CHAPTER - 5

DOMESTIC VIOLENCE WITH SPECIAL REFERENCE TO JUDICIAL DECISIONS

The campaign against dowry and related violence, in the mid-1970s was possibly the first time the issue of violence at home was discussed in public. The agitations by feminist groups across the country were able to attract, the attention of the State to the growing incidents of the so-called death-by-fire. Such incidents were (and even now are) seen as accidents and not investigated properly. The campaign high lighted the difficulties in invoking the law in cases of dowry related violence, for a range of reasons. For instance, dying declarations by women were seldom treated as evidence against the husband and in-laws; and even cases that were registered on the basis of dying declarations were later dismissed by the courts on the ground of inadequacy of evidence. Thus, charges of murder or abetment to suicide could not be successfully invoked. Similarly, police would be reluctant to intervene, arguing that it was not the task of the police to intervene in "family quarrels". The campaign led to the Criminal Law (Second Amendment) Act in 1983, which introduced Section 498A in the Indian Penal Code. Under this provision, "cruelty" to the wife by the husband or his relatives was made a cognisable, non-bailable offence punishable with imprisonment up to three years and a fine. Cruelty was defined as including both physical and mental cruelty, or any harassment associated with demand for dowry. Similarly, Section 304B was introduced in the IPC in 1986 which created a new offence of "dowry death". This provision made it possible to prosecute the husband and in-laws of a woman, if she died as a result of burns or any other injury within seven years of marriage, under suspicious circumstances.
and if it could be shown that she was subjected to cruelty or harassment by the husband/in-laws in relation to demand for dowry. However, it was only after the new provisions were sought to be activated in the courts, that the women's movement realised that the focus on dowry related violence and death had been rather narrow, for it ended up distracting attention from the other numerous instances of violence that women were faced with in the home, which were not necessarily dowry related. While it was still possible to bring cases of everyday violence against women in the home within the scope of Section 498A, it was not possible to use 304B, if the violence and the eventual death were not linked with dowry. And also, only married women facing violence at the hands of the husband or their families could claim relief under 498A. Thus a lot of other forms of violence faced by unmarried women, old women and children could not be brought under this section. It did not protect women from violence in natal relationships or in relationships that have not received the legal sanction of marriage. The other problematic aspect of this provision was the definition of "cruelty" itself. Cruelty was defined to mean any wilful conduct which could have driven the woman to commit suicide or caused grave injury to her or posed a danger to her life, limb or health (either mental or physical). The definition was worded in such vague terms that it was difficult to bring issues of sexual violence, economic violence or even threats of violence within the ambit of the section. The experience with using this section in cases showed that the threshold of the impact of violent conduct on the woman, required to be proved was so high that many forms of cruelty fell through the net. A woman had to prove that she was driven to contemplate suicide, or that her life was in danger before she could access the law. Ultimately, it was entirely on the discretion of the police as to whether the conduct of the husband was of such a nature as mentioned above. Section 304B came
into play only after the woman was dead, and Section 498A which was meant to protect her from harassment and violence was as sailed by the problems discussed above, thus making the relevance of law for women facing violence at home rather limited.”

On 26 October 2006, the Protection of Women from Domestic Violence Act came into effect, with the stated objective of providing "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”. This invocation of the Constitution in the preamble of a law on domestic violence is significant, for the application of constitutional principles to the private domain of the family and the home has often been resisted by the lawmakers and the judiciary.

Domestic violence has been on the global agenda for several decades, and in the last two, has been the subject of considerable reform activity in Asia, particularly in Singapore and Malaysia, which have enacted legislation to deal with the problem. While domestic violence affects various parties (including partners, parents, children and extended family), this article is limited to partner violence and argues for an enhanced gender analysis of the problem in this region. The evidence suggests that domestic violence disproportionately affects women as victims. The World Health Organization, in its first World Report on Violence and Health in 2002, revealed that between 40 percent and 70 percent of women who die due to homicide are killed by current or former partners. The United Nations Special Rapporteur on Violence Against Women has defined domestic violence in gender terms as "violence perpetrated in the domestic sphere which targets women

