

**EVOLUTION OF THE TERM 'RESPONDENT' UNDER
THE DOMESTIC VIOLENCE ACT: A CRITICAL
ANALYSIS**

**DISSERTATION SUBMITTED IN PART FULFILMENT FOR THE
REQUIREMENT OF THE DEGREE OF LL.M.**

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DECLARATION BY THE CANDIDATE

I, DIMPLE PAREEK, do hereby declare that the dissertation titled “**Evolution of the term ‘Respondent’ under the Domestic Violence Act: A critical analysis**” is based on original research undertaken by me and it has not been submitted in any University for any Degree or Diploma.

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This is to certify that the work reported in the LL.M. dissertation entitled “**Evolution of the term ‘Respondent’ under the Domestic Violence Act: A critical analysis**”, submitted by **Ms. Dimple Pareek** at **School of Law, Galgotias University** is a bonafide record of her original work carried out under my supervision and guidance. This work has not been submitted elsewhere for any other degree or diploma.

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DIMPLE PAREEK

LIST OF ACRONYMS & ABBREVIATIONS

1.	A.	Article
2.	AIR	All India Reporter
3.	Anr.	Another
4.	Bom	Bombay
5.	Cal	Calcutta
6.	Cri/ CrI	Criminal
7.	CrI. A.	Criminal Appeal
8.	CrI. M. C	Criminal Miscellaneous Petition
9.	CrI. O. P	Criminal Original Petition
10.	CRWP	Criminal Writ Petition
11.	CRR	Criminal Revision
12.	Del	Delhi
13.	DLT	Delhi Law Times
14.	DV Act	Domestic Violence Act
15.	Ed.	Edition
16.	E.g.	Example
17.	Etc.	Et Cetera
18.	GJ	Gujarat
19.	Hyd	Hyderabad
20.	I.e.	That is
21.	Kar	Karnataka
22.	Mad	Madras
23.	MANU	Manupatra
24.	No.	Number
25.	Ors.	Others
26.	Para	Paragraph
27.	POSH	The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act
28.	S.	Section
29.	SBI	State Bank of India
30.	SC	Supreme Court
31.	SCC	Supreme Court Cases
32.	Supp	Supplementary

33.	U.P	Uttar Pradesh
34.	v.	Versus
35.	Vol.	Volume
36.	WP	Writ Petition
37.	&	And

TABLE OF STATUTES

1860-The Indian Penal Code

1950-The Constitution of India

1973-The Code of Criminal Procedure

2005-The Protection of Women from Domestic Violence Act

2005-The Hindu Succession (Amendment) Act

2013-Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act

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2.	A.K. Gopalan v. State of Madras, AIR 1950 SC 27.
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14.	Krishna Bhattacharjee v. Sarathi Choudhary, (2016) 2 SCC 705.
15.	Kusum Lata Sharma v. State & Anr., (Crl. M.C. No. 75 of 2011).
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17.	K. Thimmappa v. Chairman, Central Board of Directors, SBI, AIR 2001 SC 467.
18.	Lachhman Dass v. State of Punjab, AIR 1963 SC 222.
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33.	Smt. Menakuru Renuka & Ors. v. Smt. Menakuru Mona Reddy, 2009 (3) Crimes 473 (AP HC).
34.	S. R. Batra v. Smt. Taruna Batra, (2007) 3 SCC 169.
35.	State of Bombay v. Balsara, AIR 1951 SC 318.
36.	State of U.P. v. Deoman Upadhyaya, AIR 1960 SC 1125.
37.	State of W.B. v. Union of India, AIR 1963 SC 1241.
38.	Varsha Kapoor v. Union of India, 2010 SCC Online Del 2213.
39.	Vijayalekshmi Amma v. Bindu, CrI. M.C. No. 2225 of 2009.
40.	V. D. Bhanot v. Savita Bhanot, AIR 2012 SC 965.
41.	West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75.

TABLE OF CONTENT

CHAPTER	TITLE	PAGE NO.
	DECLARATION BY THE CANDIDATE	ii
	SUPERVISOR'S CERTIFICATE	iii
	ACKNOWLEDGMENT	iv
	LIST OF ACRONYMS & ABBREVIATIONS	v-vi
	TABLE OF STATUTES	Vi
	LIST OF CASES	vii-viii
1.	INTRODUCTION	1
1.1.	ABSTRACT	2
1.2.	AIM(S)	2
1.3.	OBJECTIVE(S)	2
1.4.	REVIEW OF LITERATURE	2-4
1.5.	RESEARCH PROBLEM	4
1.6.	RESEARCH HYPOTHESIS	5
1.7.	RESEARCH QUESTION(S)	5
1.8.	SCOPE(S) AND LIMITATION(S) OF STUDY	5
1.9.	RESEARCH METHODOLOGY	5
1.10.	CHAPTERIZATION	6
2.	RELEVANT LEGAL PROVISIONS INVOLVED IN THE STUDY	7-13
2.1.	AGGRIEVED PERSON	7
2.2.	DOMESTIC RELATIONSHIP	8
2.3.	DEFINITION OF DOMESTIC VIOLENCE	9
2.4.	TYPES OF DOMESTIC ABUSE	10
2.4.1.	PHYSICAL ABUSE	10
2.4.2.	SEXUAL ABUSE	11
2.4.3.	VERBAL AND EMOTIONAL ABUSE	11
2.4.4.	ECONOMIC ABUSE	11
2.5.	RESPONDENT	11-12
2.6.	SHARED HOUSEHOLD	13

3.	HIRAL P. HARSORA AND ORS. v. KUSUM NAROTTAMDAS HARSORA AND ORS. (2016)- A CASE STUDY	14-31
3.1.	FACTS	14
3.2.	ISSUE(S)	15
3.3.	LAWS APPLICABLE	16
3.4.	HOLDING	16-17
3.5.	RATIONALE	18
3.5.1.	OBJECT SOUGHT TO BE ACHIEVED BY THE DOMESTIC VIOLENCE ACT	18-28
3.5.2.	COMPARING LAWS WITH SIMILAR OBJECTIVE	28-29
3.5.3.	DOCTRINE OF SEVERABILITY	30
3.5.4.	DOCTRINE OF READING DOWN	31
3.5.5.	DOCTRINE OF REASONABLE CLASSIFICATION	31
4.	‘RESPONDENTS’ UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005	34-48
4.1.	BEFORE 2016	34
4.1.1.	SMT. MENAKURU RENUKA AND OTHERS v. SMT. MENAKURU MONA REDDY	34-35
4.1.2.	SANDHYA WANKHEDE v. MANOJ BHIMRAO WANKHEDE	35-37
4.1.3.	VARSHA KAPOOR v. UNION OF INDIA & ORS.	37-42
4.1.4.	VIJAYALEKSHMI AMMA v. BINDU	43-44
4.1.5.	KUSUM LATA SHARMA v. STATE & ANR.	4-45
4.2.	AFTER 2016	45
4.2.1.	MOH. ZAKIR v. SHABANA & ORS.	46
4.2.2.	SASWATI SINHA (MUKHERJEE), IN RE	46-47
4.2.3.	SHWETA MAHESWARI v. SMT. POOJA MAHESHWARI	47-48
5.	AN ANALYSIS OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005	50-53
6.	IMPLEMENTATION OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005- AN EMPIRICAL STUDY	54-89
6.1.	RESULTS OR FINDINGS	55-86

6.2.	SUMMARY OF THE FINDINGS	86-89
7.	CONCLUSION AND SUGGESTION(S)	90-92
A.	CONCLUSION	90-91
B.	SUGGESTION(S)	91-92
	BIBLIOGRAPHY	93-94
	Books	93
	Statutes	93
	International Instruments/ Conventions	93
	Reports	93
	Journals	93
	Articles	94
	Websites	94
	APPENDICES	95-131
	Annexure-I (Questionnaire)	95-97
	Annexure-II (Copy of the landmark judgment)	98-131

CHAPTER-1

INTRODUCTION

The act of Domestic abuse against women has been an in-escapable social evil which exist in our society. It not only inflicts physical pain on women but also drains her emotionally and economically. To protect the rights of women, Section 498A of the Indian Penal Code, 1860 was introduced in Indian Criminal Justice System. However, no civil remedy existed in case of domestic violence against woman. Hence, in 2005, the Protection of Women from Domestic Violence Act was enacted. This was the first step of the Indian Parliament towards providing legitimate cures for protecting the rights of women under both civil and criminal law of India.

The dissertation dives into the complexities of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the Domestic Violence Act, the Act or DV Act) , and its implementation, by particularly focusing on the term ‘Respondent’ as provided under Section 2(q) of the Act . A comprehensive analysis has been done with the help of relevant legal provisions of the Act, judicial pronouncements and empirical findings. The paper aims to shed light on the evolving discourse surrounding the application of the Act and its affect on ensuring the protection of women from domestic abuse .

The paper begins by outlining the aims, objectives, scope(s), limitation, research questions etc., thereby, setting up a vigorous establishment for the consequent chapters. It then delves into the important legal provisions of the Act, like, aggrieved person, domestic relationship, shared household, domestic violence etc, which are necessary to understand the meaning of the term ‘Respondent’.

A detailed analysis of the landmark judgment *Hiral P. Harsora & Ors. v. Kusum Narottamdas Harsora & Ors.*, (2016) passed by the Supreme Court, is presented, which explores the evolution, application and interpretation of the term ‘Respondent’; along with other judicial pronouncements passed by various Courts of India, before and after, the landmark judgment was passed by the Supreme Court in 2016; highlighting the shift in judicial perspectives.

Moreover, the paper comprehensively examines the Act, evaluating its strengths, limitations and potential areas for improvement. The analysis is supplemented with an empirical study which examines the implementation of the Act, awareness amongst women belonging to different age groups regarding the provisions of the Act, and sheds light on the challenges confronted, and the effectiveness of the measures taken to ensure the protection of women from domestic abuse.

Lastly, the paper winds up with a synthesis of findings, interpretations, recommendations, and conclusion, offering valuable insights for the policy makers, legal researchers, legal practitioners, and other people

belonging to the socio-legal background, who work towards eradicating or protecting women from domestic abuse.

1.1 ABSTRACT

The act of Domestic abuse has been a major area of concern in India for centuries. As a result, The Protection of Women from Domestic Violence Act was enacted in 2005. However, some crucial changes have been brought about by various judicial pronouncements over the period of time. This study aims to analyze the application and interpretation of Section 2(q) of the Protection of Women from Domestic Violence Act, 2005 ; before and after the landmark judgment of Hiral P. Harsora and Ors. v. Kusum Narottamdas Harsora and Ors. was passed by the Hon'ble Supreme Court in 2016. Furthermore, data has been collected from 85 women belonging to different age groups to analyze their understanding about the rights and remedies available under the Domestic Violence Act.

Keywords: Domestic Violence, Hiral P. Harsora, Section 2(q) of the DV Act etc.,

1.2 AIM(S)

The study aims to analyze the application and interpretation of Section 2(q) of the Protection of Women from Domestic Violence Act, 2005 before and after the landmark judgment of *Hiral P. Harsora and Ors. v. Kusum Narottamdas Harsora and Ors.* was passed by the Hon'ble Supreme Court. The aim is also to conduct a small survey to find out whether there is lack of awareness amongst women regarding the rights and remedies available under the Act.

1.3 OBJECTIVES

The objectives of the study are as follows-

- To outline the relevant legal provisions related to Respondent under the Protection of Women from Domestic Violence Act, 2005 ;
- To analyze the landmark judgment of *Hiral P. Harsora and Ors. v. Kusum Narottamdas Harsora and Ors.* ;
- To trace the application and interpretation of Section 2(q) of the Domestic Violence Act, before and after the landmark judgment was passed, with the help of judicial pronouncements;
- To conduct a survey on women belonging to different age groups on awareness regarding the rights and remedies provided under the Domestic Violence Act.

1.4 REVIEW OF LITERATURE

The majorly used sources by the Researcher for this Research is the legislation i.e. Protection of Women from Domestic Violence Act, 2005 ; various judicial pronouncements including the landmark judgment of *Hiral*

P. Harsora and Ors. v. Kusum Narottamdas Harsora and Ors. , and an empirical study. However, to explore the areas on which the work has already been done, the following works of literature has been referred to:

Ilze and Sulina¹, have discussed different types of domestic violence in their research paper which includes physical, emotional, economic, and sexual abuse. According to their findings, many of the women suffer from all four types of domestic abuse throughout their lifetime. Therefore, they suggested further Research on domestic violence, to gain more information regarding the victims and perpetrators of domestic abuse to end the cycle of violence.

Prifti², has focused on some serious disagreements regarding the definition of domestic violence in her well-written dissertation. According to her, there is a misconception among people that domestic violence only includes physical abuse. She states that since there is no awareness regarding the seriousness of the crime, more attention is laid on physical abuse and the other types are ignored, which is a failure on the part of the authorized people who are bound to work on this. There is a failure on the part of the social agencies; thereby contributing more towards the offence of domestic violence.

Zayaan³, in his article *Indian Constitutional law and philosophy* talks about the misinterpretation of the landmark judgment of *Hiral P. Harsora and Ors. v. Kusum Narottamdas Harsora and Ors.* .. He states how a Judicial Magistrate misinterpreted the landmark judgment and allowed a man to file a complaint against a woman. The Hon'ble Court in the landmark judgment only allowed a woman to file an independent complaint against another woman and did not make the whole legislation gender-neutral. Such kind of erroneous action on the part of a Judicial Magistrate shows the lack of Research in this area.

In a study conducted by **CLAP-Legal Service Institute**⁴ on the status of implementation of the Protection of Women from Domestic Violence Act in the State of Orissa, their findings suggested that even though Section 11 of the Act talks about the duties of the Government to spread awareness to the general public about the legislation by every means; there is lack in implementation of the same. As a result, the victims of domestic violence sometimes do not know that they are being victimized .

¹ Ilze Slabbert & Sulina Green, *Types of domestic violence experienced by women in abusive relationships* (2014), SOCIAL WORK/MAATSKAPLIKE WERK, Vol. 49, last visited on https://www.researchgate.net/publication/275603573_Types_of_domestic_violence_experienced_by_women_in_abusive_relationships/citation/download .

² Fevronia Prifti, *Domestic Violence from a socio-legal perspective: A critical analysis of the criminal justice response to domestic violence* (2020), last visited on <https://www.diva-portal.org/smash/record.jsf?pid=diva2%3A1451159&dswid=-6472> .

³ Mohammad Zayaan, *Misinterpreting Harsora-Male Complainants and the Domestic Violence Act* (2022), last visited on <https://indconlawphil.wordpress.com/tag/article-14-2/> .

⁴ *A study on the status of implementation of Protection of women from domestic violence Act, 2005 in Orissa*, OXFAM INDIA, last visited on <https://www.clapindia.org/pdf/Research%20Report%20on%20DV%20Act%202005.pdf> .

Madaan⁵, in his book *Teaching and Research Aptitude* has beautifully explained Research Aptitude under chapter-2. It defines Research; the different approaches to Research; the methods used to conduct the Research; the steps/ styles/ format of a Research and referencing. This book has proved to be extremely important for the Researcher in writing and understanding Research Methodology.

Bekteshi, Miller and others⁶, in their Journal Article has discussed how the cases of domestic violence increased in India during the times of COVID-19 . That how women lacked social support during those times and their vulnerabilities increased as convicted prisoners of domestic abuse were released from prison. They further discuss how various governmental and non- governmental organizations worked together for this issue, but couldn't do much because of limited resources and lack in implementation of the rescue programmes.

Das and Lakshmana⁷, in their Journal Article has discussed how patriarchy is the primary cause of the incidents of domestic violence in India. That there are laws to empower them with rights and remedies. Yet, The Domestic Violence Act, 2005 fails to do so because of State-wise policies; such as delay in passing of rules and budget. They further discuss how because of unclear directions to the various stakeholders involved in the implementation of the Act, the rules and regulations have become less effective . That there is an urgent need to strengthen the Act to fulfil the objects sought to be achieved by the legislature.

Simister and Makowiec⁸, in their Journal Article, conducted a survey on women belonging to different age groups, in 26 Indian States. Their focus was only on studying and analyzing the act of domestic violence between husband and wife . After conducting the Research, they formed a conclusion that domestic violence is less common where both the parties are fairly educated. They proved their hypothesis that the phenomenon of domestic violence is very much related to the education of the Respondent. Thereby, suggesting the Government to provide effective education to both men and women.

1.5 RESEARCH PROBLEM

The present study is intended to focus on a landmark judgment that changed the meaning of the term 'Respondent' under the Domestic Violence Act, overnight. The judgment *Hiral P. Harsora and Ors. v. Kusum Narottamdas Harsora and Ors.* was passed in the year 2016 which struck down the term 'any adult male person' from Section 2(q); making it possible to include women and minors as independent respondents under the Act. However, the transformation of the provision and its application has not been widely discussed or talked about.

⁵ K V S Madaan, *Teaching and Research Aptitude*, 7th ed., PEARSON PUBLICATION, 2023.

⁶ Venera Bekteshi, Christina Miller et al, *Increased Violence during COVID-19 Pandemic- India's response*, DEVELOPMENT POLICY REVIEW, 42(2), e12749, (2024), last visited on <https://doi.org/10.1111/dpr.12749>.

⁷ Anamika Das and C.M. Lakshmana, *The implementation of Domestic Violence Act in India: A State level analysis*, WORKING PAPERS (2020), last visited on <https://ideas.repec.org/p/sch/wpaper/499.html>.

⁸ John Simister and Judith Makowiec, *Domestic Violence in India: Effects of Education*, INDIAN JOURNAL OF GENDER STUDIES (2008), 15(3), last visited on <https://journals.sagepub.com/doi/10.1177/097152150801500304> .

With the help of doctrinal and non-doctrinal methods of research, the idea is to study the landmark judgment and trace the application of Section 2(q) of the Domestic Violence Act, before and after the judgment was passed, with the help of various judicial pronouncements. The idea is to conduct a small survey within women belonging to different age group, to understand whether they have proper knowledge about the law and the changes related to it or not! The key assumption behind the whole study is that even after having a law to protect women from domestic violence and even after bringing various changes into it, many people are still unaware of the fact that under the Protection of Women from Domestic Violence Act, 2005; an independent complaint can be filed against a woman and a minor.

1.6 HYPOTHESIS

There has been a notable evolution in the interpretation and application of Section 2(q) of the Domestic Violence Act, before and after the landmark judgment of *Hiral P. Harsora and Ors. v. Kusum Narottamdas Harsora and Ors.*, was passed by the Hon'ble Supreme Court .

1.7 RESEARCH QUESTIONS

- What are the relevant legal provisions related to “Respondent” under the Domestic Violence Act, 2005?
- How did the landmark judgment of *Hiral P. Harsora* contribute to the evolution of the term ‘Respondent’ under the Act?
- How has the interpretation and application of Section 2(q) of the Domestic Violence Act, been altered with the passage of time?

1.8 SCOPE(S) AND LIMITATION(S) OF THE STUDY

The scope of the study is to understand the changes brought about in the implementation of the provisions of the Domestic Violence Act, 2005 after the landmark judgment of *Hiral P. Harsora and Ors. v. Kusum Narottamdas Harsora and Ors* was passed in the year 2016. The idea is to collect data to reach to a final conclusion on the hypothesis so formed but it is limited to digital survey in the locality of Sector-76, Noida in the district of Gautam Buddh Nagar.

1.9 RESEARCH METHODOLOGY

A Research is a systematic and logical process, wherein one needs to dive into facts and the existing data, with the help of the available resources, so as to gain an advanced knowledge for understanding things better; and reach to a conclusion, keeping in mind all the errors and limitations attached with the process.

In writing the dissertation, the Researcher has used both doctrinal and empirical kind of research methods. Doctrinal research is purely based on doctrines; whereas empirical research is based on the observation or direct experience of the Researcher. Empirical Research is basically a research based on real life experiments or experiences to find a result of the hypothesis so formed.

On the basis of Objectives, this research is descriptive in nature, whereby a particular phenomenon is described and observed; depending upon which, a conclusion is drawn. It is a cross-sectional descriptive study based on one time data collection, with the help of a survey. On the basis of logic, deductive method has been adopted in this research where a hypothesis was first formed, depending upon which data has been collected to reach to a conclusion. On the basis of Inquiry mode, the research is structured in nature, as whatever the Researcher plans to ask the target audience are pre-determined. On the basis of process, the research is quantitative in nature, as it deals with numbers and statistics to test the hypothesis. On the basis of concept, the research is empirical in nature as data has been collected with the help of digital survey to test the hypothesis.

To conduct the survey, a combined questionnaire has been prepared where it starts with closed-ended questions and ends with open-ended questions, to collect more detailed response from the target audience.

To conduct this research, both primary and secondary data has been used. Mostly secondary data has been used to conduct this research work which includes legislations, judicial pronouncements, books, journals, credible articles and other online database. Primary data includes the data collected with the help of the survey.

1.10. CHAPTERIZATION

The research work has been compiled with a systematic approach. Chapter 1 explains in detail the research method adopted to draft the thesis. The second chapter focuses on the relevant legal provisions that has been dealt with in the entire process of writing the research work, which includes some important definitions. The third chapter is extremely important as it discusses in detail the landmark judgment of Hiral P. Harsora and Ors. v. Kusum Narottam Das Harsora and Ors. (2016). In the fourth chapter, an analysis has been done of the changes brought about by the landmark judgment, based on various judicial pronouncements passed by the different courts, after and before the judgment was passed. The fifth chapter consists of a general analysis of the Domestic Violence Act. Lastly, all the results and findings of the empirical research have been shared by the researcher in order to conclude the draft.

CHAPTER-2

RELEVANT LEGAL PROVISIONS INVOLVED IN THE STUDY

Whenever a legislation is studied in detail, it is extremely important to study the important legal provisions to understand the literal meaning of the Act. In this chapter, various legal provisions have been discussed in details such as that of an aggrieved person, domestic relationship, domestic violence, shared household, etc. with the help of major judicial pronouncements.

2.1 AGGRIEVED PERSON

Section 2 of the Protection of Women from Domestic Violence Act, 2005 defines all the terms that are necessary to understand the provisions of the Act.⁹ Section 2(a) defines the term “aggrieved woman” which states that an aggrieved person can be any woman, who is, or at any point in time has been in a domestic relationship with the respondent and has been alleged to have been subjected to any kind of domestic violence by the respondent.¹⁰ Therefore, a complaint for invoking the provisions of the Protection of Women from Domestic Violence Act, 2005 can be filed by any woman who is or at any point in time has been in a domestic relationship with the respondent .

In the case of *M. Palani v. Meenakshi*,¹¹ it was held by the Court that the Domestic Violence Act does not specify the time period for which the parties need to live together to get governed by this particular act. In this case, the aggrieved person and the respondent were in a close conjugal relationship. The respondent argued before the Court that the aggrieved woman is not entitled to maintenance because both of them have not lived together in a domestic relationship at any point in time. However, the Court observed that both the parties were involved in sexual intercourse which proves that the parties lived together for some point in time and it is more than enough to attract section 2(f) of the Protection of Women from Domestic Violence Act, 2005. Hence, the Madras High Court rejected the Respondent’s argument and provided the aggrieved woman with maintenance .

In another case, named *Krishna Bhattacharjee v. Sarathi Choudhary*¹² the primary contention was that after a degree of judicial separation is passed can a woman cease to be an aggrieved person? The Hon’ble Supreme Court rejected the view of the Lower Court and stated that there is a distinction between the degree for divorce and the degree of judicial separation. Hence, even though the parties are in judicial separation, a woman can file for protection under the Domestic Violence Act as an aggrieved person .

⁹ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005 (India).

¹⁰ The Protection of Women from Domestic Violence Act, 2005, S. 2(a), No. 43, Acts of Parliament, 2005 (India).

¹¹ *M. Palani v. Meenakshi*, 2008 SCC Online Mad 150.

¹² *Krishna Bhattacharjee v. Sarathi Choudhary*, (2016) 2 SCC 705.

Furthermore, in the case of *Angshuman Chakraborty v. Arpita Banerjee*,¹³ the contention went before the Court that the wife and the husband never lived together in a shared household because of the abusive treatment by the husband. Since they never lived in a shared household therefore, no domestic relationship existed between the parties and as a result, the wife cannot be said to be an aggrieved person under section 2(a) of the Domestic Violence Act. The court in this case went for literal interpretation of the statute and observed that by the virtue of the parties being married, it was always the right of the wife to reside with the husband in a shared household. Thereby ensuring a domestic relationship between them and as a result, the wife can be considered as an aggrieved person under section 2(a) of the Domestic Violence Act, 2005 .

