REPORTABLE

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

WP (Crl.) No. 638 of 2010

Reserved On: May 28, 2010.
% Pronounced On: June 03, 2010.

VARSHA KAPOOR **. . . Petitioner**

through : Mr. Arvind Jain with Mr. T.S. Chaudhary, Advocates.

VERSUS

UOI & ORS. **. . .Respondent**

through: Mr. A.S. Chandhiok, ASG with Mr. Pratap Singh Parmar and Mr. Puneet Khurana, Advocates for UOI.
Mr. Sanjeev Bhandari, Addl. S.C. (Crl.) for the respondent No.3/State.
Mr. Shashank Rai, Advocate for the respondent No.4.
Mr. Ravindra S. Garia, with Ms. Samridhi Sinha, Advocates for the interveners.

CORAM :-
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The petitioner herein is the mother-in-law of the respondent No.4. The respondent No.4 has instituted proceedings in the Court of Metropolitan Magistrate (Mahila Court South), New Delhi under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'DV Act'). In this application, the respondent No.4 has impleaded her husband as respondent No.1 and one Rakesh Dhawan as

respondent No.3. Her mother-in-law has been arrayed as the respondent No.2 (the petitioner herein). Allegations of domestic violence perpetrated by her husband and mother-in-law are levelled on the basis of which the respondent No.4 has sought protection order under Section 18, Residence Order under Section 19 and Monetary Relief under Section 20 as well as Compensation Order under Section 22 of the DV Act.

2. Notice in this Application filed by the respondent No.4 has been issued by the Mahila Court to all the respondents and the petitioner has also received the said notice in her capacity as respondent No.2/mother-in-law. On receipt of this notice, she has rushed to this Court by means of the present writ petition, as her contention is that being a lady, she cannot be impleaded as the respondent in the said proceedings. Her submission flows from Section 2(q) of the DV Act, which defines 'respondent'. Contention is that the said definition includes only 'adult male person'. It is also the case of the petitioner that in case proviso to Section 2 (q) is interpreted including 'female' also as the respondent, then such a provision is *ultra vires* the Constitution of India. We may add at this stage itself that though the prayer clause in the writ petition contains challenge to the vires of Section 2(q) of the DV Act as well, at the time of hearing, no arguments were advanced thereon.

3. Section 2 (q) of the DV Act reads as under:

> "2(q) "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."

4. In nutshell, the submission is that the main provision of Section 2 (q), which defines 'respondent', specifically states that it would mean any 'adult male person'. However, proviso to this provision which carves out specific category of 'aggrieved person' viz. a wife or a female living in a relationship in the nature of a marriage, it stipulates that complaint by such aggrieved wife or female can file a complaint against 'a relative of the husband or the male partner' as well. It is argued that the expression 'a relative' would be circumscribed by adult male person and therefore, such a relative as mentioned in the proviso could only be an adult male person and would not include a female relative.

5. The argument is premised on the following:

   (a) The preamble as well as object and reasons of the DV Act clearly demonstrates that the DV Act is passed to give redressal to females who suffer domestic violence at the hands of male persons. It is, thus, gender based violence, which is the focus of the DV Act. When purpose is to redress this gender based violence, the respondent, by necessary implication, can only be a male person, who subjects a woman to domestic violence. The learned counsel highlighted in this behalf that violence constitutes a major form and process of oppression of women. An understanding of gender reality over the years reveals how

violence has always been used as a means to subjugate women and keep them in a position of subordination. Gender based violence may take many different forms and there may be distinctive patterns or manifestations of gender violence associated with particular communities, cultures or regions and historical epochs. Gender violence is present in all societies; it is a structural phenomenon embedded in the context of culture, socio-economic and emotional dependency, the property of some male protector. Societies organized around gendered, hierarchical power relation give legitimacy to violence against women. Violence against women, like all other historical manifestation of violence, is embedded in the socio-economic and political context of power relations. It is produced within class, caste and patriarchal social relations in which male power dominates. A narrow definition of violence may define it as an act of criminal use of physical force. But this is an incomplete definition. Violence also includes exploitation, discrimination, upholding of unequal economic and social structures, the creation of an atmosphere of terror, threat, or reprisal and forms of religio-culture.

