

DV Act: Men Can Be Victims Too As Forms Of Gender Violence Differ In Different Social Settings

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Domestic violence was recognised as a criminal offence in 1983, and is chargeable under Section 498A of the Indian Penal Code, 1860. (Image Source : Getty)

In a recent judgment, the Delhi High Court held that protection under the Domestic Violence Act is not available to men. The matter was being heard as a petition filed by the wife challenging a local court's November 5, 2022, order to summon her in a case. The proceeding was earlier initiated by the husband of the petitioner under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (DV Act), which refers to filing the application before the magistrate. The court passed the judgment that the protection under the Act is not available to a male member of the family, and more particularly the husband, under Section 2 (a) of the DV Act that defines who an aggrieved person is.

In this light, there is a need to understand the offence of domestic violence. The question that arises is, to ascertain the social and legal reasoning behind the non-applicability of the Act to men, the provisions of the DV Act that seek protection, and whether there is a need to make certain provisions under the DV Act gender neutral.

Domestic violence was recognised as a criminal offence in 1983, and is chargeable under Section 498A of the Indian Penal Code, 1860 (IPC 1860), which deals with cruelty faced by women at the hands of her husband or his relatives. Despite the said safeguards, there was a need for separate legislation dealing with this offence whose need started to arise from 1993 onwards when the Lawyers Collective was approached by the National Commission for Women with an aim to fill the vacuum created by the absence of having general legislation dealing with domestic violence.

Consequently, with the efforts of the Lawyers Collective and various women's rights groups in India and abroad, the DV Act was passed in 2005 with the aim to provide emergency civil protection for female victims of domestic violence, especially for women who are not ready to leave their spouses but are still able to seek protection under the DV Act. This fact is seen through the plethora of civil protection provided under the DV Act with the aim to prohibit the alleged abuser from committing any act of violence. The

phrase, domestic violence, has been interpreted in a flexible manner by extending its protection to several areas that have been considered private in nature such as issues like consanguinity, marriage, adoption, and cohabitation. Thus, the Act provides protection for all women who have a relationship with the abuser, including sisters, widows, mothers, in-laws, and unmarried women living with the abuser. In order to initiate the proceedings, the aggrieved woman needs to obtain an order from the court, she must first file a formal complaint in the form of a domestic incident report with the police, a protection officer, a service provider, or directly with the magistrate and all proceedings under the Act shall be disposed of within 60 days of the first hearing, which must occur within three days following the application.

What Happens When Violence Is Inflicted On Husband By Male Relative Of Wife

From a comparative perspective, domestic violence crime has also been recognised by a large number of countries across the world as a form of violence that affects a person's life in every way — physically, mentally, emotionally, and psychologically — and is a violation of basic human rights.

However, here comes the catch where the word 'people' has been used to refer to this crime, which signifies the openness that needs to be inculcated rather than being an exclusionary term. It goes without saying that any form of violence affects life physically, mentally, emotionally, and psychologically, and is also a violation of basic human rights, for all people. To illustrate, several times violence has been inflicted on the husband by a male relative of the wife who attacks or threatens the husband. However, the reporting of the same has been rather concealed as a complaint by a man carries social stigmas, and the husband in most cases is also apprehensive of being charged under Section 498A of the IPC as a counter to their complaint, which carries serious punishment.

It needs to be understood that the possible reasons for underreporting include but are not limited to the belief and hope that things would get better, fear of losing social respect and position, and family, and fear of getting prosecuted. Nonetheless, there is no law under which to protect a man against his wife or in-laws as all laws for controlling domestic violence consider women as the victims.

Historically, the issue of gender neutrality in statutes and stated policy gained significance in the last two decades as national and international women's groups pointed out that laws and policies designating men as targets or actors resulted in making women invisible and stood in the way of even formal equality. Such an argument re-conceptualises domestic violence as spousal violence and not be differentiated due to gender to achieve substantive equality. To realise this aim, not only must overtly discriminatory legislation be eliminated, but seemingly neutral legislation that in fact affects women and men differently must also be reformulated.

Going forward, there is a need to understand gendered violence through a situational analysis that recognises the effects of the larger social context on 'gender performances' and that the forms of gender violence differ in different social settings and may change over time. Such an analysis requires to draw connections between interpersonal violence and structural inequalities that provide the context for interpersonal violence as well as the institutions and practices that give meaning to gender and violence.

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