

## **Domestic Violence and Judiciary: An Analysis**

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**“Violence against women and girls is a problem of pandemic proportions. At least one out of every three women around the world has been beaten, coerced in to sex, or otherwise abused in her life time with the abuser usually someone known to her.”**

**Kofi Annan**

The time has been changed but still the mentality of the people could not change completely. Even at contemporary time, still women are suffering from the domestic violence by the husband or by relatives. For providing protection to the women from domestic violence even Act has been passed by legislature even though it is proving not so fruitful for providing protection to the women from violence. So many cases can be seen pending before the courts relating with domestic violence. At present judiciary is playing effective role for providing remedy to the women by giving punishment for the domestic violence. In present paper, the effective role of judiciary has been discussed by the author with the help of decided cases.

### **I. Introduction**

The law has passed various tests in the courts of law and has further extended the scope of the piece of legislation by the approach taken by courts in effective implementation of Protection of the Women from Domestic Violence Act. The recognition of women's status by the courts was the more advantageous outcomes this piece of legislation has granted in particular in an act where various types of abuse under this act are recognised and the same is confirmed as a form of domestic violence by the courts. The application of the Act and its judicial implementation covered several grey areas that existed in the context of the male-female relationship in India before this act came into force. The legality of a women has been tested by the Courts in relation to their rights in living relations, forms of abuse against women, the principle of equality between men and women and special privileges, etc.

### **Declaration of the Act as a benevolent legislation and permissive deviation from the procedures:**

The high court of Gujarat's 2009 in its judgement in the Case of *Jaydipsinh Prabhatsinh Jhala v. State of Gujarat and ors.*,<sup>i</sup> answered very well a question about the aspect of the respondent being a male or a female in proceedings under the Domestic Violence Act, stating that provisions of the Act do not limit the initiation of proceedings against female respondents and, therefore, that in provisions of domestic violence in their premises and in the proceedings they have brought. The Honorable Supreme Court confirmed this view in the recent decision deleting the words 'respondent male' as defined by the provisions of the Domestic Violence Act in the jurisdiction of the respondent.<sup>ii</sup> This decision also identified the nature of reliefs as prescribed in the Domestic Violence Act as civil by the High Court of Gujarat, but with a criminal redressal mechanism to enable a victim to make a redressal more effectively and more quickly. There is a detailed explanation of the type of reliefs, the nature of reliefs and the intent of the act to put the criminal machinery for the effective application of civil reliefs which were not specifically covered by the law at the relevant time into force. As for the above actions, the issue is punishable by other laws but the silence of other laws on the redressal and rehabilitation of the victim is considered the basis for adoption of DOMESTIC VIOLENCE law. The entire system of the act shall be understood as having the rehabilitation and relief of the civil victim, but effective criminal mechanism.

### **Appointment of Protection Officers for effective implementation of Domestic Violence Act:**

The Domestic Violence Act scheme provides for the violence of the time-bound disposal of women's grievances against such violent situations. In addition to the Statement of purpose and reasons, the integrated mechanism provided for in the Domestic Violence Act effectively provided for this implementation of the act. The High Court of Gujarat issued special instructions in the case of *Suo Motu v. State of Gujarat*<sup>iii</sup> The high

court of Gujarat has been glad to instruct the State Government to make regular district appointments with protection officials to enable the proper execution of the provisions of the Act, taking into account the journalist's report on the inadequacy of protection officials for the grievance redressal mechanism. The State Government has also taken responsibility for the insensitivity to effective implementation and directions for such appointments have been provided.

#### **Leniency in the approach for effective adjudication:**

On a regular basis, the high court in Gujarat has dealt with several requests under the DOMESTIC VIOLENCE Act, in which the approach towards women victims is inclined and a catenary ruling mandated that the right to grant relief to women is absolute and cannot be disturbed in any way. As this piece of legislation is a benevolent one, the complaint / application by the victim's wife must be dealt with and considered accordingly, taking into account the declaration and objects of the Act. The freedom of the woman to seek proper reliefs is to be dealt with accordingly and the husband cannot be given a chance to shirk his responsibilities.<sup>iv</sup>

#### **The point of benevolence:**

The Honorable High Court also expressed the concerns of that act and the understanding the Act tends to render in citing as provided in the case **Bhartiben Bipinbhai Tamboli v. State of Gujarat and Ors**<sup>v</sup>.