2.2 DOMESTIC RELATIONSHIP

Section 2(f) of the Domestic Violence Act, 2005 defines the term “domestic relationship.” According to the provision, two people are said to be in a domestic relationship if they are related to each other by consanguinity (descended from a common ancestor); by marriage; by adoption; or through any relationship in the nature of marriage (live-in relationship) or they are related to each other by the virtue of being family members living together in a joint family. ¹⁴ These people can be said to be in a domestic relationship if they live together or at any point in time in life have lived together in a shared household. If the parties fulfil any of the criteria mentioned in the provision, then they can be said to be in a domestic relationship under the Domestic Violence Act .

The term “domestic relationship” has been widely interpreted by the Courts through various judicial pronouncements. In the case of *V.D. Bhanot v. Savita Bhanot*¹⁵, the Hon’ble Supreme Court observed that keeping in mind Article 14, 15, and 21 of the Indian Constitution,¹⁶ the protection of women from domestic violence has to be prioritized. As a result, the Court held that the Domestic Violence Act is applicable to those acts of domestic violence as well which were committed before 2005 when the act came into force. No matter whether the aggrieved person has not resided with the respondent after the passing of the Act; if they used to live together in a shared household before 2005 then the act is applicable to them as well.

In another case, named *Krishna Bhattacharjee v. Sarathi Choudhary*¹⁷ the primary contention before the court was that if a party is judicially separated then does a domestic relationship still exist? In this case, the court held that there is a difference between decree for divorce and decree of judicial separation. If a husband and a wife is judicially separated then it does not mean that the domestic relationship between them has ended and as a result the judicially separated wife can file complaint for protection under the said Act.

¹³ *Angshuman Chakraborty v. Arpita Banerjee*, 2015 SCC Online Cal. 7120.

¹⁴ The Protection of Women from Domestic Violence Act, 2005, S. 2(f), No. 43, Acts of Parliament, 2005 (India).

¹⁵ *V.D. Bhanot v. Savita Bhanot*, AIR 2012 SC 965.

¹⁶ INDIA CONST. art 14, 15 and 21.

¹⁷ *Supra* note 12 at 7.

The term “relationship in the nature of marriage” has been interpreted by the Court on various occasions. One of them being the case of *D. Velusamy v. D. Patchaiammal*¹⁸. In this landmark judgment, the Court held that if a person has a “keep” with whom he stays for sexual intercourse and otherwise treats her as a servant then such kind of a relationship cannot be said to be “a relationship in the nature of marriage.”¹⁹ In order to come under the definition of “relationship in the nature of marriage” the partners have to make sure that both of them have attained the legal age for marriage. None of the parties should be married and they must satisfy all the requirements which are important for a valid marriage to exist. Also, the parties in a live-in relationship must be recognized as a married couple in the eyes of the society; which simply means that living with a person for a day or two does not amount to a relationship in the nature of marriage.

So, this is how the term domestic relationship has been interpreted under the Protection of Women from Domestic Violence Act, 2005.

2.3 DEFINITION OF DOMESTIC VIOLENCE

According to Section 2(g) of the Protection of Women from Domestic Violence Act, 2005 the definition of “domestic violence” has been provided under section 3 of the same Act.²⁰ Section 3 states that any kind of act, omission, commission, or conduct of the respondent may amount to domestic violence where-

- The respondent harms, injures, or endangers the mental or physical well-being (which includes the health, safety, life, limb, or well-being) of the aggrieved person or tends to do so, thereby ending up causing physical, sexual, verbal, emotional or economic abuse;²¹ or
- The respondent harasses, harms, injures, or endangers the aggrieved person or any other person related to her to coerce her, to meet an unlawful demand for dowry, other property, or valuable security;²² or
- The respondent has the effect of threatening the aggrieved person or any other person related to her, by any conduct which includes harming, injuring, or endangering their physical and mental well-being; or harassing the aggrieved person or another person related to her to coerce her for unlawful fulfilment of demands²³; or
- The respondent by any other means, tries to injure or cause harm to the aggrieved person, either physically or mentally. ²⁴

If any of the above-mentioned conditions are fulfilled by the respondent against the aggrieved person then it can be said that the offence of domestic violence has been committed. In the case of *Lalita Toppo v. State of*

¹⁸ *D. Velusamy v. D. Patchaiammal*, (2010) 10 SCC 469.

¹⁹ Choudhary Laxmi Narayan, Mridula Narayan and Mridul Deepanshu, *Live-in relationships in India-legal and psychological implications*, 3(1) JOURNAL OF PSYCHOSEXUAL HEALTH, 18-23 (2021), <https://doi.org/10.1177/2631831820974585> .

²⁰ The Protection of Women from Domestic Violence Act, 2005, S. 2(g), No. 43, Acts of Parliament, 2005 (India).

²¹ The Protection of Women from Domestic Violence Act, 2005, S. 3(a), No. 43, Acts of Parliament, 2005 (India).

²² The Protection of Women from Domestic Violence Act, 2005, S. 3(b), No. 43, Acts of Parliament, 2005 (India).

²³ The Protection of Women from Domestic Violence Act, 2005, S. 3(c), No. 43, Acts of Parliament, 2005 (India).

²⁴ The Protection of Women from Domestic Violence Act, 2005, S. 3(d), No. 43, Acts of Parliament, 2005 (India).

*Jharkhand & Anr.*²⁵ the Supreme Court observed that the definition of “domestic violence” under section 3(a) of the Protection of Women from Domestic Violence Act, 2005 also includes economic abuse. As a result, a claimant who is not a legally married wife is also eligible to get maintenance under section 125 of the Code of Criminal Procedure, 1973.²⁶

2.4 TYPES OF DOMESTIC VIOLENCE

Section 3 of the Protection of Women from Domestic Violence Act, 2005 clearly states that domestic violence not only includes physical abuse but also sexual, verbal, emotional, and economic abuse.²⁷ Domestic violence in India is faced by many women in their day-to-day lives, yet the irony is that it is the least reported form of cruelty. When we talk about domestic violence, generally it is assumed that it only includes physical abuse. As a result, the Gujarat High Court discussed the various forms of domestic violence, in the case of *Bhartiben Bipinbhai Tamboli v. State of Gujarat & Ors*²⁸. The court observed that the controlling behaviour of an abuser over an aggrieved woman is a form of domestic violence where her actions are controlled and dominated. For e.g. continuous checking of mobile phones.²⁹ The second form of abuse is physical abuse where physical force is used over a woman which not only causes physical but also mental injury to her. Some common examples of physical abuse may include punching, slapping, etc.,³⁰ The court observed that emotional abuse is also a kind of domestic violence where an aggrieved person is insulted and humiliated to an extent that forces them to question their self-worth.³¹ Furthermore, sexual abuse is also a kind of domestic violence that violates the dignity of a woman; it includes forcing a woman not to use contraceptives or abort a child.³² The Court further stated that a woman can be abused financially as well; which includes not allowing her to work and be totally dependent on her partner. Lastly, psychological abuse has also been talked about in the judgment; where an aggrieved person is threatened by the partner thereby violating the person’s dignity.³³ A common example of psychological abuse is not allowing a woman to talk to her parents or other relatives.

2.4.1 PHYSICAL ABUSE

Explanation-I(i) of Section 3 of the Protection of Women from Domestic Violence Act, 2005 explains the term “physical abuse.” The meaning of physical abuse can be easily understood by the term “physical” which means ‘relating to somebody’s body.’ So, when physical force is used upon the body of an aggrieved person, then it can be said that she has been physically abused by the Respondent by his/her act or conduct. Physical

²⁵ Lalita Toppo v. State of Jharkhand, (2019) 13 SCC 796.

²⁶ The Code of Criminal Procedure, 1973, S. 125, No. 2, Imperial Legislative Council, 1973 (India).

²⁷ The Protection of Women from Domestic Violence Act, 2005, S. 3(a), No. 43, Acts of Parliament, 2005 (India).

²⁸ *Bhartiben Bipinbhai Tamboli v. State of Gujarat & Ors.*, MANU/GJ/0025/2018.

²⁹ *Id* at 28.

³⁰ *Id* at 28.

³¹ *Id* at 28.

³² *Id* at 28.

³³ *Id* at 28.

abuse includes assault, criminal intimidation, and use of criminal force where a woman is choked, kicked, slapped, punched, abandoned in a dangerous place, or a weapon is used to hurt or threaten her.³⁴

2.4.2 SEXUAL ABUSE

Explanation-I(ii) of Section 3 of the Protection of Women from Domestic Violence Act, 2005 talks about the term “sexual abuse.” Sexual abuse is a form of physical and emotional abuse that includes any act or conduct of a sexual nature that degrades, abuses, humiliates, and violates the dignity of a woman.³⁵ Forcing a woman to participate in sexual intercourse and hurting her during the process comes under sexual abuse. Forcing a woman to watch pornography against her will or passing sexually coloured remarks on her also amounts to sexual abuse.

2.4.3 VERBAL AND EMOTIONAL ABUSE

Explanation-I(iii) of Section 3 of the Protection of Women from Domestic Violence Act, 2005 talks about the term “verbal and emotional abuse.” In verbal and emotional abuse there is no use of physical force but an aggrieved person is humiliated, insulted, ridiculed and name-called to such an extent that it destructs their mental well-being.³⁶

2.4.4 ECONOMIC ABUSE

Explanation-I(iv) of Section 3 of the Protection of Women from Domestic Violence Act, 2005 talks about the term “economic abuse.” It can be said that in an Indian society, economic abuse is the most common form of domestic violence. But because of the patriarchal structure of our society, women fail to report the same since they are taught from an early age to be financially dependent on their partners. Non-payment of house rent in a shared household; not providing the aggrieved person and her children with household necessities; taking away of Stridhan; alienation of property in which the aggrieved person has an interest; or imposition of restriction upon the aggrieved person to make sure that she does not have an access to certain resources amount to economic abuse.³⁷

2.5 RESPONDENT

Section 2(q) of the Protection of Women from Domestic Violence Act, 2005 defines the term “respondent.” Since the time of enactment of this act, a respondent would mean any adult male person who is in a domestic relationship or who at any point of time in life has been in a domestic relationship with the aggrieved person.³⁸ Furthermore, a respondent is also the one against whom an aggrieved person files for relief under the said Act. The section also provides that a complaint can be filed for the incident of domestic violence wherein an

³⁴ The Protection of Women from Domestic Violence Act, 2005, S. 3 Exp-I(i), No. 43, Acts of Parliament, 2005 (India).

³⁵ The Protection of Women from Domestic Violence Act, 2005, S. 3 Exp-I(ii), No. 43, Acts of Parliament, 2005 (India).

³⁶ The Protection of Women from Domestic Violence Act, 2005, S. 3 Exp-I(iii), No. 43, Acts of Parliament, 2005 (India).

³⁷ The Protection of Women from Domestic Violence Act, 2005, S. 3 Exp-I(iv), No. 43, Acts of Parliament, 2005 (India).

³⁸ The Protection of Women from Domestic Violence Act, 2005, S. 2(q), No. 43, Acts of Parliament, 2005 (India).

aggrieved wife or female lives with a male partner or the relatives of the husband in a relationship that is in the nature of marriage.³⁹

Here, the main provision makes it clear that a complaint for domestic violence can only be filed against an adult male person but the proviso to this section includes the term ‘relative of the husband’ which makes it difficult to understand the legislative intent of the law-making body. This contention was widely explained by the Supreme Court of India in the case of *Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade & Ors*⁴⁰. The issue in this case was that the proviso to Section 2(q) of the Protection of Women from Domestic Violence Act, 2005 did not include the expression “female” but on the other hand the term “relative of the husband” was used by the legislature which means females were not specifically excluded from this provision as well. The Hon’ble Supreme Court observed that even though Section 2(q) defines a respondent as an adult male person; the proviso to the same widens the scope of a complaint. The court further stated that the term female has not been used in the proviso to the section but if the legislature intended to exclude them from the Ambit of this provision, then they would have specifically excluded females and would not have provided for a wider term i.e. “relative of the husband.”⁴¹ The term “relative of the husband” cannot be made specific to males only, therefore, it can include both male and female members in a domestic relationship. Therefore, an aggrieved woman who is a wife or a common law wife of the husband or partner can make a complaint against the female members living within the shared household for the offence of domestic violence. But a mother in-law is not entitled to file a complaint against her daughter in-law.

In another case of *Varsha Kapoor v. Union of India & Ors.*,⁴² the contention before the court was to examine the scope of the definition provided under section 2(q) of the Protection of Women from Domestic Violence Act, 2005. The court held that the definition of “respondent” given under this provision must be divided into two independent parts and then provide an interpretation of the same. If a restricted interpretation is provided to this provision, then it would defeat the actual purpose of the legislation.⁴³ The court concluded that even though a “respondent” under section 2(q) shall be an adult male person however, the expression “relative of the husband” in the proviso includes female relatives as well because the female members residing with the husband and wife may also be equally liable for committing an offence under this act.⁴⁴

However, in 2016 the Supreme Court of India passed a landmark judgment named *Harsora v. Harsora*, wherein the term “adult male” from section 2(q) of the Protection of Women from Domestic Violence Act,

³⁹ The Protection of Women from Domestic Violence Act, 2005, Proviso S. 2(q), No. 43, Acts of Parliament, 2005 (India).

⁴⁰ *Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade*, (2011) 3 SCC 650.

⁴¹ *Supra* note 40 at 11.

⁴² *Varsha Kapoor v. Union of India*, 2010 SCC Online Del 2213.

⁴³ Dr. Nandika Kaushik, *Judicial Perspective on Protection of Women from Domestic Violence*, CHANDIGARH JUDICIAL ACADEMY,

<https://cja.gov.in/E%20Books/JUDICIAL%20PERSPECTIVE%20ON%20PROTECTION%20OF%20WOMEN%20FROM%20DOMESTIC%20VIOLENCE%2003.07.2019.pdf> .

⁴⁴ *Id* at 43.

2005 was deleted keeping in mind Article 14 of the Indian constitution.⁴⁵ The proviso to section 2(q) was also deleted by the same judgment. The passing of this judgment totally widened the scope of the Domestic Violence Act because now, the term “respondent” also includes females which means an independent complaint can be filed against a female as well, who has been or is in a domestic relationship with the aggrieved person against whom a complaint for relief under the domestic violence act has been filed.

So, this is how the term “respondent” has been defined under section 2(q) of the Protection of Women from Domestic Violence Act, 2005.

2.6 SHARED HOUSEHOLD

Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 defines the term shared household. A shared household in simple words means a household where the aggrieved person and the respondent live or at any point in time in life has lived together in a domestic relationship. Such a household may be owned or tenanted by them; by the virtue of which they have a title, right, interest, or equity in it, either singly or jointly.⁴⁶ A shared household also includes the household which belongs to the joint family of which the respondent is a member; irrespective of the fact whether the respondent or the aggrieved person has any right, title, or interest in that joint family-owned household or not.

In the case of *S.R. Batra v. Smt. Taruna Batra*,⁴⁷ it was held by the court that a wife has no right to claim residence in a shared household, where such household is owned by her in-laws and over which her husband has no interest. In 2020, a full bench of the Supreme Court overruled this judgment in the case of *Satish Chander Ahuja v. Sneha Ahuja*.⁴⁸ The court held that a daughter-in-law is entitled to reside in the shared household completely owned by her in-laws until her husband finds an alternate accommodation. Also, for a household to be claimed as a shared household it is important to reside there permanently. This judgment could not bring much change in the situation of a woman seeking her right to reside in a shared household.

However, the landmark judgment of *Prabha Tyagi v. Kamlesh Devi*⁴⁹ changed the whole scenario. In this case, the husband of the aggrieved woman died soon after her marriage. She was entitled to the property of her husband after his death but was abused and forced to leave the matrimonial residence. The contention before the Court was whether it is necessary for the aggrieved person to reside with the Respondents while reporting the incident of domestic violence. The court held that the aggrieved woman and the respondents had a marital connection between them; making the shared household her constructive home. Therefore, an aggrieved woman has all the right to seek residence; not only in the household where her husband resides but also where his family members reside making it a shared household.

⁴⁵ Hiral P. Harsora & Ors. v. Kusum Narottamdas Harsora & Ors., (2016) 10 SCC 165.

⁴⁶ The Protection of Women from Domestic Violence Act, 2005, Proviso S. 2(s), No. 43, Acts of Parliament, 2005 (India).

⁴⁷ *S.R. Batra v. Smt. Taruna Batra*, (2007) 3 SCC 169.

⁴⁸ *Satish Chander Ahuja v. Sneha Ahuja*, AIR 2020 SC 2483.

⁴⁹ *Prabha Tyagi v. Kamlesh Devi*, (2022) 8 SCC 90.

CHAPTER-3

HIRAL P. HARSORA & ORS. v. KUSUM NAROTTAMDAS HARSORA & ORS. – A CASE STUDY

3.1 FACTS

On 03-04-2007, Kusum Narottamdas Harsora and her mother, Pushpa Narottamdas Harsora filed a complaint under the Protection of Women from Domestic Violence Act, 2005; against Pradeep, their brother/son, along with his wife and two sisters/daughters respectively. The complaint was made on the basis of various acts of domestic violence against them; however, it was withdrawn on 27-06-2007 with a liberty to file a fresh complaint. After the complaint was withdrawn, no action was taken by the mother-daughter duo for over three years. In October 2010, both of them again filed a complaint against the same respondents but instead of a collective complaint, this time they decided to file it separately. After the complaint was made, an application was moved before the Learned Metropolitan Magistrate for the discharge of female respondents i.e. Pradeep's wife and the other two sisters/daughters of Kusum and Pushpa. The reason stated before the Court was that since the complaint was made under section 2(a) read with section 2(q) of the Protection of Women from Domestic Violence Act, 2005; therefore, it can only be made against an adult male person. Other than Pradeep, the rest of the respondents were females, and therefore, they moved an application for discharge. In an order dated 05-01-2012, the Learned Metropolitan Magistrate refused to accept the application for discharge, after which a writ petition was filed before a Division Bench of the Bombay High Court on 15-02-2012. The Division Bench of the Bombay High Court went for literal interpretation of the Protection of Women from Domestic Violence Act, 2005, and as a result, discharged the three female respondents from the complaint.⁵⁰ This order of the Bombay High Court has been in finality since then.

The mother-daughter duo then decided to file a writ petition (No. 300 of 2013) before the Supreme Court of India, questioning the Constitutional validity of section 2(q) of the Domestic Violence Act. In the prayer of the Writ petition before the Supreme Court, Kusum and Pushpa did not seek any interference with the order dated 15-02-2012 which discharged the three respondents.

The Bombay High Court then passed the judgment on 25-09-2014 stating that section 2(q) of the DV Act is not to be read in isolation but along with the other definitions, which includes the definition of an aggrieved person (S.2(a)), domestic relationship (S.2(f)) and shared household (S.2(s)). In the view of the Court, if these provisions are read together then it can be concluded that a complaint of domestic violence is maintainable against a daughter-in-law, daughters, or sisters under the Domestic Violence Act in cases where they are Co-Respondent(s) in a complaint against an adult male person; who is or has been in a domestic relationship with

⁵⁰ Pradeep Harsora v. Kusum Narottam Harsora, WP (Cri) No. 187 of 2012.

the Complainants and the co-respondents.⁵¹ It simply means that an independent complaint cannot be filed against female members who is or has been in a domestic relationship with the aggrieved person where no complaint has been filed against an adult male person of the family.

After this judgment was passed by the Bombay High Court, the Respondents filed an appeal against it before the Supreme Court. The learned senior advocate, Shri. Harin P. Raval appeared on behalf of the appellants (Pradeep; his wife and two sisters). He argued before the Court that according to Section 2(q) of the Protection of Women from Domestic Violence Act, 2005; a respondent can only be an adult male person. He further argued that the proviso to Section 2(q) is to be read separately and not along with the main part of the provision because it might change the entire meaning of the provision. The learned senior advocate also stated that there might exist some issues with the existing legislation, but it does not mean that the court while interpreting the law, can mend or bend with the provisions, which have been plainly written by the legislature or declare them to be unconstitutional.⁵²

The respondents (Kusum and Pushpa) were presented before the Court by Learned Senior Counsel Ms. Meenakshi Arora. She argued before the Court that the Domestic Violence Act is a piece of social beneficial legislation which was enacted to protect women from all forms of domestic violence. Therefore, if any provision restricts the objects sought to be achieved by the Act, then they may either be struck down or read down as being violative of Article 14 of the Indian constitution. She further argued that even “the Hindu Succession Act” has been amended which has given the females the right to become coparceners in a Hindu joint family. So, every statutory law must work in tune with each other and if an expression cannot be struck down from a provision, then it must be read in such a manner so has to make it constitutional in nature, for which the doctrine of severability might be helpful.⁵³ Moreover, the Learned Counsel argued that if a complaint of domestic violence cannot be filed against female members of a joint family, then it would defeat the very objective of the domestic violence act because the potential female abettors of the crime would never be caught; and as a result it might become a shield in the hands of the perpetrators.

3.2 ISSUE(S)

After looking at the arguments made by the Learned Counsel’s for the Appellants and Respondents, many important issues were raised before The Hon’ble Supreme Court regarding the provisions of the Protection of Women from Domestic Violence Act, 2005 . They are as follows-

1. What exactly is the object sought to be achieved by the Protection of Women from Domestic Violence Act, 2005?
2. Is Section 2(q) of the Domestic Violence Act, 2005 violative of Article 14 of the Indian constitution?

⁵¹ Kusum Narottam Harsora v. Union of India, 2014 SCC OnLine Bom 1624.

⁵² Hiral P. Harsora case, (2016) 10 SCC 165, Para 7.

⁵³Hiral P. Harsora case, (2016) 10 SCC 165, Para 8.

3. Whether the striking down of the expression “adult male” from section 2(q) of the Domestic Violence Act render the rest of the provision as invalid?

3.3 LAWS APPLICABLE

Several doctrines and Article 14 of the Indian Constitution has been widely discussed throughout the Judgment.⁵⁴ Apart from that, the main legislation thoroughly discussed and analysed is the Domestic Violence Act, 2005.

3.4 HOLDING(S)

When this matter went before the Supreme Court of India, several issues were raised regarding the provisions of the Domestic Violence Act, which were classically analysed and explained by the Hon’ble Court.

The first question raised before the Hon’ble Court was regarding the objectives sought to be achieved by the Domestic Violence Act. For this matter the historical background before the passing of the Act, statement of objects and reasons, the Preamble, the provisions of the 2005 Act, and some already laid down judgments were taken into consideration by the Court. In the case of *State of West Bengal v. Union of India*, it was held that to understand the background and reasons why a legislation was enacted by the lawmakers; the statement of objects and reasons provided during the introduction of a Bill in the Parliament can be taken into consideration.⁵⁵ Similarly, in the case of *Shashikant Laxman Kale v. Union of India*, when the Court faced an issue regarding the Constitutional validity of a provision in the Income Tax Act, 1961; the true purpose or object of the enactment was referred to, to recognize the object sought to be achieved by the said Act and the legislative intent behind the same.⁵⁶

So, the Hon’ble Court went through the Preamble, Statement of objects and reasons, and the other provisions of the Domestic Violence Act to understand the reasons why such a legislation was enacted by the Parliament. One such provision considered was Section 18(b) of the Domestic Violence Act which provides with protection order to an aggrieved person from the respondent and prohibits any kind of aiding or abetting in the commission of the acts of domestic violence.⁵⁷ The Court observed that when a protection order is passed, a Respondent (only adult male person) is prohibited from aiding or abetting any act of domestic violence against the aggrieved person. However, the female members residing in a household may be equally liable for aiding and abetting of offences. So, if they are not covered under the Protection Order then it would stultify the reach of such orders.⁵⁸

⁵⁴ INDIA CONST. art 14.

⁵⁵ *State of W.B v. Union of India*, AIR 1963 SC 1241.

⁵⁶ *Shashikant Laxman Kale v. Union of India*, (1990) 4 SCC 366.

⁵⁷ The Protection of Women from Domestic Violence Act, 2005, Section 18(b), No. 43, Acts of Parliament, 2005 (India).

⁵⁸ *Hiral P. Harsora case*, (2016) 10 SCC 165, Para 22.

