

## **DOMESTIC VIOLENCE LAW AND FEMALE RESPONDENT - JUDICIAL VIEWS**

**Mr. Rajendra Anbhule\***

### **Introduction**

While displaying the significance of women in the world, a great philosopher and poet Mohammad Iqbal said: “If the whole universe is compared with the painting, the women are the glow and colour of it”. It was said that a man is incomplete without woman and women were called as *ardhangini*, i.e., half part of a man. But today the fact is that women are sufferers of domestic violence at the hands of men and it is one of the major problems which have thwarted the development of humanity. Women have always been discriminated against and have suffered, and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.<sup>1</sup> According to Sidney Brandon: “Statistically it is safer to be on streets after dark with a stranger than at home in the bosom of one’s family, for it is there that accident, murder and violence are likely to occur.”<sup>2</sup>

Domestic or family violence is one of the leading causes which obstructed the amelioration of women. It is undoubtedly a human rights issue and serious deterrent to the development.<sup>3</sup> As a State party to the various international Conventions, in India a law has been enacted by Parliament to protect women against violence of any kind especially that occurring within the family.<sup>4</sup> Before 2005 there was no comprehensive civil law in India which addressed the phenomenon of domestic violence in its entirety. The penal provision under Section 498-A of the Indian Penal Code, 1860 which provides for cruelty by husband or relatives of husband was not sufficient to provide justice to an aggrieved woman. Besides this, the rights guaranteed under

\* Advocate.

1. *Madhu Kishor v. State of Bihar*, (1996) 5 SCC 125.

2. Brandon, Sydney, *Violence in Family*, M. Borland (edn), (1976) 1.

3. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its *General Recommendation No. XII* (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family. Subsequently the Vienna Accord of 1994 acknowledged domestic violence occurring in family as a serious human rights issue and deterrent to the development of society. Notably, it was for the first time that the subject of physical, sexual, psychological violence against women was addressed vehemently. As a result in 1999, an optional protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 was adopted. In 1995 the Beijing Declaration and the Platform for Action also expressed ‘a serious concern’ relating to women’s rights. Thereafter, a number of U. N. sponsored international conferences on women proposed programmes in the field of human rights of women.

4. See *Infra* note 9.

Articles 14<sup>5</sup>, 15<sup>6</sup> and 21<sup>7</sup> of the Constitution of India emphasized a need for new remedy under civil law which ultimately resulted into the enactment of the Protection of Women from Domestic Violence Act, 2005.<sup>8</sup> This law has been enacted with a view to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society. In exercise of the powers conferred by Section 37 of the Act, the Central Government has made rules in 2006.

In the span of seven years in catena of cases judiciary has made attempt to interpret the provisions of this Act, in some cases beneficially and in some cases following the strict rules of evidence rejecting the legitimate claim of an aggrieved woman. The most important aspect is whether female can be a respondent under this law. In view of this the need to address the issue of family violence by female respondent in the light of some decisions of Apex Court is arguably important and urgent.

### Definition of Aggrieved Person

The Act has defined an 'aggrieved person', as 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 respondent.<sup>9</sup> Those women who are sisters, widows, mothers, single women are entitled to legal protection under the Act.<sup>10</sup> Even a female living in relationship in the nature of marriage may also file a complaint against a relative of the male partner.<sup>11</sup> Besides this, a child of an aggrieved woman who is below the age of 18 years can also claim relief under the Act along with an aggrieved woman.<sup>12</sup> In *Razzak Khan v. Smt. Shahnaz Khan*<sup>13</sup>, the Court held that, even a divorcee has a right to reside in an ancestral house of the husband. Failing this a husband can be directed to make available same level of alternate accommodation to her as enjoyed by her in the shared house.