*“Till the year 2005, the remedies available to a victim of domestic violence were limited. The women either had to go to the civil court for a decree of divorce or initiate prosecution in the criminal court for the offence punishable under section-498A of the Indian Penal Code. In both the proceedings, no emergency relief is available to the victim. Also, the relationships outside the marriage were not recognized. This set of circumstances ensured that a majority of women preferred to suffer in silence, not out of choice but of compulsion. Having regard to all these facts, the Parliament thought fit to enact the Protection of Women from Domestic Violence Act, 2005. The main object of the Act is protection of women from violence inflicted by a man and/or a woman. It is a progressive Act, who's sole intention is to protect the women irrespective of the relationship she shares with the accused. The definition of an aggrieved person under the Act is so wide that it takes within its purview even women who are living with their Partners in a live in relationship.”*<sup>vi</sup>

#### **Supreme Court and Domestic Violence**

In the case of **Virendra Chanmuniya v. Chanmuniya Kumar Singh Kushwaha and Anr**<sup>vii</sup>, the widow with two daughters who, according to the custom of the community, married her husband's younger brother. Saptapadi was not performed in such marriages generally. The marriage was carried out through katha and sindur in accordance with the custom of the Kushwaha community. The wife requested maintenance when her husband deserted her. The Court of Justice upheld its trial, but the High Court held that its marriage is not valid as Saptapadi has not been married. The appellantes submitted a Special Leave Petition against the High Court judgement reiterating that he was not the appellants' husband, therefore they could not keep him, as this could only be claimed by women legally married in the context of Section 125 of the Code of Criminal Procedure. The petition was not filed by the appellants. The Supreme Court carefully considered the Act's provisions and noted that the Act extended its interpretation to include the term domestic relationship. According to the judgement, the broad coverage of the definition of domestic relations is the most important provision under the act. The effect of such inclusion ensure that "women are entitled to all reliefs contained in that act in living relationships." The decision concluded that "if the financial relief and compensation can be granted in live relationships pursuant to the Act 2005, it should also be allowed in cases pursuant to section 125 of Cr PC." The Court has therefore upheld the maintenance claim requested because parties have lived with each other for a long period, even if not married. This decision is relevant from the point of view of the Act, since it derives directly from the applicable provisions of the Act, by understanding the fundamental social purpose and purpose behind both enactments, to expand the category of relations which could legally benefit from maintenance provisions under section 125 Cr PC, There is some discussion and criticism about the inclusion of relationships in the nature of marriage in defining domestic relationships under the Act.

In **D Veluswamy v. D. Patchaiammal**<sup>viii</sup>, his two Judge Bench of the Supreme Court discussed the sphere of the right of the maintenance for women in 'relationship in the nature of marriage' under the Act.

In accordance with Section 125 of the Criminal Procedure Code, the respondent claimed maintenance from the appellant and was upheld by the family court and the high tribunal. The appellant had appealed to the Supreme Court, which was aggrieved at the decision. There was a discussion before the Court in this case of the provisions concerning economic abuse, an aggrieved party, a domestic relationship and a household shared by the Act. The Court made it clear that marriage and marriage relationships and said that people who participate in either have the right to benefits under the Act. In addition, the Court held:

*“Relationship in the nature of marriage is akin to common law marriage to the effect that:(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. Common Law marriage require although not being formally married must also fulfill the above requirements. In our opinion relationship in the nature of marriage under the 2005 Act must also fulfill the above requirements and in addition* "the parties must have lived together in a shared household as defined in s.2(s) of the Act. Merely spending weekends together or a night stand would not make it a domestic relationship"

The court tried to discuss however the sexual behaviour and the amoral character of live-in relations. "In a feudal society, sex between man and woman outside of marriage was completely tabuistic and viewed in horror and disgust.

Meanwhile, court recognised that: "Still Indian societies change and Parliament has recognised and reflected this change by adopting the 2005 Domestic Violence Act on the Protection of Women." In order to iron some ambiguous situations out, the relationship must comply with certain above-mentioned conditions to be eligible for 'palimony.' The Court made passing remarks regarding popular cases in U.S.A when it referred to the concept of palimony in another jurisdiction. Regarding the interpretation of the subject-matter of section. The Court relied on certain Indian cases and held that the social aim and object of the provision is to prevent vagrancy and misery. The Apex court was aware that it was not this court's job to legislate or amend law in the knowledge that a judgement excluded many live women from the benefit of the Domestic Violence Act 2005. The parliament used the word "relationship in marriage nature" rather than "live-in relationship." The court cannot modify the statute's language, it said:

The Supreme court observed:

*"Not all Live-in relationships will amount to a relationship in the nature of marriage to get the benefit of Act of 2005. To get such benefits the conditions named 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 be a relationship in the nature of marriage."*

However, it is worrying that it would leave the ground open for people to enter into great relations without any civil or criminal responsibility and to send false signals to younger generations in India. Their decision is designed to limit the abuse of the provision. This rule changes women's burden to show that their relationship is not great, ignoring practises within the community.