Thus, it is the submission of the learned counsel that when the object and purpose, which the legislature seeks to achieve is to provide mechanism for preventing domestic violence perpetrated by male persons, and is, thus, gender based, necessary corollary would be that the term 'a relative'

contained in the proviso would mean only 'adult male person' as respondent.

(b) Learned counsel proceeded to buttress his aforesaid submission by arguing that the main provision categorically limits the category of 'respondent' within the confines of 'adult male person'. Once that is the clear and categorical definition provided to the term 'respondent' in the main provision, the proviso has to take colour therefrom inasmuch as it cannot expand or limit the scope of the main provision. The petitioner has relied upon the judgment of the Supreme Court in the case of ***Dwarka Parsad*** Vs. ***Dwarka Das Saraf*** [AIR 1975 SC 1758], where following principle of law is laid down while interpreting a proviso:

> "…If on a fair construction, the principle provision is clear, a proviso canto expand or limit it. A proviso must be limited to the subject matter of the enacting clause. A proviso must *prima facie* be read and considered in relation to the principle matter to which it is a proviso. It is not a separate or independent enactment."

(c) Submission in the alternate, as pointed out above, was that if relative includes female, as per the proviso, then such a provision is *ultra vires* Article 15 (3) of the Constitution of India. It is argued that the said provision enables the Parliament to make law for the welfare of women and such a law cannot be for protection of one woman against other woman. Therefore, this provision would not withstand the concept of reasonableness and would be arbitrary and thus violative of Article 14and 15of the Constitution of India.

6. Mr. A.S. Chandhiok, learned ASG appeared for Union of India. Mr. Sanjeev Bhandari, ASC appeared for the respondent No.3/Govt. of NCT OF Delhi. Mr. Shashank Rai, learned counsel represented the respondent No.4 while Mr. Ravindra S. Garia, learned counsel appeared for interveners/NGO, which was allowed to intervene and make submission. All the counsel countered the submissions of the learned counsel for the petitioner.

7. The purpose with which the DV Act was enacted hardly needs to be emphasized. In fact, that is accepted even by the petitioner. The Statement of the Objects and Reasons of the Act states that:

> "Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and Beijing Declaration and Platform for Action (1955) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination 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. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under Section 498A of Indian Penal Code. However, the civil law does not address this phenomenon in its entirety. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution of India to provide for a remedy under civil law, which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society."

8. It is also accepted position between the parties that the Statue is a special benevolent piece of legislation aimed to provide for more effective protection of rights of women guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for matters connected

therewith or incidental thereto. It would not be out of place to mention at this stage itself that vires of the entire DV Act were challenged by means of a petition filed in this Court, which challenge was emphatically repelled. It happened in the case of ***Aruna Parmod Shah*** Vs. ***Union of Indian*** (Writ Petition (Crl.) No.425 of 2008). While dismissing challenge to the constitutionality of the aforesaid Act, the Division Bench of this Court made the following pertinent observations:

> "What Article 14 of the Constitution prohibits is 'class legislation' and not 'classification for purpose of legislation'. If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is twofold: (i) that the classification must be founded on intelligible differential which distinguishes persons grouped together from others who are left out of the group, and (ii) that differential must have a rational connection to the object sought to be achieved. Article 14 does not insist upon classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory; though due to some fortuitous circumstance arising out of (sic) peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment. In substance, the differential required is that it must be real and substantial, bearing some just and reasonable relation to the object of the legislation.
>
> Domestic Violence is a worldwide phenomenon and has been discussed in International for a, including the Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995). The United Nations Committee Convention on Elimination of All Forms of Discrimination against Women (CEDAW) has recommended that States should act to protect women against violence of any kind, especially that occurring within the family. There is a perception, not unfounded or unjustified, that the lot and fate of women in India is an abjectly dismal one, which requires bringing into place, on an urgent basis, protective and ameliorative measures against exploitation of women. The argument that the Act is *ultra vires* the Constitution of India because it accords protection only to women and not to men is therefore, wholly devoid of any merit. We do not rule out the possibility of a man becoming the victim of domestic violence, but such cases would be few and far between, thus not requiring or justifying the protection of parliament."

