

Role of Judiciary and Domestic Violence

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THERE IS NO CHANCE FOR THE WELFARE OF THE WORLD UNLESS THE CONDITION OF WOMEN IS IMPROVED. A BIRD CAN'T FLY ON ONE WING- SWAMI VIVEKANANDA

I. INTRODUCTION

Judges interpret the laws. The judges are watching real cases to see how the legislature's scripts are performed by real people. A judge is able to accurately and realistically assess the laws, identify authoritative challenges, and fix gaps in them.¹ According to Justice V.R. Krishna Iyer, "Judges can't make laws, they only interpret the law and decide specific cases and controversies within the limits, but in that process, they make laws. Law is the big one. "So, it's serious codification, revolution in the social order, that we need, a avant-garde operation Parliament must perform. As magnificently as the judiciary acted, they gave real worth to the legislative work."²

Since the Protection of Women from the Domestic Violence Act was passed in 2006, the Act has matured. interpret and apply the law most of the time. The decisions of the Apex Court and the higher courts are essential to the successful execution of the Act because they clarify and substantiate the law. The judgments passed by the Indian Courts show how the judiciary is actively working to protect women from exploitation when laws are not aware of this situation because of the lack of effective enforcement. The laws and courts have put the women in a better position in society.³

This chapter deals with the role of the judiciary in dispensing justice and enforcing The Domestic Violence Act to protect Indian women. It studies precedents and positivism towards The Domestic Violence Act. Researcher studied and analyzed the

Higher Court orders passed under the Act to see if women have been protected from violence under the Act. It also reflects the studies about the role of Courts, how much they have protected women's rights and how much they have changed inherited prejudices, stereotypes, and discriminatory practices against women.

The judiciary by its decisions on the matters of women protection and Domestic Violence has extended through positive vibrant judgments which have exalted the dignity of women. The matters concerning with the Domestic Violence Act since 2006 has been analysed by the researcher to determine the role of judiciary regarding protecting of women from violence in general and implementation of domestic violence Act in particular has made an attempt to analyze.

In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*⁴, the Supreme Court extended the benefits of the Maternity Benefit Act, 1961 to the Muster Roll, daily wagers female employees of Delhi Municipal Corporation. In this case, the Court directly incorporated the provisions of Article 11 of CEDAW, 1979 into the Indian Law.

In *Chairman, Railway Board v/s Chandrima Doss*⁵, the Supreme Court awarded compensation of 10 lakhs to an alien woman under Article 21 of Constitution, who has been a victim of rape. In *Githa Hariharan v/s Reserve Bank of India*⁶, the Supreme Court interpreted Section 6(a) of Hindu Minority and Guardianship Act, 1956 and Section 19(b) of the

¹ http://www.ebc-india.com/lawyer/articles/2005_2_49.htm, 14/2/15

² *ibid*

³ <http://www.airinfotech.in/article3.html>, 14/2/15

⁴ AIR 2000 SC 1274

⁵ AIR 2000 SC 988

⁶ AIR 1999 SC 1149

Guardians and Wards Act, 1890 in such a way that father and mother get equal status as guardians of a minor.

In *Mohammed Ahmed Khan v. Shah Bano*⁷, the Supreme Court granted equal right of maintenance under Section 125 of Cr. P.C. 1973 to a divorced Muslim married woman notwithstanding the personal law. The Supreme Court also held that large segments of society which have been traditionally subjected to unjust treatment, women is one such segment and needed protection from such barbarous laws. In *Charansingh v/s Union of India*⁸, the Delhi High Court expressed that women are a backward class as compared to men. In *Government of Andhra Pradesh v/s P. B. Vijay Kumar*⁹ the Supreme Court has held that the issue of reservation for women in State services was upheld under Article 15(3) of the Indian Constitution. In *Municipal Corporation of Delhi v/s Female Workers*¹⁰, the Supreme Court held that a just social order could be achieved only when inequalities are obliterated and women, which constitute almost half of the segment of our society, are honoured and treated with dignity. In *Air India v/s Nargis Mirza*¹¹, the Supreme Court struck down the discriminatory Rules of Indian Airlines. In *Bodhisattwa v/s Ms. Subhra Chakraborty*¹², the Supreme Court held that rape is a crime against basic human rights and as of women rights.