Similarly, Section 19(1)(c) states that if a Magistrate is satisfied that domestic violence has taken place he/she may pass a Residence Order and restrain the Respondent or his relatives from entering into the portion of the shared household where the aggrieved person resides.⁵⁹ This provision makes it clear that the legislation intended to protect women from every sort of violence done by males or females; or else, the Residence Order would be pointless. The Court observed that this provision cannot stay limited to ‘an adult male person’ because it is not difficult to imagine a non-adult of 16 or 17 years entering into the portion of a shared household where an aggrieved person resides, who can easily aid or abet the commission of an act against her.⁶⁰

So, the Court held that the term “adult male” before the word “person” in Section 2 (q) of the Domestic Violence Act stands deleted along with the Proviso attached to it; as the offence of domestic violence can be equally committed by persons of both genders. Furthermore, Section 2(q) is also contrary to the object sought to be achieved by the Protection of Women from Domestic Violence Act, 2005.

The second issue raised before the Court was whether Section 2(q) of the Domestic Violence Act violates Article 14 of the Indian Constitution. The Court went through some major legislations like the Hindu Succession Act, 1956⁶¹ and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013⁶² and found that the term “adult male” was missing in both the legislations. So, the Court held that the provisions of an Act that strives to achieve its objectives shall not provide restrictive relief as it may become contrary not only to the objectives of the same legislation but also to the similar existing ones which provides unrestrictive relief.

The last issue was whether the striking down of the expression “adult male” from section 2(q) of the Domestic Violence Act render the rest of the provision invalid. The Court referred to the judgment of *R.M.D Chamarbaugwalla v. Union of India* which has been applied in various cases, one of them being *Corp. of Calcutta v. Calcutta Tramways Co. Ltd.* In this case a part of the Calcutta Municipal Act, 1951 was struck down as it was providing an unreasonable restriction within the meaning of Article 19(6) of the Indian Constitution.⁶³ The Court here applied the *Chamarbaugwalla case* and held that if a part of a provision of an Act is struck down, the rest of the Act continues to apply.⁶⁴ So, the Court held that even though the term “adult male” from Section 2 (q) of the Domestic Violence Act stands deleted, the rest of the Section is left intact and stands valid.

⁵⁹ The Protection of Women from Domestic Violence Act, 2005, Section 19(1)(c), No. 43, Acts of Parliament, 2005 (India).

⁶⁰ Hiral P. Harsora case, (2016) 10 SCC 165, Para 26.

⁶¹ The Hindu Succession (Amendment) Act, 2005, No. 39, Acts of the Parliament, 2005 (India).

⁶² Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013, No. 14, Acts of Parliament, 2013 (India).

⁶³ *Corp. Of Calcutta v. Calcutta Tramways Co. Ltd.*, AIR 1964 SC 1279.

⁶⁴ *R.M.D. Chamarbaugwalla v. Union of India*, AIR 1957 SC 628.

3.5 RATIONALE

The term “rationale” means a set of principles or reasons which explain a particular set of thought or decision. When the landmark judgment of *Hiral P. Harsora* was passed, 33 pages of the case explained the insights and observation of the Hon’ble Court and brought before us the higher intellectual thinking capacity of the Learned Judges, which they nourish over a period of time. So, whenever a case analysis is done, it is important to understand the rationale behind the same. In this chapter, we are going to look at the rationale i.e. the reasoning behind every observation made and order passed by the Court.

3.5.1. OBJECT SOUGHT TO BE ACHIEVED BY THE DOMESTIC VIOLENCE ACT

First of all, the Court went to examine the “object sought to be achieved” by the Domestic Violence Act, 2005. The Court in this matter, stated that to examine the true purpose or object of an enactment it is important to analyze the statement of objects and reasons, the Preamble and several important provisions of the Act.

The statement of objects and reasons of the Protection of Women from Domestic Violence Act, 2005 is as follows-

⁶⁵*“Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. 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.*

2. 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 the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under Articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society.

4. The Bill, inter alia, seeks to provide for the following-

(i) It covers those women who are or have been in a relationship with the abuser where both parties have lived together in a shared household and are related by consanguinity, marriage or through a relationship in the nature of marriage or adoption. In addition, relationships with family members living together as a joint family are also included. Even those women who are sisters,

⁶⁵ The Protection of Women from Domestic Violence Act, 2005, STATEMENT OF OBJECTS AND REASONS, No. 43, Acts of Parliament, 2005 (India).

widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas 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.

(ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

(iii) It provides for the rights of women to secure housing. It also provides for the right of a woman to reside in her matrimonial home or shared household, whether or not she has any title or rights in such home or household. This right is secured by a residence order, which is passed by the Magistrate.

(iv) It empowers the Magistrate to pass protection orders in favour of the aggrieved person to prevent the respondent from aiding or committing an act of domestic violence or any other specified act, entering a workplace or any other place frequented by the aggrieved person, attempting to communicate with her, isolating any assets used by both the parties and causing violence to the aggrieved person, her relatives or others who provide her assistance from the domestic violence.

(v) It provides for appointment of Protection Officers and registration of non-governmental organisations as service providers for providing assistance to the aggrieved person with respect to her medical examination, obtaining legal aid, safe shelter, etc.

5. The Bill seeks to achieve the above objects. The notes on clauses explain the various provisions contained in the Bill.”

From the above quoted statement of objects and reasons it can be understood that violence against women is a global phenomenon which needs to be addressed in a national framework. Before the passing of the Domestic Violence Act, there was only Sec. 498 A of the Indian Penal Code in criminal law which covered the offence of cruelty by husband or his relatives. Civil law was silent on this matter.⁶⁶ Therefore, there was a need to enact a law in accordance with Articles 14, 15 and 21 of the Indian Constitution to provide remedy to victims of domestic violence not only under criminal law but also civil law.⁶⁷ The Court stated that from the statement of objects and reasons, it can be easily understood that the Domestic Violence Act was enacted to provide innovative remedies to the victims of domestic violence under both criminal and civil law as it is a widely prevalent phenomenon which needs to be redressed.⁶⁸

The Preamble of the Domestic Violence Act is equally significant. It states:

⁶⁶ The Indian Penal Code, 1860, No. 45, Imperial Legislative Council, 1860.

⁶⁷ INDIA CONST. art 14, 15 and 21.

⁶⁸ Hiral P. Harsora case, (2016) 10 SCC 165, Para 16.

“An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and formatters connected therewith or incidental thereto.”⁶⁹

The Court observed that the Preamble of the legislation clearly mentions the objective behind its enactment. That the purpose of Domestic Violence Act is to save the victims from ‘violence of any kind’, which means it aims to address every kind of abuse whether sexual, economic or verbal. Furthermore, the Preamble makes it clear that the perpetrators or abettors of domestic violence can be a person of any gender ‘within the family’. The Preamble does not aim to make only an ‘adult male person’ as a perpetrator.

After keeping the observed objects in mind, let us now examine the other relevant provisions of this Act.

The first important provision of the Domestic Violence Act is Section 2 which consists of relevant definitions in order to understand the legislation, which are as follows-

“2. Definitions—In this Act, unless the context otherwise requires—

(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 respondent⁷⁰;

(f) “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 family⁷¹;

(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 partner⁷²;

(s) “shared household” means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a house hold whether owned or tenanted either jointly by the aggrieved person and the respondent, or owned or tenanted by either of them in respect of which either the aggrieved person or the respondent or both jointly or singly have any right, title, interest or equity and includes such a household which may belong to the joint family of which the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household⁷³.”

⁶⁹ The Protection of Women from Domestic Violence Act, 2005, PREAMBLE, No. 43, Acts of Parliament, 2005 (India).

⁷⁰ The Protection of Women from Domestic Violence Act, 2005, S. 2(a), No. 43, Acts of Parliament, 2005 (India).

⁷¹ The Protection of Women from Domestic Violence Act, 2005, S. 2(f), No. 43, Acts of Parliament, 2005 (India).

⁷² The Protection of Women from Domestic Violence Act, 2005, S. 2(q), No. 43, Acts of Parliament, 2005 (India).

⁷³ The Protection of Women from Domestic Violence Act, 2005, S. 2(s), No. 43, Acts of Parliament, 2005 (India).

Section 2(a) of the Domestic Violence Act defines the term ‘aggrieved person.’ This provision clearly states that under the DV Act, an aggrieved person can only be a woman. It shows the clear intent of the legislation to enact a special legislation for women, keeping in mind Article 15(3) of the Indian Constitution which enables the State to make special laws for women and children.⁷⁴ Therefore, a complaint for invoking the provisions of the Protection of Women from Domestic Violence Act, 2005 can be filed by any woman who is, or has been in a domestic relationship with the respondent.⁷⁵

Furthermore, Section 2(f) of the Act defines the term ‘domestic relationship.’ The Court observed that for ‘domestic relationship’ a very wide definition has been provided. It includes a relationship between two people who are related to each other by consanguinity (descended from a common ancestor); by marriage; by adoption; or through any relationship in the nature of marriage (live-in relationship) or are related to each other by the virtue of being family members living together in a joint family.⁷⁶ This provision makes it clear that two people in a domestic relationship involve person belonging to both sexes, where they may be related to each other by marriage or by the virtue of being family members in a joint family.⁷⁷

Similarly, Section 2(s) defines the term “shared household.” The Court observed that a shared household includes a household which belongs to a joint family of which the respondent is a member.⁷⁸ The Court also considered the amendment made to the Hindu Succession Act, 1956 which came into effect from 2005 itself. The amendment conferred coparcenary rights to a daughter (both married and unmarried), which was earlier limited to a son living in a Hindu Joint family.⁷⁹ As a result, the Court suggested re-examination of Section 2(q) which continued to be read as “a respondent being an adult male person.” Because after the amendment of the Hindu Succession Act, logically, an aggrieved person can easily make a female member of a joint family, a Respondent.⁸⁰ So, if female’s right to property can be recognized in a Hindu joint family; then being a member of such household, she can be made liable as a Respondent, under the Domestic Violence Act as well.

After a thorough reading of all the relevant definitions, the Court reached to a conclusion that there is inconsistency in the interpretation of the provisions which needs to be addressed by the Court in due course of its judgment.

The next relevant provision is the one which defines the term “domestic violence.” It states-

⁷⁴ INDIA CONST. art 15(3).

⁷⁵ *Supra* note 68 at 21.

⁷⁶ *Supra* note 71 at 21.

⁷⁷ Hiral P. Harsora case, (2016) 10 SCC 165, Para 20.

⁷⁸ *Supra* note 73 at 21.

⁷⁹ Hindu Succession (Amendment) Act, 2005, S. 6, No. 39, Acts of Parliament, 2005 (India).

⁸⁰ *Supra* note 77 at 22.

“3. Definition of domestic violence—*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

(d) otherwise injures or causes harm, whether physical or mental, to the aggrieved person. Explanation I.—
For the purposes of this section—

(i) “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;

(ii) “sexual abuse” includes any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of woman;

(iii) “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;

(iv) “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, house hold 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 house hold 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.”⁸¹

After going through Section 3 of the Domestic Violence Act, the Court observed that such violence is gender neutral. Nowhere in the section has been stated that it is a violence by men against women. The section describes different forms of abuse, such as physical, sexual, verbal and emotional, or economic abuse.⁸² The Court stated that all the forms of abuse, including sexual abuse can be done by a woman against another woman. That Section 3 of the Domestic Violence Act is in consonance with the object of the Act, so that a victim can be saved from every possible way of violence.⁸³

After analysing some of the most important provisions, the Court then decided to examine the remedies provided under the Act, to make things clearer.

Section 17 of the Act provides an aggrieved person, the right to reside in a shared household. It states-

“17. Right to reside in a shared household— (1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to reside in the shared household, whether or not she has any right, title or beneficial interest in the same.

(2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law.”⁸⁴

The Court observed that as per Section 17(2) of the Act, an aggrieved person cannot be evicted by the Respondent from a shared household. That if a Respondent can only be “an adult male person” according to Section 2(q), then the female members of a shared household who evicts or excludes an aggrieved person cannot be made liable under the Act, which will defeat the purpose of the legislation to save the victim from all forms of violence.⁸⁵ Furthermore, it will give rise to cases where men would hide their identity and put women forward to commit violence as this law does not govern them.

Another important provision of the Act is Section 18 which states-

“18. Protection orders —The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is

⁸¹ The Protection of Women from Domestic Violence Act, 2005, S. 3, No. 43, Acts of Parliament, 2005 (India).

⁸² *Id* at 81.

⁸³ Hiral P. Harsora case, (2016) 10 SCC 165, Para 21.

⁸⁴ The Protection of Women from Domestic Violence Act, 2005, S. 17, No. 43, Acts of Parliament, 2005 (India).

⁸⁵ *Supra* note 83 at 24.

likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

- (a) committing any act of domestic violence;
- (b) aiding or abetting in the commission of acts of domestic violence;
- (c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;
- (d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;
- (e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;
- (f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;
- (g) committing any other act as specified in the protection order.”⁸⁶

Under Section 18 of the act, a Magistrate can pass a protection order if he/she is satisfied that domestic violence has taken place. The Court in *Harsora’s* case, emphasized on Section 18(b) and observed that a respondent is prohibited from aiding or abetting the commission of acts of domestic violence.⁸⁷ If a respondent under section 2(q) continues to be “an adult male person” then the other female members residing in the shared household can commit the offence without being caught.⁸⁸ This may simply paralyze the reach of Protection Order under the Domestic Violence Act.

The next remedy under the Domestic Violence Act has been provided under Section 19 which talks about residence order. The provision states as follows-

“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;

⁸⁶ The Protection of Women from Domestic Violence Act, 2005, S. 18, No. 43, Acts of Parliament, 2005 (India).

⁸⁷ The Protection of Women from Domestic Violence Act, 2005, S. 18(b), No. 43, Acts of Parliament, 2005 (India).

⁸⁸ Hiral P. Harsora case, (2016) 10 SCC 165, Para 22.

(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 person 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 officer 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.”⁸⁹

Under Section 19 of the Domestic Violence Act, a Magistrate may pass residence order if he/she is satisfied that domestic violence has taken place. The Court laid emphasis on Section 19(1)(c) which restrains a respondent or his relatives from entering into the portion of a shared household where the aggrieved person

⁸⁹ The Protection of Women from Domestic Violence Act, 2005, S. 19, No. 43, Acts of Parliament, 2005 (India).

resides.⁹⁰ The court observed that residence order would be useless if it would not have restrained the relatives of a husband from entering into the portion of a shared household where an aggrieved person resides.⁹¹ That the inconsistency here lies in the provision that it is only applicable in cases where a wife or a common law wife is an aggrieved person. In such a case, the adult male person along with the other female members like his sister or mother can be prohibited from entering into the portion where the aggrieved person resides. But if an aggrieved is a mother in-law or sister in-law, then the respondent can only be an adult male person and not his relatives.⁹² Therefore, there is an inconsistency within the provision, since it protects only one group of women under the residence order i.e. the wife or a common law wife; and not if any other woman belonging to a family is an aggrieved person.

The next relief provided under the Domestic Violence Act is monetary relief under Section 20. It states-

“20. Monetary reliefs — (1) While disposing of an application under sub-section (1) of section 12, 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 the domestic violence and such relief may include, but not limited to —

(a) the loss of earnings;

(b) the medical expenses;

(c) the loss caused due to the destruction, damage or removal of any property from the control of the aggrieved person; and

(d) the maintenance for the aggrieved person as well as her children, if any, including an order under or in addition to an order of maintenance under section 125 of the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force.

(2) The monetary relief granted under this section shall be adequate, fair and reasonable and consistent with the standard of living to which the aggrieved person is accustomed.

(3) The Magistrate shall have the power to order an appropriate lump sum payment or monthly payments of maintenance, as the nature and circumstances of the case may require.

(4) The Magistrate shall send a copy of the order for monetary relief made under sub-section (1) to the parties to the application and to the in charge of the police station within the local limits of whose jurisdiction the respondent resides. (5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved

⁹⁰ The Protection of Women from Domestic Violence Act, 2005, S. 19(1)(c), No. 43, Acts of Parliament, 2005 (India).

⁹¹ Hiral P. Harsora case, (2016) 10 SCC 165, Para 23.

⁹² *Supra* note 91 at 27.

person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.”⁹³

Under Section 20 of the Domestic Violence Act, a Magistrate may direct the respondent to pay monetary relief to an aggrieved person. The Court observed that if a respondent can only be “an adult male person”, then by application of Section 2(q) and its Proviso, only a wife or a common law life can get monetary compensation from her husband or other female relatives.⁹⁴ If domestic violence is committed against a mother in-law or sister in-law then they cannot claim monetary relief against the wife of their son/brother; which again defeats the object of this Act.

The last provision examined by the Court was Section 26 of the Act. It says-

“26. Relief in other suits and legal proceedings— (1) Any relief available under sections 18, 19,20, 21 and 22 may also be sought in any legal proceeding, before a civil court, family court or a criminal court, affecting the aggrieved person and the respondent whether such proceeding was initiated before or after the commencement of this Act.

(2) Any relief referred to in sub-section (1) may be sought for in addition to and along with any other relief that the aggrieved person may seek in such suit or legal proceeding before a civil or criminal court.

(3) In case any relief has been obtained by the aggrieved person in any proceedings other than a proceeding under this Act, she shall be bound to inform the Magistrate of the grant of such relief.”⁹⁵

Section 26 states that an aggrieved person may avail relief not only under the Domestic Violence Act but can also initiate proceedings before a civil, criminal or family court. The Court observed that if an aggrieved person avails relief under the Domestic Violence Act, then the Respondent can only be “an adult male person.” But this definition of a “respondent” would not be applicable if proceedings are initiated before the other mentioned Courts. It would create discrimination because an aggrieved availing relief only the 2005 Act could claim it only from “an adult male person”. However, the others who choose to avail relief from the civil, criminal or family court then they could easily avail relief from female relatives as well.⁹⁶ The Court stated that there is no reasonable ground which permits creating a difference between different kinds of forum providing different kinds of relief for the offence of same nature.

Ultimately, after examining all the relevant provisions of the Act, the Court held that the “object sought to be achieved” by the Act is simply to provide every kind of assistance to an aggrieved woman in case of any kind of violence. That the different kinds of violence like physical, sexual, economic, verbal can be committed by one woman against the other as well. That a woman can help a man in committing the offence of domestic abuse by aiding or abetting the same. That even a non-adult of 16 or 17 years can commit domestic violence. That there should be uniformity in reliefs provided by different forums for the same offence without discrimination. That a mother in-law shall also have a right to claim relief from her daughter in-law in case of

⁹³ The Protection of Women from Domestic Violence Act, 2005, S. 20, No. 43, Acts of Parliament, 2005 (India).

⁹⁴ Hiral P. Harsora case, (2016) 10 SCC 165, Para 24.

⁹⁵ The Protection of Women from Domestic Violence Act, 2005, S. 26, No. 43, Acts of Parliament, 2005 (India).

⁹⁶ Hiral P. Harsora case, (2016) 10 SCC 165, Para 25.

violence. That the residence order can be easily breached by non-adults who try to enter into that portion of the shared household where the aggrieved resides. That if females can be made coparceners in the property owned by a Hindu joint family around the time when domestic violence act was passed, then the act must be relooked and certain changes have to be brought about. That the definition provided under section 3 of the DV Act is gender-neutral. So, keeping all those loopholes in mind, the Court held that the term “adult male person” from Section 2(q) shall be struck down to bring uniformity in the provisions of the Act. That the object of the Domestic Violence Act is to help and provide aid to every suffering woman who has faced violence of any form. If a wife or a common law wife can avail relief against the relatives of the husband then the mother in-law shall also be able to achieve the same. Only then will the purpose of the Domestic Violence Act be achieved.

3.5.2. COMPARING LAWS WITH SIMILAR OBJECTIVE

The Court then went onto comparing the laws which has a similar objective to protect women in various spheres of life. First of all, the Court went through the ‘The protection from Domestic Violence Bill’ drafted by the Women and Child Development Department in 2002. The bill contained the definition of a “Respondent” which stated that-

“2. Definitions-In this Act, unless the context otherwise requires-

(j) “Respondent” means any person who is or has been a relative of the aggrieved person and against whom the aggrieved person has sought monetary relief or has made an application for protection order to the Magistrate or to the Protection Officer, as the case may be;”⁹⁷

The Court observed that when the Bill was introduced in the Lok Sabha in 2002, the term “Respondent” was defined using the term “any person.” However, the Bill lapsed and eventually another Bill was introduced in 2005 which later became the Protection of Women from Domestic Violence Act, 2005. The 2005 Bill introduced the term “adult male person” in the definition of a Respondent which was passed by both the houses of the Parliament. The Court held that the Bill introduced in 2002 was more in consonance with the objects of the Domestic Violence Act rather than the 2005 Act. ⁹⁸

Another important legislation analysed by the Court was “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” (hereinafter referred to as POSH Act). The Act defines a Respondent as follows-

“2. Definitions- In this Act., unless the context otherwise requires-

⁹⁷ The Protection from Domestic Violence Bill, 2002, S. 2(j), No. 13 (India).

⁹⁸ Hiral P. Harsora case, (2016) 10 SCC 165, Para 46.

(m) 'Respondent' means a person against whom the aggrieved women has made a complaint under Section 9; ”⁹⁹

The absence of the term “adult male person” from the definition of a Respondent under the POSH Act clearly shows the “object sought to be achieved” by the Act and the intention of the legislation behind the same. The Court mentioned that it is important to compare two Statutes together when the purpose of the Statutes is the same. The Domestic Violence Act and the POSH Act has a common objective i.e. to protect women from abuse/ violence of every various nature. ¹⁰⁰

The Court also analysed Section 498A of the Indian Penal Code, 1860 which states-

“S. 498A- Husband or relative of husband of a woman subjecting her to cruelty — Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation. — For the purposes of this section, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.”¹⁰¹

The intent of the Court behind looking at the provisions related to women protection was to draw the inference that a woman can be a perpetrator against another woman. That the same can be said by looking at the POSH Act and Section 498A of the Indian Penal Code. So, it can be easily concluded that a woman can also commit domestic violence over another woman, as a result the term “adult male person” is not based on any intelligible differentia having rational nexus with the object sought to be achieved by the Domestic Violence Act. ¹⁰²

Thus, the Court held that intention of the Parliament in widening the scope of the term “Respondent” can be clearly seen in the POSH Act, 2013. That a woman can be a perpetrator against another woman has been clearly noted. Hence, the definition of “respondent” under the Domestic Violence Act can be re-considered.

Lastly, the Court examined Section 2(q) of the Act through the lens of the Constitution of India.

⁹⁹The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, S. 2(m), No. 14, Acts of Parliament, 2013 (India).

¹⁰⁰ *Supra* note 98 at 29.

¹⁰¹ The Indian Penal Code, 1860, S. 498A, No. 45, Imperial Legislative Council, 1860.

¹⁰² Hiral P. Harsora case, (2016) 10 SCC 165, Para 8.

3.5.3 DOCTRINE OF SEVERABILITY

To understand the Doctrine of Severability we have to go through Article 13 of the Indian Constitution .

Article 13 of the Constitution says-

“(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires —

(a) “law” includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) “laws in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

[(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.]”¹⁰³

The words used under Article 13(1) is ‘..to the extent of such inconsistency, be void.’ A question always arises that whenever a part of a statute is declared unconstitutional then whether the whole statute is to be declared void or only that part which is inconsistent.¹⁰⁴ The answer to this question lies under Article 13 of the Constitution which talks about the Doctrine of Severability. The doctrine basically states that whenever such a situation arises, only that part of the Statute is to be declared void which is inconsistent and not the whole statute.¹⁰⁵ That the part which has been declared void does not affect the entire statute.¹⁰⁶ That the omission of a section does not change the entire subject of a legislation.¹⁰⁷

The doctrine of severability for the first time was elaborately discussed in *R.M.D.C. v. Union of India*. It was held that striking down a part of a provision does not affect the rest of the provision of the Act.¹⁰⁸

If the Doctrine of Severability is applied on Section 2(q) of the Domestic Violence Act, then it makes it clear that deleting the term “adult male person” would not make the entire provision void. And if “adult male

¹⁰³ INDIA CONST. art 13.

¹⁰⁴ Dr. J.N.Pandey, *Constitutional Law of India*, 68th ed., CENTRAL LAW AGENCY, 2023.

¹⁰⁵ Motor General Traders v. State of A.P., (1984) 1 SCC 222.

