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An Analysis on the Shared Household and the Right to Reside under the Protection of Women from Domestic Violence Act, 2005

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ABSTRACT

Patriarchy is deeply rooted in our Indian Society. Women are always considered as the chattels of men and this set-up is the main reason for domestic violence. Women suffer violence from womb to tomb. Women are being socially, economically, physically, psychologically and sexually exploited. But they always suffer in silence. In 2005, the Parliament enacted the Protection of Women from Domestic Violence Act. The Preamble of the Act states that the object of the Act is to provide effective protection of the rights of women guaranteed under the Constitution. It protects the women from any kind of violence in their domestic relationships. The Act provides protection for all women who all are having a relationship with the abuser so sisters, mothers, in-laws, widows and unmarried women living with the abuser can seek protection under the Act. A key provision of the Act is the shared household concept. Now by this Act, women have the right to reside in the “shared household” or to seek support for alternative housing arrangements. A woman cannot be evicted from her husband’s house, it can be done only according to the procedure establish by law. In case if she is thrown out of that house she can be brought back to the same house by obtaining an order from the court. Mostly Indian women do not have the option to return to their parent’s home or to live on their own; this provision enabled them to stay in their in-laws house with law’s protection. It is the interpretation provided by various judgments which enlarged the concept of “shared household and the right to reside.” The paper examines the various aspects of shared household from the analysis of various judgments.

Keywords: *Patriarchy, chattels, domestic violence, domestic relationships, abuser, shared household*

I. INTRODUCTION

Michelle Obama once said, “No country can ever truly flourish if it stifles the potential of its women and deprives itself of the contributions of half of its citizens” and going by her words we

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can say that India is far away from being a truly flourished country. In India women suffer from various types of violence against them. “Tremendous amounts of talents are lost to our society just because that talent wears a skirt” as rightly pointed out by Shirley Chisholm, the first black woman elected to the United State Congress, Indian society loses tremendous amount of talents possessed by woman. Indian society has always marked women as the ones born to suffer, to stay as the chattels of men and the ones to stay within the four corners of the kitchen. Women are never being considered as equal to that of man and they suffer all the savageries in silence. Because of this augmenting numbers of violence against the women s.498 A was introduced in Indian Penal Code by virtue of the Criminal Law Amendment Act of 1983 by which husband and his relatives were punished for harassing women in such a way which is likely to drive her to commit suicide or to cause grave danger to her life, limb or health. So the available options for women were further limited, as the criminal sanctions were available only if the abuse involved is extreme cruelty or dowry related acts of violence. It was only in 1993 the United Nations internationally recognized violence against the women as a serious violation of human rights through the Declaration on the Elimination of Violence against Women. Thereafter more and more countries started adopting policies to address violence against women particularly domestic violence. So, in 2005 the parliament enacted the Protection of Women from Domestic Violence Act². It provided a vast and a perfect definition for domestic violence as well as a single access point for women with the provision of protection, shelter, and medical services, in custody of children, maintenance and the compensation required by them. This Act not only embraced the relationship on the basis of marriage but also the relationship based on adoption, consanguinity as well as cohabitation so it provided protection for all women who have a relationship with the abuser including sisters, widows, mothers, in-laws and women in living relationships. Prior to this enactment, women were forced to either tolerate the violence or to face the wrath of the society which does not accept divorce. Women were prevented from leaving these abusive relationships because of the social stigma attached to divorce and living outside the matrimonial home. According to Indian Culture, the breaking down of marriage is considered as a virtual civil death for a woman. The failure of a marriage is always considered as women’s fault. So returning to her parents would generally bring great shame on her parental family and usually women do not have any other economic resources also. Sadly, they don't have any place to stay. Therefore women suffer in silence as they fear that exposing her husband would force her into homelessness and shame. But now the Act has provided the right to reside in the shared household or to seek support for alternative housing arrangements. A shared household is a household where a woman lives or has lived in a domestic relationship,

² Protection of Women from Domestic Violence Act, No. 43 of 2005; India Code 2005 (Hereinafter DV Act).

law provides her right to reside in that house even though she does not have any ownership right over that property. This provision only creates a right to reside but not a right of ownership. It protects women from being evicted from her matrimonial home even though her in-laws are having the ownership right over the property.

II. SHARED HOUSEHOLD (S.2(S))

As per s.2(s) of DV Act, 2005

“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 household 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 respondent is a member irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household³.

It is imperative to examine s.2 (f) of the Act before analyzing s.2(s). S.2 (f) provides the meaning of “domestic relationship”. By s.2 (f) “domestic relationship” means 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 family⁴.