9. Keeping in mind that the DV Act has been held to be a valid piece of legislation giving power to the Parliament having regard to the provisions of Article 15 (3) of the Constitution which gives power to the Parliament to make such a law and thus, it is not *ultra vires* the legislative power of the Parliament, we proceed to determine the tow issues posed before us, viz., interpretation of Section 2(q) and constitutional validity thereof.

<u>Re: Interpretation of Section 2(q):</u>

10. The first task is to examine the scope of the definition of the term 'respondent' as defined in Section 2 (q), particularly proviso thereof which includes a relative of the husband or the male partner as well who could be the respondent. Discussion in this behalf has to start with the definition of 'aggrieved person' as provided under Section 2 (q) of DV Act inasmuch as it is that aggrieved person who is permitted to file application and initiate proceedings under various provisions of the Act. Section 2 (a) reads as under:

> "2(a) "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 respondent."

11. We would also take note of Section 12, 19 and 31 of DV Act as conjoint reading of all these Sections form the basis of redressal machinery provided to the aggrieved person in the scheme of the DV Act. These provisions read as under:

> "**12. Application to Magistrate.-** (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:

Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.

(2) The relief sought for under sub –Section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

Provided that where a decree for any amount as compensation or damages has been passed by any court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree, shall notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount, if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-Section (1) within a period of sixty days from the date of its first hearing.

19. Residence orders. – (1) While disposing of an application under sub-section (1) of Section 12, the Magistrate may, on being satisfied that domestic violence has taken place, pass a residence order-

(a) Restraining the respondent from dispossessing or in any other manner disturbing the possession of the aggrieved person from the shared household, whether or not the respondent has a legal or equitable interest in the shared household;

(b) Directing the respondent to remove himself from the shared household;

(c) Restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides;

(d) Restraining the respondent from alienating or disposing off the shared household or encumbering the same;

(e) Restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate; or

(f) Directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same if the circumstances so require:

Provided that no order under clause (b) shall be passed against any person who is a woman.

(2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.

(4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly

(5) While passing an order under sub-section (1), sub-section (2) or sub-section (3), the court may also pass an order directing the officer-in-charge of the nearest police station to give protection to the aggrieved pero0n or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), THE Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer5-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her *stridhan* or any other property or valuable security to which she is entitled to.

31. Penalty for breach of protection order by respondent.- (1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extent to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3)While framing charge under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions."

12. When we interpret the provisions of Section 2 (q) in the context of the aforesaid scheme, our conclusion would be that the

petition is maintainable even against a woman in the situation contained in proviso to Section 2(q) of the DV Act. No doubt, the provision is not very satisfactorily worded and there appears to be some ambiguity in the definition of 'respondent' as contained in Section 2 (q). The Director of Southern Institute for Social Science Research, Dr. S.S. Jagnayak in his report has described the ambiguity in Section 2(q) as "Loopholes to Escape the Respondents from the Cult of this Law" and opined in the following words:

> "As per Section 2 Clause (q) the respondent means any adult male person who is or has been in a domestic relationship. Hence, a plain reading of the Act would show that an application will not lie under the provisions of this Act against a female. But, when Section 19(1) proviso is perused, it can be seen that the petition is maintainable, even against a lady. Often this has taken as a contention, when ladies are arrayed as respondents and it is contended that petition against female respondents are not maintainable. This is a loophole which should be plugged."