¹⁰⁶ State of Bombay v. Balsara, AIR 1951 SC 318.

¹⁰⁷ A.K. Gopalan v. State of Madras, AIR 1950 SC 27.

¹⁰⁸ *R.M.D.C. v. Union of India*, AIR 1957 SC 628.

person” is deleted then the proviso would not have any independent status. Hence, it would stand deleted as well. The rest of the provision will exist as it is; since the provision is severable in nature. ¹⁰⁹

3.5.4. DOCTRINE OF READING DOWN

Another important doctrine discussed by the Hon’ble Court in Harsora’s case is the doctrine of reading down. This doctrine basically means that when two interpretations of a statute can be done, where one interpretation renders it to be Constitutional and the other renders it to be unconstitutional, then the former one which makes a statute constitutional in nature shall be preferred. ¹¹⁰ This happens mostly in those cases where the intent of the legislature or the object of a statute is not clear. In the present case, the Court held that the doctrine of reading down is not applicable because the intent of the legislature and “the object sought to be achieved” by the statute is clear. The Court mentioned that remaking or a statute does not come under the ambit of the Court. If a statute requires some amendments, then they can only strike it down. The rest of the work lies with the legislature.

In the case of *Cellular Operators Assn. of India v. TRAI*, the Court held that the doctrine of reading down would apply only when general words used in a statute can be confined in a particular manner so as not to violate a constitutional right. ¹¹¹

In *DTC v. Mazdoor Congress*, the Court held that the doctrine of reading down can only be applied in limited cases. That when a provision clearly shows the intent of the legislature then the Court even in good conscience cannot re-structure a statute. ¹¹²

Hence, after going through all the judgments, the Court held that the doctrine of reading down constitutional provisions is not applicable in the present case.

3.5.5. DOCTRINE OF REASONABLE CLASSIFICATION

Article 14 of the Constitution talks about Equality before law where two expressions are used i.e. “equality before the law” and “equal protection of the law.” Many a times, both the expressions are used interchangeably but they both carry a different meaning. The term “equality before law” is of English origin and said to have a negative aspect because it means that every class of people is subject to the same law; which means any special privilege cannot be given to anyone no matter what. Whereas, the term “equal protection of law” has been taken from the American Constitution and said to have a positive aspect which means equality of treatment in equal circumstances. ¹¹³ The Court stated that-

¹⁰⁹ Hiral P. Harsora case, (2016) 10 SCC 165, Para 44.

¹¹⁰ Hiral P. Harsora case, (2016) 10 SCC 165, Para 13.

¹¹¹ Cellular Operators Assn. of India v. TRAI, (2016) 7 SCC 703.

¹¹² DTC v. Mazdoor congress, 1991 Supp (1) SCC 600.

¹¹³ State of U.P v. Deoman Upadhyaya, AIR 1960 SC 1125.

“24.This subject has been so frequently and recently before this Court as not to require an extensive consideration. The doctrine of equality may be briefly stated as follows: All persons are equal before the law is fundamental of every civilised constitution. Equality before law is a negative concept; equal protection of laws is a positive one. The former declares that everyone is equal before law, that no one can claim special privileges and that all classes are equally subjected to the ordinary law of the land; the latter postulates an equal protection of all alike in the same situation and under like circumstances. ... So, a reasonable classification is not only permitted but is necessary if society should progress. But such a classification cannot be arbitrary but must be based upon differences pertinent to the subject in respect of and the purpose for which it is made....”¹¹⁴

In the case of *West Bengal v. Anwar Ali Sarkar*, the Court was of the view that both the expressions mean one and the same thing.¹¹⁵ Under Article 14 of the Indian Constitution, there is the Doctrine of Reasonable Classification based on the positive aspect of “equal protection of law.”

The doctrine of Reasonable Classification is based on the idea that different group of people with special needs require separate treatment.¹¹⁶ If identical treatment is provided in unequal circumstances, then it may amount to inequality.¹¹⁷ Article 14 forbids class legislation but not reasonable classification; which means if any classification is done, it shall not be arbitrary, artificial or evasive. ¹¹⁸ If there is an objective sought to be achieved by the legislature then it should be based on just and reasonable classification. To test whether the classification is just and reasonable, two conditions must be fulfilled. Firstly, if any reasonable classification is to be done, it should be based on “intelligible differentia” which means the capability of understanding the difference. Secondly, if there exist any difference then it must be in tune with “the object sought to be achieved” by the legislation. ¹¹⁹ Thus, someone can be stopped from entering into a contract because of their minority but no one can be stopped from entering into a contract on the basis of their skin colour.

However, in the judgment of *Lachhman Dass v. State of Punjab*, the Court held that-

“47....It shall also be remembered that a citizen is entitled to a fundamental right of equality before the law and that the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to the said doctrine. Overemphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive the article of its glorious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of

¹¹⁴ *Id* at 113.

¹¹⁵ *West Bengal v. Anwar Ali Sarkar*, AIR 1952 SC 75.

¹¹⁶ *Kedar Nath v. State of West Bengal*, AIR 1953 SC 404.

¹¹⁷ *Abdul Rehman v. Pinto*, AIR 1951 Hyd 11.

¹¹⁸ *R.C. Cooper v. Union of India*, AIR 1970 SC 564.

¹¹⁹ *K. Thimmappa v. Chairman, Central Board of Directors, SBI*, AIR 2001 SC 467.

equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the doctrine of classification....”¹²⁰

In Lachhman’s case, the Court warned that over-emphasis on the doctrine of reasonable classification may overshadow the doctrine of equality and the same was felt by the Court in *Harsora’s* case. The Court after going through the doctrine and judgments held that the legislation by classifying “adult male person” has totally weakened the doctrine of equality, by curtailing the scope of the Domestic Violence Act. That the object of the Statute is to protect women from all forms of violence but restricting the perpetrator to “an adult male person” does not fulfil the purpose of the Act, thereby curbing the reach of the social beneficial statute. ¹²¹

Hence, after going through all the relevant provisions of the Domestic Violence Act, various doctrines under the Indian Constitution and the statutes of similar nature; the Court held that Section 2(q) of the Act is violative of Article 14 of the Indian Constitution. That the term “adult male person” does not fulfil the objects sought to be achieved by the Act. Thereby, it stands deleted. As a result, the proviso to Section 2(q) serves no purpose, and it also stands deleted. Furthermore, the Court stated that the three women who were discharged by the Bombay High Court can now be held liable under the Domestic Violence Act, in spite of not mentioning it in the Prayer before the Court. However, the Counsel stated that she would not be pursuing those complaints from 2010 and just want the Court to address the matter regarding the constitutional validity of Section 2(q).¹²² As a result, no action was taken against the three women respondents against whom a complaint was filed before the Bombay High Court in 2010.

¹²⁰ Lachhman Dass v. State of Punjab, AIR 1963 SC 222.

¹²¹ Hiral P. Harsora case, (2016) 10 SCC 165, Para 33.

¹²² Hiral P. Harsora case, (2016) 10 SCC 165, Para 50.

CHAPTER-4

‘RESPONDENTS’ UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT

The definition of “Respondent” under the Act totally changed after the landmark judgment of “*Hiral P. Harsora v. Kusum Narottamdas Harsora*” was passed by the Hon’ble Supreme Court in 2016. In this chapter, we will be analysing various judicial pronouncements from different Courts of India, before and after the landmark judgment was passed.

4.1 BEFORE 2016

4.1.1. “SMT. MENAKURU RENUKA AND OTHERS v. SMT. MENAKURU MONA REDDY”

FACTS- In this case, a Complaint of Domestic Violence was filed by the aggrieved person against her husband, father in-law, mother in-law and sister in-law. The Couple got married in 1997 after which they moved to the United States. The aggrieved person stated that a whopping amount of Rs 1 crore was given to the groom’s family along with other valuables.¹²³ However, her husband used to harass her in the US even after the birth of their child. When they came back to India, her father in-law, mother in-law and sister in-law used to harass her along with her husband. After such incidents, she filed a Complaint of Domestic Violence stating that they not only physically assaulted her but also her father. In the application before the Court, she sought relief of separate residence, compensation of Rs 8 crore and other household expenses. The aggrieved women had also made a complaint against all the above-mentioned people under the Dowry Prohibition Act¹²⁴ and Section 498A of the Indian Penal Code¹²⁵. A Complaint was given to the Protection Officer where it was stated that she was assaulted repeatedly by her husband in the US on the instigation of his family members.

The Respondents then filed a petition before the Andhra Pradesh High Court. The Counsel appearing for Petitioners claimed before the Court that no complaint of domestic violence can be filed against women and that the relief sought by her cannot be claimed from any of the Petitioners, therefore the Complaint needs to be quashed.

On the other hand, the Counsel appearing for the Respondent stated that a complaint of domestic violence can be made against a woman and that any kind of relief mentioned in the Act can be sought from her husband, father in-law, mother in-law and sister in-law.

ISSUES- The first contention before the Court was to determine whether a Complaint of domestic violence could be filed against a woman or not as per Section 2(q). Secondly, the contention was to check whether the relief claimed by the Respondent against the Petitioners was maintainable or not.

¹²³ Smt. Menakuru Renuka & Ors. v. Smt. Menakuru Mona Reddy, 2009 (3) Crimes 473 (AP HC).

¹²⁴ The Dowry Prohibition Act, 1961, No. 28, Act of the Parliament, 1961 (India).

¹²⁵ *Supra* note 101 at 30.

HELD- The Court firstly referred to Section 2(q) and Section 2(f) of the Domestic Violence Act. According to Section 2 (f) which defines “domestic relationship”, any close relative of the husband could be included but since Section 2(q) includes only “an adult male person”; therefore, the Court stated that no complaint was maintainable against female relatives of the husband. The Court held that the proviso would not include female relatives as they were automatically excluded by the term “adult male person” used in the main part of the provision; as a result, the female members could not be made respondents under the present proceedings. That since the Complaint of domestic violence is maintainable against the husband and father in-law, therefore any kind of relief can be sought from them as per the provisions of the Act. ¹²⁶

ANALYSIS OF THE JUDGMENT- The judgment interpreted Section 2(q) and the proviso attached to it under the Domestic Violence Act. According to which, no complaint of domestic violence could be filed against women. Furthermore, the term “relatives of the husband or partner” could only include “male relatives of the husband or partner”.

4.1.2. SANDHYA WANKHEDE v. MANOJ BHIMRAO WANKHEDE

FACTS- In this case, the Appellant got married to Respondent no.1 on 20th January, 2005 under the Special Marriage Act, 1954.¹²⁷ After getting married, the Appellant and the Respondent started residing in Amravati. There the Appellant used to reside with her husband (Respondent no.1), widowed mother in-law (Respondent No.2) and sister in-law (Respondent no.3). About an year after their marriage, things started becoming difficult for the Appellant as she was assaulted by all the three Respondents. On 16th June, 2007 she filed an FIR against her husband under Section 498A of the Indian Penal Code for mercilessly beating her. Further, on 16th July 2007 she went on to file a complaint against all the three Respondents under the Protection of Women from Domestic Violence Act, 2005 seeking protection order (section- 18), residence order (section-19), monetary relief (section-20) and compensation order (section-22). This application was filed before the Judicial Magistrate, First Class in Amravati under Section 23 which grants power to the Magistrate to pass an interim order to grant ex-parte orders. The Magistrate allowed the application and on 16th August 2007 directed Respondent No.1 i.e. the husband to pay interim maintenance of Rs. 1500 per month to the Appellant from the date of application till the final disposal. The Court also restrained all the Respondents from dis-possessing the Appellant from her matrimonial home in Amravati, till the final disposal of the case.¹²⁸

The order of the learned Magistrate was challenge by Respondent No.1 before the Sessions Judge, Amravati. The Sessions Judge dismissed the appeal on 2nd May 2008. Hence, the Respondent moved before the Hon’ble High Court under Section 482 of the Code of Criminal Procedure, 1973; challenging the order of the Judicial Magistrate and Sessions Judge. This appeal was also dismissed by the High Court on 4th September 2009.¹²⁹

¹²⁶ *Supra* note 123 at 35.

¹²⁷ Sandhya Manoj Wankhede v. Manoj Bhimrao Wankhede, (2011) 3 SCC 650.

¹²⁸ Sandhya Manoj Wankhede case, (2011) 3 SCC 650, Para 4.

¹²⁹ Sandhya Manoj Wankhede v. Manoj Bhimrao Wankhede, Misc. CrI. App. No. 203 of 2007.

In the meantime, Respondent No.2 (widowed mother in-law) of the Appellant filed an application before the Judicial Magistrate First class praying for modification of the Order dated 16th August 2007 and to direct the Appellant to leave her house. The Application was dismissed by the Court. After that, Respondent No. 2 and 3 collectively filed an application under the Domestic Violence Act before the Sessions Judge, questioning the Orders passed by the Magistrate. They stated that the Orders are not maintainable since women cannot be made respondents under the Domestic Violence Act. Respondent No.2 also said before the Court that the owner of the property in Amravati is the widowed mother in-law. Hence, it is not a shared household for the Appellant. The appeal was allowed by the Sessions Judge, hence, all the orders passed by the Judicial Magistrate were set aside and modified the order which restrained the Respondents from dis-possessing the Appellant from their house in Amravati. The Court then directed Respondent No.1 i.e. the husband to arrange separate accommodation for the Appellant and pay her Rs.1000 per month till the final disposal of the case. ¹³⁰

The Appellant challenged the judgment and stated that she has all the rights to stay at her matrimonial home. The High Court disposed of the matter on 5th March 2010 by directing the Appellant to leave the matrimonial household since it belonged to her mother in-law.¹³¹ The Court also directed the Trial Court for speedier trial of the case and confirmed the order relating to the deletion of the name of women respondents. Thereafter, an appeal was filed before the Hon'ble Supreme Court.

The Counsel representing the Appellant made submission before the Supreme Court that under the Proviso to Section 2(q) of the Domestic Violence Act, a wife/common law wife can file a complaint not only against her husband or male partner but also his relatives. That the term "relatives" has not been defined under the said Act but it does not mean that the object is to exclude females from its application.

The Counsel representing the Respondents submitted that the term "relative" under Section 2(q) aims to include within its ambit just the male relatives of the husband, keeping in mind the main part of the provision. Furthermore, he also stated that the term "adult male person" used in the legislation shows the intent of the legislature to exclude women from the ambit of the Statute.

ISSUE- Whether a complaint can be filed by the Appellant against her mother in-law and sister in-law as Respondents under section 2(q) of the Domestic Violence Act?

HELD- The Court referred to Section 2(q) of the Domestic Violence Act and held that even though the main part of the provision states that a respondent under the DV Act can only be an "adult male person", the Proviso to it extends the meaning. The proviso includes the term "relative of the husband or male partner" which may include a male as well as a female. That the term "relative" has not been defined under the Act, but if the

¹³⁰ Manoj Wankhede v. Sandhya Wankhede, Cri. A. No. 159 of 2008.

¹³¹ Sandhya Wankhede v. Manoj Wankhede, CRWP No. 588 of 2009.

legislature intended to exclude women, they would have done it explicitly. That the term “relative of the husband or male partner” extends the scope of the Statute.¹³²

The Hon’ble Supreme Court set aside the orders passed by various Courts and directed the trial court to proceed with the applications filed against Respondent no.2 and 3 (the women respondents).

ANALYSIS OF THE JUDGMENT- This judgment basically interpreted the meaning of “relatives of the husband or male partner” as provided under the Proviso to Section 2 (q). Since section 2 (q) of the Domestic Violence Act states that a complaint can be filed only against “an adult male person” therefore, many complaints of domestic violence were not taken into consideration. After the judgment was passed, it became a precedent for the upcoming cases where wife of a husband or female, living in a relationship in the nature of marriage were able to file complaints of domestic violence against female members living in a domestic relationship within a shared household. However, if a mother in-law had to file a complaint of domestic violence against her daughter in-law, then she could not do so under the Act.

4.1.3. VARSHA KAPOOR v. UNION OF INDIA & ORS.

FACTS- In this case, a daughter in-law instituted proceedings before the Metropolitan Magistrate, Mahila Court, New Delhi under Section 12 of the Domestic Violence Act where she made a Complaint against her husband (Respondent no.1), mother in-law (Respondent no.2) and a person named as Rakesh Dhawan (Respondent no.3); seeking protection order (section- 18), residence order (section-19), monetary relief (section-20) and compensation order (section-22).¹³³ When the mother in-law received the notice, she filed a writ petition before the Delhi High Court challenging the same by stating that a complaint of domestic violence cannot be filed against a woman as per Section 2(q) of the Domestic Violence Act. ¹³⁴

The submission made before the Court by the Petitioner’s (mother in-law) Counsel was that the term “relative of the husband” shall be read with the term mentioned in the main provision i.e. “adult male person” and as a result, a complaint can be filed against male relatives of the Respondent and not a female. Furthermore, the Counsel stated that the object of the Domestic Violence Act is to protect women from all forms of violence done by men. That domestic violence is a result of patriarchy and is a gender-based violence which can only be done by a man against a woman.¹³⁵ So, the object and aim of the legislation is to protect women from different forms of abuses done by men. That if the Court allows to file complaint against a female, then it would go against “the object sought to be achieved” by the Statute.

The Counsel went on to citing another case where the Court stated as follows-

¹³² *Supra* note 127 at 36.

¹³³ Varsha Kapoor v. Union of India, 2010 SCC Online Del 2213.

¹³⁴ Varsha Kapoor v. Union of India, CRWP No. 638 of 2010.

¹³⁵ Varsha Kapoor’s case, CRWP No. 638 of 2010, Para 5(a).

*“...If on a fair construction, the principle provision is clear, a proviso cannot 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.”*¹³⁶

By citing this case, the Counsel made further submission before the Court that a Proviso to principle legislation has to be read in co-relation where the proviso cannot expand the meaning provided under the main provision. As a result, the term “relative of the husband” cannot be given a different meaning and has to be read with “adult male person”. That if a female is included under the term “relative of the husband” then it would be violative of Article 15(3) of the Indian Constitution which gives power to the state to make laws for the welfare of women and children.¹³⁷ That a women protection law cannot be used to protect one woman from another, otherwise it will be an arbitrary statute.

The Court then went on to analyze the Statement of objects and reasons of the Protection of Women from Domestic Violence Act, 2005 which states as follows-

*“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.”*¹³⁸

The Court stated that both the parties agree with the fact that the Act is a special legislation which aims to protect women from all sorts of violence. The Court also quoted the observation made by the Court in another case which states as follows-

“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:

¹³⁶ Dwarka Parsad v. Dwarka Das Saraf, AIR 1975 SC 1758.

¹³⁷ Varsha Kapoor’s case, CRWP No. 638 of 2010, Para 5(c).

¹³⁸ *Supra* note 68 at 25.

- (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."¹³⁹

Therefore, the Court held that the Domestic Violence Act is not ultra vires to the legislative power of the Parliament and went on to discussing the main issues.

ISSUE- The contention made before the Court was that, a complaint cannot be filed against a woman, as Section 2(q) of the Act includes only “an adult male person”. That the Proviso to Section 2 (q) includes the term “relative of the husband” but if a female is included under it then it is ultra-vires to the Constitution of India.

HELD- The Court referred to Section 2(q) of the Act and stated that in order to understand the scope of Section 2(q) and its proviso, it is important to examine some other provisions of the same Act. So, the Court referred to Section 2(a), 12, 19 and 31 of the DV Act; since these sections collectively provide redressal machinery to an “Aggrieved person” under the Act. They state as follows-

“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.”¹⁴⁰

¹³⁹ Aruna Parmod Shah v. Union of India, CRWP No. 425 of 2008.

¹⁴⁰ The Protection of Women from Domestic Violence Act, 2005, S. 2(a), No. 43, Acts of Parliament, 2005 (India).

“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.”¹⁴¹

“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;

¹⁴¹ The Protection of Women from Domestic Violence Act, 2005, S. 12, No. 43, Acts of Parliament, 2005 (India).

(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 person 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 officer-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.”¹⁴²

“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 extend 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.

¹⁴² The Protection of Women from Domestic Violence Act, 2005, S. 19, No. 43, Acts of Parliament, 2005 (India).

(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.”¹⁴³

The Court held that after interpreting all the provisions together, it can be said that the provisions of the Act are meant to be applicable on females as well. So, a woman can be a respondent under the proviso to Section 2(q) of the Act.¹⁴⁴ That there is a loophole in the definition of a Respondent which needs to be fixed. That it is the duty of the Court to give correct interpretation to a Statute and its provisions.

The Court relied on the case of *Star India P. Ltd. v. The Telecom Regulatory Authority of India and Ors.* where the Court held that it is obliged to give correct interpretation to a piece of legislation and find the true intent of the Legislature behind the drafting of a Statute. That the Court tries to find out the intent of the Legislature not only from the language of the Statute but by also considering the social construct. ¹⁴⁵

The Court in the case of Varsha Kapoor stated that Section 2(q) and its proviso has to be read separately since they are supplementary to each other. That the main enacting part deals with those aggrieved persons who are in a domestic relationship. Thus, any women living in a domestic relationship can seek relief under the Domestic Violence Act from “an adult male” person. Such women may include a mother, a sister, daughter in-law, sister in-law etc.¹⁴⁶ That the Proviso is specifically for a married woman or a woman living in a relationship in the nature of marriage, where she can seek relief not only from her husband or partner but also from their relatives. The Court further stated that if the definition of a Respondent does not include female members living in a shared household, then an aggrieved woman cannot seek protection order or residence order against a woman, which would simply defeat the object sought to be achieved by the Act. That when all the above-mentioned provisions are read together, it shows the intent of the legislature to include female relatives of a husband or partner under the Proviso of Section 2(q) even though they have not mentioned it explicitly.¹⁴⁷ That Section 2(q) and its Proviso has to be read independently and as a result, the term “respondent” only includes “an adult male person” and the term “relatives of the husband or partner” includes female relatives of such person. Thus, the term “a relative” under the Proviso includes female relatives.

So, the Court found no merit in the writ petition and dismissed the same.

ANALYSIS OF THE JUDGMENT- This judgment basically interpreted the meaning of “relatives of the husband or male partner” as provided under the Proviso to Section 2 (q) and the Constitutional validity of the same. After the judgment was passed, married women or women living in a relationship in the nature of

¹⁴³ The Protection of Women from Domestic Violence Act, 2005, S. 31, No. 43, Acts of Parliament, 2005 (India).

¹⁴⁴ Varsha Kapoor’s case, CRWP No. 638 of 2010, Para 12.

¹⁴⁵ *Star India Pvt. Ltd. v. The Telecom Regulatory Authority of India and Ors.*, 146 (2008) DLT 445 (DB).

¹⁴⁶ Varsha Kapoor’s case, CRWP No. 638 of 2010, Para 15(a).

¹⁴⁷ Varsha Kapoor’s case, CRWP No. 638 of 2010, Para 17.

marriage were able to file Complaint against female relatives of the husband or the partner and Section 2(q) was held to be Constitutionally valid.

4.1.4. VIJAYALEKSHMI AMMA v. BINDU

FACTS- In this case, an aggrieved woman made a complaint of domestic violence before Judicial Magistrate First Class under Section 12 of the Act, seeking various reliefs against another woman. The Respondents made an appeal before the Kerala High Court questioning the allegations of domestic violence made against another woman stating that a woman cannot be a respondent according to Section 2(q) of the Domestic Violence Act.¹⁴⁸ That the aggrieved woman has no right over the property of the Petitioner since it was not a shared household.

The learned Counsel representing the Petitioner stated that-

*“A respondent as defined under section 2(q) of the Act can only be a male person and not a female and therefore the proceedings initiated by the learned Magistrate on Annexure A-1 complaint as against the petitioner is not sustainable and is an abuse of process of the Court and hence it is to be quashed. It is also argued that the house involved in the petition is the exclusive property of the petitioner and is not a shared household of respondents 1 and 2 and on that ground also the petition is not maintainable”.*¹⁴⁹

ISSUE- The contention before the Court was to examine whether a female could be a Respondent under Section 2(q) of the Domestic Violence Act.