So by this provision, domestic relationships are relationships between a woman and a man, living or had lived in a shared household. This relationship can be through

- Marriage - like wives, widows, daughter in laws, and sister in laws with other members of the family
- Consanguinity - like daughters-fathers, mothers-sons, sisters-brothers, etc
- Other relations – like adoption, relationships in the nature of marriage (living together relationships, victims of second marriages [bigamous]).

Now by s.2(s) a shared household means

- A household where the aggrieved person (woman) lives or has lived in a domestic relationship, either singly or along with the abuser.

³ DV Act, ch.I § 2(s).

⁴ DV Act, ch.I § 2(f).

- It includes owned or tenanted households either singly or jointly by the woman and the abuser.
- It also includes such households which belong to the joint family of which the abuser is a member.
- The above mentioned are shared household, irrespective of whether the respondent or the aggrieved person has any right, title or interest in that household.

III. RIGHT TO RESIDE IN A SHARED HOUSEHOLD (S.17)

S.17 states that

(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 law⁵.

So by virtue of s.17 (1), women in a domestic relationship have the right to reside in the shared household. The ownership rights in that particular property does not affect this right to reside so she may or may not be having any right, title or beneficial interest over that property. By s.17 (2) a woman is protected from being evicted or excluded from the shared household. She can be evicted only according to the procedure established by law. It does not create any ownership interest in that house but it only recognizes the right to reside in the household in which she has become accustomed to live. A woman can claim the right to reside only if she has established that (a) her relationship with that of the respondent is a domestic relationship and (b) that the house in respect of which she is seeking her right is a shared household. This law does not alter the legality of ownership or transfer the ownership and a woman cannot claim that she owns a house; it only provides emergency relief to the victim in the sense that she cannot be thrown out of her house.

IV. RESIDENCE ORDERS (S.19)

By s.12 (1), an aggrieved person or a protection officer or any person on behalf of an aggrieved person can file an application seeking any of the reliefs provided under the Act. The Magistrate on receiving such an application and being satisfied that domestic violence has taken place then the court can issue residence order under s.19 (1). The court can issue such residence orders as

⁵ DV Act, ch.I § 17.

specified in s.19 (1) (a) to (f). They are:

- Orders restraining the respondent from dispossessing or in any other manner distributing the possession of the aggrieved person from the shared household. In issuing such orders, it is not necessary for the respondent to have any legal or equitable interest in the shared household,
- Orders directing the respondent to remove himself from the shared household. Proviso to the section states that these orders cannot be passed against a woman,
- Orders restraining the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides,
- Orders restraining the respondents from alienating or disposing off the shared household or obstructing the same,
- Orders restraining the respondent from renouncing his rights in the shared household except with the leave of the Magistrate,
- Orders directing the respondent to secure the same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay the rent for the same, if required.⁶

V. FROM S.R. BATRA TO VANITHA – THE TRANSFORMATION

The shared household concept was introduced to cover a wide range of intimate housing arrangements thereby to provide assistance to women in all respects to save her from becoming homeless but the court's view in *S.R. Batra and Another v Taruna Batra*⁷ narrowed the scope of shared household and thus limited her right to reside. In this case, a husband and wife were living together on the second floor of a house which was owned by her husband's mother. After sometime the husband filed for divorce and he moved out of the house. Later on, the wife was locked out from the house by her mother-in-law. So she applied for an injunction to prohibit her dispossession of the marital home. The High Court granted the injunction and held that the wife was in possession of the matrimonial home. An appeal was filed to the Supreme Court. In the meantime, the Domestic Violence Act became effective and the wife argued that by s.17 and s.19 (1) of the Act protected her right to stay in the shared household and further she claimed that the plain meaning of the s.2(s) encompasses not only a household where the victim leaves but also any household in which she has lived at any stage of the domestic relationship.

⁶ DV Act, ch.IV § 19.

⁷ *S.R. Batra and Another v. Taruna Batra*, A.I.R 2007 SC 1118 (Hereinafter mentioned as *Batra*).

