

DOMESTIC VIOLENCE AGAINST MEN: NEED FOR GENDER**NEUTRAL LAWS IN INDIA***Pratibha Ahirwar*

National University of Study and Research in Law, Ranchi

"A gender-equal society would be one where the word 'gender' does not exist: where everyone can be themselves."

*-Gloria Steinem***INTRODUCTION**

Domestic violence is today's reality in many parts of the world. Generally, domestic violence is seen as a synonymous with violence against women. Women only seen as a victim of domestic violence and men as a perpetrator, but most of the men victims continued to suffer in silence from their partner. The paper focuses on the phenomenon of domestic violence against men with the women as perpetrator with a view towards gender balancing. The paper shows the need for a law of gender equality.

The literal meaning of the "Domestic Violence" means any violent or aggressive behavior of any person within the home as the word "domestic" dictionary meaning is relating to a running of a home or to family relation. Basically from the ages domestic violence has been committed against women but in today's scenario men can also file for domestic violence which can come under the category of domestic abuse, family violence arising out of relationship such as marriage, family members, family friends, etc. and it can be in various forms such as physical aggressions, sexual abuse, emotional abuses, etc. Domestic violence arises when one intimate partner uses physical force, violence, coercion, threat, intimidation, isolation or emotional, sexual or economic abuse to maintain power and control over the other intimate person. There is no such physical act which characterizes domestic violence but it encompasses behaviors of abusing, false imprisonment, sexual abuse, etc.

This form of violence is very common in India. But more cases of domestic violence is registered against men and women are victim. To prevent these atrocities against women at International and National level many efforts are being made so that these types of crimes can be controlled. The entire focus of domestic violence is on women as it is perceived notion that definitely men will be the perpetrator and women will be victim but the domestic violence against men is also increasing gradually in India. The supremacy of men in the society makes everyone believe that they are not vulnerable to domestic violence.

Domestic violence against men by their spouse and family members has become an important issue in today's generation and became the form of domestic violence under the judiciary. In comparison to violence against women, violence against men in India is less frequent and less reported but it has already taken a drastic shape/change in most of the countries of the world including India.

WHY VIOLENCE AGAINST MEN IS NOT REPORTED

Most of the cases of domestic violence go unreported so it is difficult to get exact number on domestic violence and it is even more difficult to figure out that how many men are suffering from abuse or domestic violence. The main reason that most of the violence against the men are remain to be unreported is the traditional gender roles in society and the stigma of the perceived weakness to admit or confess of falling victim to a woman. Although some research suggest that the domestic violence committed by men and women are equal in numbers but the reported victims are mainly female. The reason for the difference in reported victims might be because of the men who call police to report the domestic violence against them fear of police as they might end up being getting arrested.

The second reason for the same could be that the word man is itself a gender-biased which denotes power, full of masculine behavior, appearances and control of emotions. It is a common belief or we can say that a common perception that distinguishes male and female in terms of expression of their feelings. It could be harder as well as a matter of shame for men to disclose their suffering in a male-dominated society. It can be perceived as a "feminine behavior" in the society. This is the reason the men fear to share his feeling to any of his friend or family members and he starts living in distress, loneliness and not able to disclose his feelings to anybody.

The third reason could be the unavailability of proper sources to men for example: proper enactment of law for male as there are for female under IPC and CrPC, counseling services, institutional support, family support, help lines, etc.

As long as the common misconception that men are always the abuser and women are always the victim will remain in the society, the male victims will feel fear and uncomfortable reporting about domestic violence.

DYNAMICS RELATED TO VIOLENCE AGAINST MALES

The word "violence" is generally referred in the terms of cognitive interpretations. It basically relates to power dynamics i.e., who is more powerful male or female? Male violence is the interpretation of power, can be in terms of economic empowerment or the level of insecurities i.e., who feels more insecure of leaving whom.

For example, if a male earns less than a female and his wife starts analyzing the situation and feels more empowered and powerful, and the woman starts bashing the male for it then it develops insecurity within the man and can even be a victim of violence thereafter.

This can be seen in professional field also, if the workplace is headed by active, socially strong women in status, physical robustness, mental strength, and psychological power. There are no absolute principles for understanding the emotional differences between men and women and the dynamics of violence. However, there are principles that provide interpretation of individual situations.