HELD- The Court referred to Section 2(q) of the Domestic Violence Act and observed that-

*“A learned Single Judge of the same High Court in Rema devi v. State of Kerala had taken an identical view that respondent as defined under section 2(q) could also be a female person.”*¹⁵⁰

On the basis of the observations made, the Court held that-

*“The Legislatures in their wisdom used “a male person” in the main definition of the respondent and purposely did not use “a male relative” and instead used only a relative. The proviso makes it clear that an aggrieved wife or a female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner. The proviso consciously avoided using “a male relative” and instead used only a “relative” of the husband or male partner. A relative could be both male and female. Hence a female relative is not excluded by the proviso. If that be so, contention that a female relative of the husband cannot be a respondent, as defined under section 2(q) of the Act cannot be accepted. There are sufficient indications in the Act to strengthen the said conclusion.”*¹⁵¹

¹⁴⁸ Vijayalekshmi Amma v. Bindu, CrI. M.C. No. 2225 of 2009.

¹⁴⁹ Vijayalekshmi Amma’s case, CrI. M.C. No. 2225 of 2009, Para 1.

¹⁵⁰ Rema Devi v. State of Kerala, CRR P. No. 2568 of 2008.

¹⁵¹ Vijayalekshmi Amma’s case, CrI. M.C. No. 2225 of 2009, Para 5.

ANALYSIS OF THE JUDGMENT- The passing of this judgment by the Kerala High Court strengthened the reverse contention of various people that the term “relative of the husband or male partner” could only be a male person since the main part of the provision i.e. Section 2(q) talks about “an adult male person.” The judgment acted as a precedent for the Lower Courts thereby widening the scope of the Act.

4.1.5. KUSUM LATA SHARMA v. STATE & ANR.

FACTS- In this case, a mother in-law made a complaint before the Magistrate against her daughter in-law and son under Section 12 of the Protection of Women from Domestic Violence Act. After receiving an Order from the Magistrate, the daughter in-law filed a petition before the Delhi High Court stating that there has been a long-standing dispute between her husband and mother in-law regarding property. That her mother in-law wants them to alienate the property left by his father, as a result she filed a false complaint seeking relief under the Domestic Violence Act. The daughter in-law further contended that the mother in-law cannot seek relief from her since she cannot be a respondent under Section 2(q) of the Domestic Violence Act. ¹⁵²

ISSUE- Can a mother in-law file a Complaint before the Magistrate under Section 12 of the Domestic Violence Act to seek relief against her daughter in-law?

HELD- In this case, the Delhi High Court observed the judgment passed by a Division Bench of the same Court where it was held that-

“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. The Court should also endeavour 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 favour of the constitutionality of a statute.”¹⁵³

After hearing the Learned Counsels of both the parties and examining various cases, the Court held that-

“15. Having regard to the purpose which the DV Act seeks to achieve and when we read Section 2 (q) along with other provisions, our task is quite simple, which may in first blush appear 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

¹⁵² Kusum Lata Sharma v. State & Anr., (Crl. M.C. No. 75 of 2011).

¹⁵³ Star India Private ltd. v. The Telecom Regulatory Authority of India and Ors., 146 (2008) DLT 455.

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 females 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.”¹⁵⁴

The Court further stated that after dividing the main part of Section 2(q) and its proviso, it is not difficult to understand the meaning of the term “relative of the husband or male partner.” That usually when a wife is harassed by the husband, his relatives are also a part of the incident through direct participation or by aiding or abetting the same. So, if female relatives are not included in the definition of a Respondent than it would defeat the object sought to be achieved by the legislation. Furthermore, if female relatives are not included in the definition, then the relief provided under the legislation can be easily defeated by initiating an act of domestic violence with the help of female members of the family.¹⁵⁵ The Court held that a mother in-law being an aggrieved person can file a complaint of domestic violence against her daughter in-law. Hence, the petition was dismissed by the Court on the basis of the above-mentioned reasons.

ANALYSIS OF THE JUDGMENT- This was for the first time when a High Court passed a judgment stating that a mother in-law can also file a complaint of domestic violence against her daughter in-law. This judgment worked as a precedence for various Lower Courts where it was held that the term “relative of a husband or male partner” and “an adult male person” has to be read separately. That a mother in-law can file a Complaint against her daughter in-law under the Proviso to Section 2(q). The Court also observed that the Act was enacted for a larger purpose, hence, the interpretation of “relative of a husband or male partner” cannot be limited to just wives and female live-in partners.

4.2 AFTER 2016

In this chapter we will be analysing the cases of domestic violence related to Section 2(q) of the Act after the landmark judgment of Hiral P. Harsora was passed.

¹⁵⁴ Kusum Lata’s case, (Cri. M.C. No. 75 of 2011), Para 15.

¹⁵⁵ Kusum Lata’s case, (Cri. M.C. No. 75 of 2011), Para 16.

4.2.1. MOH. ZAKIR v. SHABANA & ORS.

FACTS- In this case, a Muslim man was aggrieved by certain acts of his wife and family members. So, he decided to approach the Court, seeking relief under Section 12 of the Domestic Violence Act. When the matter went before the Magistrate and Sessions Judge, they refused to consider the Complaint stating that the provisions, and statement of objects and reasons of the Domestic Violence Act is heavily loaded with reliefs provided to women only.

Aggrieved by the Orders passed by them, the aggrieved male person filed an appeal before the Karnataka High Court. The Court referred to the landmark judgment passed by the Hon'ble Supreme Court in the case of *Hiral P. Harsora and Ors. v. Kusum Narottamdas Harsora and Ors.* and accepted the petition filed by the Muslim male person. The Court stated that after the term "adult male person" was deleted by the Hon'ble Court in the abovementioned case, a male or female, can easily invoke the provisions of the Domestic Violence Act.¹⁵⁶ So, the High Court held that an appeal can be filed by anyone person, whether a male or female, under the Domestic Violence Act.

ISSUE- Can a male be an aggrieved person under the Domestic Violence Act, 2005?

HELD- A Judge of the Karnataka High Court stated that a Complaint of Domestic Violence cannot be rejected merely on the ground that it was filed by a male person, by an order dated 18.04.2018. However, a subsequent Order was passed by the Court on 28.04.2018 where the previous Order was withdrawn stating it to be 'patently erroneous.'¹⁵⁷ The matter again went before the Supreme Court of India where the Court set aside the previous Order passed by the Karnataka High Court on 18.04.2018.¹⁵⁸ The Hon'ble Court also stated that the High Court had no power to make corrections on merit. Hence, the Court directed the case to be efficiently and speedily disposed of by the Magistrate or Sessions Judge.

ANAYSIS OF THE JUDGMENT- This judgment of the Karnataka High Court shows how sometimes a landmark judgment passed by the Hon'ble Supreme Court can be mis-interpreted by the Appellant Courts. If this can be a case of an Appellant Court then we can just wonder how common men interpret or understand such important judgments. As a result, there is a need for increasing sensitization programmes by the authorized authorities, so as to make people aware of their rights and remedies.

4.2.2. SASWATI SINHA (MUKHERJEE), IN RE

FACTS- In this case, a mother in-law wanted to initiate proceedings against her daughter in-law by filling a Complaint under Section 12 of the Domestic Violence Act before the Lower Court. However, the Learned Counsel representing the Petitioner i.e. the mother in-law stated that the Court did not provide his client with

¹⁵⁶ Mohd. Zakir v. Shabana, 2017 SCC OnLine Kar 4719.

¹⁵⁷ Mohd. Zakir v. Shabana, CrI. Petition No. 2351 of 2017.

¹⁵⁸ *Supra* note 3 at 11.

a chance to be heard and dropped the proceeding instituted by her against her daughter in-law.¹⁵⁹ Thereafter, a petition was filed before the Calcutta High Court seeking relief. The High Court stated that they are not going to examine who is correct and who is at fault. However, they would just examine the maintainability of the petition.

ISSUE- Can a mother in-law initiate proceedings against her daughter in-law under section 12 of the Protection of Women from Domestic Violence Act, 2005?

HELD- The Calcutta High Court referred to the landmark judgment passed by the Hon'ble Supreme Court in the case of *Hiral P. Harsora* and held that Section 2(q) of the Domestic Violence Act has been amended by the Hon'ble Court. So, a question of maintainability of the case filed by a mother in-law against her daughter in-law does not arise. The Court further stated that a mother in-law can be said to be in a domestic relationship with the daughter in-law, therefore even she is entitled to seek relief under Section 12 of the Domestic Violence Act.¹⁶⁰ The Calcutta High Court directed the Trial Court to proceed with the matter stating that the complaint filed by the mother in-law is maintainable.

ANALYSIS OF THE JUDGMENT- The landmark judgment of *Hiral P. Harsora* was passed by the Hon'ble Supreme Court in 2016. In the landmark judgment, the definition of a "Respondent" under the Domestic Violence Act was amended. The term "an adult male person" and the proviso to the section was deleted. The deletion of the term "an adult male person" widened the scope of the Domestic Violence Act because after that, a complaint of domestic violence could be filed against any person living in a domestic relationship which includes a mother in-law, sister in-law, daughter etc. Before this judgment was passed, a complaint of domestic violence could be filed only against an adult male person. An independent complaint could not be filed against a female member. This judgment of the Calcutta High Court shows how such landmark judgments work as a precedence, thereby providing justice to a larger section of the society.

4.2.3. SHWETA MAHESHWARI v. SMT. POOJA MAHESHWARI

FACTS- In this case, the aggrieved woman got married to Vishal Maheshwari in the year 2014. A lot of expensive gifts were given from the bride's family to the groom, which included gold, silver, diamond ornaments, cash etc. Apart from that, Rs. 25,00,000/- was spend on the arrangements made for the marriage and furniture.¹⁶¹ Basically, a hefty amount was spent by the bride's family before and during the marriage. After her marriage, she shifted to Jamshedpur. After her marriage, things started to turn sour as her mother in-law started taunting her for not bringing enough dowry. Her husband and father in-law also supported her mother in-law. When the couple went on honeymoon, at that point of time as well, they were constantly on phone calls to provoke her husband. After her marriage, the house-help was removed and she was asked to do

¹⁵⁹ Saswati Sinha (Mukherjee), In re, CRR 1975 of 2017.

¹⁶⁰ *Id* at 47.

¹⁶¹ Shweta Maheshwari v. Mrs. Pooja Maheshwari, M. Cr. C. No. 2388 of 2016.

all the household chores. One day, her husband said that he is going to re-join his job in Gurugram. When she asked to accompany him, she was physically and mentally tortured by her mother in-law and father in-law.

After the husband left for his job, she was residing alone with the in-laws who constantly tortured her and demanded cash and a car. The aggrieved woman claimed that her in-laws could have killed her, but they feared strict punishment. After a while, her brother came to Jamshedpur and took her back to Gwalior. She was not allowed to take any of her belongings with her. After several requests made to the in-laws, her husband came to take her but again made a demand of Rs.7,00,000/-.¹⁶² The aggrieved woman's father gave Rs.60,000/- at that point of time but the atrocities continued. The aggrieved woman then decided to go back to her father's place. She was not allowed to take her identity cards and debit card along with her. When the aggrieved woman went back to Gwalior, her in-laws came and again made the same demand.

Finally, a Complaint was made against her husband and in-laws under Section 12 of The Domestic Violence Act.

Therefore, a petition was filed before the Madhya Pradesh High Court by her in-laws stating that they are not involved in whatever has happened between their daughter in-law and her husband.¹⁶³ That they reside in Bangalore and the only allegation against them is that they provoked her husband to demand money and harass her. The contended before the Court that since the Applicants are women, a Complaint made under Section 12 of the Domestic Violence Act is not maintainable against her.

ISSUE- Can a Complaint of Domestic Violence be made against another female who is/ has been in a domestic relationship?

HELD- In this case, the Court found that the aggrieved woman and her family members were not serious regarding this matter, otherwise they would have appeared before the Court and would have paid the process fee. Furthermore, the Court found that no allegations were made against applicant number 1 and 2 in the entire complaint. Therefore, the Court held that-

*"From the plain reading of the complaint as well as the documents which have been filed along with the petition, it is clear that no specific allegations have been made against the applicants. The applicant No.2 is a resident of Bangalore whereas the applicant No.1 is an unmarried girl. In absence of any specific allegation against the applicants that they have committed any domestic violence against the complainant, in the considered view of this Court, the proceedings against the applicants which are pending in the Court of ACJM, Gwalior are liable to be quashed."*¹⁶⁴

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *Supra* note 161.

However, the Court went on to answering the applicability of the application filed by the wife of Mr. Vishal and held that a complaint of domestic violence can be made against another woman under Section 12 of the Act, by referring to the judgment of Hiral P. Harsora.

ANALYSIS OF THE JUDGMENT- The judgments of various High Courts where a petition was made questioning the maintainability of a Complaint which involved women respondents, were duly examined by the Court. As a result of which, the landmark judgment of *Hiral P. Harsora* has been widely applied as a precedence, thereby fulfilling “the objects sought to be achieved” by the legislation.

CHAPTER- 5

AN ANALYSIS OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

The Domestic Violence Act is Act No. 43 of 2005, which was enacted on 13th September 2005 but came into force on 26th October 2006. It has a total of 5 chapters and 37 sections. Before 2005, an act of cruelty against a woman was a criminal offence under Section 498A of the Indian Penal Code, 1860 which states as follows -

“498A-Husband or relative of husband of a woman subjecting her to cruelty.

[Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, "cruelty means"—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]”¹⁶⁵

The statement of objects and reasons clearly states that a remedy under criminal law already existed but there was a need for remedy under the civil law, to address the offence of violence against women. As a result, the Domestic Violence Act was enacted. There has been a debate over the issue whether the Domestic Violence Act is civil or criminal in nature. However, this contention was cleared by the Madras High Court in the case of *Dr. P. Pathmanathan v. Monica & Ors.*. The Court held that-

“Mere determination of rights under Chapter-4 of the Act does not result in penal consequences so as to term it as criminal proceedings. It is only when there is a breach of such protection order passed by the Magistrate, that proceedings become penal in nature.”¹⁶⁶

Therefore, it can be said that the Domestic Violence Act is civil in nature.

The introductory part of the legislation states that there are various International Conventions/ Instruments which acknowledge that Domestic Violence is a serious issue which needs to be addressed by the States. They are- The Vienna Accord of 1994¹⁶⁷; the Beijing Declaration and the Platform for Action ((1995)¹⁶⁸; and The

¹⁶⁵ *Supra* note 101 at 40.

¹⁶⁶ *Dr. Pathmanathan v. Monica & Ors.*, CrI. O.P No. 28458 of 2019.

¹⁶⁷ Vienna Declaration and Programme of Action, UN COMMISSION ON HUMAN RIGHTS, 1994.

¹⁶⁸ Beijing Declaration and Platform for Action, THE FOURTH WORLD CONFERENCE ON WOMEN, 1995.

United Convention Committee on Elimination of All Forms of Discrimination Against Women in its General Recommendation No. XII (1989) ¹⁶⁹.

The Statement of Objects and Reasons further states that Articles 14, 15 and 21 were taken into consideration while the enactment of this Act. A.14 was referred to check the Constitutional Validity of this Act.¹⁷⁰ A.15 was referred since it empowers the State to make special provisions for certain group of people including women and children.¹⁷¹ A.21 was referred since it gives a woman the right to be free of violence, the right to live with dignity, the right to shelter etc., ¹⁷²

Coming to the Preamble of the Act, it clearly states that the Act was enacted to protect women from ‘violence of any kind’ occurring within the family.¹⁷³ Here, the term ‘violence of any kind’ includes physical, sexual, economic, and emotional or verbal abuse.

Since, Section 2 has already been discussed in details in the previous chapters, let’s dive into the other provisions of the Act.

First of all, the definition of ‘domestic violence’ has been provided under Section 3 of the Act which states that any act/omission/commission/conduct of the Respondent which physically, sexually, emotionally, verbally or economically abuse/ injures/ harms/ harasses or endangers the life/ safety/ health/ limb or well-being¹⁷⁴ of the aggrieved person or any person related to her then it comes under the offence of Domestic Violence, for which remedy can be sought by filing a Complaint before the Magistrate under Section 12 of the Act.¹⁷⁵ Only a Judicial Magistrate First Class and Metropolitan Magistrate has the jurisdiction to receive a Complaint of Domestic Violence; where either the Aggrieved person or Respondent resides or works (temporarily or permanently), or where the cause of action arose. ¹⁷⁶

According to the Domestic Violence Act, an act of causing bodily harm to a woman amounts to physical abuse. An act of sexual nature which degrades or outrages the modesty of a woman amounts to sexual abuse. An act of insulting or abusing a woman for not bringing dowry, or for not being able to bear a male child, amount to verbal or emotional abuse. An act of depriving a woman of her basic needs by not allowing her to work or not providing resources of necessity amounts to economic abuse.

The third chapter discusses about the duties and powers of Service provider, Protection Officer, Government etc., It states that ‘any person’ who has a reason to believe that an act of domestic violence has been/is being/may be committed, can provide the information to the Protection Officer.¹⁷⁷ Even though the

¹⁶⁹ Convention on the Elimination of All forms of Discrimination against Women, UN GENERAL ASSEMBLY, 1979.

¹⁷⁰ *Supra* note 67 at 35.

¹⁷¹ *Id* at 170.

¹⁷² *Id* at 170.

¹⁷³ *Id* at 170.

¹⁷⁴ The Protection of Women from Domestic Violence Act, 2005, S. 3, No. 43, Acts of Parliament, 2005 (India).

¹⁷⁵ The Protection of Women from Domestic Violence Act, 2005, S. 12, No. 43, Acts of Parliament, 2005 (India).

¹⁷⁶ The Protection of Women from Domestic Violence Act, 2005, S. 2(i), No. 43, Acts of Parliament, 2005 (India).

¹⁷⁷ The Protection of Women from Domestic Violence Act, 2005, S. 4(1), No. 43, Acts of Parliament, 2005 (India).

information turns out to be false, if given in good faith would not attract any kind of civil or criminal liability. Such a provision encourages people to report the incidents of domestic violence. It further states that a complaint of Domestic Violence can be received by a Police Officer, a Magistrate, Protection Officer or Service Provider; who in turn have to make the aggrieved person aware of their rights, including the right to free legal service. ¹⁷⁸

Furthermore, when a Protection Officer, Service Provider or the aggrieved person requests to provide her with shelter home or medical aid, then it becomes compulsory for the shelter home or medical facility to provide her with the service.¹⁷⁹ It is the duty of the State Government to appoint Protection Officer in each district, who as far as possible shall be a woman.¹⁸⁰ Also, under the Domestic Violence Act, it is the duty of both the Central Government and State Government to sensitize people and make them aware of the rights and remedies provided under the Act. ¹⁸¹

When a Complaint seeking relief under Section 12 is filed, the Magistrate passes an order depending upon the facts and circumstances of the case which may include a residence order¹⁸², protection order¹⁸³, compensation order¹⁸⁴, monetary relief¹⁸⁵ or custody order¹⁸⁶. Solely on the basis of an affidavit submitted by a woman, the Court may grant ex-parte order for relief as well. ¹⁸⁷

Furthermore, a Protection order passed by the Magistrate can be altered, modified or revoked as well on the receipt of an application by the Aggrieved person or Respondent.¹⁸⁸ For e.g. if the aggrieved woman decides to shift abroad, then the Protection Order passed by the Magistrate can be revoked. It is important to note that a relief under this Act can be sought from a criminal, family or civil court and the Domestic Violence Act is supplementary in nature. ¹⁸⁹ Which means a case of cruelty under Section 498A of the Indian Penal Code and domestic violence under The Protection of Women from Domestic Violence Act can go hand in hand. ¹⁹⁰

All the proceedings and offences are governed by the Criminal Procedural Code, 1973. However, if the Court deems fit, they can lay down their own rules to dispose of the matters as well. In addition to it, if a person is aggrieved from the Order passed by the Magistrate, then they may file an appeal before the Court of session within 30 days of receiving the order (the aggrieved person or the Respondent, whoever receives later). ¹⁹¹

¹⁷⁸ The Protection of Women from Domestic Violence Act, 2005, S. 5, No. 43, Acts of Parliament, 2005 (India).

¹⁷⁹ The Protection of Women from Domestic Violence Act, 2005, S. 6 & 7, No. 43, Acts of Parliament, 2005 (India).

¹⁸⁰ The Protection of Women from Domestic Violence Act, 2005, S. 8, No. 43, Acts of Parliament, 2005 (India).

¹⁸¹ The Protection of Women from Domestic Violence Act, 2005, S. 9, No. 43, Acts of Parliament, 2005 (India).

¹⁸² The Protection of Women from Domestic Violence Act, 2005, S. 19, No. 43, Acts of Parliament, 2005 (India).

¹⁸³ The Protection of Women from Domestic Violence Act, 2005, S. 18, No. 43, Acts of Parliament, 2005 (India).

¹⁸⁴ The Protection of Women from Domestic Violence Act, 2005, S. 22, No. 43, Acts of Parliament, 2005 (India).

¹⁸⁵ The Protection of Women from Domestic Violence Act, 2005, S. 20, No. 43, Acts of Parliament, 2005 (India).

¹⁸⁶ The Protection of Women from Domestic Violence Act, 2005, S. 21, No. 43, Acts of Parliament, 2005 (India).

¹⁸⁷ The Protection of Women from Domestic Violence Act, 2005, S. 23, No. 43, Acts of Parliament, 2005 (India).

¹⁸⁸ The Protection of Women from Domestic Violence Act, 2005, S. 25, No. 43, Acts of Parliament, 2005 (India).

¹⁸⁹ The Protection of Women from Domestic Violence Act, 2005, S. 26, No. 43, Acts of Parliament, 2005 (India).

¹⁹⁰ The Protection of Women from Domestic Violence Act, 2005, S. 26(2), No. 43, Acts of Parliament, 2005 (India).

¹⁹¹ The Protection of Women from Domestic Violence Act, 2005, S. 29, No. 43, Acts of Parliament, 2005 (India).

A Protection Order under the Domestic Violence Act acts as a shield for an aggrieved person. It helps them to live a peaceful and secured life. On the order of the Court, the Respondents can be prohibited from communicating her by any means; or entering her place of employment/ school in case the aggrieved is a child; or committing/ aiding/ abetting the offence of Domestic Violence.¹⁹² If the Respondents or the Protection Officer breaches the Protection Order without any reason then it is said to be a non-bailable and cognizable offence under the Act.¹⁹³ For the breach of a Protection Order, the Court may provide the Respondent or Protection officer with imprisonment (simple or rigorous) for up to two years; or fine up to Rs. 20,000/- or both. ¹⁹⁴

So, after going through all the important provisions, it can be said that the Domestic Violence Act works as a great wall behind which a woman is protected no matter what! The powers provided to different authorities like the Police Officer, Service Provider, Protection Officer and Magistrate to receive Complaints of domestic violence shows how the Legislature wanted to protect women by every means; so that she can swiftly reach any authorized person who is available nearby. Besides that, every kind of violence has been included under the Act so that no act/omission/commission/conduct of the Respondent is left unreported.

¹⁹² The Protection of Women from Domestic Violence Act, 2005, S. 18, No. 43, Acts of Parliament, 2005 (India).

¹⁹³ The Protection of Women from Domestic Violence Act, 2005, S. 32, No. 43, Acts of Parliament, 2005 (India).

¹⁹⁴ The Protection of Women from Domestic Violence Act, 2005, S. 31 & 33, No. 43, Acts of Parliament, 2005 (India).

CHAPTER-6

IMPLEMENTATION OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005- AN EMPIRICAL STUDY

Domestic Violence as an evil phenomenon has existed in the Indian society for centuries.¹⁹⁵ Hindu Marriage was regarded as a pious institution, where two people used to get united for a sacrament of seven births.¹⁹⁶ Divorce was never regarded as a solution to a problem in marriage. Similarly, under the Muslim personal law, a marriage was considered to be a contract where both the parties had to fulfil some terms and conditions before marriage.

Today, the demand for dowry, and the act of domestic violence has given rise to thousands of ongoing and pending court cases in India, with respect to divorce, maintenance, monetary relief, compensation, cruelty etc.¹⁹⁷ However, most of the cases related to dowry and domestic violence go un-reported because of the taboos attached to it. A woman has always been regarded as a torch-bearer of a family's respect and identity. Hence, she is always taught to keep the conversation within the family, a secret affair, inside the four walls. As a result, most of the women do not report the incidents of domestic violence to the Appropriate Authority.¹⁹⁸ And since most of the people living in the society are unaware about the provisions of The Protection of Women from Domestic Violence Act, 2005; they ignore such incidents, thinking it to be a personal matter between both the parties.