But this view was rejected by the Supreme Court and it held that by s.17(1) the wife is entitled to claim a right to residence in a shared household only if that house belongs to the husband or taken on rent by the husband or that house belongs to joint family of which the husband is a member. The Court further pointed out that if her argument is accepted then it will mean that wherever the husband and wife lived together in the past that property becomes a shared household and it is quite possible that the husband and wife may have lived together in dozens of places. So in such a situation if this argument is allowed then the wife can well insist on living in all these houses merely because she had stayed with her husband for sometime in those houses in the past. Such a view would lead to chaos and would be absurd. Thus the injunction was vacated and the woman's in-laws can evict her if they desire to do so. The *Batra* decision was followed in various cases. In *Varinder Kaur v Jatinder Kumar and Another*⁸, the court held that a daughter-in-law has no right to live in the self acquired house of the mother-in-law or the father-in-law and this house cannot be considered as a shared household. The Punjab and Haryana High Court in *Suman v Tulasi Ram*⁹ held that the house exclusively owned by the father-in-law cannot be termed as a shared household. In *Lokesh Kumar Shah v. Shradha Lokesh Shah and Another*¹⁰, it was held that a house which neither belongs to husband nor belongs to the joint family of which husband is a member cannot be covered under the term shared household. A house owned by the husband's father being his self acquired property is not the shared household therefore the petitioner wife is only entitled to claim alternate accommodation¹¹. A casual visit by a daughter-in-law to the house of father-in-law does not amount to live or living together in a shared household¹². The property in question was settled by way of a settlement deed by father of husband in favour of his mother and according to the terms of the settlement deed the husband has no right to enjoy the property so long as mother is alive and his right starts only after the lifetime of mother. Thus the husband cannot demand and obtain order against his mother for possession and enjoyment hence wife has no better right. So the wife's claim of the house being a shared household cannot be accepted¹³. In *Harish A.R. and Others v Shima and Others*¹⁴, the Kerala High Court held that the residence belonging to mother-in-law or father-in-law would not be a shared household and a residence order cannot be passed in respect of the said house. In *Bhanot V.D v. Savita Bhanot*¹⁵ the Supreme Court

⁸ 2016(4) RCR (CrI) 861.

⁹ 2015(1) RCR (Civil) 304.

¹⁰ 2013(1) Crimes208 (BOM).

¹¹ *Dr. Kavitha Chaudhari v Evenet Singh & Another*, 2012 (3) KLT SN 1.

¹² *Vijay Verma v State of NCT Delhi*, 2010(3) LRC 291(DEL).

¹³ *Anuradha V.P v S Sugantha@Suganthi & Others*, 2015 CriLJ 3478.

¹⁴ *Hashir A.R & others v Shima & Others*, A.I.R 2006 Ker.2.

¹⁵ (2012) 3 S.C.C.183.

held that even if a wife who had shared household in the past but was no longer doing so when the Act came into force would still be entitled to the protection under the DV Act. The willingness of the husband to provide alternative accommodation is not a reason to deny any order in favour of the wife to reside in shared household¹⁶. In *Ekta Arora v. Ajay Arora and Another*¹⁷, the property was owned by father-in-law of the petitioner. The father-in-law has executed a will stating that after his death property will be vested in his wife and if she dies intestate it would devolve upon his son who is the husband of the petitioner. The court held that the petitioner cannot claim the right to reside as the property is not a shared household. A broader view of shared household concept was identified by Kerala High Court in *Kunjathiri v. State of Kerala and Another*¹⁸. In this case it was held that proceedings can be taken against the relative of the husband without the husband being a party to the proceedings. The only requirement is that the respondent should be related to the aggrieved person through husband, by matrimonial relationship or a relationship in the nature of marriage and must have shared a household at any point of time and has committed an act of domestic violence. In *Mary Jacob v Elizabeth Jacob and Others*¹⁹, the Kerala High Court held that the right to reside in a shared household cannot be said to be an indefeasible right, the aggrieved person could be evicted or excluded from the shared household or any part of it by the respondent in accordance with the procedure established by law. The narrow construction of shared household concept put forward by the decision in *Batra* strained India's commitment to end domestic violence and the main aim of introducing such a provision in the Act was defeated as their right to claim the residence was limited. But the courts find new creative ways to bypass the Supreme Court's narrow construction of the term shared household. In *Shalu Bansal v. Nitin Bansal*²⁰, the court took notice of the supreme court's decision in *Batra* but held that the women could not be dispossessed of the marital residence without due process of law and if she is dispossessed the husband have to pay the women the rent as maintenance. Further in *Jyoti Parihar v. Munidra Singh Parihar and Another*²¹, the Madhya Pradesh High Court came up with the same view put forward by the Supreme Court in *Batra*'s case but added that the Magistrate can direct husband to make available same level of alternate accommodation for petitioner as enjoyed by her in the house where she lived or an alternative directing the husband to pay rent for the same. Finally the Supreme Court overruled the decision in *Batra* through the decision in *Satish*

¹⁶ *Rakesh v Rajnesh@Manto*, 2012(1) Crimes527.

¹⁷ A.I.R.2015Del.180.

¹⁸ 2015(4) KHC 185.

