acts in India are perpetrated by the extended family, including presumably older women (Gangoli & Rew 2011: 421). In light of this data, Indian feminists came to recognise the nature of female violence against women as a part of Indian social structures. Nonetheless, it is an analytical mistake to pursue a complete feminisation of violence, placing all the responsibility on women and obfuscating men's role in perpetrating violence, as well as to reiterate the misogynist rhetoric that "women are women's worst enemies" (Gangoli 2007: 106). One way of making sense of this data is to acknowledge that women



may be compelled to follow certain behaviours, due to power imbalances and patriarchal rules existing within the family. However, one should be careful not to completely erase the role and agency of women from the analysis as this would be tantamount to fall in the very same binary trap "men vs. women" that postcolonial feminism has tried to defy. Thinking that women can only be victims of events and never agents or accomplices contributes to perpetuating an image (which has a very colonial flavour) of women as passive, weak creatures with no will of their own.

In light of these considerations, it appears that the classic analytical dichotomy of patriarchy as an issue of "men vs. women" is deeply inadequate and does not capture more nuanced and complex situations. There is therefore a strong need of doing away with oversimplified categorisations in favour of carrying out a positional analysis which takes due account of the specificities and positions of both the narrator¹¹ and the narrated subjects, refraining from polarised stances.

Death by culture?

Indeed, when it comes to violence against women in developing countries, and particularly in South Asia, it often happens that violent episodes are gathered underneath the umbrella term of "cultural crimes", grounding the reasoning on the assumption of culture as something fixed, homogenous and easily identifiable. Culture, which in some scholarship is often used as a synonym for tradition, is frequently employed to explain the kind of violence experienced by women in the developing world, though it is not invoked in a similar way when discussing violence against women in various Western contexts (Kapur 2005: 110). Indeed, some scholars underline that what in the Western world might be labelled as "sexual jealousy", "crime of passion", etc. seems not to be happening in India, or happening in a culturally determined way.¹²

Aisha Gill, in laying bare the narrative adopted by the British media when reporting honour-based episodes of violence, points to the fact that "mainstream" forms of domestic violence are generally reported as individual deviations and aberrations. In contrast, the majority of news stories about honour-based violence employ arguments of cultural differences to account for these episodes of violence. Dysfunctional family dynamics, which are often a factor, are repeatedly neglected in these accounts (Gill 2014: 188). Gill maintains that this discursive strategy brings about a distorted perception of these pheno-



mena to such an extent that forms of violence presented as culturally specific come to be perceived as more abhorrent than "normal" ("white") domestic violence. In the eyes of observers, this can make phenomena like honour killings seem more comfortably intelligible, preserving at the same time their foreignness (Narayan, U. cit. in Gill 2014:193).

The analysis of allegedly traditional forms of discrimination and violence should be inflected with a broader understanding of culture, as something encompassing the whole spectrum of experiences and modes of thinking, feeling and behaving—as well as the values, customs and traditions—of relevant social formations (Gill 2014: 188). Historical and economic factors impinging on social behaviours should be also considered in order to carry out a comprehensive analysis.

The impact of colonialism on the social and legal position of women

A thorough investigation into the genealogy of gender issues in India cannot avoid further exposing the impact of British colonisation and the Orientalist construction of knowledge about native women on contemporary approaches and considerations. This inquiry may be useful to supersede standard explanations of women's issues in India and engage in more fruitful debates and policy-making.

In discussing colonialist theories, Lata Mani points out that "tradition was not the ground on which the status of women was being contested. Rather the reverse was true [...] what was at stake was not women but tradition" (Mani, L. cit. in Arya 2012: 54). The colonial power sought to bolster its legitimacy through a critique of indigenous law and society, and women's bodies and lives not only became a battle field where to struggle for mastery (Sen 2001: 7) and social control, but were also instrumental in building the image of the humanitarian Western saviours as opposed to barbarous Hindu men (Sturman 2010: 101).

Indrani Sen contends that the colonisers' strategy was rather complex and took advantage of a tailor-made Orientalist discourse meant to discredit Hindu males, often depicted as decadent and lascivious (Sen 2001: 10).¹³ By contrast, women, who were already seen as passive and defenceless, were further described as victims of an illogical and sexually perverse culture and in need of the British civilising intervention (Arya 2012: 53). This gender essentialist approach, merged with cultural assumptions and prejudices, brought about the concep-



tual and social marginalisation of women, who came to be considered as weak and unable to resist tradition or choose the direction of their life.