Norm violation theory by De Ridder and Tripathi¹ (1992) is one such principle that can be used to explore violent reactions and the underlying factors. Norm violation theory looks at the cycle of conflict-dynamics and predicts whether it is going to follow the cycle of escalation or de-escalation. The precipitating factor is taken as a norm violation. It is in this context that norm-violation theory can be used to understand how a certain action on the part of the male/female may be seen as malevolent and lead to a violent (retributive or tit-for-tat) reaction by the partner. Male victims of domestic violence deserve the same recognition, sympathy, support, and services as do female victims. Domestic violence mostly leaves the victim depressed and anxious irrespective of gender. Consequently, male victims should be listened to and cared for. Male victims must be prepared to speak out their situations because men are traditionally thought to be physically stronger than women, they might be less likely to talk about or report incidents of domestic violence in their heterosexual relationships due to embarrassment or fear. Men should start telling someone about the abuse and not hesitate about the same, whether it's a parent, friend, relative, health care provider or other close contact. At first, it might be difficult due to the male ego, but in the end, it is likely to bring about relief and the much-needed support.

THE LAWS SHOULD BE GENDER NEUTRAL

The meaning of gender neutral laws is that all genders are equal in the eyes of law, either by explicitly mention that every gender in law or by making the language of the law gender neutral. For example- under the POSCO Act, 2012 a child has been defined as “any person below the age of 18 years” in there is no specification of gender and the word ‘any’ denotes the equality to all genders.²

¹ DeRidder, R. R. & Tripathi, R. C. (1992). Norm violation and intergroup relations. Oxford, UK: Clarendon Press.

² Sonakshi Awasthi, Is India ready for gender-neutral laws? The Indian Express, (October 18, 2017, 11:00AM), <http://indianexpress.com/article/india/is-india-ready-for-gender-neutral-laws-4895122/>

The Justice Verma Committee Report³ of 2012 has underlined the need of India to recognize different sexual orientations and recommended inclusion of transgender along with other genders, i.e. men and women while drafting gender-neutral laws. "However each of these requires to be codified distinctly and separately as victims and not clubbed together in a gender-neutral term, 'person,'" said Vrinda Grover, a lawyer and a human right activist. The female dominated laws can be terminated only if, men as well as women in India understand equality. It's possible only when their voice which will sort out this issue. It's true that women were sexually harassed, it's true that they were man-handled, subjected to dowry, etc⁴. But in today's scenario the men also face sexual harassment and domestic violence by their spouse, so the laws need to be changed as the society is progressing. "Crime has no gender and neither should our laws. Women commit crime for the same reasons that men do. The law does not and should not distinguish between criminals and every person who has committed an offence is liable to punishment under the Code,"⁵

The problem arises in the interpretation of the word "feminism". Generally, the word "feminism" means having equal rights for women as the men has and there should be no gender biasness. But today, feminism become all about woman superiority or women are superior to men and somehow competing with men in each sense to be in higher positions than him. Females should understand the true sense of word which is neither men nor women is superior but both should be equal and walk hand in hand.

The change can be started by women of the society only as you can see in the case of the alimony issue, had a woman stood out and said to the man, we don't need your money we are equal. That is what equality is for. An equal woman would have said don't see us differently, we are just like how the men are.

So, the beginning should be from women in the society to come forward and say that we are not at all superior in any sense. Therefore, the laws should be gender neutral in the case of Domestic Violence in India as Women rights has been protected in Protection of Women from Domestic Violence Act, 2005. Similarly, there should be law were men rights should be protected under the ambit of law.

³ Justice Verma Committee Report, January 23, 2013.

⁴ Harish V Nair, Parliament can make law on rape gender-neutral, says Supreme Court(March 15, 2018, 12:45), <https://www.indiatoday.in/mail-today/story/parliament-can-make-law-on-rape-gender-neutral-says-supreme-court-1160829-2018-02-03>

⁵ Monalisa Das, Should Rape Laws in India be Gender Neutral? Experts weigh in, (March 15, 2018, 12:55AM), <https://www.thenewsminute.com/article/should-rape-laws-india-be-gender-neutral-experts-weigh-75834>

DOMESTIC VIOLENCE AGAINST MEN: A LEGAL PERSPECTIVE

If we talk about India, we can hardly find any legislation that aims to protect men against domestic violence. It is a grave social issue violating the human rights. Many countries have laws to protect both men and women from domestic violence but in India it seems that the government has not addressed the issue properly. These men are at the mercy of their abusive wives or other female relative, facing physical, mental and emotional distress. Such violence also leads to death in some cases. Men who are at the receiving end of this harassment remain numb out of fear that they will be trapped in a false dowry case or separated from their children.