13. But then, Courts are not supposed to throw their hands up in the air expressing their helplessness. It becomes the duty of the Court go give correct interpretation to such a provision having regard to the purpose sought to be achieved by enacting a particular legislation. This so expressed by the Supreme Court in the case of ***Ahmedabad Municipal Corpn. Anr.*** Vs. ***Nilaybhai R. Thakore & Anr.*** [(1999) 8 SCC 139 in the following words:

> "14. Before proceeding to interpret Rule 7 in the manner which we think is the correct interpretation, we have to bear in mind that it is not the jurisdiction of the court to enter into the arena of the legislative prerogative of enacting laws. However, keeping in mind the fact that the Rule in question is only a subordinate legislation and by declaring the Rule ultra vires, as has been done by the High Court, we would be only causing considerable damage to the cause for which the Municipality had enacted this Rule. **We, therefore, think it appropriate to rely upon the famous and oft-quoted principle relied by Lord Denning in the case of Seaford Court Estates Ltd. v. Asher [1994] 2 All ER 155 wherein**

> **he held : "When a defect appears a judge cannot simply fold his hand and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament and then he must supplement the written words so as to give 'force and life' to the intention of the Legislature.** A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out ? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases". This statement of law made by Lord Denning has been consistently followed by this Court starting in the case of M. Pentiah and Ors. v. Muddala Veeramallappa and Ors. : [1961]2SCR295 and followed as recently as in the case of S. Gopal Reddy v. Slate of Andhra Pradesh : 1996CriLJ3237 . Thus, following the above Rule of interpretation and with a view to iron out the creases in the impugned Rule which offends Article 14, we interpret Rule 7 as follows : "Local student means a student who has passed H.S.C./New S.S.C. examination and the qualifying examination from any of the High Schools or Colleges situated within the Ahmedabad Municipal Corporation limits and includes a permanent resident student of Ahmedabad Municipality who acquires the above qualifications from any of the High School or College situated within Ahmedabad Urban Development Area."

14. This Court also followed the aforesaid principles in the case of ***Star India P. Ltd.*** Vs. ***The Telecom Regulatory Authority of India and Ors.*** [146 (2008) DLT 445 (DB) in the following words:

> "28. It is also a firmly entrenched principle of interpretation of statutes that the Court is obliged to correct obvious drafting errors and adopt the constructive role of 'finding the intention of Parliament... not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it' as enunciated in State of Bihar v. Bihar Distillery Ltd.: AIR1997SC1511 . The Court should also endeavor to harmoniously construe a statute so that provisions which appear to be irreconcilable can be given effect to, rather than strike down one or the other. It must also not be forgotten that jural presumption is in favor of the constitutionality of a statute."

15. Having regard to the purpose which the DV Act seeks to achieve and when we read Section 2 (q) along with other provisions, out task is quite simple, which may in first blush appears to be somewhat tricky. We are of the considered view that the manner in which definition of 'respondent' is given

under Section 2(q) of DV Act, it has to be segregated into two independent and mutually exclusive parts, not treating proviso as adjunct to the main provision. These two parts are:

a) Main enacting part which deals with those aggrieved persons, who are 'in a domestic relationship'. Thus, in those cases where aggrieved person is in a domestic relationship with other person against whom she has sought any relief under the DV Act, in that case, such person as respondent has to be an adult male person. Given that aggrieved person has to be a female, such aggrieved person in a domestic relationship can be a mother, a sister, a daughter, sister-in-law, etc.

b) Proviso, on the other hand, deals with limited and specific class of aggrieved person, viz. a wife or a female living in relationship in the nature of marriage. First time by this legislation, the legislator has accepted live in relationship by giving those female who are not formally married, but are living with a male person in a relationship, which is in the nature of marriage, also akin to wife, though not equivalent to wife. This proviso, therefore, caters for wife or a female in a live in relationship. In their case, the definition of 'respondent' is widened by not limiting it to 'adult male person' only, but also including 'a relative of husband or the male partner', as the case may be.