In *Vishakha v/s State of Rajasthan*¹³, the Supreme Court took a serious note of the increasing menace of sexual harassment at workplace and elsewhere. Considering the inadequacy of legislation on the point, the Court even assumed the role of legislature and defined sexual harassment and laid down instruction for the employers. In *Apparel Export Promotion Council v/s A. K. Chopra*¹⁴, the Supreme Court found all facets of gender equality including

prevention of sexual harassment in the fundamental rights granted by the Constitution. In *C. B. Muthamma v/s Union of India*¹⁵, a service rule whereby marriage was a disability for appointment to Foreign Service was declared unconstitutional by the Supreme Court. In *Shobha Rani v/s Madhukar*¹⁶, the Supreme Court held that dowry demand was held enough to amount to cruelty. In *Prathibha Rani v/s Suraj Kumar*¹⁷, the Supreme Court upheld women's right to the Stridhana. In *State of Punjab v/s Gurmit Singh*¹⁸, the Supreme Court held that rape was held to be violative of the right of privacy. In *Bodhisathwa Gowtham v/s Subhra Chakraborty*¹⁹, the Supreme Court observed that rape was not only an offence under the criminal law, but it was a violation of the fundamental right to life and liberty guaranteed by Article 21 of Indian Constitution.

In *Saveetha Samvedhi* case²⁰, the Supreme Court held that a married daughter was allowed accommodation in parental house. In *Delhi Domestic Working Women's Forum v. Union of India*²¹, the Supreme Court suggested the formulation of a segment for awarding compensation to rape victims at the time of convicting the person found guilty of rape. The Court suggested that the Criminal Injuries Compensation Board or the Court should award compensation to the victims by taking into account, the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape.

Standards developed by the judiciary have a significant beneficial effect of making the lives of people better. In addition, these standards may ensure a better understanding of the relationship between the people and their government, on the one hand, and among the individual members of the community,

⁷ AIR 1985 SC 945

⁸ 1979 Lab IC 633

⁹ AIR 1995 SC 1648

¹⁰ AIR 2000 SC 1274, 1281

¹¹ AIR 1981 SC 1829

¹² AIR 1996 SC 922

¹³ AIR 1997 SC 301

¹⁴ AIR 1999 SC 625

¹⁵ AIR 1979 SC 1868 : 1979 Lab IC 1307

¹⁶ AIR 1988 SC 121

¹⁷ AIR 1985 SC 628

¹⁸ AIR 1996 SC 1393

¹⁹ AIR 1996 SC 622

²⁰ ((1996) 1 SCR 1046)

²¹ ((1995) 1 SCC 14)

on the other²². One of the vital ways to keep human rights safe is by preserving the prevailing role of the judiciary.

In order to assess the impact of any social legislation it is necessary to understand and evaluate whether the beneficiaries of the legislation are able to access and obtain the reliefs that the Law promises to provide. Hence to evaluate the application and implementation of the Domestic Violence Act the further studies are concentrated only on the case laws and judgments delivered under the Act.

The Domestic Violence law has been shaped and strengthens through the responses of the Supreme Court and High Courts; although each judgment has aided in clarifying, expanding and interpreting provisions of the Act. The analysis of judgments seeks to examine whether the higher Judiciary interprets the Act keeping in mind this gender sensitive understanding of the Act²³. The judgments selected for examination are those which touch upon issues that have been frequently raised before the various Courts or provide clarity on fundamental provisions of the law.

The judgments have been analyzed under the following issue-based categories and selected judgments under each of the following categories are being studied and presented.