This deviated and deviating image of the Indian man was but one of the effects of the colonial construction of the Indian space (Chitnis & Wright 2007: 1345) and allowed the colonisers to justify their action as a "civilising mission" and to adopt a paradigm which would enable them to affirm their moral superiority over the natives. Indian society was depicted as unfit to rule itself and as morally inferior to the "hypermasculine" West, which indirectly proclaimed itself as the only entity able to rule the colonised territory and population (Moore 1998: 27). It has been argued that this "naturalisation" and "essentialisation" of difference therefore served the purpose of denying both a wide range of legal rights and sovereignty to the colonised (Kapur 2006a: 678).¹⁴

This situation triggered an equally dangerous reaction on the part of the Hindu nationalist movement, which, in an attempt to save native culture and customs from criticism and undue European interference, reconstituted in its discourses the "home" as a pure space of Hindu culture, uncontaminated by the colonial encounter (Kapur 2005: 53). The home had to be protected from the corrupting influence of the West through women, using their virtues of "chastity, self-sacrifice, submission, devotion, kindness, patience and the labours of love" (Chatterjee, P. cit. in Kapur 2005: 53). Chatterjee links this nationalist idea of the woman to the absence of social gender reforms at the end of the nineteenth century: because of these considerations, nationalists refused to engage in negotiations and discussions on the question of women with the colonial power, thus impeding any further emancipation. This reinforces Lata Mani's argument that women's bodies served as a pretext as well as a primary site for re-articulation of power, tradition and culture.

Furthermore, it has been observed that the stances adopted by nationalist movements contributed to the intensification of the theoretical and social divide between public and private spaces (Kapur 2005: 29). This divide still informs several governmental policies and the breaking down of this separateness has long represented one of the main projects of various feminist movements, campaigning for the penetration of questions of justice into every domain of human life, including the family.¹⁵ Indeed, the "doctrine of space" was used in the colonial period and has been used recently to argue that domestic affairs should be confined to the private space of family and that all



matters within the family should be kept out of the purview of the law. Some scholars have claimed that one of the direct consequences of this approach is to consider some forms of sexuality as legitimate as long as they are exercised within the family (ibid.: 32): think of marital rape, which was excluded from the 2013 criminal law amendment and kept in place as a blatant exception to section 375 of the Indian Penal Code disciplining rape.¹⁶ This has been regarded by some authors as reinforcing patterns of heterosexual dominance within marriage, where women can legitimately be the sexual property of their husbands (Gangoli 2007: 58).

The British repeatedly showed their intention not to interfere with matters related to the personal sphere, but it appears that they actually exerted direct and indirect influence in this field. Their official aim was to bring civilisation and progress to the local system, eradicating ancient "savage" practices. But if one takes a closer look at some of the laws enacted by the British, it can be noted how, "most ostensibly for the uplifting of women", they were in fact "deliberately designed to be limited in scope" (Tambe 2000: 590).¹⁷ Not only were these laws conservative in nature, but they also realised a sort of collusion between different kinds of patriarchies. Furthermore, according to some scholars, by rendering scriptural interpretations and formal opinions within the ambit of personal laws, the British eroded certain customary ambiguities on which female negotiating power had hinged in the private realm (Agnes 1999: 58).

In light of these observations, we can argue that the British contributed to the perpetuation and, somewhat, the stiffening of certain patriarchal mechanisms, with the indirect support of the nationalist movement. Despite their overt declarations, the colonisers adopted a substantially conservative approach which added to the subordinate position of women in society both from a legal and social perspective, depicting them as passive individuals in need of protection and legally marginalising them, leaving little room for self-determination and negotiation.

Mainstream feminist positions have been criticised for their alleged complicity with the colonial project¹⁸ because they have not adequately addressed how this cumbersome colonial past continues to inform postcolonial realities, oppressive gender relationships and the understanding of differences.



The role of the state in perpetuating gender discrimination: "Institutional Violence"

Having stressed the fact that violence against women in South Asia does not merely stem from cultural and religious premises, but can be rooted in Western patterns of domination and local reactions to it, I will now develop a third point which will be more closely related to the responsibility of the state in addressing violence and legal pluralism.

The Mexican anthropologist Marcela Lagarde, in theorising a broader concept of femicide, drew attention to so-called "institutional" or "systemic violence" to describe the kind of violence stemming from the inability or unwillingness on the part of the state to confront forms of gender violence or from its direct involvement in perpetrating it (Spinelli 2008: 44-5).¹⁹ According to the doctrine of "due diligence", which was developed within the framework of the General Recommendation No. 19 adopted in 1992 by the United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), states become responsible for private acts, "if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation" (CEDAW Women 1992: comment 9). CEDAW further recommended the adoption of measures meant to safeguard women's rights; namely, states must ensure effective preventive measures (education and public information programmes intended to deconstruct crystallised gender roles (ibid.: recommendation 24 (f)), protective measures (such as services for victims of family violence, rape, sexual assaults and other forms of gender-based violence, including shelters, specially trained health workers, rehabilitation and counselling (ibid.: recommendation 24(k)) and legal measures.²⁰

As to the latter, Radhika Coomaraswamy (2010: 10) asserts that if one can demonstrate that the application of a specific set of laws generates discrimination against victims of violence, then the state can be held responsible for the violation of equality and non-discrimination principles under international human rights law. In order to avoid this, states should, as a first step, refrain from any discriminatory practice, making sure that the same be done by authorities and public institutions, and secondly check the national legislation repealing laws and rules which are discriminatory in nature.