In this empirical study, data has been collected and analyzed pertaining to the implementation and awareness of the Domestic Violence Act. The survey was conducted particularly in Sector-76 of the district of Gautam Buddha Nagar. For conducting the survey, profiles of 85 women residing in this location were collected on the basis of their age, awareness regarding the Domestic Violence Act, awareness about the rights and remedies provided under the Act, their marital status, family income etc. A questionnaire was prepared by the Researcher where various questions related to the provisions of the Domestic Violence Act were drafted and distributed for collecting data.

The questions were framed in such a manner, so as to extract as much data from the target audience as possible. Many-a-times, women hesitate from sharing about their journey or sufferings; so, the questionnaire was framed keeping in mind all the important canons of drafting a question, which includes asking simple questions without pressurizing the audience.

¹⁹⁵J.P. Singh, *Problems of India's changing family and State Intervention*, UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL, last visited on <https://www.un.org/esa/socdev/family/docs/egm09/Singh.pdf> .

¹⁹⁶ S. Nambi, *Marriage, mental health and the Indian Legislation*, INDIAN JOURNAL OF PSYCHIATRY, 47(1), Jan 2005, last visited on <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2918313/> .

¹⁹⁷ Pooja Gajmer & Swati Tyagi, *Domestic Violence: an overview of Section 498A- A case report*, INDIAN JOURNAL OF FORENSIC AND COMMUNITY MEDICINE, last visited on <https://www.ijfcm.org/html-article/13600> .

¹⁹⁸ *Supra* note 195 at 55.

It is very important to understand that most of us have witnessed or heard about the incidents of domestic violence. Yet we ignore the matter and violate the provision of the Domestic Violence Act which states that anyone who has a reason to believe that domestic violence has been/ is being or can be committed, then they can provide such information to the Protection officer. Keeping in mind all the important rights and duties of various stakeholders; and the remedies available to them, the questionnaire was drafted.

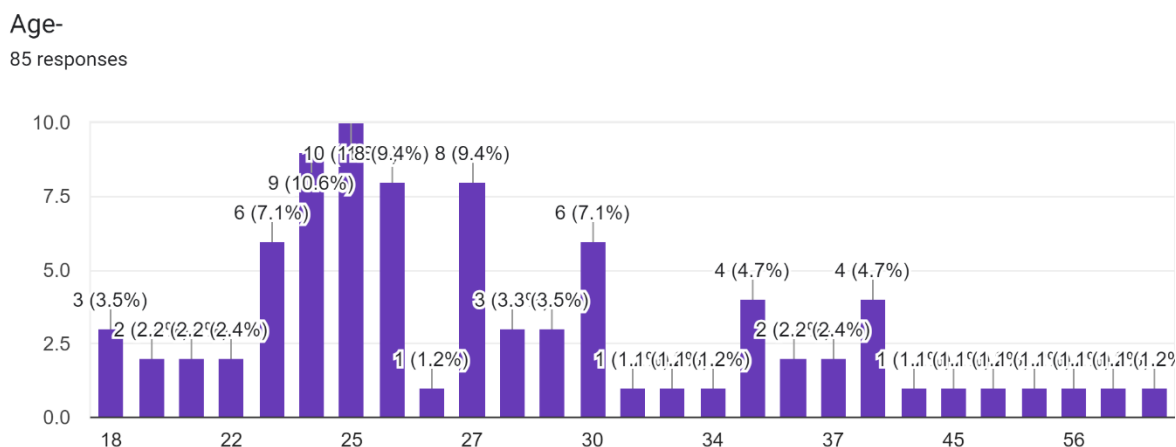
So, data of a total of 85 cases has been collected and analyzed by the Researcher which has been presented in suitable diagrammatic representation.

6.1 RESULTS OR FINDINGS

ANALYSIS OF PRIMARY DATA

GRAPHICAL REPRESENTATION-I

Age of the women who participated in the survey



TABULAR FORM OF GRAPHICAL REPRESENTATION-1

Sr. No.	Age	No. of women belonging to same age group
1.	18	3
2.	19	2
3.	20	2
4.	22	2
5.	23	6
6.	24	9
7.	25	10
8.	26	9
9.	27	8

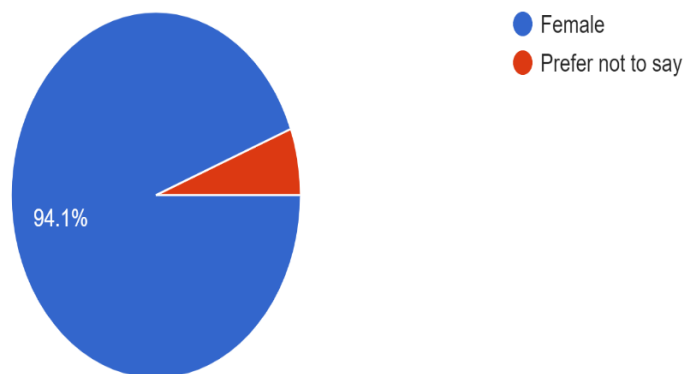
10.	28	3
11.	29	3
12.	30	6
13.	31	1
14.	32	1
15.	34	1
16.	35	4
17.	36	2
18.	37	2
19.	38	4
20.	40	1
21.	45	1
22.	50	1
23.	51	1
24.	56	1
25.	57	1
26.	65	1
	TOTAL	85

Graphical representation-I shows the age group of 85 women who have actively participated in the survey conducted by the Researcher. The table and graphical representation show that most of the women who participated in the survey belonged to the age group of 24, 25, 26 and 27.

PIE CHART-I

Gender of the women who participated in the survey

Gender-
85 responses



TABULAR FORM OF PIE CHART-I

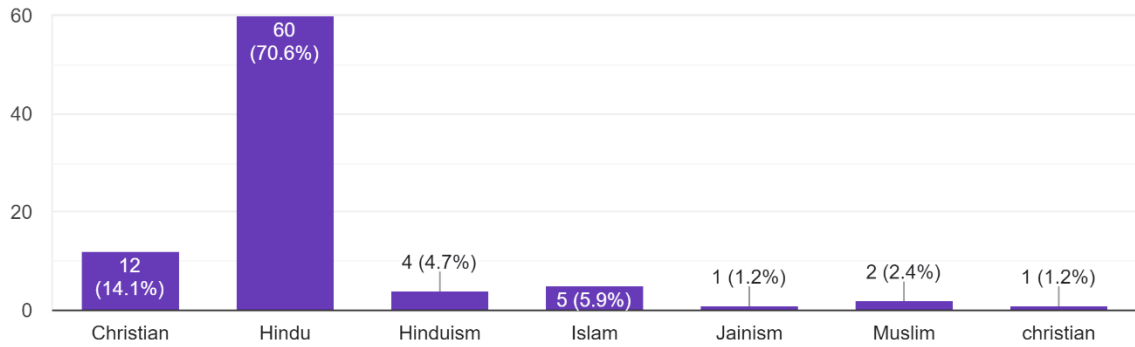
Sr. No.	Gender	Percentage	No. of women
1.	Female	94.1%	80
2.	Prefer not to say	5.9%	5
	TOTAL	100%	85

The first Pie Chart shows that out of 85 women who participated in the survey 80 accepted that they are females. The rest 5 preferred not to choose their gender. It shows how surveys which do not mandate writing the name of the participants turns out to be a bold and honest.

GRAPHICAL REPRESENTATION-II

Religion of the women who participated

Religion
85 responses



TABULAR FORM OF GRAPHICAL REPRESENTATION-II

Sr. No.	Name of the Religion	No. of women belonging to a particular religion
1.	Hinduism	64
2.	Islam	7
3.	Christianity	13
4.	Jainism	1
TOTAL		85

The second Graphical Representation represents the different religions to which 85 women who participated in the survey belongs to. Women belonging to four religions participated in the survey, which consisted of 64 women who are Hindus or practices Hinduism; 7 Muslim women or women who practices Islam; 13 Christian women and 1 woman who practices Jainism.

PIE CHART-II

Language

Language
85 responses



TABULAR FORM OF PIE CHART-II

S. No.	Language	No. of women
1.	Hindi	34
2.	English	38
3.	Both Hindi and English	5
4.	Regional languages	8
TOTAL		85

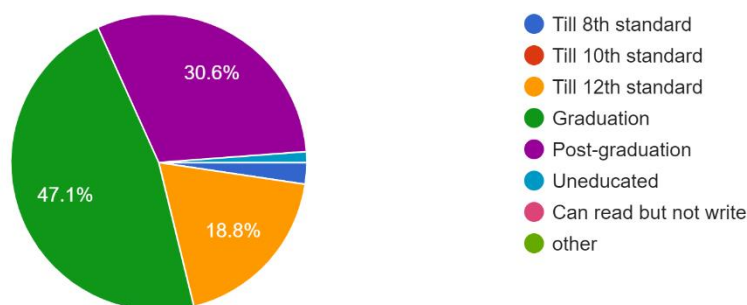
The second Pie Chart shows the language, 85 women were comfortable speaking in. They are as follows-

38 women stated that they prefer speaking in English. 34 women preferred speaking in Hindi. 5 chose both Hindi and English. 8 women stated that they prefer speaking in their regional languages i.e. Assamese, Bengali, Marwadi, Urdu and Nagamese.

PIE CHART-III

Education level of the women who participated in the survey

Education
85 responses



TABULAR FORM OF PIE CHART-III

S. No.	Education Level	No. of women	Percentage
1.	Post Graduation	26	30.6%
2.	Graduation	40	47.1%
3.	12 th standard	16	18.8%
4.	8 th standard	2	2.4%

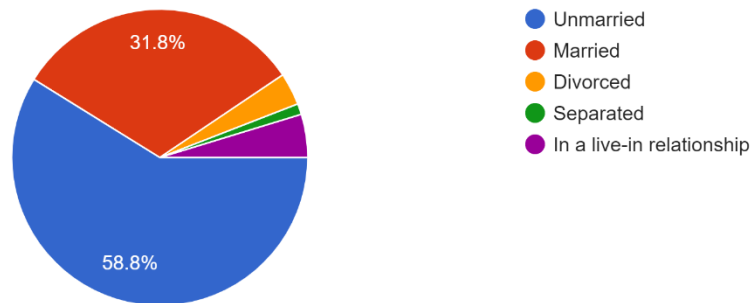
5.	Uneducated	1	1.2%
	TOTAL	85	100%

The third pie chart and its tabular form shows that out of 85 women who participated in the survey- 26 are either Post Graduates or are pursuing the same; 40 are either Graduates or are pursuing the same; 16 women have received education till 12th standard and 2 women till 8th. Rest 1 woman stated that she is uneducated.

PIE CHART-IV

Marital Status of the women who participated in the Survey

Marital Status
85 responses



TABULAR FORM OF PIE CHART-IV

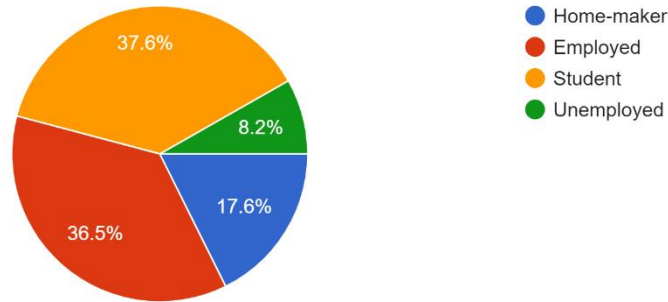
S. No.	Marital Status of Women	No. of women	Percentage
1.	Married	27	31.8%
2.	Unmarried	50	58.8%
3.	Divorced	3	3.5%
4.	Separated	1	1.2%
5.	Live-in relationship	4	4.7%
	TOTAL	85	100%

The fourth Pie Chart and its Tabular Form represents the marital status of 85 women who participated in the survey. It shows that 27 women are married, 50 are unmarried, 3 are divorced, 1 is separated while 4 are in a live-in relationship.

PIE CHARTS-V & VI

Occupation of the women who participated in the survey

Occupation
85 responses



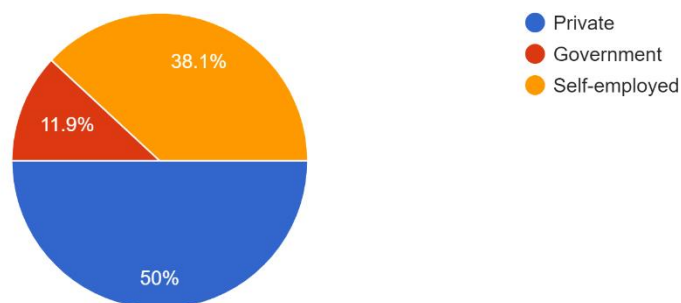
PIE CHART-V

TABULAR FORM OF PIE CHART-V

S. No.	Occupation	No. of women	Percentage
1.	Employed	31	36.5%
2.	Unemployed	7	8.2%
3.	Student	32	37.6%
4.	Home-maker	15	17.6%
	TOTAL	85	99.9%

The fifth Pie Chart represents the occupation status of women who participated in the survey. It shows that out of 85 women; 31 are employed, 7 are unemployed, 32 are students and 15 are home-makers.

If employed, then which sector-
42 responses



PIE CHART-VI

TABULAR FORM OF PIE CHART-VI

S. No.	Sector of Employment	No. of women	Percentage
1.	Private	21	50%
2.	Government	5	11.9%
3.	Self-employed	16	38.1%
	TOTAL	42	100%

The sixth Pie Chart further shows that out of 85 women, how many of them work in different sectors. It states that 21 women are working in private sector, whereas only 5 are working in government sector; and 16 are self-employed.

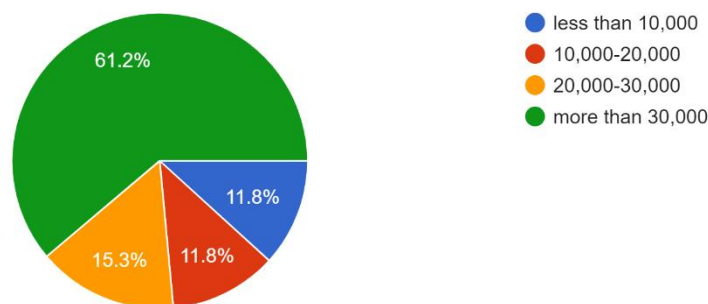
Pie Chart-V shows that only 31 women out of 85 are employed. However, the total number of women in Pie Chart-VI shows 42. There is a disparity in numbers because there are still many women in our society who do not consider small businesses like tailoring, running a cloud kitchen etc. as employment. However, when given a chance, they do consider themselves as self-employed.

PIE CHART-VII

Family Income of the women who participated in the Survey

Family Income (per month)

85 responses



TABULAR FORM OF PIE CHART VII

S. No.	Family Income (p.a.)	No. of women	Percentage
1.	Less than Rs.10,000	10	11.8%
2.	10,000-20,000	10	11.8%
3.	20,000-30,000	13	15.3%

4.	More than 30,000	52	61.2%
	TOTAL	85	100%

Family income does not only include the collective income of a family after the marriage of a woman but also before their marriage when they reside with their parents.

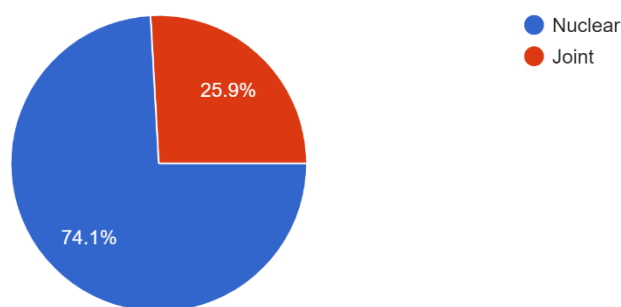
The seventh Pie Chart and its Tabular Form shows the family income of 85 women who participated in the survey. It states that there are 52 women with family income more than Rs.30,000/- per month; 13 with family income between Rs.20,000-30,000; 10 with family income between Rs.10,000-20,000 and 10 with family income less than Rs.10,000 per month.

PIE CHART-VIII

Type of the family of women who participated in the survey

Type of Family

85 responses



TABULAR FORM OF PIE CHART-VIII

S. No.	Type of Family	No. of women	Percentage
1.	Nuclear	63	74.1%
2.	Joint	22	25.9%
	TOTAL	85	100%

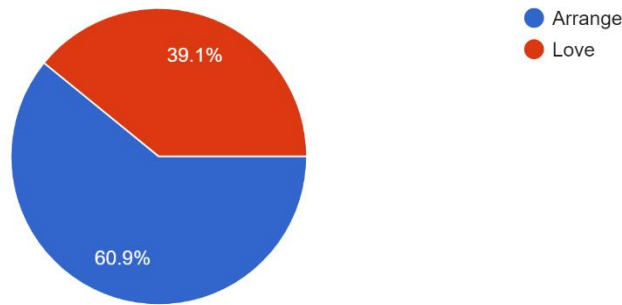
Pie Chart No. 8 and its Tabular form shows that out of 85 women who participated in the survey, 63 belongs to nuclear family setup, whereas only 22 belongs to joint family.

PIE CHART-IX

Type of Marriage of the married women who participated in the survey

Type of marriage

46 responses



TABULAR FROM OF PIE CHART-IX

S. No.	Type of Marriage	Percentage
1.	Love	39.1%
2.	Arrange	60.9%
	TOTAL	100%

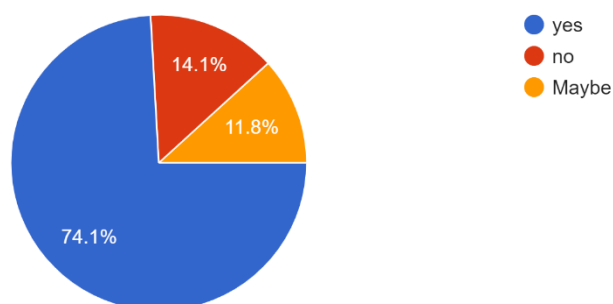
The ninth Pie Chart and its Tabular Form shows that out of all the married women who participated in the survey, most of them had an arranged marriage.

PIE CHART-X

Awareness regarding the Domestic Violence Act

Have you ever heard about The Protection of Women from Domestic Violence Act, 2005?

85 responses



TABULAR FORM OF PIE CHART-X

S. No.	Ever heard about the Domestic Violence Act?	No. of women	Percentage
1.	Yes	63	74.1%
2.	No	12	14.1%
3.	Maybe	10	11.8%
TOTAL		85	100%

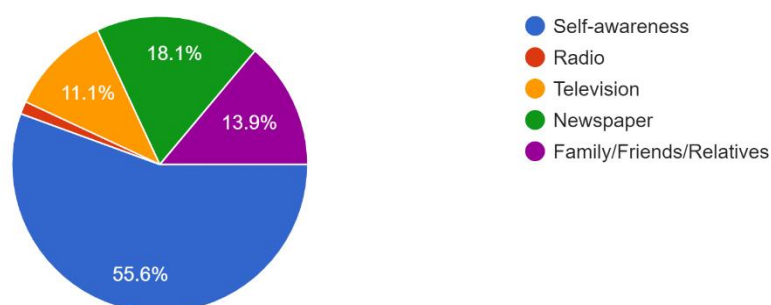
Pie Chart-X and its Tabular Form shows that out of 85 women who participated in the survey, 63 of them have somewhere or the other heard about The Protection of Women from Domestic Violence Act, 2005; 12 have never heard of the same and 10 are not sure whether they have ever heard about it or not!

It means that if out of 85 women, 22 face the act/omission/commission or conduct of domestic violence then they would have no idea about the rights and remedies available under the Act.

PIE CHART-XI

If yes, how did you come to know about it?

72 responses



TABULAR FORM OF PIE CHART-XI

S. No.	Mode of knowledge	No. of women	Percentage
1.	Self-awareness	33	55.6%
2.	Radio	1	1.4%
3.	Television	8	11.1%
4.	Newspaper	12	18.1%
5.	Relatives/ friends	9	13.9%
TOTAL		63	100%

Pie Chart-XI shows that out of 63 women who have heard about the Domestic Violence Act, 55.6% know about it because of self-awareness. The reason behind self-awareness can be an interest in knowing about laws;

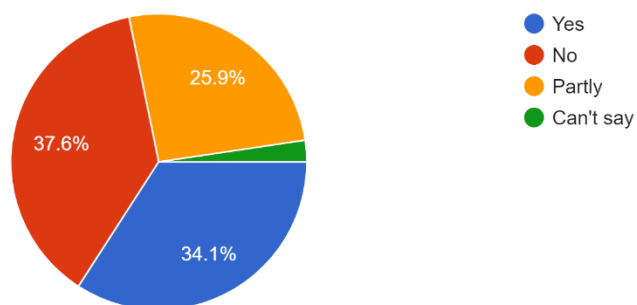
belongingness to the legal field; or a lesson learnt by the victim who sought relief under the Act. The rest of them have either heard about the Act from radio, television, newspaper; or from a relative or friend.

PIE CHART-XII

Are the women aware of the Provisions of the Domestic Violence Act?

Are you aware of the provisions (sections) of the Act?

85 responses



TABULAR FORM OF PIE CHART-XII

S. No.	Awareness of the Provisions	No. of women	Percentage
1.	Yes	29	34.1%
2.	No	32	37.6%
3.	Partly	22	25.9%
4.	Can't say	2	2.4%
TOTAL		85	100%

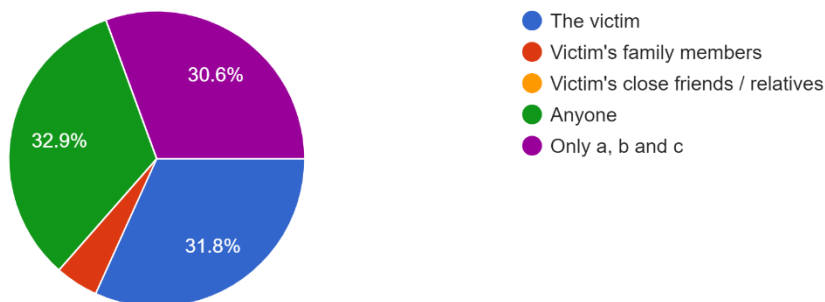
Pie Chart-XII and its tabular form shows the number of women who are aware of the Provisions of the Domestic Violence Act. It represents that out of 85, only 29 women claim to know the provision of the Act; rest 56 women either do not know about its provisions or are confused.

PIE CHART-XIII

Who can be a Complainant under the Domestic Violence Act?

Who can file a Complaint of Domestic Violence?

85 responses



TABULAR FORM OF PIE CHART-XIII

S. No.	Who can be a Complainant?	No. of women	Percentage
1.	The victim	27	31.8%
2.	Victim's family members	4	4.7%
3.	Victim's close friends/ relatives	0	0%
4.	Anyone	28	32.9%
5.	Only a, b and c	26	30.6%
		TOTAL	85
			100%

Pie Chart-XIII discusses a very important question from the Domestic Violence Act that who can be a Complainant under the Act? Whether it can only be the victim, her family, friends/ relatives, all of them or anyone!

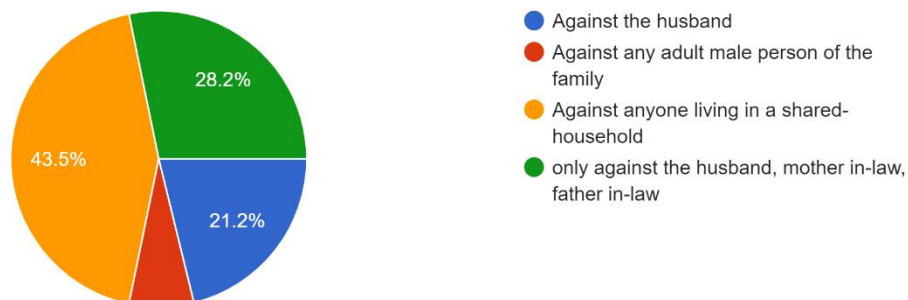
The Domestic Violence Act clearly states that a Complaint of the same can be given by anyone. However, only 28 women out of 85 knew about the same. The rest think that a complaint of domestic violence can only be done by the victim, her family/ friends/ relatives.

PIE CHART- XIV

Who can be a Respondent under the Domestic Violence Act?

Do you know against whom a Complaint of Domestic Violence Can be filed?