- A. Constitutionality of the Domestic Violence Act
- B. Women as Respondents under the Act
- Right to reside and interpretation of “shared household”

Constitutionality of the Domestic Violence Act

Many Petitions were made before various High Courts challenging the constitutionality of the Act. *Dennison Paulraj and Ors v. Union of India, rep. by Secretary,*

*Ministry of Law and Justice and Ors*²⁴ This writ petition challenged the constitutionality of Sections 12, 18, 19 and 23 of the Domestic Violence Act. It was challenged on the ground that it is biased as a wife can file an application alleging domestic violence whereas the husband cannot file an application under the Act. Hence the law discriminates in favour of the wife and affects the right to life and liberty of the husband and his family members under Articles 19 and 21 of the Constitution. The Court dismissed this challenge and held that “giving certain preferential treatment to the wife and treating them as a special category cannot be termed as violative of either Article 14 or Article 16 of the Constitution of India.” The Court referred to Article 15(3) which allows the State to discriminate in favour of women and children. Several landmark judgments of the Apex Court were cited in order to conclude that “sex” constitutes a sound basis for classification, and although there cannot be any discrimination on that ground alone, the specific mandate of Article 15(3) allows for such preferential treatment. The issue of constitutionality of the law on the ground that it is gender specific has been conclusively decided.

Women as Respondents under the Act

Definition of Respondent: Since the enactment of the Act there has been a long debate with regard to the Respondent as defined under Section 2 (q) of the Act Whether it includes a female person or relative of the husband or male partner was matter of concern but was settled with the following case laws

*Alfzalunnisa Begum v. The State of A.P*²⁵ and *Umesh Prasad Maharana, Harihar Maharana and Bhubaneswari Devi v. The State of A.P. and Munum*

²²http://www.google.co.in/url?url=http://shodhganga.inflibnet.ac.in/bitstream/10603/8112/16/16_chapter%25207.pdf&rct=j&q=&esrc=s&sa=U&ei=tF3fVLDkO8ewuQTW64DQCQ&ved=0CFEQFjAH&usg=AFQjCNHPsPEPXpOA4UdXTcZ7i1S47yx6Q, 14/2/15

²³ *Staying Alive Third Monitoring & Evaluation Report 2009 on the Protection of Women from Domestic Violence Act, 2005*

²⁴ 2 MANU/ TN/09757/2009; Writ Petition No. 28521 of 2008

²⁵ *rep. by its Public Prosecutor, High Court of A.P. and Nuzhathunissa Begum*

*Maharana*²⁶ These criminal revision petitions under Section 482 of Cr.P.C against the decisions of the lower Court orders were combined and taken up by the Division Bench of the Andhra Pradesh High Court. The question that arose in both the petitions was whether 'Respondent' as defined under Section 2 (q) of the Act includes a female person or relative of the husband or male partner. High Court, held that female members cannot be made Respondents under the Act. The Court examined the definitions of "Respondent," "Domestic Relationship" and other relevant provisions under the Act, and in seeking to arrive at a conclusion referred to the Statement of Objects and Reasons. It was held that the definition of 'Respondent' makes it clear that it can only be an adult male person. However, the proviso, which has an expanded meaning, says that an aggrieved wife or female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner. The Court went on to state that "The proviso deals with complaint against two categories of persons i.e., (1) a relative of the husband or (2) the relative of the male partner. If we restrict the meaning only to male persons, a relative of the husband will become redundant." The Court further observed that except in case of Residence Orders under Section 19 (1) (b), the Magistrate can pass any other order against the relatives of the husband including a female person.

The Court then went on to refer to Section 31 (3) which authorizes the Magistrate, while framing charges under Section 31(1) to also frame charges under Section 498A IPC or any other provision of IPC or the Dowry Prohibition Act, if the facts disclose the commission of such an offence. The High Court interpreted this gender neutral provision to clearly show that the Magistrate can always frame charges against the female relatives of the Respondent who have committed an offence under Section 498A or any other provision of IPC or the Dowry Prohibition Act. It was on this sound ground the Court arrived at a finding that women are not excluded from the coverage of the definition of 'Respondent'. This

judgment is a clear vindication of the intent of the Act to not exclude relatives of the husband, who are very often the perpetrators of violence within the home. Further, the High Court of Andhra Pradesh accurately arrived at the conclusion that because the provisions under the Act are in addition to criminal provisions like Section 498A IPC and the DPA, it is essential to interpret its definitions in consonance with those of the existing law. Finally, the clear and unambiguous broadening of the definition of "Respondent" through the proviso was correctly understood and pointed out by the Court in this judgment.