> What follows is that on the one hand, aggrieved persons other than wife or a female living in a relationship in the nature of marriage, viz., sister, mother, daughter or sister-in-law as aggrieved person can file application against adult male person only. But on the other hand, wife or female living in a relationship in the nature of marriage is given right to file complaint not only against husband or male partner, but also against his relatives.

16. Having dissected definition into two parts, the rationale for including a female/woman under the expression 'relative of the husband or male partner' is not difficult to fathom. It is common knowledge that in case a wife is harassed by husband, other family members may also join husband in treating the wife cruelty and such family members would invariably include female relatives as well. If restricted interpretation is given, as contended by the petitioner, the very purpose for which this Act is enacted would be defeated. It would be very easy for the husband or other male members to frustrate the remedy by ensuring that the violence on the wife is perpetrated by female members. Even when Protection Order under Section 18 or Residence Order under Section 19 is passed, the same can easily be defeated by violating the said orders at the hands of the female relatives of the husband.

17. It is not even necessary to proceed on the aforesaid assumptions. Various provisions in the DV Act, provide for clinching the circumstances indicating that female relative was

clearly in the mind of the legislature when it comes to filing of the complaint/application by a wife or a female living in a relationship in the nature of marriage, as contemplated in proviso to Section 2(q). These provisions are Section 19, 21 and 31 of the DV Act. The wordings of Section 19 of the DV Act makes it clear that the section provides for disposal of applications made under sub-section (1) of Section 12 by the Magistrate. Under Sub-section (1) of Section 19, the Magistrate can pass any order against a female person other than the orders under Clause (b). Whereas proviso to Sub-section (1) of Section 19 puts a bar on the power of the Magistrate for passing an order against any person who is a woman under Section 19(1)(b). In other words, except residence order under Section 19(1)(b), it is competent for the Magistrate to pass orders against the relatives of the husband including a female person under Section 19(1)(c) i.e., restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides. For example, if the aggrieved person along with husband resides in a house owned by joint family including the presents of the respondent, his brothers and sisters, if any whether or not the respondent has no legal or equitable interest or title in the shared household, he can be restrained form dispossessing the aggrieved person. Further, under Sub-section (8) of Section 19, if an aggrieved person was provided with residential house towards her *Stridhan*, property or valuable security, namely, gold jewellery etc., which was in possession of the female member of the husband. Section 21

of the Act deals with grant of temporary custody of any child or children to the aggrieved person or the person making an application on her behalf and specifies necessary arrangements for visit of such child or children by the respondent. For instance, if the children are under the custody of mother-in-law of an aggrieved person, if we give a restricted meaning to Section 2(q), no such order can be passed for giving temporary custody of the child against a female relative of the husband, i.e., father, mother who are residing jointly.

18. Another provision, viz., Section 31 of the DV Act would also lead us to the same answer. This exercise has already been undertaken by the Division Bench of the Kerala High Court in the case of ***Vijayalekshmi Amma*** Vs. ***Bindu*** [2010(1) KLT 79] in the following words:

> "8. It is to be borne in mind that Sub-section (1) of Section 31 only provides that a breach of protection order or of an interim protection order, by the respondent shall be an offence under the Act and shall be punishable with the sentence provided therein. Section 32 provides for cognizance and proof of the offence. Under Sub-section (1) notwithstanding anything contained in the Code of Criminal Procedure, the offence under Sub-section (1) of Section 31 shall be cognizable and non-bailable. Under Sub-section (2) of Section 32, upon the sole testimony of the aggrieved person, the court may conclude that an offence under Section 31(1) has been committed by the accused. Under Sub-section (1) of Section 31 it is only the breach of a protection order under Section 18 or an interim protection order under Section 23 which is made punishable. As is clear from Sub-section (1) of Section 31, such breach shall be by the "respondent". Therefore unless the "respondent" could be a female person, an offence cannot be committed by breach of such an order by a female person. If that be so, the complaint provided under proviso to Clause (q) of Section 2, cannot be a complaint as interpreted by the learned Judge, as it is an impossibility because if a female person cannot be a respondent as defined under Section 2(q), no protection order under Section 18 or interim protection order under Section 23 could be passed against the female person and in that case the proviso enabling filing of a complaint against the female relative of the husband would be redundant. If that be so, it could only be taken that the complaint provided