85 responses



TABULAR FORM OF PIE CHART-XIV

S. No.	Who can be a Respondent?	No. of women	Percentage
1.	The Husband	18	21.2%
2.	An adult male person	6	7.1%
3.	Anyone in a shared-household	37	43.5%
4.	The Husband and in-laws	24	28.2%
TOTAL		85	100%

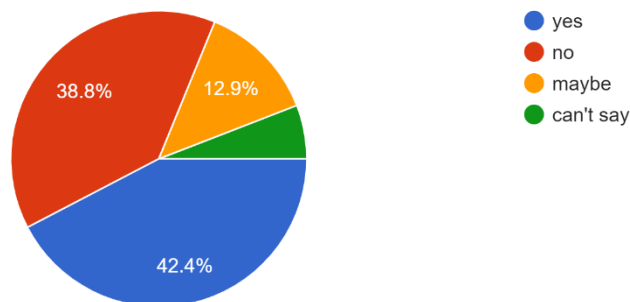
Pie Chart-XIV depicts the response of 85 women on the question- who can be a Respondent under the Act? More than half of 85 women who participated in the survey couldn't give the correct answer. 48 women out of 85 stated that a Respondent can either be the husband and in-laws or an adult male person living in a shared-household. Only 37 women gave the correct answer that a Respondent can be any person living in a domestic relationship within a shared- household. It shows that even though the statute exists, there is lack of awareness among the people living in our society, especially women regarding the same.

PIE CHART-XV

Can a daughter file a Complaint of Domestic Violence against her brother or father?

Can a daughter file a complaint of domestic violence against her father or brother?

85 responses



TABULAR FORM OF PIE CHART-XV

S. No.	Options	No. of women	Percentage
1.	Yes	36	42.4%
2.	No	33	38.8%
3.	Maybe	11	12.9%
4.	Can't say	5	5.9%
TOTAL		85	100%

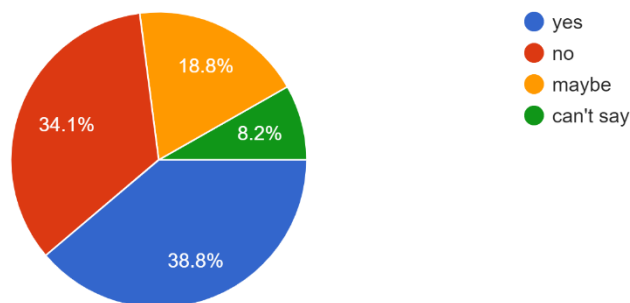
Pie Chart-XV represents that less than half of the women who participated in the survey could correctly answer that a daughter can also file a complaint of domestic violence against her father or brother in a domestic relationship. 36 women said yes; 33 said no; 11 said maybe; and 5 said they can't say whether it is so. This empirical study depicts a micro analysis of the response of 85 women. If this is the case in urban areas then the awareness level of the women living in rural areas is un-imaginable.

PIE CHART-XVI

Can a mother file a Complaint of Domestic Violence against her son?

Can a mother file a complaint of domestic violence against her son?

85 responses



TABULAR FORM OF PIE CHART-XVI

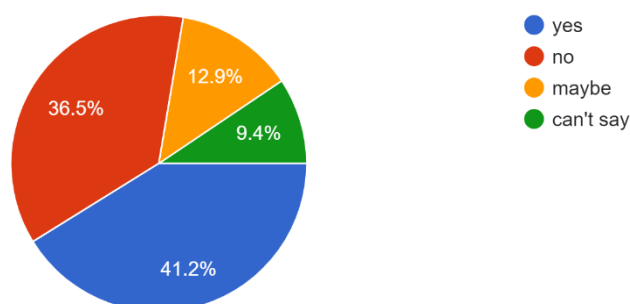
S. No.	Options	No. of women	Percentage
1.	Yes	33	38.8%
2.	No	29	34.1%
3.	Maybe	16	18.8%
4.	Can't say	7	8.2%
		TOTAL	85
			100%

Pie Chart XVI and its tabular form depicts that only 33 out of 85 women know that a mother can file a complaint of domestic violence against her son which is less than half of the target audience who participated in the survey. 29 said that a mother can't file a complaint of domestic violence against her son; and the rest 23 of them seems to be confused.

PIE CHART-XVII

Can a mother in-law file a Complaint of Domestic Violence against her daughter in-law?

Can a mother in-law file a complaint of domestic violence against her daughter in-law?
85 responses



TABULAR FORM OF PIE CHART-XVII

S. No.	Options	No. of women	Percentage
1.	Yes	35	41.2%
2.	No	31	36.5%
3.	Maybe	11	12.9%
4.	Can't say	8	9.4%
		TOTAL	85
			100%

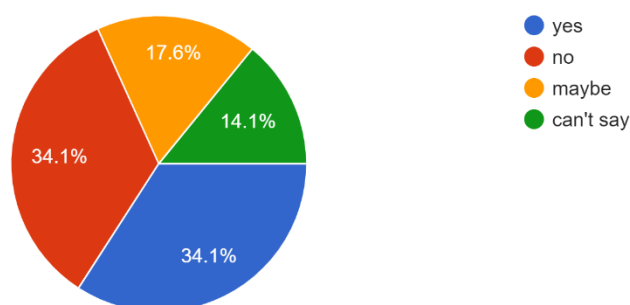
Pie Chart XVII and its tabular form depicts that only 35 out of 85 women know that a mother in-law can file a complaint of domestic violence against her daughter in-law which is less than half of the target audience who participated in the survey. 31 said that a mother in-law can't file a complaint of domestic violence against her ; and the rest 19 of them seems to be confused.

PIE CHART-XVIII

Can a sister in-law file a Complaint of Domestic Violence against her brother's wife?

Can a sister in-law file a complaint of domestic violence against her brother's wife living in a shared household?

85 responses



TABULAR FORM OF PIE CHART-XVIII

S. No.	Options	No. of women	Percentage
1.	Yes	29	34.1%
2.	No	29	34.1%
3.	Maybe	15	17.6%
4.	Can't say	12	14.1%
TOTAL		85	100%

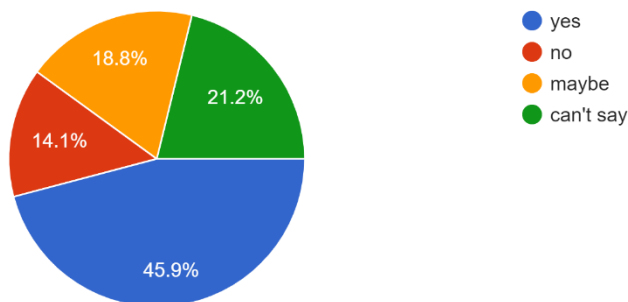
Pie Chart XVIII and its tabular form depicts that there is a tie when it comes to the question whether a sister in-law can file a complaint of domestic violence against her brother's wife living in a shared household. 29 of them said that she can, and 29 of them said that she cannot; the rest 27 of them seems to be confused.

PIE CHART-XIX

Can a woman living in a live-in relationship seek remedy under the Domestic Violence Act?

Can a woman living in a live-in relationship also seek remedy under the Domestic Violence Act?

85 responses



TABULAR FORM OF PIE CHART-XIX

S. No.	Options	No. of women	Percentage
1.	Yes	39	45.9%
2.	No	12	14.1%
3.	Maybe	16	18.8%
4.	Can't say	18	21.2%
TOTAL		85	100%

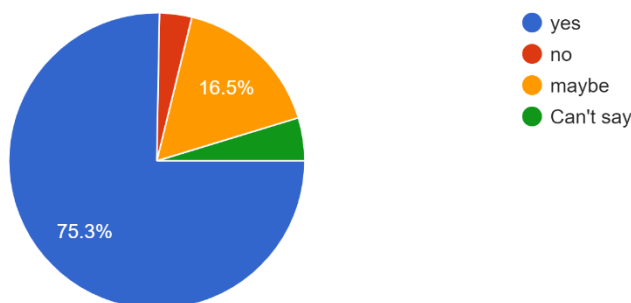
The question asked in Pie Chart XIX is of utmost importance since live-in relationships are on a rise in India since the last decade. When a question was asked to 85 women that can a woman living in a live-in relationship seek remedy under the Act, 39 of them gave answer in affirmation. The rest 46 stated that either such woman can't seek remedy under the or they are unaware about any such provision.

PIE CHART-XX

Can the act of Domestic Violence include sexual, economic, verbal and emotional abuse?

Can the act of domestic violence include sexual, economic, emotional or verbal abuse?

85 responses



TABULAR FORM OF PIE CHART-XX

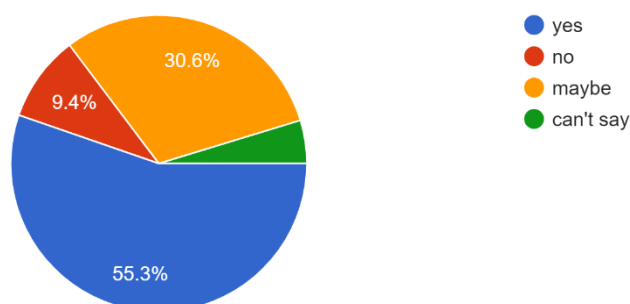
S. No.	Options	No. of women	Percentage
1.	Yes	64	75.3%
2.	No	3	3.5%
3.	Maybe	14	16.5%
4.	Can't say	4	4.7%
		TOTAL	85
			100%

Pie Chart XX and its tabular form depicts that 64 out of 85 women know that the act of domestic violence includes not only physical but also sexual, economic, verbal and emotional abuse. Only three of them said no, and the rest 18 of them seems to be confused regarding the same. This figure seems to be impressive as more than 3/4th of the women who participated in the survey knew the correct answer.

PIE CHART-XXI

Does ridiculing someone for not having a child or male child amounts to domestic violence?

Does ridiculing someone for not having a child or male child amounts to domestic violence?
85 responses



TABULAR FORM OF PIE CHART-XXI

S. No.	Options	No. of women	Percentage
1.	Yes	47	55.3%
2.	No	8	9.4%
3.	Maybe	26	30.6%
4.	Can't say	4	4.7%
		TOTAL	85
			100%

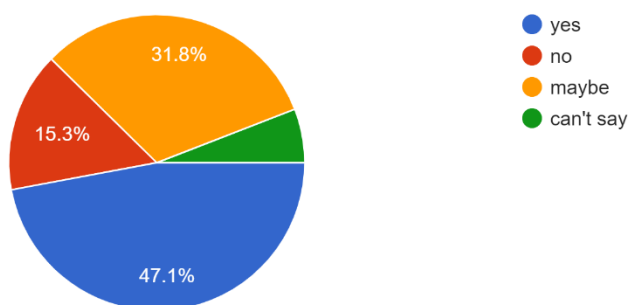
Pie Chart XXI and its tabular form represents a very important question that whether ridiculing someone for not having a child or male child amounts to domestic violence. 47 out of 85 women answered in affirmation which seems to be a good figure. However, 38 of them collectively answered that either they do not know about it or that it does not amount to domestic violence.

PIE CHART-XXII

Does name calling, insulting or humiliating a woman in a domestic relationship amounts to domestic violence?

Does name calling someone, insulting or humiliating a woman living in a shared household amounts to domestic violence?

85 responses



TABULAR FORM OF PIE CHART-XXII

S. No.	Options	No. of women	Percentage
1.	Yes	40	47.1%
2.	No	13	15.3%
3.	Maybe	27	31.8%
4.	Can't say	5	5.9%
TOTAL		85	100%

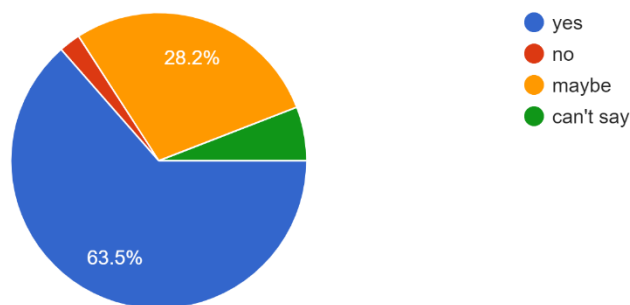
Pie Chart XXII and its tabular form represents another important question that whether name calling, insulting or humiliating a woman in a domestic relationship amounts to domestic violence. 40 out of 85 women answered in affirmation. However, 45 of them collectively answered that either they do not know about it or that it does not amount to domestic violence. Which means more than half of the women have no idea about such kind of verbal or emotional abuse.

PIE CHART-XXIII

Does throwing away a woman from her matrimonial home amounts to domestic violence?

Does throwing away a woman from her matrimonial home where she is living in a shared household amounts to domestic violence?

85 responses



TABULAR FORM OF PIE CHART XXIII

S. No.	Options	No. of women	Percentage
1.	Yes	54	63.5%
2.	No	2	2.4%
3.	Maybe	24	28.2%
4.	Can't say	5	5.9%
TOTAL		85	100%

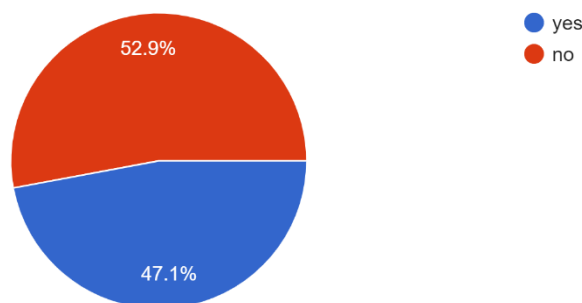
Pie Chart XXII and its tabular form represents another important question that whether throwing away a woman from her matrimonial home amounts to domestic violence. 54 out of 85 women answered in affirmation which seems to be a good figure; and 31 of them collectively answered that either they do not know about it or that it does not amount to domestic violence.

PIE CHART-XXIV

Helpline number of domestic violence

Do you know there is a helpline number for domestic violence?

85 responses



TABULAR FORM OF PIE CHART-XXIV

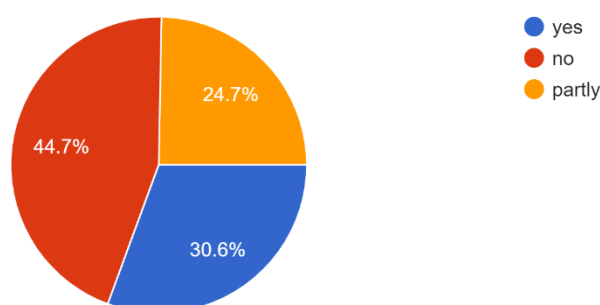
S. No.	Options	No. of women	Percentage
1.	Yes	40	47.1%
2.	No	45	52.9%
	TOTAL	85	100%

When 85 women who participated in the survey were asked whether they are aware of the helpline number for seeking help or reporting incidents of domestic violence, more than half of them said 'No' which seems to be a serious concern for the authorities who are liable for the implementation of this Act. (As depicted under Pie Chart-XXIV and its tabular form).

PIE CHART-XXV

Awareness of the rights and remedies provided under the Act

Are you aware of the rights and remedies provided under the Domestic Violence Act?
85 responses



TABULAR FORM OF PIE CHART-XXV

S. No.	Options	No. of women	Percentage
1.	Yes	26	30.6%
2.	No	38	44.7%
3.	Partly	21	24.7%
	TOTAL	85	100%

When 85 women who participated in the survey were asked whether they are aware of the rights and remedies available under The Protection of Women from Domestic Violence Act, 2005; 26 of them answered in affirmation, 38 of them said no, and the rest 21 said that they partly know about the same. It means lesser

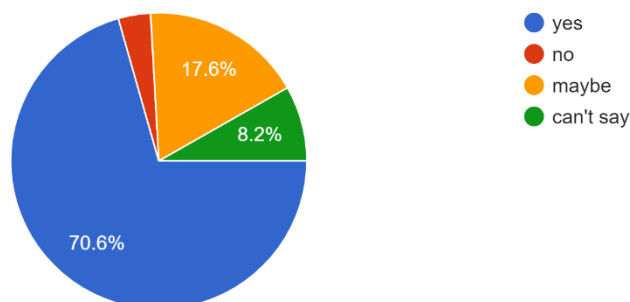
number of women who participated in the survey know about the rights and remedies available under the Act which is a matter of serious concern. (As depicted under Pie Chart-XXV and its tabular form).

PIE CHART-XXVI

Hardship in implementation of the Act

Do you think there is some hardship in the implementation of the domestic violence act?

85 responses



TABULAR FORM OF PIE CHART-XXVI

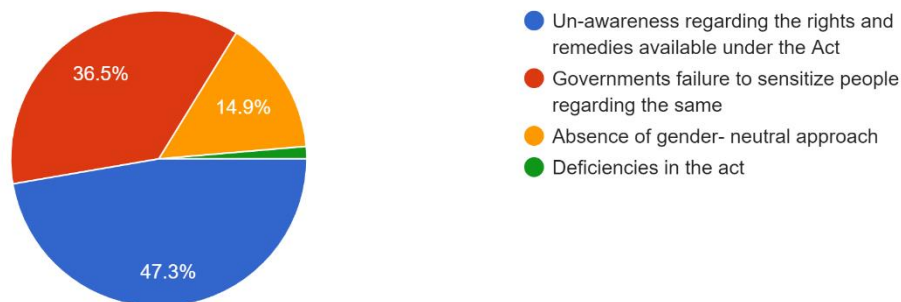
S. No.	Options	No. of women	Percentage
1.	Yes	60	70.6%
2.	No	3	3.5%
3.	Maybe	15	17.6%
4.	Can't say	7	8.2%
TOTAL		85	100%

When 85 women who participated in the survey were asked whether there is some hardship in the implementation of this Act; 70% of them answered in affirmation, only 3 said no, and the rest 22 of them seemed to be confused. (As depicted under Pie Chart-XXVI and its tabular form).

PIE CHART-XXVII

If yes, then choose one of the following options-

74 responses



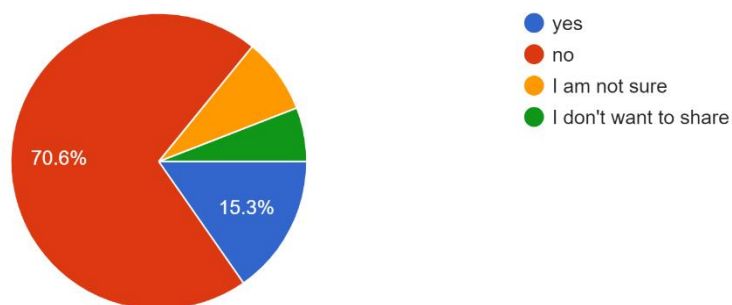
Out of the one’s who answered the above-mentioned query, 47.3% of them said that there is hardship because people are un-aware of their rights and remedies provided under the Act. 36.5% stated that the government has failed to spread awareness and sensitize people regarding the act and its provisions as a result the hardship exist. Furthermore, 14.9% of them stated that there is some hardship in the implementation of this Act since the act does not have gender-neutral approach and the rest said that there exist some deficiencies in the Act. (As depicted under Pie Chart-XXVII and its tabular form).

PIE CHART-XXVIII

Victims of domestic violence

Have you ever faced Domestic Violence?

85 responses



TABULAR FORM OF PIE CHART-XXVIII

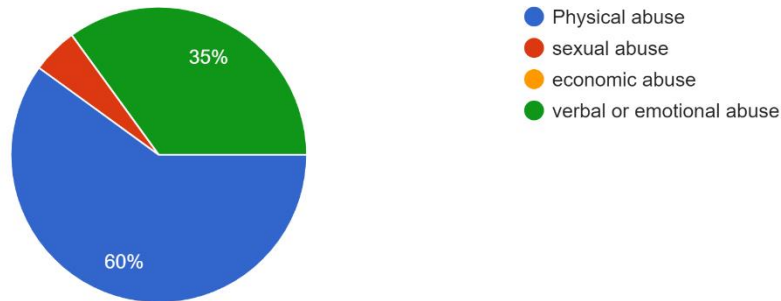
S. No.	Options	No. of women	Percentage
1.	Yes	13	15.3%
2.	No	60	70.6%
3.	I am not sure	7	8.2%

4.	I don't want to share	5	5.9%
	TOTAL	85	100%

Pie Chart-XXVIII and its tabular form represents one of the most important questions of the survey which asks whether the one's who are participating in the survey have faced domestic violence. 60 women said that they have not experienced the same. However, 13 said yes, and the rest 12 said that either they are not sure about the same or it's something which they do not want to share. (As depicted under Pie Chart-XXVIII and its tabular form).

PIE CHART-XXIX

If yes, then of what nature?
20 responses



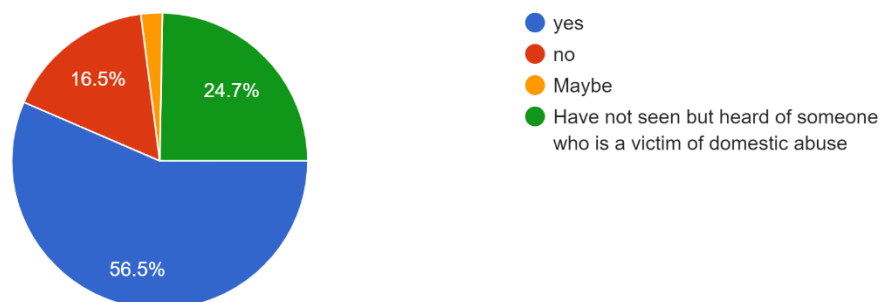
Out of those women who accepted that they have been a victim of domestic violence, and those who didn't wanted to share- 60% of them responded that they have faced physical abuse, 35% said that they have gone through verbal or emotional abuse, and the rest 5% selected sexual abuse. It means out of all the abuses; physical violence is the most prevalent. (As depicted under Pie Chart-XXIX).

PIE CHART-XXX

Do you know someone who has been a victim of domestic violence?

Do you know someone who is or has been a victim of domestic violence?

85 responses



TABULAR FORM OF PIE CHART-XXX

S. No.	Options	No. of women	Percentage
1.	Yes	48	56.5%
2.	No	14	16.5%
3.	Maybe	2	2.4%
4.	Have not seen but heard	21	24.7%
	TOTAL	85	100%

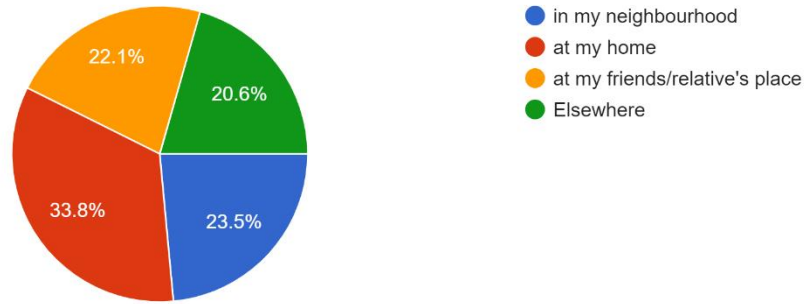
When all the 85 participants were asked whether they know someone who has been a victim of domestic violence, 48 said yes, and 21 said that they have not witnessed such an act but have heard about it. It means 69 out of 85 women either has been a victim of domestic violence or know someone who has gone through the same. This figure tells a lot about the overall situation of violence against women across India. (As depicted under Pie Chart-XXX and its tabular form).

PIE CHART-XXXI

If yes, then where?

If yes, then where?

68 responses



TABULAR FORM OF PIE CHART-XXXI

S. No.	Options	No. of women	Percentage
1.	In my neighbourhood	16	23.5%
2.	At my home	23	33.8%
3.	At my friend's/ relative's place	15	22.1%
4.	Else where	14	20.6%
TOTAL		68	100%

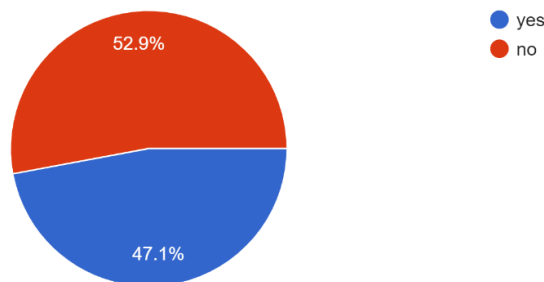
Out of those 69 women who stated that either they have been a victim of domestic violence or know someone who has gone through the same, 68 responded to the question 'WHERE?' 23 women stated that they have witnessed it at their own place, 16 in the neighbourhood, 15 at their relatives or friends place, and 15 stated that they have seen such incidents elsewhere. It simply means that most of the cases of domestic violence happens, in the women's own household. (As depicted under Pie Chart-XXXI and its tabular form).

PIE CHART-XXXII

Witnessing an incidence of domestic violence

Have you ever witnessed an incidence of domestic violence?

