

Conceptual Analysis of the Protection of Women from Domestic Violence Act, 2005

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Abstract:

When we talk about crime against women, the first thing that appears in our mind is heinous offences which were recognized under the criminal laws. What is often neglected and unrecognized is the offences that were committed within the family. Domestic violence is present in most of the societies but it often goes unrecognized as it usually happened within the family. It is often tolerated by the victims because most of them do not want to exposed it and take recourse to law due to fear of losing family reputation. A careful reading of the Protection of Women from Domestic Violence Act, 2005 clearly show that the enactment is a women welfare legislation which provides quick and effective civil remedy against different forms of violence by their relatives. The act is wider in scope than any other previous legislation relating to women centric provisions such as Section 498 A IPC, Section 125 CrPC. Section 498 A IPC which provide cruelty by husband or relatives of husband, the explanation appended to section which defined Cruelty is very limited, it applies only to violence faced by married women at the hands of their husband and relative of husband. The definition neglects everyday violence faced by married women at the hands of other relative and by an unmarried women and children at their home as they face violence at hands of other male or female relatives. Section 125 CrPC provides maintenance of wives, children and parents. It only concern with the maintenance allowance payable. The said Act, however, provides various reliefs like residence order, protection order monetary reliefs etc to the aggrieved person.

Keywords: Domestic violence, live-in-relationship, Supreme Court, High Court, women, reliefs

Introduction:

The idea of women's right and legal remedies involves in it the notion of power, privileges and claims. It also implies duty on others to recognize and respect women's right. To recognize and respect not only means to refrain from interfering with the free exercise of their rights but also to assists women in attaining their rights. Enactment of the Protection of Woman from Domestic Violence Act, 2005 (herein referred to as the said Act/Act) has been a major milestone in the journey towards recognition of violence against women within the private sphere and by private actors as an effective protection of their rights guaranteed by the Constitution¹. India being signatory to the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), the Act is also a steps for fulfilling the State's

¹ The Protection of Women from Domestic Violence Act, 2005 Long Title.

commitment towards elimination of discrimination against women. The Act received the assent of the President on 13.09.2005 and came into force on 26.10.2006.

Objectives of the study:

1. To give conceptual analysis the different provisions of Protection of Women from Domestic Violence Act, 2005
2. To highlight the advantages of the said Act as compared to other legislation dealing with women related issues.
3. To highlight the various judicial pronouncement on difficulties in interpreting some provisions under the Act.

Research Methodology:

Doctrinal method is adopted to achieve the objectives whereby the main sources of the research are collected from the Protection of Women from Domestic Violence Act, 2005 and judicial decisions.

Aggrieved person: Who can file complaint under the Act?

“Aggrieved person means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent²”.

“Domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family³”.

“Domestic violence has the same meaning as assigned to it in section 3⁴”.

To understand what exactly constitute an ‘aggrieved person’ it is also necessary to look into the definition of domestic relationship as well as the meaning of domestic violence. If any of the violence complained of is not within the parameter of domestic violence provided under the Act, the aggrieved person is not entitled to file complaint against the Respondent. From the careful analysis of the above-mentioned definition provided under the said Act, the definition is very wide, although live-in-relationship is not mentioned in the Act, but it can be inferred that the Legislature has acknowledged live-in-relationship *“Domestic relationship means a relationship between two persons who live or have, at any point of time, lived together in a shared household when they are related by..... or through a relationship in the nature of marriage”*. However, this has been a subject of interpretation by the Judiciary.

Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy⁵ here the Privy Council took a stand that, “where a man and a woman are proved to have lived together as man and wife, the law will

² Section 2 (a), The Protection of Women from Domestic Violence Act, 2005

³ Section 2 (f), The Protection of Women from Domestic Violence Act, 2005

⁴ Section 2 (g), The Protection of Women from Domestic Violence Act, 2005

⁵ AIR 1927 PC 185

presume, unless the contrary be clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage.

In *Mahabbat Ali Khan v. Mohd. Ibrahim Khan*⁶ their Lordships of the Privy Council laid down that “the law presumes in favour of marriage and against concubinage, when man and a woman have cohabited continuously for a number of years”.

*D. Velusamy v. D. Patchaiammal*⁷ two Judge Bench of the Supreme Court held ‘relationship in the nature of marriage’ is akin to a common law marriage. Common law marriages require that although not being formally married :-

- (a) The couple must hold themselves out to society as being akin to spouses.
- (b) They must be of legal age to marry.
- (c) They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. In our opinion a ‘relationship in the nature of marriage’ under the Act of 2005 must also fulfill the above requirements, and in addition the parties must have lived together in a ‘shared household’ as defined in Section 2(s) of the Act. Merely spending weekends together or a one night stand would not make it a ‘domestic relationship’. In our opinion not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act. To get such benefit the conditions mentioned by us above must be satisfied, and this has to be proved by evidence. If a man has a ‘keep’ whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not, in our opinion, be a relationship in the nature of marriage’

*Chanmuniya v. Virendra Kumar Singh Kushwaha*⁸ (two Judge Bench) It was held that the Act gives a very wide interpretation to the term “domestic relationship” as to take it outside the confines of a marital relationship and even includes live-in relationship in the nature marriage within the definition of domestic relationship under Section 2 (f) of the Act. Therefore, women in live in relationship are also entitled to all the reliefs in the Act. The Supreme Court further decided that monetary relief and compensation can be awarded in case of live-in-relationship under the Act, they should also be considered with respect to Section 125 of CrPC and accordingly, a broad interpretation of the same should be taken.