> in the proviso to Clause (q) of Section 2 is the application filed under Section 12, though inadvertently an application is referred in the Section as complaint. A learned single Judge of this Court in Remadevi v. State of Kerala 2008 (4) KLT 105 has taken an identical view that respondent as defined under Section 2(q) could also be a female person. It cannot be said that proceedings under Section 12 cannot be initiated against a female person."

19. It is also well-recognized principle of law that while interpreting a provision in statute, it is the duty of the Court to give effect to all provisions. When aforesaid provisions are read conjointly keeping the scheme of the DV Act, it becomes abundantly clear that the legislator intended female relatives also to be respondents in the proceedings initiated by wife or female living in relationship in the nature of marriage.

20. If the proviso is not construed independently, in the manner we have explained above and the meaning of the term 'respondent' is restricted only to the male persons while construing the expression 'a relative of the husband or male person', then the aforesaid provisions contained in Sections 19 and 31 shall be rendered obtuse. This is not contemplated under the scheme of the DV Act and would be contrary to well-settled principle of interpretation. In ***Bhavnagar University*** Vs. ***Palitana Sugar Mill Pvt. Ltd. and Ors.*** (AIR 2003 SC 511), the Apex Court categorically laid down that the legislature does not use any word unnecessarily. Every word or expression used in a stature ha a meaning, a reason and it cannot be devoid from its reason. Interpreting the statute without reason underlying it would be like "body without a soul". We may also usefully quote the following observations of the Supreme Court in the case of ***Utkal Contractors and***

Joinery Pvt. Ltd. and Ors. Vs. ***State of Orissa and Ors.*** [(1987) 3 SCC 279]:

> "…A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its interpretation. The words of a statue take their colour from the reason for it."

21. The Single Bench of Madhya Pradesh High Court in the case of ***Ajay Kant and Ors.*** Vs. ***Alka Sharma*** [2008 CrilJ 264] does not at all discuss the aforesaid provisions of the DV Act and parameters with which such a statute to be interpreted. We, therefore, are not in agreement with the aforesaid view of MP High Court. Apart from solitary view of Madhya Pradesh High Court, all other High Courts which have dealt with this issue have taken the view, which we have advanced in this judgment. The learned counsel for the petitioner had referred to the judgment rendered by the Single Bench of Madras High Court in the case of ***Uma Narayanan*** Vs. ***Priya Krishna Prasad*** [(2008) 3 MLJ 756]. However, this judgment has since been overruled by its Division Bench in the case of ***S. Meenavathi*** Vs. ***Senthamarai Selvi*** (Crl. O.P. (MD) No.12092/2008) and ***R. Nivenran and Ors.*** Vs. ***Nivashini Mohan @ M. Nivashini*** (Crl. O.P. No.24598/2008). The Division Bench of Kerala High Court has also taken the same view in ***Vijayalekshmi Amma*** (supra) has already been pointed out above. The Rajasthan High Court in the case of ***Nand Kishore*** Vs. ***State of Rajasthan*** [RLW 2008 (4) RAJ 3432] and ***Sarita (Smt.)*** Vs. ***Smt. Umarao*** [2008 (1) WLN 359], Andhra Pradesh High Court in ***Afzalunnisa Begum*** Vs. ***State of A.P.*** [2009 Crl.LJ 4191] and Gujarat High Court in

the case of ***Jaudipsinh Prabatsinh Jhala and Others*** [(2010) 51 GLR 635] have also given the same interpretation.