85 responses



TABULAR FORM OF PIE CHART-XXXII

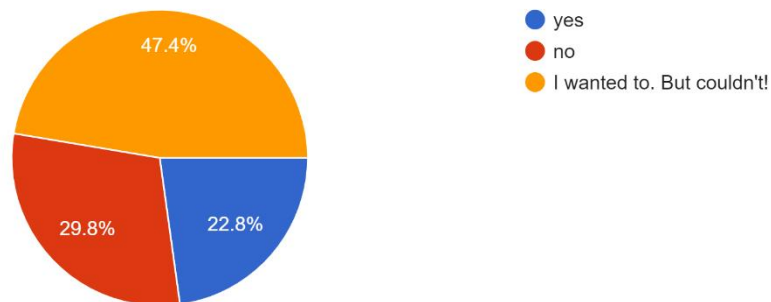
S. No.	Options	No. of women	Percentage
1.	Yes	40	47.1%
2.	No	45	52.9%
	TOTAL	85	100%

When all the participating women were asked whether they have witnessed an incidence of domestic violence, 40 said 'yes' and 45 said 'no'. (As depicted under Pie Chart-XXXII and its tabular form).

PIE CHART-XXXIII

Trying to help the victim

Did you try to help the victim?
57 responses

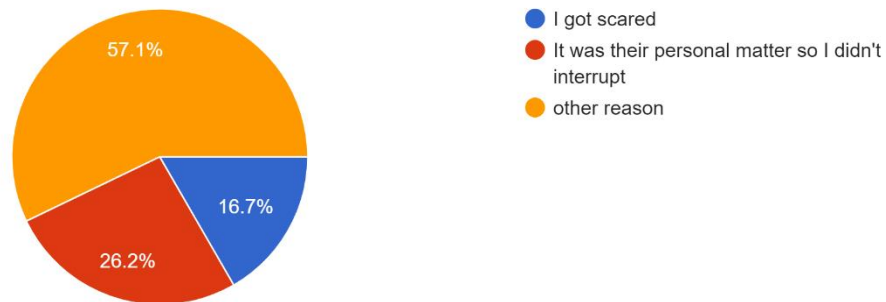


When all the participating women were asked whether they have been a victim of domestic violence, or know someone who has gone through the same, or have witnessed such an incident in person; majority answers were in affirmation. So, when asked if they tried to help the victim, 47.4% of them said that they wanted to help but couldn't, and 29.8% said that they didn't try to help the victim. If analyzed, it can be said that most incidents of domestic violence go unreported because people do not try to help the victim, and fail to show that there is someone who is going to support them. (As depicted under Pie Chart- XXXIII).

PIE CHART-XXXIV

If you did not or couldn't, then why?

42 responses



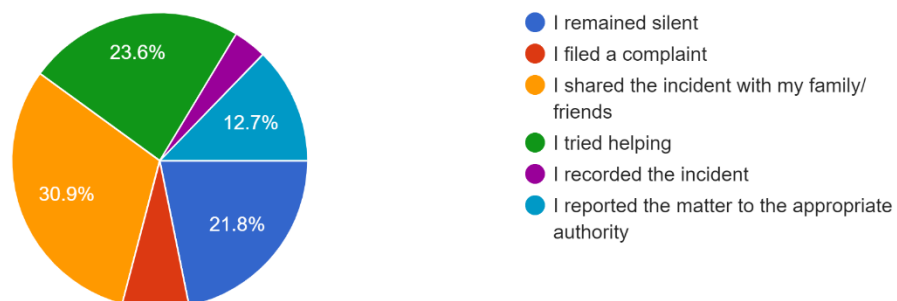
Further, when asked the reason behind not helping the victim; 16.7% women said that they got scared, 26.2% said that they didn't try to help since it was a personal matter between the aggrieved and the respondent, the rest 57.1% said that they had other reasons to not help the victim. (As depicted under Pie Chart-XXXIV).

PIE CHART-XXXV

Reaction after witnessing or being a victim of domestic violence

What was your immediate reaction after you became a victim of domestic violence or witnessed an incidence of domestic violence?

55 responses



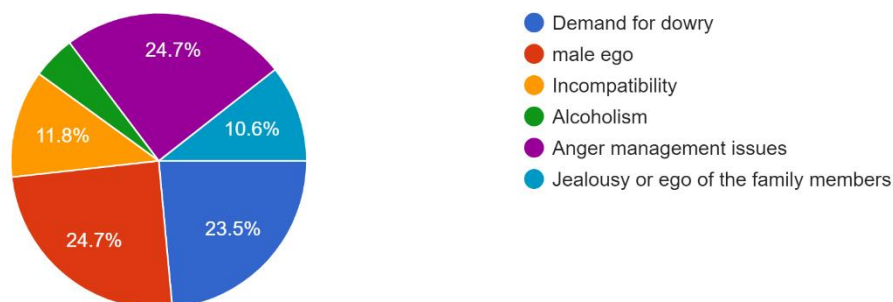
Henceforth, when asked about their immediate reaction after witnessing or going through the act of domestic violence; 21.8% of the women said that they remained silent. 30.9% said that they shared it with their family or friends. Only a few filed a complaint or reported the matter. Which means most of the cases of domestic violence go un-reported because people choose to remain silent or just like to share it within their closed group to overcome the pain. (As depicted under Pie Chart- XXXV).

PIE CHART-XXXVI

Prominent reason behind incidents of domestic violence

What do you think is a prominent reason behind the various incidents of domestic violence?

85 responses



TABULAR FORM OF PIE CHART XXXVI

S. No.	Reasons	No. of women	Percentage
1.	Demand for dowry	20	23.5%
2.	Male ego	21	24.7%
3.	Incompatibility	10	11.8%
4.	Alcoholism	4	4.7%
5.	Anger management issues	21	24.7%
6.	Jealousy	9	10.6%
TOTAL		85	100%

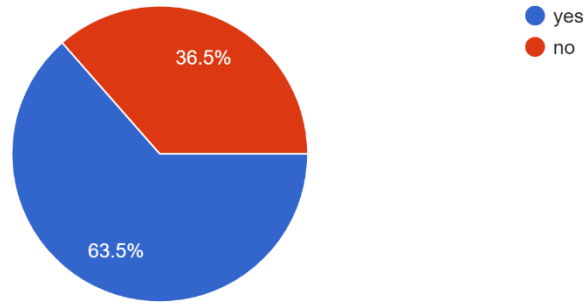
Coming towards the end of the questionnaire, a question was asked to every woman regarding the prominent reasons behind the mis-happenings of domestic violence against women. More than half of them gave demand for dowry, male ego, and anger management issues as their response. It means the cases of domestic violence occurs when a woman does not fetch desirable amount of dowry for her in-laws, or when there is no bond between the partners and the family members resulting into violence. (As depicted under Pie Chart-XXVI).

PIE CHART-XXXVII

Gender neutrality of Domestic Violence Act

Shall the Domestic Violence Act be made gender neutral?

85 responses



TABULAR FORM OF PIE CHART-XXXVII

S. No.	Options	No. of women	Percentage
1.	Yes	40	63.5%
2.	No	45	36.5%
	TOTAL	85	100%

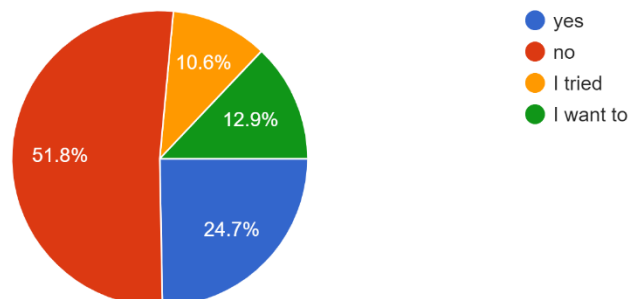
When all the 85 participating women were asked whether the Domestic Violence Act shall be made gender-neutral or not; 40 of them answered in affirmation and 45 denied the same. (As depicted under Pie Chart-XXXVII).

PIE CHART-XXXVIII

General awareness

Have you ever tried from your end to sensitize people about the provisions of the Domestic Violence Act and the rights and remedies provided under it?

85 responses



TABULAR FORM OF PIE CHART-XXXVIII

S. No.	Options	No. of women	Percentage
1.	Yes	21	24.7%
2.	No	44	51.8%
3.	I tried	9	10.6%
4.	I want to	11	12.9%
	TOTAL	85	100%

Lastly, when asked whether they ever tried to sensitize people about the rights and remedies available under the Domestic Violence Act; 44 women responded that they never tried to, 11 said that they want to, 9 responded that they tried and 21 said that they did. Here, more than half of the women said 'no', which means a lot of awareness drives and sensitization programs needs to be initiated by the appropriate government to make people aware of the rights and duties as a citizen of this country. (as depicted under Pie Chart-XXXVIII).

6.2. SUMMARY OF THE FINDINGS

After the analysis of the Primary Data collected from 85 women belonging to different age groups, the Researcher arrive at the following concrete findings-

1. Most of the women who participated in the survey belongs to the age group of 23-30 years and majorly practice Hinduism.
2. The level of educational qualification of the women ranges from being Uneducated to Post-Graduation; where majority of the women are Graduates or Post-Graduates, and few of them are either uneducated or have educational qualification till 8th standard.
3. Most of the women who participated in the survey, live in a nuclear family, and are either students or employed and have a decent family income per month.
4. It is interesting to note that majority of women who participated in the survey are aware of the existence of the Domestic Violence Act. The sources being self-awareness, newspaper, television, friends or relatives. But only a few of them are aware of the exact provisions of the Act.
5. When asked about who can file a complaint of domestic violence or provide information regarding the same to the appropriate authorities, majority of them said that only the victim or her family/ friends can file the same. However, as per the law, anyone who has a reason to believe that the act of domestic violence has been/ is being/ can be committed, then they may provide such information to the appropriate authorities.¹⁹⁹

¹⁹⁹ *Supra* note 77 at 57.

6. When asked against whom a complaint of domestic violence can be filed, 48 out of 85 women said that it can be filed only against the husband, in-laws or an adult male person and 37 women gave the correct answer that it can be filed against anyone living in a share household.
7. Less than half of the women who participated in the survey know that a complaint of domestic violence can be filed by a daughter against her brother or father.
8. Less than half of the women who participated in the survey know that a complaint of domestic violence can be filed by a mother against her son.
9. Less than half of the women who participated in the survey know that a complaint of domestic violence can be filed by a mother in-law against her daughter in-law.
10. Less than half of the women who participated in the survey know that a complaint of domestic violence can be filed by a sister in-law against her brother's wife.
11. Less than half of the women who participated in the survey know that a woman living in a live-in relationship can seek relief from the Court for the act of domestic violence against her male- partner.
12. 75% women who participated in the survey know that the act of domestic violence includes physical, sexual, economic, verbal and emotional abuse.
13. When asked whether ridiculing someone for not being able to bear a child; throwing a woman out of her matrimonial home; insulting a woman or name-calling her amounts to domestic violence, all the women had mixed responses but most of them knew that it does amount to domestic violence.
14. More than half of the women who participate in the survey, do not know that there is a helpline number for domestic violence.
15. Only 26 women has knowledge about the rights and remedies available under the Domestic Violence Act.
16. 70.6% women affirmed that there is some hardship in the implementation of the Domestic Violence Act. That the hardship lies in the government's failure to sensitize people regarding the rights and remedies available under the Act.
17. 15.3% women has faced domestic violence, which has been majorly physical, verbal or emotional in nature.
18. More than half of the women know someone who is or has been a victim of domestic violence; or have heard of such incidents from their family/ friends/ neighbours.
19. When asked whether they have ever witnessed an incidence of domestic violence, nearly half of the women said yes; but only 22.8% of them tried to help the victim. The one's who didn't help the victim are of the view that it's a personal matter between an aggrieved and a Respondent; or that they got scared.
20. When asked about their reaction after witnessing an incidence of domestic violence, only a few said that they filed a complaint or reported the matter. Rest of the women ignored the matter or remained silent.

21. When asked about prominent reasons behind the incidents of domestic violence, all of them had mixed reviews. Some think that such incidents happen because of dowry related issues, male ego, incompatibility or anger management issues. While the other think that it happens because of the jealousy or ego of the family members who live in a shared-household.

22. When asked whether being a responsible citizen, did they ever try to sensitize people regarding the rights and remedies provided under the Act, more than half of them said 'no'. The rest said that they tried or that they want to do so.

23. When asked whether the Domestic Violence Act shall be made gender neutral in nature, 63.5% of them said 'yes'. The reasons stated by them are as follows-

- Every human being needs to get equal amount of respect. That the act of domestic violence is committed against men as well.
- By making the Act gender-neutral, the scope of the same can be widened by including people belonging to third gender as aggrieved persons.
- The act of domestic violence shall be seen as serious matter of human rights; and when we talk about human rights, it includes everyone living in the society and not just women. So, the act shall be made gender-neutral to protect the rights of every vulnerable person including men and people belonging to third gender.
- We have witnessed an evolution in the upliftment of the status of women. Not every woman is vulnerable. They equally commit crimes like domestic violence. So, a crime in general should always be gender-neutral in nature.
- The act of domestic violence happens with minor boys as well. So, by making the act gender-neutral, equal protection can be provided to them.
- Women get immunity from such protective laws which empowers them to file fake cases against their partner or family members.
- The cases of woman abusing her in-laws or husband has increased. As a result, some measure should be taken to help and protect them.
- If women want to get treated equally then it should not be limited to education, job opportunities etc. They should be made equally liable in cases of crime as well.
- There has been a huge generational gap now. Women have now become vocal about their rights and freedom. So, the tag of 'most vulnerable' shall be removed and laws against violence should be made applicable on all, irrespective of their gender.

36.5% of the women said that the Act should not be made gender neutral, stating the following reasons-

- The act should be limited to protecting the rights of women because even though some cases of men being abused are witnessed, majority of the violence still happens with woman only.

- Most of the victims of domestic violence are women and they remain silent because they are asked to protect the dignity of the family. If the Act is made gender-neutral then men can become more oppressive and the act can be highly mis-used.
- Women have become empowered but there is still a long journey to cover. So, making the act gender-neutral won't help, it may create new challenges for women.
- Women are in need of more protection. If men are abused, they shall be provided other alternatives to report such cases. But including men in the Act itself is not a good step.

7. CONCLUSION AND SUGGESTION(S)

A. CONCLUSION

The Domestic Violence Act has played a significant role towards safeguarding the rights of women who are subject to different kinds of abuse, within a household. However, this Dissertation has demonstrated, the challenges in the interpretation, implementation and implication of an important provision of this Act i.e. Section 2(q) which defines the term ‘respondent’.

When the Domestic Violence Bill was passed, it aimed to include every person as a Respondent, in case of domestic violence against a woman living in a domestic relationship. However, when the Act actually came into force, the term ‘Respondent’ only included the adult male members of the family. In case of a wife or female partner living in a live-in relationship, they could file a complaint against the relatives of their husband/partner as well. But this was also a point of debate for a long time, since, every Court had a different explanation for the term ‘relative of the husband or male partner’. Some Courts held that the term ‘relative’ can include female relatives as well, while the others held that it was not intended by the legislature, otherwise they would have explicitly mentioned the same.

In 2016, the landmark judgment of *Hiral P. Harsora & Ors. v. Kusum Narottamdas & Ors.*, was passed which marked a pivotal moment in the interpretation of the term ‘Respondent’. The judgment expanded the definition of ‘Respondent’ to include not only husband or male partner of a woman living in a domestic relationship, but ‘everyone’ living together in a shared household. The aim of the Court was to broaden the protective umbrella of the Act, and align it with the object sought to be achieved by the provisions of the Act, thereby, protecting and providing relief to women.

The definitions of ‘respondent’ includes an important term ‘domestic relationship’. So, a domestic relationship is a relationship between two parties, who live or have at any point of time lived together in a shared household, where they are related to each other either by blood, marriage, adoption, being family members living in a joint family or through a relationship in the nature of marriage.²⁰⁰ Here, the term shared-household means a household where an aggrieved and respondent lives or have lived at any point of time lived together in a domestic relationship.²⁰¹ The household can be rented or owned either by both the parties or singly, and can be a household belonging to the joint family of which the Respondent is a member. These were some of the relevant legal provisions related to the term ‘Respondent.’

The analysis of the pre-2016 judicial pronouncements reveals that the interpretation and application of an important provision of the Act has been inconsistent across various judicial forums, leading to ambiguity and potential disparities in the protection provided to aggrieved women. However, all the ambiguities were resolved after the landmark judgment of *Hira P. Harsora* was passed by the Court. Therefore, the result of the hypothesis test suggests that there has been a notable evolution in the interpretation and application of Section

²⁰⁰ The Protection of Women from Domestic Violence Act, 2005, S. 2(f), No. 43, Acts of Parliament, 2005 (India).

²⁰¹ The Protection of Women from Domestic Violence Act, 2005, S. 2(s), No. 43, Acts of Parliament, 2005 (India).

2(q) of the Domestic Violence Act, before and after the landmark judgment of “*Hiral P. Harsora and Ors. v. Kusum Narottamdas Harsora and Ors.*,” was passed in 2016.

Furthermore, the empirical study undertaken as part of the dissertation has shed light on the practical challenges faced in the implementation of the Act, including inadequate sensitization programmes, lack of awareness, and societal attitudes that continue to stigmatize and marginalize victims of domestic violence.

Addressing these issues through targeted interventions, such as strengthening support systems, increasing public awareness campaigns, and fostering attitudinal changes, is crucial to ensure the effective implementation of the Act.

Moving forward, it is important to keep re-evaluating the legal frameworks, especially those which are related to the protection of women, to ensure that it remains responsive to the evolving needs and challenges faced by aggrieved women. If the definition of ‘Respondent’ was not re-evaluated and re-interpreted by the Hon’ble Court, other family members and minors could never be included in the radar of committing domestic violence, thereby, giving rise to more cases of such abuses, as the accused could easily commit the act of violence, with the help of female members and minors living in a family. The act of re-evaluation and re-interpretation may involve legislative amendments, judicial interpretations or policy interventions that prioritize the protection of the rights and dignity of women.

Ultimately, eradication of this social evil requires a multi-faceted approach that combines robust legal mechanism, effective implementation strategies and a societal shift towards respect for human rights. The Dissertation serves as a call to action for all the stakeholders, to come together and work towards creating a safer and empowered society for women. At least, women living in our society shall have awareness about the rights and remedies provided under the Act, and shall know that authorized service providers exist, who can help them avail those rights, or who can protect them from violence.

B. SUGGESTION(S)

i) Spreading awareness through social media

The use of social media platforms has drastically increased in the past few years, because of advanced technology and cheaper internet facilities. Earlier, the craze of using social media was limited to teenagers and people in their age of 30s or early 40s, but now elders are equally active on such platforms. Since, a larger number of audience is available on different platforms, the government can initiate making awareness videos from their official accounts or by collaborating with other influencers, to spread awareness amongst people regarding the rights and remedies provided under the Domestic Violence Act.

Earlier, the government used to run awareness campaigns on DD National regarding various policies of the government, and the practice of social evils because all the households used to watch that particular channel. Now that people have shifted their interest towards using social media, such platforms can be used for the advantage of our society, by simply running advertisements about the same.

ii) Strengthening support system

Under the Domestic Violence Act, various stakeholders act as a support system for aggrieved persons, which includes, “the police officers, protection officers, service providers and the Magistrate”. However, the main support system lies in the society, or the surroundings of women where she works or resides. The society must extend their support to the victims of domestic abuse, by actively reporting such matters to the authorities, or providing resources to connect them with the helpline number and support groups. The victims must be ensured that they are not alone.

iii) Running Legal literacy programme

Spreading of awareness using social media platforms may work in urban or semi-rural areas, but we cannot deny the fact that women are less aware or unaware of such rights and remedies in remote areas. To spread awareness in remote areas where women are not empowered, or are uneducated/ illiterate, the stakeholders and NGOs (non-governmental organizations) can run legal literacy programmes. To make it more interactive and engaging, they can organize local public (art or cultural) events, thereby, attracting more people to spread sensitive informative regarding domestic abuse, and the rights and remedies available to them.

By implementing these suggestions, the government along with the other stakeholders can work towards strengthening the legal framework, raising awareness, and promoting ‘zero tolerance’ against every kind of domestic abuse occurring within a family; thereby enhancing the implementation of the Domestic Violence Act.

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ANNEXURE-I
QUESTIONNAIRE

(Please note: The names and the information provided herein will be kept strictly confidential and the information will be used only for analysis purpose for the research work and not anywhere else).

PERSONAL INFORMATION

- 1) Name (optional)
- 2) Age
- 3) Gender
- 4) Religion
- 5) Language
- 6) Residence
 - a) Rural b) Urban
- 7) Marital status
 - a) Married b) Unmarried c) Live-in
- 8) Family income (per month)-
 - a) <10,000 b) >10,000 c) >20,000 d) >30,000
- 9) Education of the Respondent
 - a) 10th b) 12th c) Graduation d) Post-graduation e) Uneducated f) can only read g) 8th h) else
- 10) Occupation
 - a) Home-maker b) Employed c) Student
- 11) If employed, then-
 - a) Private b) Government c) Self-employed
- 12) Type of marriage
 - a) Arrange b) Love c) Inter-religion d) Inter-caste
- 13) Type of family
 - a) Nuclear b) Joint

KNOWLEDGE OF THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

- 1) Are you aware of the Protection of Women from Domestic Violence Act, 2005?
- 2) If yes, how did you come to know about it?
 - a) Self- awareness b) News c) Radio d) Television e) Friends
- 3) Are you aware of the provisions of the Act?
 - a) Yes b) No c) Partially
- 4) Do you know who can file a Complaint of Domestic Violence?

- a) Victim b) victim's family c) victim's relatives or friends d) anyone e) only a, b and c.
- 5) Do you know against whom a Complaint of Domestic Violence can be made?
 - 6) Do you know that a mother in-law can file a complaint of domestic violence against her daughter in-law?
 - 7) Do you know a sister in-law can file a complaint of domestic violence against her brother's wife living in a shared household?
 - 8) Do you know a mother can file a complaint of domestic violence against her son?
 - 9) Do you know that a woman living in a live-in relationship can also seek remedy under the Act?
 - 10) Did you know that domestic violence includes physical, sexual, economic and emotional/verbal abuse?
 - 11) Does ridiculing someone for not having a child or male child amounts to domestic violence?
 - 12) Does name calling someone, insulting or humiliating a woman living in a shared household amounts to domestic violence?
 - 13) Does throwing away a woman from her matrimonial home where she is living in a shared household amounts to domestic violence?
 - 14) Do you know there is a helpline number for domestic violence?
 - 15) Are you aware of the rights and remedies provided under the Domestic Violence Act?
 - 16) Do you think there is some hardship in the implementation of the domestic violence act?
 - a) Yes b) no c) can't say d) partly
 - 17) If yes, then choose one of the following options-
 - a) Non-awareness regarding the rights and remedies available under the Act
 - b) Governments failure to sensitize people regarding the same
 - c) Absence of gender- neutral approach
 - d) Deficiencies in the act
 - 18) What are your suggestions for better implementation of the Act?

GENERAL INFORMATION

1. Did you face domestic violence?
 - a) Yes b) no
2. If yes, then of what nature?
 - a) Physical abuse b) sexual abuse c) economic abuse d) verbal or emotional abuse e) other
3. Do you know someone who has been a victim of domestic violence?
 - a) yes b) no
4. If yes, where?
 - a) in my own family b) my relatives c) friends d) neighbours
5. Have you ever witnessed an incidence of domestic violence?
6. Did you try to help the victim?

- a) Yes b) no
7. If not, then why?
- a) I got scared b) It's their personal matter c) other reason
8. What was your immediate reaction after you became a victim of domestic violence or witnessed an incidence of domestic violence?
- a) I remained silent b) I filed a Complaint c) I shared it with my family/friends d) I tried helping e) I recorded the incident f) I reported the matter to the authorities
9. Shall the Domestic Violence Act be made gender neutral?
10. If yes, then why?
11. If no, then why?
12. What do you think is a prominent reason behind the incidents of domestic violence?
- a) Demand for dowry
- b) Male ego
- c) Incompatibility
- d) Alcoholism
- e) Anger management issue
- f) Jealousy or ego of the family members
13. Have you ever tried from your end to sensitize people about the provisions of the Domestic Violence Act and the rights and remedies provided under it?