The Veluswamy case does not contain the precautionary approach taken in the Chamuniya case. It is based on a high moral standard and western ethos which disregards Indian social reality. Such types of reckless and uncomfortable decisions violate the constitutional mandate to protect women's dignity rather than women from domestic violence.

A living relationship in India cannot be equated or replaced by marriage. We must welcome all the interest towards the very civil and fundamental right of the people to live in line with their wishes. However, the true spirit of these trends must be assimilated by the actors or otherwise it will lead to the utilisation of the moral and ethical values which form part of our country's rich cultural heritage. The most crucial question that could be answered if legal recognition was granted for middle-way relationships would firstly be whether the current social norms, i.e., compatibility, go beyond these standards and secondly whether law has sufficient provisions to address the peculiar arrangements in which these couples exist. Some of the common time that stems from these relationships need to be clarified legally, while, in the present liberalised society, keeping these legal provisions at a minimum.

The Supreme Court clearly upheld this right of residence of the matrimonial house, according to **B. P. Achala Anand v. Appi Reddy's** heroic judgement<sup>13</sup>. Opinion of the Supreme Court:

*"A Hindu wife is entitled to be maintained by her husband, she is also entitled to separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own of residence of other just because she is compelled to live apart from him. Right to residence is a part and parcel of wife's right to maintenance. The right to maintenance cannot be defeated by the husband executing a will to defeat such a right. The right has come to be statutorily recognized with the enactment of the Hindu Adoption and Maintenance Act, 1956. Section 18 of the Act provides for maintenance of wife. Maintenance has been so defined in clause (b) of section 3 of the Hindu Adoption and Maintenance Act, 1956 as to include therein provision for residence amongst other things. For the purpose of maintenance, the term wife includes a divorced wife."*

In clarifying the role of deserted women in the tenanted premises, the Court expressed optimism that rights coexist. Further clarification has been provided by the Supreme Court and:

*"We are also of the opinion that a deserted wife in occupation of the tenanted premises cannot be placed in a position worse than that of a sub-tenant contesting a claim for eviction on the ground of sub-letting. Having been deserted by the tenant-husband, she cannot be deprived of the roof over her head where the tenant has conveniently left her to face the peril of eviction attributable to default or neglect of himself. We are inclined to hold and we do so that a deserted wife continuing in occupation of the premises obtained on*

*lease by her husband, and which was their matrimonial home, occupies a position akin to that of an heir of the tenant husband if the right to residence of such wife has not come to an end. The tenant having lost interest in protecting his tenancy rights as available to him under the law, the same right would devolve upon and inhere in the wife so long as she continues in occupation of the premises."*

In Indian courts, the right to residence under this act had largely evolved as provision of the case of the Supreme Court in **S.R. Batra v. Taruna Batra** in 2007<sup>x</sup>. The respondent had the son of the appellant married and began living together in the mother's house of the appellant. Later on, the Appellant filed a request for divorce. In conjunction with other provisions of the Indian Penal Code, FIR lodged as a counterblast respondent under section 498A. The law's daughter was in the present case looking for an order to allow her to go home. In that case. The appellant repressed him saying that before the proceedings began his son had moved his residence to a new flat. The trial court granted Temporary Injunction for the respondent. The Senior Civil Judge on appeal held that the respondent had no right other than to her husband's property. A petition filed by the respondent in accordance with Article 27 was given by the High Court to continue residing in the house of the appellant in her favour. Worse than the High Court's decision, the appellants preferred the Supreme Court to appeal. The Supreme Court based its judgement against her during a ruling on her interpretation of the term 'household share' in the Act and held:

*"The wife is entitled to claim right under Section 17(1) to reside in a shared household and shared household would only mean a house belonging to or taken on rent by the husband or a house belonging to a joint family in which the husband is a member"*.

The Supreme Court ruled that the griever cannot claim any residence rights in this common household because the house at issue was owned by a mother-in-law. In addition, the Court observed that "the respondent is not liable against the in-husband but is entitled to claim alternative accommodation as referred to in section 19(1)(f)."

The court of Apex did not give a wise interpretation of the definition of the right of residence in a household in domestic because it saw that including every single household in which the victim lives or has a family relationship at any stage ultimately implies that every property in which the victim and the respondent lived in the past, including every house of the interviewee. Such a broader interpretation could lead and would be unfair to an absurdity not intended by the legislature.