The Indian case is particularly interesting as there are several provisions still in place which would hardly pass this "non-discrimination test." In addition to Exception 2 to s. 375 of the Indian Penal Code



(the exclusion of marital rape), s. 377 of the same code, rubricated as "unnatural offences", criminalises sodomy, basically targeting homosexual relationships. It is nonetheless possible to see a glimmer of light after the Indian Supreme Court's decision (2 February 2016) to hear in open court curative petitions on this section, opening the doors for a rectification of previous conservative judgements. Finally, it should be noted that s. 155 of the *Indian Evidence Act*, "Impeaching credit of a witness", was in effect until 2002, when it was ultimately repealed. This section allowed the accused to discredit the testimony of his prosecutrix in a rape case by making reference to her personal sexual history: "[...] it may be shown that the prosecutrix was of generally immoral character."

Nonetheless, as Simone de Beauvoir stated, recognising abstract rights has never been enough to assure women of a definite hold on the world (De Beauvoir, S. cit. in Sunder Rajan 2003: 18). Over the years, several campaigns for human rights have forced the Indian state to enact new legislation, sponsor reports and set up commissions to meet national and international pressures. Still, despite these legal achievements and the proliferation of laws meant to protect women's rights, an enormous gap exists between formal equality and substantial inequality. Many of these laws remain inaccessible to the vast majority of Indian women (Cossman & Kapur 1993: 289), bringing about little or no improvement in their status. As Kapur points out, "the gap between formal rights and the actual status of disadvantaged groups has not decreased as a result of the legalization process" (2006b: 101).

More sceptical feminists, looking at the shortcomings of the hyper legislative experience of the 1980s and 1990s, raised doubts about the transformative capacity of law and its ability to bring about effective social change (Gangoli 2007: 9). The Indian state's failure in adequately addressing women's issues has divided feminist movements on the issue of seeking the state's support in pursuing liberation and equality.

On the grounds of postmodernist and Foucauldian theories of states and law, radical and communitarian feminists maintain that liberal faith in the state's promises is no longer valid as an attitude. In their opinion, continued law reform is a waste of energy, as well as against the interests of women (Sunder Rajan 2003: 31)²¹, and they envisage instead reforms from within communities and social institutions. Left-liberal feminists, on the contrary, ask for rectifications and improvement of existing law and more substantial equality by negotiations



with and within the state. They stress the beneficial role of the process of these struggles, rather than the ends, in raising awareness of women's rights among women and among the general public (ibid.: 32).²²

Generally, it could be said that few feminists have faith in legal solutions to violence and many are wary of being co-opted by state and hegemonic discourses; nonetheless, law remains a significant terrain for feminist interventions. While at times law may reinforce oppressive patriarchal mechanisms, it is in fact undeniable that it is also a crucial means of resistance, liberation and change. The legalisation process can be used as a very radical tool by the invisible and marginalised people to put forward their requests, forge their political identity and challenge dominant social meanings (Kapur 2006b: 110). In this regard, law is vested with a critical normative and constitutive role, in that it has the power to legitimise "certain visions of the social order, to determine relations between persons and groups and to manipulate cultural understandings and discourses" (Moore 1998: 35). This view is closely linked with postmodernist constructions of knowledge as a partial product of perspectives. The Enlightenment description of the individual as a subject existing prior to its interaction with society is criticised and substituted with a view of the subject as produced through a multiplicity of discourses (Kapur 2006b: 103). Among these discourses, law is a particularly authoritative one as it has the power to definitively pinpoint the boundaries and features of situations and events, shaping their popular understanding (Finley, L. cit. in ibid.: 104).

In contrast to the totalising project of the state which unifies the people as a national community, there stands its individualising attitude that constructs subjects in specific roles and ways (including law) (Sunder Rajan 2003: 6). The state in its governmental function is therefore involved in producing rather than merely controlling individuals, partially affecting their experiences, self-understandings and capacities.²³ Not only does legal discourse constitute subjects as legal citizens, but also as gendered subjects, drawing lines between men and women or among women themselves. Likewise, it mirrors social concerns and attitudes towards women and their sexuality and, by doing so, helps perpetuate patriarchal arrangements.