¹⁹ 2015(5) KHC 234.

²⁰ CC 1250/1(Delhi, Unreported Judgment January 3, 2007) (Order granting Residence Order).

²¹ 2011(3) Crimes 798.

Chander Ahuja v. Sneha Ahuja²²; in this case a husband and his wife were living together on the first floor of a house owned by her husband's father. After sometime there arose a marital discord between husband and wife and the husband moved out of the first floor and started staying in a guest room on the ground floor. Later on the husband filed a divorce petition, subsequently the wife filed an application under s.12 of the Act and it was alleged that she was subjected to severe emotional and mental abuse by her husband, her father-in-law and her mother-in-law. An interim order was passed by the Chief Metropolitan Magistrate that the respondents shall not alienate the alleged shared household nor they should not dispossess the complainant or their children from the shared household without any orders of a competent court. An appeal was filed by the father-in-law for a decree for mandatory injunction against the daughter-in-law to remove herself and her belongings from the first floor of the property as it is owned by him. But the daughter-in-law argued that the suit property is a shared household as per the provision of section 2(s) she has a right to stay or reside in the shared household. The father-in-law argued that the property is his self acquired property and he is having the ownership of the property so, it will not become a shared household. His contentions were mainly based on the judgment in *Batra*. The trial court decreed a mandatory injunction against the daughter-in-law. Later on the matter was taken to the Supreme Court, here the court held that the view taken by the court in *Batra* with regard to the definition of shared household under s.2(s) didn't adverted to different parts of the definition which makes it clear that there was no requirement for the shared household to be owned singly or jointly by the husband or taken on rent by the husband. The respondent in a proceeding under the Act can be any relative of the husband and in the event, the shared household belongs to any relative of the husband with whom the woman has lived in a domestic relationship, the conditions mentioned in s.2(s) are satisfied and the said house will become a shared household. If the interpretation given in *Batra* is accepted, it would frustrate the main object of the Act. The court has taken the view that the definition of shared household in s.2(s) is an exhaustive definition. The entire scheme of the legislation is to provide immediate relief to the aggrieved person with respect to the shared household where the aggrieved woman lives or has lived. On 15th December 2020, a landmark judgment was pronounced by the Supreme Court in *Vanitha S v. Deputy Commissioner, Bengaluru Urban District and Others*²³, the main issue in this case was whether the provisions of Maintenance and Welfare of Parents and Senior Citizens Act²⁴ can be invoked by the in-laws

²² (2021)1 SCC 414.

²³ 2020(6) KHC 749.

²⁴ The Maintenance and Welfare of Parents and Senior Citizens Act, No.56 of 2007 (India) (Hereinafter Senior Citizens Act, 2007).

to evict their daughter-in law. The court had to check whether the Senior Citizens Act have an overriding effect over the DV Act. Here the court harmoniously interpreted the provisions of Domestic Violence Act, 2005 and the Senior Citizens Act, 2007. S.3 of the Senior Citizens Act, 2007 laid down that its provisions will affect, notwithstanding anything inconsistent contained in any other enactment and s.36 of the DV Act, 2005 stipulates that the provisions of the Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force. The object of these provisions is to ensure that the remedies given under the respective enactments are in addition to and do not displace other remedies. The court identified that the principles of statutory interpretation dictate that in the event of two special enactments, both containing a non obstante clause, the latter will prevail over the former. The court observed that in case of a conflict between the provisions of two statutes, enquiry is to be made between the dominant purposes of both Acts to decide which should prevail over the other. So in this case the court held that allowing the Senior Citizens Act 2007 to have an overriding force and effect in all situations, irrespective of competing entitlements of the women to the right in a shared household within the meaning of DV Act, 2005, would defeat the object and the purpose for which the Parliament has enacted the latter legislation. The Supreme Court held that the Senior Citizens Act, 2007 does not have an overriding effect over the right to residence of women in a shared household under the DV Act, 2005. Thus it is evident from this judgment that paramount importance is given to the women rights and their protection. So, through judicial activism the scope of shared household and women's right to reside are more sophisticated.

VI. CONCLUSION

The right to reside in the shared household introduced by the Domestic Violence Act, 2005 paved the way for many women to stand up and raise their voice. Their fear of becoming homeless was the main element which made them suffer all the violence in silence. The court's verdicts on this aspect are also paving the way for women empowerment. "No nation can rise to the height of glory unless your women are side by side with you", the words of Muhammad Ali Jinnah shows how the glory of a nation can be preserved by treating the women rightly. Domestic Violence Act is a prominent legislation in protecting the women from violence and making the society to treat her rightly.