"The **Batra v. Batra** Supreme Court judgement, "which narrowly interpreted the term shared household in order to deny a woman a right to reside in her marriage home, has regrettably failed to interpret the Act with its aim to prevent the dispossession of a woman challenging domestic violence. This has had a variety of effects on subsequent High Court decisions." Although some High Courts followed the judgement to restrict residence rights, others distinguished them by the facts of their case in favour of the aggrieved woman to grant residence rights. The courts were also proactive in ensuring that the Act was implemented.

Further, the Court clarified that no law in India, such as the British Matrimonial Homes Act 1967, and warned against the equation by the English courts of a common household with a 'matrimonial home.' The Supreme Court has in some way limited the possible abuse of this provision by interpreting this otherwise extensive definition in its narrow sense.

The meaning "relative" under section 498 A IPC in **U. Suvetha v. State by the Inspector of the Police and Anr**<sup>xi</sup>. and the Supreme Court was then considered as the decision to examine a girlfriend part of that term. The Supreme Court held "*Living with another woman may be an act of cruelty on the part of the husband for the purpose of judicial separation or dissolution of marriage but the same in our opinion would not attract the wrath of section 498A of the Penal Code.*" The persons specified in that provision shall commit an offence. You must be "male" or "his family." Either the woman's husband and his relative must have subjected her in the above provision to cruelty. The husband would have committed some offences punishable under the other provisions of the penal code if the appellant had not instigated the husband of the first informant to torture her and may be held guilty for having committed such an offence but not an offence under Section 498A of the criminal code."

The term "relative" has to be assigned meaning in the absence of any statutory definition as is usually understood. Consequently, according to Section 2(q) of the Act the court held that the "respondent" includes a male or a female relative of the husband. The Court also highlighted the following:

*"To establish an offence under Section 498A, evidence of legal marriage in its rigidity or in civil law is unnecessary. A dilute significance can be given for 'marriage' or 'relative' which, for the purposes of section 498A IPC, a single person or society can attribute to those concepts."*

In view of the Court's right approach to the matter, sensitivity and understanding of the intent of the law, this is an important decision. The interpretation of Section 2(q) proviso and its constitutional validity were challenged in **Varsha Kapoor v. Union of India and Ors**<sup>xii</sup>. The mother-in-law of the aggrieved party submitted a written petition to the High Court in Delhi stating that the Act could not implement female relatives. "The facts of the case were that the daughter-in law sought reliefs under the Act before the court,

alleging different forms of abuse of the husband and other relatives of the husband. The court of the trial accepted the application and issued a notice to the parties that filed this petition.

In the written petition the petitioner argued that in the provision the term relative would only mean adult male since the Preamble to the Act clearly States that the law is enacted so that women can be redressed against domestic violence and therefore cannot be used against women.”

In 1954, when the provision of Section 497 of the IPC imposing punishment of adultery was challenged, a question regarding any law specific to sex was answered by the Honourable Supreme Court well. The main question was whether the offence was gender-specific, as punishment for adultery can only be sentenced to men rather than women. While denying the question and allowing such a reasonable classification, the Apex Court in the case of *Yusuf Abdul Aziz v. State of Bombay*<sup>xiii</sup>, held that “Article 14 is general and must be read with the other provisions which set out the ambit of fundamental rights. Sex is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The two articles read together validate the impugned clause in section 497 of the Indian Penal Code.”

## **II. Conclusion**

On the behalf of above discussion, it is clear that judiciary is playing effective role in case of domestic violence. In many cases the court has given severe punishment for the domestic violence. Even though there is dire need for strict implementation of the Domestic Violence Act, 2005 for preventing the violence against women. There must be harsh punishment for the causing domestic violence. So that the object of Domestic Violence Act, 2005 must be fulfilled.

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<sup>i</sup>2010 (51) GLR 635.

<sup>ii</sup> The Protection of Women from Domestic Violence Act, 2005 (Act no 43 of 2005)

<sup>iii</sup> (2013) 2 GLR 1047.

<sup>iv</sup> 2018 (1) Crimes11 (Guj).

<sup>v</sup> *Ibid*

<sup>vi</sup> *Ibid*

<sup>vii</sup> (2011) 1 SCC 141.

<sup>viii</sup> (2010) 10 SCC 469.

<sup>ix</sup> (2005) 3 SCC 313.

<sup>x</sup> 2007 (3) SCC 169.

<sup>xi</sup> (2009) 6 SCC 757.

<sup>xii</sup> Writ Petition (CrI) 638 of 2010.

<sup>xiii</sup> AIR 1954 SC 321.