*Indra Sarma v. V.K.V. Sarma*⁹ wherein two judge Bench of the Supreme Court laid down some guidelines for testing under what circumstances, a live-in relationship will fall within the expression “relationship in the nature of marriage” Under Section 2(f) of the Act.

The act also covers that those women who are or have been in relation with the Respondent where they have lived together in a shared house-hold and are related by consanguinity or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a

⁶ AIR 1929 PC 135

⁷ (2010) 10 SCC 469

⁸ (2011) 1 SCC 141

⁹ (2013) 15 SCC 755

joint family are also included. Even those women who are sisters, widow, mothers or having link with the Respondent are entitled to various reliefs provided under the Act. Section 4 of the Act further provides that complaint of domestic violence can be made not only by the aggrieved person but also by any other persons who has reason to believe that an act of domestic violence has taken place or is likely to take place. Such persons if given the information in good faith are exempted from any civil or criminal liability.

Respondent: Against whom Complaint is filed.

“Respondent means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act:

Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner”¹⁰.

The term Respondent is also a subject of judicial interpretation. Different High Courts have expressed conflicting opinion as to whether females could also be included within the purview of Respondent. The Hon’ble High Court of Rajasthan in *Sarita v. Umrao*¹¹ and *Nand Kishore v. State of Rajasthan*¹² and the High Court of Kerala in *Rema Devi v. State of Kerela*¹³ have held that the plain reading of proviso appended to the Section recognizes the inclusion of women as Respondent. It is obvious that a wife or female living in a relationship in the nature of marriage may file complaint against relative of husband and the word ‘relative’ is quite broad and it includes all relations of the husband irrespective of gender or sex. Although the word ‘relative’ covers male or female, the aggrieved person must have a relationship with the Respondent in the nature of marriage. To support this contention, Section 19 (1) of the Act also provides that the Magistrate can grant the reliefs under the Act against a female respondent except directing her to remove herself from the shared household. This clearly reflect that female can be respondent and Section 19(1) of the Act would be meaningless if female is excluded from definition of Respondent.

However, a contrary view have been expressed by the High Court of Madhya Pradesh in *Ajay Kant v. Alka Sharma*¹⁴ “It is clear by the definition of respondent that for obtaining any relief under this Act an application can be filed or a proceeding can be initiated against only adult male person and on such application or under such proceeding, aforementioned protection order can be passed. Obviously those orders will also be passed only against the adult male person”. In the case of *Menakuru Mona Reddy v. State of A.P*¹⁵ the High Court of Andhra Pradesh has held that “what stands excluded by the main provisions cannot thereafter be included by way of a proviso. Thus implying that proviso cannot add to the main provisions, therefore the term ‘ a relative’ in the proviso cannot be interpreted as brining within

¹⁰ Section 2(q), The Protection of Women from Domestic Violence Act, 2005.

¹¹ (2008) 1 RCrD 97 (Raj).

¹² (2008) 4 RLW 3432 (Raj).

¹³ (2009) 1 DMC 297 (Ker).

¹⁴ 2008 Cri LJ 264 (M.P.).

¹⁵ Criminal Petition No.4106 of 2008

its purview female relatives, which stand excluded from the scope of the term ‘respondent’ as defined in the main provisions.

It must be remembered that the decisions of a particular High Court is not binding on other High Court. However, the decision of the High Court is binding on lower Courts which are within the jurisdiction of the High Court. Despite various contradicting opinion given by different High Courts, in the year the Supreme Court gave judgment with regards to who can be a respondent under the Act.

Two judge bench of the Supreme Court in the case of *Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade*¹⁶ held that “ From the above definition it would be apparent that although Section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage. It is true that the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. No restrictive meaning has been given to the expression ‘relative’, nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only. In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005”.

Following the decision of the Supreme Court, in *Hiral P.Harsara v. Kusum Narottamdas Harsara*¹⁷ wherein the Hon’ble Supreme Court had struck down a part of Section 2(q) of the Act holding it to be violative of Article 14 of the Constitution of India, and the phrase ‘adult male’ as appearing in Section 2(q) stood deleted since these words do not square with Article 14 of the Constitution of India and proviso to the Section being rendered otiose also stands deleted.

What is Domestic Violence?

Definition of domestic violence¹⁸ - For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

- A. harms or injures or endangers the health, safety, life, limb or well-being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or
- B. harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or
- C. has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

¹⁶ (2011) 3 SCC 650

¹⁷ (2016) 10 SCC 165

¹⁸ Section 3, The Protection of Women From Domestic Violence Act, 2005.