In 2016, the Supreme Court Justices Kurian Joseph and Rohinton F Nariman struck down the words, “adult male person” from Sec. 2(q) of the Domestic Violence Act, 2016. It was held that, “We, therefore, strike down the words ‘adult male’ before the word ‘person’ in Section 2(q), as these words discriminate between persons similarly situated, and far from being in tune with, are contrary to the object sought to be achieved by the 2005 Act,” This will include women as offenders from then onwards.⁶

In 2017, it was clear from a judgment in the court of Karnataka in case of Mohammed Zakir. The Court held, “If the said sub-section is read after deleting the expression ‘adult male’, it would appear that any person, whether male or female, aggrieved and alleging violation of the provisions of the Act could invoke the provisions under the Act. In that view of the matter, the petitioner’s complaint could not have been trashed on the ground that the Act does not contemplate provision for men and it could only be in respect of women.”⁷

On 2 July 2014, the Supreme Court said that this law is being used by some women to harass their husband and in-laws. The court prohibited the police from making arrests on the mere basis of a complaint. The court asked the police to follow Section 41 of the Code of Criminal Procedure, 1973, which provides a 9-point checklist which must be used to decide the need for an arrest. The court also said that a magistrate must decide whether an arrested accused is needed to be kept under further detention. The decision was in response to a Special Leave Petition (SPL) filed by one Arnesh Kumar challenging his arrest and of his family under this law. The decision was welcomed by men’s right activists but was criticized by women rights activists. However, due to lack of communication to police

⁶ Ashok KM, SC Strikes Down Words ‘Adult Male’ From The Definition Of “Respondent” Under Section 2(Q) Of DV Act; Relief Possible Against Minors, Women, Live Law(March 13, 2018, 1:44AM), <http://www.livelaw.in/sc-strikes-words-adult-male-definition-respondent-section-2q-dv-act-relief-possible-minors-women/>

⁷ Live Law News Network, Husband Can Initiate Proceedings Under DV Act Against Wife, Her Relatives: Karnataka HC, Live Law(March 13, 2018, 2:00AM), <http://www.livelaw.in/husband-can-initiate-proceedings-dv-act-wife-relatives-karnataka-hc-read-order/>

stations, the guidelines of Supreme Court of India are still not getting followed.⁸ Domestic violence against men in India is not recognized by the law. The general perception is that men cannot be victims of violence. This helps women get away scot-free.⁹ So, presently there is no law regarding domestic violence against men in India, and the time has come to make gender neutral laws.

CONCLUSION

Society is changing with time and so are the values. Men has started facing torture and harassment by women/spouse so the time has come to address their issue and problems as a social issue and develop appropriate strategies and interventions to cure this problem. They are no longer stronger than women now, but women come at the same footing as the men are. This is the reason they need a help in crisis and violence particularly violence by spouse/wife. Male victims of the domestic violence can be helped through the appropriate intervention such as recognition of violence against men by women; enactment of relevant piece of legislation; helpline for the male victims of violence; and education, awareness, and legal safeguards.

Effective legislations to curb domestic violence against men must be put in place and enforced. Law enforcement agents should accept that domestic violence against men is a reality, from which men should be protected. The brutality of a man by his wife should not be seen as a trivial domestic matter. The trials of women who batter or kill their husbands must be given wide publicity in order to serve as deterrence to others who may have such tendencies. There should be greater advocacy to enlighten the public about the existence and reality of the evil of domestic violence against men by government agencies, religious groups and civil rights organizations. This will help in balancing the gender discourse on domestic violence and bring about better families in the Indian society. Gender activism must involve a balance of power in relationships in order not to arrogate too much power to the women, who will then turn around to use such power to oppress the men. It is the contention of this paper, that as we protect the right of women in the marriages, similarly the rights of men should be protected. Also just like women, men deserve protection from intimate partner brutality and abuse, and also have a right for better living as married men.

⁸ Arnesh Kumar v. State of Bihar (2014) 8 SCC 273.

⁹ Dhawani Desai, When Husband are Victim of Domestic Violence, Times of India, May 10,2017