In the criminal revision petition before the High Court of Bombay, *Archana Hemant Naik v. Urmilaben Naik and Anr.*²⁷ A similar contention as to the inclusion of female relatives within the definition of 'Respondent' under Section 2(q) was raised.

The Court upheld the maintainability of action under the Domestic Violence Act against female relatives of the husband or the male partner. The Court based its decision on the argument that the proviso to Section 2(q) carves out an exception to the general provision that a Respondent can be only an adult male person. It provides that an aggrieved wife or female living in relationship in the nature of marriage may also file a complaint against any relative of the husband or the male partner. The Court observed, 'It is important to note that the proviso refers to a relative and not to a male relative.'

The Court went on to state the difference in applicability of the proviso by explaining that a wife or a woman to whom the proviso is applicable is compelled to seek residence order in respect of a shared household only as against the male relatives of her husband or male partner, as the case may be, the order under Section 19 of the said Act will be completely ineffective in as much as the female relatives of the husband or the male partner occupying the shared household will continue to disturb possession of such wife or such female of the shared household, or may continue to prevent entry of

²⁶ MANU/AP/0206/2009, Criminal Petition No. 7160 and 8495 of 2008)

²⁷ Criminal Revision Application No. 590 of 2008

such aggrieved wife or female to the shared household. On plain reading of the proviso to section 2(q) it is clear that a relative referred to in the proviso is male as well as female relative.

The Court further interpreted the intent of the Legislature from a reading of the proviso to Section 19 (1), and held that this very fact shows that an order under other clauses of section 19 (1) can be passed against a woman. The Court specifically held that “If a narrow interpretation is put to proviso to Section 2 (q) to the effect that the relative referred to therein is only a male relative, the aforesaid proviso to sub-section (1) of Section 19 becomes meaningless. Therefore, on this basis the Bombay High Court reiterated the position that the definition of ‘Respondent’ under the Act includes female relatives of the husband or male partner. This judgment assumes significance in light of the fact that the Court looks to the intention of the legislature as well as attendant provisions of the Act in order to reach a conclusion, instead of using a narrow interpretation of the main provision of Section 2(q).

*Rema Devi v. State of Kerala*²⁸ In this revision petition filed against the order of the Sessions Court deleting the name of the female relative as a Respondent, the Madras High Court reiterated the position taken by the High Courts in the afore-mentioned judgments. The Court clearly held that the proviso to Section 2 (q) enables an aggrieved woman to file a complaint against a relative of the husband or the male partner, and such a relative of the husband or the male partner need not necessarily be a male relative. The Court also referred to the proviso to Section 19(1), providing an exception to women Respondents in relation to a residence order passed under Section 19(1) (b) of the Domestic Violence Act. The Court held that the only embargo against the passing of a residence order while disposing of an application under Section 12(1) of the Act is that if the Respondent is a woman, the Magistrate shall not direct such woman to remove herself from the shared household. The High Court clearly stated that “A different interpretation may

render the provisions of the Act as meaningless and unworkable.

Some High Courts took different views such as in *In Tehmina Qureshi v. Shazia Qureshi*²⁹ the Madhya Pradesh High Court used the argument that since the main provision of Section 2(q) does not refer to respondent as any adult member but uses the word “male” to qualify it, the expression “a relative” in the proviso must also be considered not to include female relatives of the husband or male partner and held that an application under the Domestic Violence Act cannot be filed against a female relative of the husband.

In pronouncing this judgment, the Court has clearly based its decision on a few cases such as *Ajay Kant v. Smt. Alka Sharma*³⁰ that were decided in the initial years of implementation of the Act.

In the final analysis, although the question of whether women can be respondents continues to draw differing conclusions from the Courts, it is encouraging to note that some High Courts are providing a conclusive decision on the same. From the analysis of orders, the discernible trend is that the female relatives of the husband are being made respondents.