D. otherwise injures or causes harm, whether physical or mental, to the aggrieved person.

Explanation I - For the purposes of this section –

1. “physical abuse” means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;
2. “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;
3. “verbal and emotional abuse” includes—
 - a. insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and
 - b. repeated threats to cause physical pain to any person in whom the aggrieved person is interested.
4. “economic abuse” includes—
 - a. deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, household necessities for the aggrieved person and her children, if any, stridhan, property, jointly or separately owned by the aggrieved person, payment of rental related to the shared household and maintenance;
 - b. disposal of household effects, any alienation of assets whether movable or immovable, valuables, shares, securities, bonds and the like or other property in which the aggrieved person has an interest or is entitled to use by virtue of the domestic relationship or which may be reasonably required by the aggrieved person or her children or her stridhan or any other property jointly or separately held by the aggrieved person; and
 - c. prohibition or restriction to continued access to resources or facilities which the aggrieved person is entitled to use or enjoy by virtue of the domestic relationship including access to the shared household. Explanation II.—For the purpose of determining whether any act, omission, commission or conduct of the respondent constitutes “domestic violence” under this section, the overall facts and circumstances of the case shall be taken into consideration.

The Act gives a very broad definition of domestic violence; it encompasses all kinds of violence within its ambit. A single act of omission or commission or conduct will constitute domestic violence. For determining whether the act of omission or commission or conduct of Respondent constitutes domestic violence, the overall facts and circumstances of the case are the deciding factor.

Reliefs available under the Act:

The Act gives the Magistrate power to pass different order in favour of the aggrieved person. Such order may include:

1. Counseling: Section 14 of the Act empowers the Magistrate at any stage of the proceeding directing the respondent or the aggrieved person to undergo counseling.
2. Right to reside in shared household (Section 17): It efforts the aggrieved person right to reside in the shared household whether or not the aggrieved person has any right, title or beneficial interest in the shared household.

3. Protection order (Section 18): The Magistrate may prohibit the Respondent from committing, aiding or abetting any act of domestic violence. The Respondent can also be prohibited from alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both parties jointly by the aggrieved and the respondent or singly by the Respondent.
4. Residence order (Section 19) : The Magistrate on being satisfied that while disposing of the application u/s Section 12 (1) of the Act may pass a residence order restraining the Respondent from dispossessing the aggrieved person from shared household, alienating or disposing off the shared household or directing the Respondent to secure same level of alternate accommodation as enjoyed by the aggrieved person in the shared household or to pay rent for the same.
5. Monetary reliefs (Section 20): It includes the expenses and loss suffered by the aggrieved person or child due to the result of domestic violence, loss of earning, medical expenses, monthly payments of maintenance allowances.
6. Custody order (Section 21): Temporary custody of child may be granted to the aggrieved person.
7. Compensation order (Section 22) : This section can be invoke for providing any other reliefs in addition to the other reliefs like compensation for mental torture or emotional distress.
8. Interim Reliefs (Section 23) : During the pendency of the proceeding under the Act, if the Magistrate is satisfied that there is a prima facie incidence of domestic violence, it can pass an interim order by granting all the reliefs available under the Act in favour of the aggrieved person. To seek such interim reliefs, the aggrieved person will have to submit an Affidavit as per For III of the Protection of Women from Domestic Violence Rules, 2006.

Other important provisions:

Under Section 27 of the Act, it provides the aggrieved person can file the complaint to the territorial jurisdiction of Magistrate first class where the aggrieved permanently or temporarily resides or where the Respondent resides or carry on business or is employed or where the cause of action i.e where the domestic incidence happened.

The Act under section 12 (5) provides that case shall be tried as expeditiously as possible and the Magistrate shall try to disposed of the case within 60 days from the date of receipt of the application.

The Act also provides for the appointment of Protection Officer and recognition of non-governmental organization as Service Providers for giving assistance to the aggrieved persons. They give assistance to the aggrieved persons with respect to medical examination, legal aid or any other assistance. Their contribution towards to the effective implementation of the Act is commendable.

Conclusion:

The Act is civil in nature which intended to protect victim of women from all sorts of domestic violence in the society. There is only one penal provision under the Act i.e Section 31 which provides penalty for breach of protection order by the Respondent. If the Respondent breach any of the protection order pass by the Magistrate he shall be liable to punishment for imprisonment of a term which may extend to one year or with fine or with both. A careful analysis of the Act clearly reveals that the main intention of legislature in passing the Act is not to criminalised the Respondent but to restructure the broken family, to built a better strong relationship between members of the family. Law is made for the society, for the

happiness of every individual. If a person abides by the law, there is peace and prosperity in every corners of life. The above analysis of the act shows that women are entitled different reliefs under the Act, but the question remains with us that are they women aware of their rights. It is imperative that creating legal and social awareness amongst women as well as men is the need of the hour. Therefore, the dream of gender justice will be practically realized which will be an accomplishment towards the mandate accepted by the Constitution of India under Article 51A that it is the fundamental duties of every citizen of India *“To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.*

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