Nonetheless, this is but one of the problematic aspects law can present to the advancement of women's rights. Indeed, in addition to a gender essentialist approach which obscures the inner diversity among women and discounts the different impact laws may have on different



women, overemphasising the role of law in bringing about social change may encourage the view that "law is the exclusive language in which to express claims to social justice and emancipation and consequently marginalize the benefits of other 'emancipatory' vocabularies" (Kapur 2006b: 106). Paradoxically, over legislative and overprotective measures on the part of the state may be more harmful than useful. For instance, prescribing more stringent punishments for offenders may cause conviction rates to fall: the National Commission of Women in its report *Rape: a legal study* (2000) opposed the introduction of the death penalty provision for cases of rape arguing that such an irrevocable penalty would reduce the already very low conviction rate (Sunder Rajan 2003: 242, fn. 34).

Nonetheless, "the progression of amendments to the original anti-dowry legislation during the 1980s may be a model lesson in criminal law strategies and their lack of real impact in society" (Menski 1998: 59). This can be ascribed, among other things, to a theoretical misrepresentation of the features of the phenomenon. In much of the relevant national and international literature, dowry-related crimes are examined through the analytical lenses of culture and presented as exotic and ancient Hindu practices, pathological in nature and harmful to women's dignity and integrity. Uma Narayan uses the term "death by culture" to point out that dowry-related murders are cast in First World scholarship as age-old Indian customs, and contrasts this with research on domestic violence murders in the US, which on the contrary are not presented as American cultural practices nor explained by making reference to the Bible (Kapur 2005: 109, fn. 11). Kapur argues that "[d]owry murders continue to receive attention from researchers because of their connection with the Other and their misplaced cultural association with fire which exoticises the practice" (ibid.: 111). The same argument is reinforced by Oldenburg who maintains that

[b]urning rings bells in your brain. Suddenly, it's cultural-Hindu, fire, cremations, sati are pre-associated with it. You get the whole culture laid out. However, it (burning) is the simplest crime. It's a kitchen crime. You have a tin of kerosene, you have a match. When you burn a woman, you won't find any fingerprints, any kind of tell-tale signs of whether she died in an accident, suicide or murder.²⁴

Talwar Oldenburg labels this approach "the exoticism move" which only exonerates the researcher from further investigation of the issue at a deeper level, "by inquiring whether there are more complex stories to tell about dowry, and about domestic violence generally" (Talwar



Oldenburg, V. cit. in Kapur 2005: 112). Exoticising the object of investigation is an intellectual justification which should find no place in research, as it impoverishes discourses on gender and violence, fails to reflect on the absolutely contemporary aspects of certain phenomena and adds to the alleged ontological gap existing between the West and "the rest." Narayan argues that "the 'death by culture' arguments used to explain the phenomenon of dowry murders are neither accurate nor helpful" as they offer very little understanding about the nature and causes of such practices (Narayan, U. cit. in Kapur 2005: 109, fn. 11).

Suggestions for a Broader Analysis

The repeated failures of the state in providing effective legal responses to phenomena such as the ones discussed above hint at the fact that the complex nature of gender violence and of practices like dowry is often not fully grasped.

With regards to dowry, the cornerstone of the question may lie in stopping treating the dowry problem as a mere legal issue, and starting seeing it as a more complex social and economic matter, for which no matter how many amendments are enacted, they will never succeed in solving it. As Sunder Rajan acutely points out, "modern dowry inhabits another world than the private one of families" and in order to fully comprehend its identity we should dislodge the aetiological discourse from traditional and cultural premises and start looking, among other things, at the new forms of consumerism promoted by the neoliberal regime or the role of a status-booster it often plays in marriages (Sunder Rajan 2003: 205).

First of all, researches show that, behind what is often construed as a dowry problem may lie different and broader conjugal problems and dowry can be just a pretext to oppress women²⁵ or express dissatisfaction and contempt. After an initial focus on dowry-related murders and bride burning, women's movements subsequently acknowledged such myopia which denied "recognition and legitimacy to the need for protection against violence by all women under all circumstances" (Agnes, F. cit. in Gangoli 2007: 103). The boundaries between dowry-related issues and other problems are blurred: dowry violence is just one part of domestic violence, sometimes merely the tip of an iceberg, and complainants often resort to anti-dowry legislation simply because they think it is more stringent and want to ensure prosecution against their oppressors (Wyatt & Masood 2003: 3).²⁶



Furthermore, a better contextualisation of the role of women in society is needed in order to grasp the nature of the social and legal spheres which they have to navigate, outlining the features of the relationships that tie them to the outside world and how these ties shape their identities and rights. Reena Patel stresses the importance of "mov(ing) beyond positive law and the enunciation of rights within it [...] to take account of women's particular locations and the constitutive realities of their lives" (Patel 2006: 1259): adopting a legal pluralist perspective is therefore crucial in acknowledging that there are regulatory or normative systems other than formal law that discipline individuals' lives. This approach scales down the role of state law and partly explains the shortcomings of several sets of law.

In order for a law to be effective, it is of paramount importance to research thoroughly the terrain where it will operate, engaging in a fruitful dialogue with these parallel normative spheres and investigating the nature of the social ties that may affect the correct functioning of a law. Mapping these aspects makes it possible to shape laws that will impact not only the symptoms of a problem, but also its causes, weakening those mechanisms that contribute to the subordination of women.