5. It states that, "The State shall not deny to any person equality before law and equal protection of laws within the territory of India". Article 14 permits reasonable classification by the Legislature for the purpose of achieving specific ends. See, *R.K. Dalmia v. Justice Tendolkar*, AIR 1958 SC 538, *Ashutosh Gupta v. State of Rajasthan*, AIR 2002 SC 1533, *Saurabh Chaudhary v. Union of India*, AIR 2004 SC 361.
6. It prohibits discrimination on grounds of religion, race, caste, sex or place of birth. Clause (3) provides that, "Nothing in this Article shall prevent the State from making any special provision for women and children".
7. It states that, "No person shall be deprived of his life and personal liberty except according to the procedure established by law". Now Supreme Court has made it clear in catena of cases that, right to life includes the right to live with human dignity"; see *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746; *Vikram Tomar v. State of Bihar*, AIR 1988 SC 1782; *H. Tiwari v. Kamla Devi*, AIR 2001 SC 3211.
8. See the Statement of Objects and Reasons which provides for a right based law in favour of women in India.
9. Section 2 (a) of the Act.
10. *Supra* note 9.
11. *D. Velusamy v. D. Patchaimmal*, 2011 Cri LJ 320 SC, wherein the Supreme Court held that a relationship in the nature of marriage is akin to a common law marriage'. Common law marriage requires 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, and (d) They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. '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 'share 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. The Court also referred *Khushboo v. Kanniammal*, AIR 2010 SC 3196., *Tulsa v. Durghatiya*, AIR 2008 SC 1193.
12. According to Section 2 (b) of the Act 'child' means any person below the age of eighteen years and includes any adopted, step or foster child. Section 20 of the Act which provides for monetary reliefs says that the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of domestic violence.
13. 2008 ALL MR (Cri) Journal 213. See also *Smt Bharati Naik v. Ravi Ramnath Halamkar*, 2011 CRI LJ 3572.

From the definition under Section 2 (a) of the Act, it can be seen that the 'aggrieved person' can only be a woman, not a man for whose protection the Act has been enacted.<sup>14</sup> Even though the aggrieved person can only be woman, the Protection Officer or any other person may present an application to the Magistrate seeking one or more reliefs under the Act for aggrieved person.<sup>15</sup> In *Mohammad Majeenuddin Ahmed v. State of A.P.*<sup>16</sup>, the Court justified filing of an application by the father of a lady claiming medical expenses incurred by him for delivery and other health problem suffered by his daughter from her husband.

### **Definition of Respondent**

The Act<sup>17</sup> defines the term 'respondent' as 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. But the *proviso* 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. Further the relevant part of the Statement of Objects and Reasons of the said Act also provides that though the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any relative of the husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.<sup>18</sup>

The term 'relative of the husband' as emphasized by Section 2 (q) suggests that relative of the husband may be male or female. Hence a married woman can file complaint under the provisions of this Act even against a mother-in-law for the alleged domestic violence committed by her. But the Madhya Pradesh High Court has taken very restricted view in *Ajay Kant v. Smt. Alka Sharma*<sup>19</sup> by saying that, application for seeking reliefs under the Act can be filed or a proceeding can be initiated against only adult male persons. Hence, application under Section 12 filed by respondent against petitioners who are not adult male persons is not maintainable. In this regard Andhra Pradesh High Court has taken a proper view in *Afzalunnisa Begum v. State of A.P.*<sup>20</sup>, by saying that the word 'respondent' in Section 2 (q) of the Act would also include female relative of the husband depending upon the nature of the reliefs claimed against the respondent in the domestic violence case. The Court makes it clear that the complainant shall necessarily be a woman and the respondent also shall necessarily be a male except in cases where the complainant is wife, the respondent may be a female relative of the husband or male partner. The Court held that the Act do not exclude women altogether in the proceedings initiated under the Act.

14. *Johnson Fernandes v. Mrs. Maria Fernandes*, 2011 CRI L J. 1505.

15. Section 12 (1) of the Act.

16. 2007 CRI LJ 3361.

17. Section 2 (q).

18. Statement of Objects and Reasons, para 4 (l).

19. 2008 CRI LJ 264.

20. 2009 CRI LJ 4191.

In *Archana Naik v. Urmilaben Naik*<sup>21</sup>, the Bombay High Court held that, the word 'relative' mentioned in Section 2 (q) of the Act is not restricted to a male relative of the husband or a male relative of the male partner. Therefore, the word 'relative' in *proviso* to Section 2 (q) includes a female relative. However, whether a relief can be granted against female relative of husband or a male partner depends on the nature of the reliefs sought and facts and circumstances of the case. It is to be noted that according to Section 19 of the Act, while disposing an application under Section 12 (1) of the Act, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order directing the respondent to remove himself from the share household.<sup>22</sup> But *proviso* provides that no order under Clause (b) shall be passed against any person who is a woman. The Bombay High Court thus did not rely on the judgment given by Madhya Pradesh High Court<sup>23</sup> but relied on the judgment of Andhra Pradesh High Court in *Afzalunnisa Begum's* case accepting that relative under Section 2 (q) of the Act includes female relative.