22. We, thus, hold that the expression 'a relative' in proviso to Section 2(q) includes a female relative as well.

Re: Constitutional Validity of Section 2(q):

23. This brings us to the last leg of petitioner's submission, viz., whether such a provision would be unconstitutional. As pointed out above, submission of the learned counsel for the petitioner was that the DV Act is enacted to protect women at the hands of men, therefore, a woman cannot be respondent in a petition filed by another woman. We are afraid there is hardly any merit in the argument. We have already pointed out above that Section 2 (q) has provided two classes of aggrieved persons. Main provision deals with those, who are in a 'domestic relationship' with the respondent whereas proviso deals with aggrieved wife or a female in live-in relationship. Insofar as the latter category is concerned, the legislature in its wisdom, has widened the scope of 'respondent' by including male as well as female relatives of the husband or male partner also. Rationale for this is not far to seek.

24. No doubt, when we talk of domestic violence against women, it may include all women in legal relationship. The Declaration on illumination of discrimination is as under:

> "Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement

> of women, and that violence against women is one of the crucial social mechanisms by which women are forced into s subordinate position compared with men.
>
> - Declaration on Elimination of Violence against Women, 1993."

At the same time, it is also well-known that most of the time, it is the wife which becomes the target and subject matter of such domestic violence. Apart from many other reasons, most prevalent cause is the dowry. The Parliament in India has been enacting statutes from time to time in order to curb this menace. Dowry Provision Act, 1961 was enacted, which identifies dowry as social evil and giving and taking dowry was prohibited by law. Human rights activities feel that demand for dowry reflects the degraded women in the society. It is the negation of women's human rights including their right to equality. It also becomes main cause of domestic violence targeting women bringing insufficient dowry at the time of marriage. Though the intention was to eliminate, or at least curb the dowry system continued (and continues till date) in spite of the said Act having passed half a century ago. It even leads to what is commonly described as "dowry death". The fact that the violence exists in the matrimonial home, the legislature made dowry related violence as criminal offence by introducing Section 498A IPC in the year 1983. Significantly, constitutional validity of Section 498A was upheld by the Supreme Court in the case of ***Sushil Kumar Sharma*** Vs. ***Union of India and Others*** [AIR 2005 SC 3100]. Within three years, Section 304B IPC was introduced, which made the unnatural death of a woman in the matrimonial home, within seven years of marriage, an offence, if it could be shown that

she was subjected to cruelty immediately before her death. There have been voices that Section 498A is misused. Fact also remains that dowry related crimes still continue to occur. At times, female relatives of the husband are also actively involved.

25. Since invoking criminal machinery under Section 498A IPC has serious ramifications, need was felt to have civil law on domestic violence inasmuch as there was no law enabling the Court to give protection order to give monetary relief in case women go to Court complaining violence. In order to provide such remedies, DV Act has been enacted. It is in this backdrop, we have to appreciate that married women (i.e. wives) are given rights to agitate their grievances against wide spectrum of respondents under proviso to Section 2(q) of the DV Act, with attempt to put an end to domestic violence and at the same time saving matrimonial home, which was not possible under the remedies provided in criminal law and there was no such provision under the existing Family Laws. When this was the lacuna in law sought to be plugged by passing the DV Act and the purpose was to remove the said mischief, leaving family relatives of a husband or a male partner out of purview of the 'respondent' would negate the purpose for which the DV Act is passed. Therefore, even the mischief rule of interpretation, commonly known as Heyden's Rule squarely becomes applicable, which persuades us to provide that construction to the provision which shall suppress the mischief, and advance the remedy, and to suppress subtle

inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico* (see ***Bengal Immunity Co.*** Vs. ***State of Bihar,*** AIR 1955 SC 661).

26. We, therefore, are of the opinion that a wife or a female living in a relationship in the nature of marriage belongs to "a well defined class". The legislation passes the test of permissible classification as both the conditions stand satisfied, viz., (i) classification is founded on intelligible differentia; and (ii) differential as a rational relation to the objective sought to be achieved by the statutes, i.e., DV Act.