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As to dowry, many scholars stressed the desirability of ensuring equal inheritance rights to women as a means to curb the dowry problem. It has been argued that, by protecting daughters from unlawful disinheritance and granting them stronger property rights through inheritance laws, they would stop considering dowry the only viable solution to get a share in native family properties and to enter the groom's family with some sort of bargaining power.

This can partly explain the shortcomings of the dowry boycott campaigns, initially led by Manushi's founder Madhu Kishwar. She carried out a partial analysis of Indian women's lives which finally badly impacted the result of her programmes. She noticed that women were not willing to refuse dowry, despite recognising its potentially dangerous aspects, and this brought her to acknowledge that women often did not have any better option available (Kishwar 1983: 3). Kishwar therefore shifted the focus of her struggle towards better implementation of inheritance rights.

With this in mind, the Parliament enacted the *Hindu Succession (Amendment) Act*, 2005 and removed the disparities previously set by the 1956 Act within the Hindu community. The legislation now recognises equal inheritance rights to daughters and sons in ancestral proper-



ty, providing women with the status of coparcener with the same rights and responsibilities as men. Nonetheless, the test of time revealed the shallow nature of these legal interventions, as women rarely claim their rights in natal family property, often putting forward sentimental and ideological reasons. The fear of being labelled as greedy, selfish and homewreckers by claiming their rights and therefore bringing about the disintegration of the age old family properties can be so strong that women often prefer not to endanger ties with their original family, waiving their inheritance rights altogether.

The persistence of dowry-related episodes of violence and, more broadly, of domestic violence, in spite of all the reforms enacted, suggests that legal intervention is not enough and that larger-scale efforts should be made. Legal rights in inheritance, property and anti-dowry legislation are nothing but empty shells, if not coupled with corresponding social power in exercising them. These laws did not substantially impact the structural inequality women suffer within the family, but rather acted, and still do, within this familial arrangement.

One way of enhancing women's social power can be constantly checking the activities of those who are in charge of implementing the law (police and judges, above all) and by securing access to justice and fundamental services such as education, health care and equal pay. A good level of education would allow women to offer skills in the labour market and receive better pay. A better education and better-paid work would also mean stronger bargaining power within the family, granting women not only legal independence but also factual and social autonomy.²⁷ This would spare them being overburdened with household chores and open up the possibility for them to leave the husband's family promptly, should conjugal problems become unbearable and dangerous.

Finally, it is important to assess the impact of recent neoliberal policies of economic deregulation, reduction of governmental controls and increased autonomy for private investment. Some scholars have argued that, if these measures may have shaped a more efficient system of economic governance, on the other hand they have caused an erosion of labour rights and profits for both urban and rural poor (Gangoli 2007: 13). Among these poor, women appear to be paying the highest price for the paradoxes and failures of neoliberalism. According to some authors, there is much evidence of the gendered nature of poverty and the disproportionate burden of it on women. In fact, some family members can be poorer than others, due to discrimi-



natory patriarchal practices such as the prevention of women from getting access to economic resources, health care and food. This often causes them to suffer severely and disproportionately from illnesses and malnutrition (Cossman & Kapur 1993: 282).

However, we should not think that the problems brought about by neoliberalism concern only those groups situated at the extreme poles of the social ladder, since they have affected the middle-classes as well. It has been observed that the remarkable economic growth experienced by India in the past decade has had small impact on the generation of new jobs, inducing that phenomenon known as 'jobless growth', where unemployment remains high even as the economy grows.²⁸ Following the shrinking of the agricultural share from 57 to 53 per cent in the period between 2004 and 2010, 15 million workers migrated to towns and cities for work. The manufacturing and services sectors failed to absorb them fully. This is why most migrant workers joined the informal sector,²⁹ where there is no legal protection and wages are usually on the limit of viability. These people abruptly found themselves caught in unstable, temporary working conditions which prevented them from earning a living or making long-term projects (Sen, S. cit. in Sirohi 2003: 16). This was coupled with a sudden availability of goods (Jeffrey 2014: 13), potentially within everyone's reach, but actually inaccessible to the greater part of the population. Marriage, with all its corollaries like dowry and other economic exchanges, has therefore become, even more than it used to be, the fastest track to wealth and the reasoning behind it all the more material.