The view taken by Madhya Pradesh High Court in *Ajay Kant's* case was again relied by Karnataka High Court in *Amruth Kumar v. Chithra Shetty*<sup>24</sup>, wherein the Court held that the word 'relative' appearing in the *proviso* to Section 2 (q) of the Act only means other than women relative of the husband or male partner of an aggrieved person. In fact, the view taken by Bombay High Court in *Archana Naik's* case and Andhra Pradesh High Court in *Afzalunnisa Begum's* case was correct. If the intention of the Legislature was that the relative of the husband referred in the *proviso* to Section 2 (q) has to be only a 'male' relative, the legislature would have specifically used the word 'male' in the *proviso*. In *Jaydipsingh Jhala v. State of Gujarat*<sup>25</sup>, the Gujarat High Court accepted the view taken by Bombay High Court and Andhra Pradesh High Court and held that the word 'respondent' in Section 2 (q) of the Act does not necessarily mean only male members. In case, aggrieved person is a wife, under Section 12 of the Act, if the facts warrant, a female relative of the husband can also be joined as a respondent.<sup>26</sup>

It is pertinent to note that, restricted view taken by Madhya Pradesh High Court in *Ajay Kant's* case was again reiterated by it in *Tehmina Qureshi v. Shazia Qureshi*<sup>27</sup>, wherein the Court held that female member cannot be made respondent in a proceeding filed under the relevant provisions of the Protection of Women from the Domestic Violence Act, 2005. The judgment given by Kerala High Court in *Remadevi v. State of Kerala*<sup>28</sup> was dissented in *Tehmina Qureshi's* case wherein it was held that, 'aggrieved person' under Section 12 of the Act can file application not only against adult male relatives

21. 2009 ALL MR (Cri) 2849.

22. Section 19(1)(b).

23. *Supra* note 20.

24. 2010 CRI LJ 2680.

25. 2010 CRI LJ 2462.

26. *Ibid.*, para 13, 14 and 19.

27. 2010 ALL MR (Cri) Journal 97.

28. I (2009) DMC 297.

including husband but also against any female relatives. Likewise the restricted view taken by Karnataka High Court in *Amruth Kumar's* case was again reiterated by it in *Smt. Leelavati v. Murgesh*<sup>29</sup>, wherein the Court held that, the *proviso* to Section 2 (q) cannot be construed that Parliament intended to expand the meaning and scope of the term 'respondent' so as to encompass even female relatives of the husband. If that were to be the intention, then the provision would have been clear and specific, worded in a different way.

Thus, there were contrary views taken by different High Courts while interpreting the term 'relative' under *proviso* to Section 2 (q) of the Act. It is to be remembered that the intent and purpose of the legislation has to be kept in view while interpreting the provisions contained in the Act, which has been primarily enacted to ameliorate the hardships that may be caused to hapless wives at the matrimonial homes.<sup>30</sup> Purposive interpretation is very much necessary for effective interpretation of the provisions of the Act. Finally, in *Sandhya Wankhade v. Manoj Wankhade*<sup>31</sup>, the Supreme Court settled the position of law under Section 2 (q) of the Act saying that, the Legislature never intended to exclude female relative of the husband from the ambit of a complaint that can be made under the Act. Although section 2 (q) defines 'respondent' to mean any adult male person, the *proviso* widens the scope of the said definition by including the relative of the husband. 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 being provided in the *proviso* that a complaint could also be filed against a relative of the husband. No restrictive meaning has been given to the expression 'relative', nor has the said expression been specifically defined in the Act, to make it specific to males only. The Court held that complaint by aggrieved person can be filed against female relatives of the husband. By relying on Supreme Court's decision in *Sandhya Wankhade's* case, in *Kusum Lata Sharma v. State*<sup>32</sup> the Delhi High Court has went further and held that, a mother who is being maltreated and harassed by her son would be an aggrieved person. If the said harassment is caused through female relative of the son, *i.e.*, his wife, said female relative will fall within the ambit of 'respondent'. Mother-in-law being an aggrieved person can file complaint against daughter-in-law as respondent. Thus the present legal position in relation to the term, 'relative' as mentioned in *proviso* to Section 2 (q) of the Act is as follow:

1. Female can be a respondent in a proceeding filed under Section 12 of the Act by an aggrieved person;
2. Whether a relief can be granted against female relative of husband or a male partner depend on the nature of the reliefs sought and facts and circumstances of the case;

29. 2011 ALL MR (Cri) Journal 18.

30. 2009 ALL MR (Cri) Journal 210.

31. 2011 CRI LJ 1687.

32. III (2011) DMC 1.

3. Residence order under Section 19 of the Act directing the respondent to remove himself from the share household cannot be passed against any person who is a woman;
4. Mother-in-law being an aggrieved person can file complaint against daughter-in-law.