27. It, therefore, cannot be treated as irrational or arbitrary provision, which would render it violative of Article 14 of the Constitution. Following observations of the Supreme Court in case of ***State of A.P.*** Vs. ***Nallmillin Rami Reddi*** [AIR 2001 SC 3616] would justify the permissibility of the aforesaid classification:

> "What Article 14 of the Constitution prohibits is 'class legislation' and not 'classification for purpose of legislation'. If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is twofold: (i) that the classification must be founded on intelligible differential which distinguishes persons grouped together from others who are left out of the group, and (ii) that differential must have a rational connection to the object sought to be achieved. Article 14 does not insist upon classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory; though due to some fortuitous circumstance arising out of (sic) peculiar situation some included in a class get an advantage over others so long as they are not singled out for special treatment. In substance, the differential required is that it must be real

> and substantial, bearing some just and reasonable relation to the object of the legislation."

28. Merely because amplitude of 'respondent' in a case where a wife or female living in a relationship akin to marriage initiates the proceedings is widened, would not be a ground to hold that such a provision is 'ultra vires'. Fallacy in the argument of the learned counsel for the petitioner is that he is seeking to compare the two categories of 'aggrieved persons'; one provided in the main provision of Section 2(q) and other in proviso thereto. No doubt, the scope of the 'respondent' is restricted in the former category of cases. However, if at all that would be a cause of grievance by those aggrieved persons falling in the first category. The petitioner cannot be permitted to take such plea thereby putting at naught the more benevolent provision in the legislation in respect of a wife or a female living in a relationship in the nature of marriage.

29. For centuries, jurists and legal scholars have debated about the functions of law, viz., why do we need law, and what does it do for society? More specifically, what functions does the law perform? Though there may not be unanimity amongst the scholars of law on the precise functions, it is widely recognized that the recurring theme of law includes; (i) social control, (ii) disputes settlement and (iii) social engineering. Though there are many methods of social control, law is considered one of the forms of former social control by prescribing social norms within which individuals/members of the society have to behave. Likewise, law discharges the functions of disputes settlement, i.e., disputes are settled by

application of the law of land providing for legal rights and obligations. Apart from these, many scholars are of the view that principal function of law in modern society is social engineering (with which we are concerned here). It refers to purposive, application and direct social change initiated, guided and supported by law. Roscoe Pound captures the essence of this function of law when he states:

> "For the purpose of understanding the law of today, I am content to think of law as a social institution to satisfy social wants – the claims and demands involved in the existence of civilized society – by giving effect to as much as we need with the least sacrifice, so far as such wants may be satisfied or such claims give effect by an ordering of human conduct through politically organized society. For present purposes I am content to see in legal history the record of a continually wider recognizing and satisfying of human wants or claims or desires through social control; a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of the goods of existence – in short, a continually more efficacious social engineering. (1959:98-99)."

30. Though it will remain a matter of never ending debate as to whether law brings social change or social changes in society brings law (i.e. whether law "leads" change or "follows" change), it has to be accepted that many times laws are passed to ensure normative changes in the society. Abolition of *Sati Pratha* by an appropriate enactment is a sterling example. In broad terms, "change" is of two types: continuous or evolutionary and discontinuous or revolutionary. The most common form of change is continuous. This day-to-day incremental change is a subtle, but dynamic, factor in social analysis.

31. The journey from enacting Dowry Prohibition Act, 1961 to Amendment in IPC by incorporating Section 498A and 304B to

the passing of DV Act is aimed at bringing desirable and much needed social change in this particular sphere. Therefore, Courts are required to give an interpretation which subserves the aforesaid purpose with which the law is enacted. The contention advanced by the petitioner, which negates the right given to women by this legislation has to be eschewed.

32. We, thus, find no merit in this writ petition and dismiss the same. No order as to costs.

(A.K. SIKRI)
JUDGE

(AJIT BHARIHOKE)
JUDGE

JUNE 03, 2010.
pmc