Praveen Swami, talking about violent behaviours against women, wittily quotes Irvine Welsh's *Marabou stock nightmares* underlining that behaviours always have a context. He stresses the fact that, behind Indian men's dysfunctional attitudes towards women, may lie different contexts which, combined together, affect young men's social and personal development. Among these contexts, "India's transforming urban economy has, firstly, produced a mass of young, prospectless men. [...] The young, though, find themselves fighting for space in an economy that offers mainly casual work."³⁰

This sense of frustration and alienation from society clashed with the advent of different relational models between genders and the new role women play in society. The increase in the status and independence of some women, their growing presence in public jobs³¹ and their assertion of personal identity and subjectivity may have deeply shaken the fragile equilibrium in men-women relationships, forcing a



reconfiguration of previous balances. These advancements in women's status may have been perceived as threats to the social status quo (Fraschetti 2013: 11) and to the institution of traditional family, where men usually play the role of bread-winners.

Gelles analyses the dynamics of domestic violence stating that "[v]iolence is developed in the family as it is in society by a superior status group (husbands) on an inferior status group (wives and children) when the legitimacy of the superior group's status is questioned" (Gelles, R. J. cit. in Hirsch 1981: xxii). Hirsch builds on this point arguing that this increase in the status of women may generate anxiety in those men that she defines as troubled by "compulsive masculinity." Changes in gender balances may be therefore seen by these men as a threat to their position of superiority (ibid.). The inability on the part of some men to conform to bread-winner and manhood paradigms may therefore bring about frustration and a sense of emasculation which may find a way out through violence, often to the detriment of women.

In conclusion, dowry and marriage have increasingly served material strategies of easy accumulation of wealth. This aspect has been coupled with an exacerbation of men-women relationship, due to aggressive economic policies which allegedly left many people behind and new relational models between genders. This situation resulted in the breaking down of manhood paradigms and, following Gelles' reasoning, harsher episodes of domestic violence. As stated at the beginning of this section, these episodes are often hidden behind dowry justifications, but their nature is far more complex, with dowry representing only one facet of the whole. I therefore argue that any analysis on dowry and dowry legislation effects should always be mindful of these factors.

Conclusions

The first point I made is that violence against women does not merely originate from backward cultural practices and that seeing a clash between backward traditions (bad) and positivist state norms (good) ignores crucial shades and aspects. In light of this, the first critical methodological step is starting to think of culture as a dynamic, hybrid entity constantly reconstituting itself on the grounds of historical, social and economic influences.³²

The violence more and less directly perpetrated by the British colonisers, who actively contributed to maintaining a patriarchal social status quo and in some cases even reshaped tradition in a stricter sense,



provides suitable examples to bolster this argument. Subsequently, on the basis of Lagarde's analysis, I underlined how even the state can be responsible for gender discrimination and institutional violence, through limp implementation of existing legislation or ineffective laws drafted without taking due account of the intensely plural realities in which women live. I drew upon the socio-legal analysis of dowry and dowry-related deaths to substantiate this argument and describe how wide-ranging policies should be in order for a piece of legislation to be effective. Social aspects such as the role of women in the society or the factual imbalances they have to cope with in different social arenas are all factors affecting the functioning of laws. Furthermore, I stressed the role of economically aggressive neoliberal politics in India as elements influencing the relationships between gender and the social terrain where laws operate. The consequences of neoliberalism, its impact on the economic conditions of many people and the new role played by women in the society may have triggered vicious cycles and violent mechanisms whose high price is often paid by women.

Sagarika Ghose, columnist at *The Hindustan Times*, writes that "[a] profound fear and a deep, almost pathological, hatred of the woman who aspires to be anything more than mother and wife is justified on the grounds of tradition."³³ Debunking the myth of evil traditions, unpacking culture and identifying alternative roots to gender violence may be useful methodological tools to better grasp the reality of many Indian women and develop more comprehensive policies to address the manifold issues affecting Indian women's lives today.

Endnotes

¹ Jyoti Singh was beaten, tortured and brutally gang raped on the night of 16 December 2012 after watching a movie in New Delhi. She was assaulted in the private bus that she had taken to go back home with her friend. The girl died several days after the assault, namely on 29 December, at the Mount Elizabeth Hospital in Singapore because of the massive damage suffered.

² The Leipzig University internship controversy is a best-known example of the impact the media misrepresentation of India had on international public opinion. For more information on this episode, see Laskar, Rezaul H. 2015. Student denied German university internship citing India's "rape problem." *The Hindustan Times*, 9 March., <http://www.hindustantimes.com/india/student-denied-german-university-internship-citing-india-s-rape-problem/story-msSgBL5CIUkSLgWx95fZHO.html> [retrieved 27.09.16].

³ Kapur, Ratna. 2015. India's daughter may change nothing, but India needs to watch it. *The Huffington Post*, 20 March., <http://www.huffingtonpost.in/ratna-kapur/indias-daughter-may-change-nothing-but-india-needs-to-watch-it/> [retrieved 27.09.16].

⁴ Delhi police officers affixed public notices warning women against the perils of getting on empty buses and advising them to go straight home after school. In the same vein, after three episodes



of sexual violence occurred in Bergamo, northern Italy, the public prosecutor in chief invited women to go out at night only if accompanied by someone (Fraschetti 2013: 9).