High Court decisions on the issue began by taking conflicting views. However, at present, a majority of decisions have ruled that female relatives are covered under Section 2 (q). The High Courts of Madhya Pradesh and Andhra Pradesh respectively, in *Ajay Kant v. Alka Sharma*³¹ and *Smt. Menakuru Renuka and Ors. v. Smt. Menakuru Mona Reddy and Ors*³² have held that women cannot be made Respondents under the Act, and that Section 2 (q) must be interpreted in light of the expression “adult male.” On the other hand, there have been a number of decisions from various High Courts have clearly held that female relatives of the husband or male partner can be made Respondents in accordance with the proviso to Section 2 (q) Finally Hon’ble Supreme Court settled the matter. The Court went on to examine the meaning of

²⁸ *I (2008) DMC 297*

²⁹ *M. Cr. C. No. 3312 of 2009*

³⁰ *(2008) Cri. L. J. 264.*

³¹ *CrI. P. No. 4106/2008*

³² *CrI. P. No. 4106/2008*

“relative” under Section 498 A IPC and for this purpose, reference is made to the Supreme Court’s judgment in *U. Suvetha v. State by Inspector of Police and Anr*³³

The Supreme Court had held that in the absence of any statutory definition, the term “relative” must be assigned a meaning, as it is commonly understood. Therefore, the Court held that “respondent” under Section 2(q) of the Act includes a female relative of the husband or the male partner. This is an important judgment in view of the approach that the Court adopts to the issue, its sensitivity and understanding of the intent of the law.

In *Varsha Kapoor v. Union of India & Ors*³⁴ not only was the interpretation of proviso to Section 2(q) an issue but also its constitutional validity. A writ petition was filed by the mother-in-law of the AP before the Delhi High Court contending that female relatives cannot be impleaded under the Act. In the writ petition, it was argued by the petitioner that the expression “a relative” in the proviso would only mean an “adult male person”, since the Preamble to the Domestic Violence Act clearly provides that the law has been enacted to provide redressal to women against domestic violence, and as such cannot be used against women. It was also contended that the proviso cannot expand or limit the scope of the main provision for which reliance was placed on the judgment of the Supreme Court in *Dwarka Prasad v. Dwarka Das Saraf*³⁵

In the alternate, it was further argued, if relative is interpreted to include female relatives, the same would not pass the test of reasonable classification under Articles 14 and 15 of the Constitution. To begin with, the Court noted the purpose and intent of the law. Reference was also made to the judgment of the Delhi High Court in *Aruna Parmod Shah v. Union of India*³⁶ in which the Court upheld the constitutionality of the Act and dismissed the contention that the gender-specific nature of the law was arbitrary. The Court examined the definition of an Aggrieved Person as

well as the provisions under Sections 12, 19 and 31 of the Act, which were held to provide redress to the Aggrieved Person. Having read the afore-mentioned provisions together, the Court reached the conclusion that a petition can be filed against a woman in cases covered under proviso to Section 2(q). At the same time, the Court acknowledged that there are gaps in the manner in which the provision has been drafted. Having noted that, however, the Court clearly stated that it becomes the duty of the Court to give correct interpretation to such a provision, having regard to the purpose sought to be achieved by enacting a particular legislation, which is a principle laid down by the Supreme Court.

CONCLUSION

The Court based its conclusion on the fact that because there was no communication or contact between the parties, no proximate act of domestic violence could be alleged, it must be mentioned that the fact of desertion continued. As was rightly contended by the APs, desertion itself is a form of economic abuse under the Act. Hence, irrespective of any communication or contact, the fact of continued desertion is sufficient to invoke the provisions of this Act. With this decision, the Supreme Court has conclusively settled the question of the retrospective application of the Domestic Violence Act. However, the judgment is critical for the recognition that a woman dispossessed of her Shared Household at any time in the past continues to suffer the effects of that dispossession. Actions brought under Act thus relate to the present and any relief granted

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³³ ((2009) 6 SCC 757)

³⁴ Writ Petition (Crl.) No. 638 of 2010

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