⁵ For broader discussions on these aspects see Kapur, Ratna. 2015. India's Daughter May Change Nothing, But India Needs To Watch It (see above); and Krishnan, Kavita. 2012. Freedom without fear is what we need to protect, to guard and respect. *Tehelka*, 21 December., <http://www.tehelka.com/2012/12/freedom-without-fear-is-what-we-need-to-protect-to-guard-and-respect/?singlepage=1> [retrieved 27.09.16];

"When journalist Soumya [Viswanathan] was killed, Sheila Dixit had said that she was out and about at 3 in the morning, she was too 'adventurous'. So we have come here to say that women have every right to be adventurous. We will be adventurous. We will be reckless. We will be rash. We will not do anything to secure our 'safety'. Don't tell us what to wear. What time at night we should be out, how we should be out during the day, how many people we should have with us – don't tell us any of that" (part of Kavita Krishnan's speech held while protesting outside the Delhi Chief Minister's residence after the Delhi gang rape, translated by View Point: Kavita Krishnan, Sheila Dixit and this rape culture. *The Alternative*, 24 December 2012., <http://www.thealternative.in/society/view-point-kavitha-krishnan-outside-delhi-cms-office/> [retrieved 27.09.16].

⁶ Gopal, Priyamvada. 2015. Reducing rape to a generic Indian male mindset fails its victims. *The Guardian*, 4 March., <http://www.theguardian.com/commentisfree/2015/mar/04/reducing-to-a-generic-indian-male-mindset-fails-its-victims> [retrieved 27.09.16].

⁷ De Petris, Stefania. 2016. Il femminismo postcoloniale – Una bibliografia. *StoricaMente – Laboratorio di Storia*, Università di Bologna, <http://storicamente.org/03depetris> [retrieved 27.09.16]. Adrienne Rich underscores how using an "always" strategy "blots out what we really need to know: when, where and under what conditions has the statement been true?" (Rich 2003: 31).

⁸ One should not however think of postcolonial feminism as a mere counter to Western feminism as it would be reductive and would add to the entourage of binaries ("us and them", "here and there", "first world/third world") that characterise a considerable amount of Western scholarship (Kapur 2005: 4). "[A]rguments that seek to speak from an 'authentic' Indian feminist position, or a 'culturally' distinctive position can land themselves in a number of traps, including cultural essentialism [...] efforts to naturalise boundaries and distinctions produce mythical differences [...] there is a need to avoid slipping into a 'native' or 'authentic' feminist position of culturally relativist knowledge production, which serves only to erase or marginalise the heterogeneity of the Others" (Kapur 2005: 5).

⁹ It should be also taken into consideration the fact that also men can be victims of patriarchal violence, often because of them having defied age-old patriarchal balances of power within a family or not having met the expectations of "hegemonic masculinity" projected on them (Jeffrey & Harriss 2014: 117).

¹⁰ *Justice Verma Committee Report on Amendments to Criminal Law*, 23 January 2013: 383.

¹¹ Carrying out a positional analysis which is constantly mindful of who speaks for whom, how and where, as well as of who is listening and to what end (Kapur 2005: 4). On the politics of location, see also Rich 2003.

¹² Talwar Oldenburg, Veena. 2003. Don't condemn the institution of dowry. *Rediff-India Abroad*, 5 April., <http://www.rediff.com/news/2003/apr/05inter.htm> [retrieved 27.09.16].

¹³ On this topic see also Jeffrey & Harriss 2014: 117-8.



¹⁴ On colonialism as a form of rule built upon the construction of differences, see also Jeffrey & Harriss 2014: 33.

¹⁵ Through slogans like "the personal is the political", feminist movements tried to establish a continuum between the public/private worlds, bringing to light problems and discriminations women experienced in the private realm (Sunder Rajan 2003: 21).

¹⁶ Exception 2. – Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape. (*Indian Penal Code* 1860, s. 375, as amended by the *Criminal Law Amendment Act*, 2013). In the same vein, Judge Sir Matthew Hale wrote in 1736, with regard to marital rape, that "[t]he husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself this kind unto her husband which she cannot retract" (cit. in Kapur 2005: 34).

¹⁷ The *Hindu Widows' Remarriage Act*, 1856 is a telling example of the shallowness and merely apparent progressivism of British laws. Indeed, the Act on the one hand validated the second marriage of widows, but on the other hand imposed severe restrictions on widows' economic independence and personal life. Art. 2 contained the so-called forfeiture clause, on whose basis "[a]ll rights and interests which any widow may have in her deceased husband's property by way of maintenance, or by inheritance to her husband or to his lineal successors, or by virtue of any will or testamentary disposition conferring upon her, without express permission to re-marry, only a limited interest in such property, with no power of alienating the same, shall upon her re-marriage cease and determine as if she had then died; and the next heirs of her deceased husband, or other persons entitled to the property on her death, shall thereupon succeed to the same." Moreover, according to art. 3, "[o]n the re-marriage of a Hindu widow, if neither the widow nor any other person has been expressly constituted by the will or testamentary disposition of the deceased husband the guardian of his children, the father or paternal grandfather, or the mother or paternal grandmother, of the deceased husband, or any male relative of the deceased husband, may petition the highest Court having original jurisdiction in civil cases in the place where the deceased husband was domiciled at the time of his death for the appointment of some proper person to be guardian of the said children, and thereupon it shall be lawful for the said Court, if it shall think fit, to appoint such guardian, who when appointed shall be entitled to have the care and custody of the said children, or of any of them, during their minority in the place of their mother [...]."

¹⁸ De Petris, Stefania. 2016. Il femminismo postcoloniale – Una bibliografia. *StoricaMente – Laboratorio di Storia*, Università di Bologna, <http://storicamente.org/03depetris> [retrieved 27.09.16].

¹⁹ Lagarde argues that whenever states fail to react, are negligent in the apprehension of the suspects, favour their impunity, impede access to justice to women and their families or actively engage in discriminatory practices, they are guilty of institutional violence. If, in the past, states were merely required to refrain from any act of violence, the international doctrine today requires an active part in preventing and punishing violence against women.

²⁰ "States parties should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention" (Committee on the Elimination of Discrimination against Women 1992: comment 24b).

²¹ Anti-statist feminists mean to carry out their struggles on a different terrain than the state "In recognition of the local, concrete and context-sensitive nature of political issues and in response to the heterogeneity of 'women's problems' and their imbrication with other struggles" (Sunder Rajan 2003: 33).



²² Sunder Rajan stands up for these liberal stances underlining that "having rights is more empowering than not having them, that progressive laws are better than regressive ones [...] and that universal citizenship is preferable to a political system that reflects social differences and hierarchy" (2003: 61).

²³ It should be said that this Foucauldian view of the state as an entity producing subjectivities has been criticised by several scholars as not being able to account for forms of resistance to power cf. Fraser, Nancy cit. in Armstrong, Aurelia. Michel Foucault: feminism. *Internet Encyclopedia of Philosophy*, <http://www.iep.utm.edu/foucfem/> [retrieved 27.09.16].

²⁴ Talwar Oldenburg, Veena. 2003. Don't condemn the institution of dowry. *Rediff-India Abroad*, 5 April., <http://www.rediff.com/news/2003/apr/05inter.htm> [retrieved 27.09.16].

²⁵ For an interesting contribution, see Kishwar 2005: 268-78.

²⁶ Gangoli reports that there have been cases where the police refused to investigate cases of domestic violence until they were linked to dowry demands (which were thought to increase the credibility of the case), resulting in a number of fictitious dowry demands, weak constructions of cases and more acquittals (Gangoli 2007: 109).

²⁷ As Srimati Basu argued, "for women to be truly empowered by changes in sociolegal norms of dowry and inheritance, they have to have access and control over independent financial resources (acquired through the labor market on equal terms with men and through inheritance), accompanied by changes in the ideologies that assign them to powerless positions in the household as brides/junior women, deny the reproductive freedom, or overburden them with domestic labor, affecting their productivity in the paid labor market and their status as equals" (1999: 226).

²⁸ For an interesting overview of India's jobless growth, see Jaffrelot, Christophe. 2016. India's jobless growth is undermining its ability to reap the demographic dividend. *The Indian Express*, 29 April., <http://indianexpress.com/article/opinion/columns/economic-survey-india-unemployment-2775236/> [retrieved 27.09.16].

²⁹ Mathew, P. M. 2014. Decoding jobless growth. *The New Indian Express*, 25 November., <http://www.newindianexpress.com/opinion/2014/11/25/Decoding-Jobless-Growth/article2538969.ece> [retrieved 27.09.16].

³⁰ Swami, Praveen. 2013. The rapist in the mirror. *The Hindu*, 11 January., <http://www.thehindu.com/opinion/lead/the-rapist-in-the-mirror/article4295240.ece> [retrieved 27.06.16].

³¹ Frascchetti observes that, between 2010 and 2011, a more significant presence of women in public places in Delhi was coupled with an increase in rape cases by 17 per cent (Frascchetti 2013: 10).

³² Talwar Oldenburg, Veena. 2003. Don't condemn the institution of dowry. *Rediff-India Abroad*, 5 April., <http://www.rediff.com/news/2003/apr/05inter.htm> [retrieved 27.09.16].

³³ Ghose, Sagarika cit. in Harriss, Gardiner. 2013. India's new focus on rape shows only the surface of women's perils. *The New York Times*, 12 January., http://www.nytimes.com/2013/01/13/world/asia/in-rapes-aftermath-india-debates-violence-against-women.html?_r=0 [retrieved 27.09.16].



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