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204 Indira Jaising : Bringing Rights Home: Review of the Campaign for a Law of Domestic Violence
because of their role within that sphere or as violence which is intended to impact, directly and negatively, on women within the domestic sphere." The significance of using gender as a basis of analysis is that it forces a paradigmatic shift away from domestic violence analysis best captured by the following observation: 'Instead of asking why he batters, there is a tendency to ask why she stays." A gendered analysis compels us instead to question why men resort to violence and why violence against women occurs and is tolerated in many societies. Restructuring the debate in this way is vital for meaningful legal reform, especially from the perspectives of criminal justice and human rights. The key to understanding domestic violence from a gender perspective is to appreciate that the root cause of violence lies in an unequal power relationship between men and women that is compounded in male dominated societies. As noted recently, "Violence is ... a sign of the struggle for the maintenance of certain fantasies of identity and power. Violence emerges, in this analysis, as deeply gendered and sexualised." 205

Section 3 of Domestic Violence Act defines 'domestic violence'as, “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, household 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 household 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. 206

Constitutional Perspectives

The enactment in question was passed by the Parliament with recourse to Article 253 of the Constitution. This provision confers on the

206 Section 2 (g) of the Act provides that ‘domestic violence’ has same meaning as provided under section 3.
Parliament the power to make laws in pursuance of international treaties, conventions, etc. The Domestic Violence Act was passed in furtherance of the recommendations of the United Nations Committee on the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). The Act encompasses all the provisions of the Specific Recommendations, which form a part of General Recommendation no.19, 1992.

Protection of Women and Fundamental Rights

The Statement of Objects and Reasons declares that the Act was being passed keeping in view the fundamental rights guaranteed under Articles 14, 15 and 21. Article 21 confers the right to life and liberty in negative terms, stating that it may not be taken away except by procedure established by law, which is required, as a result of judicial decisions, to be fair, just and reasonable. The right to life has been held to include the following rights (which are reflected in the Act), among others:

1. The right to be free of violence:

In Francis Coralie Mullin v. Union Territory Delhi, Administrator, Facts: The petitioner, who is a British national, was arrested and detained in the Central Jail, Tihar under an Order dated 23rd November 1979 issued under section 3 of the COFEPOSA Act. She preferred a petition in this Court for a writ of habeas corpus challenging her detention, but by a judgment delivered by this Court on 27th February 1980, her petition was

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207 (CEDAW) is an international treaty adopted in 1979 by the United Nations General Assembly. Described as an international bill of rights for women, it was instituted on 3 September 1981 and has been ratified by 189 states.

208 1981 AIR 746
rejected with the result that she continued to remain under detention in the Tihar Central Jail. Whilst under detention, the petitioner experienced considerable difficulty in having interview with her lawyer and the members of her family. Her daughter aged about five years and her sister, who was looking after the daughter, were permitted to have interview with her only once in a month and she was not allowed to meet her daughter more often, though a child of very tender age. It seems that some criminal proceeding was pending against the petitioner for attempting to smuggle hashish out of the country and for the purpose of her defence in such criminal proceeding, it was necessary for her to consult her lawyer, but even her lawyer found it difficult to obtain an interview with her because in order to arrange an interview, he was required to obtain prior appointment from the District Magistrate, Delhi and the interview could take place only in the presence of a Customs Officer nominated by the Collector of Customs. This procedure for obtaining interview caused considerable hardship and inconvenience and there were occasions when, even after obtaining prior appointment from the District Magistrate, Delhi, her lawyer could not have an interview with her since no Customs Officer nominated by the Collector of Customs remained present at the appointed time. The petitioner was thus effectively denied the facility of interview with her lawyer and even her young daughter 5 years old could not meet her except once in a month. This restriction on interviews was imposed by the Prison Authorities by virtue of clause 3(b) sub-clauses (i) and

(ii) of the Conditions of Detention laid down by the Delhi Administration under an Order dated 23rd August 1975 issued in exercise of the powers conferred under section 5 of the the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act. These two sub-clauses of
clause 3(b) provided inter alia as under:

"3. The conditions of detention in respect of classification and interviews shall be as under:-

(a) .........

(b) Interviews: Subject to the direction issued by the Administrator from time to time, permission for the grant of interviews with a detenu shall be granted by the District Magistrate, Delhi as under:-

(i) Interview with legal adviser:

Interview with legal adviser in connection with defence of a detenu in a criminal case or in regard to writ petitions and the like, may be allowed by prior appointment, in the presence of an officer of Customs/Central Excise/ Enforcement to be nominated by the local Collector of Customs/Central Excise or Deputy Director of Enforcement who sponsors the case for detention.

(ii) Interview with family members:

A monthly interview may be permitted for members of the family consisting of wife, children or parents of the detenu ........."

The petitioner, therefore, preferred a petition in this Court under Article 32 challenging the constitutional validity of sub-clauses (i) and (ii) of clause 3(b) of the Conditions of Detention Order and praying that the Administrator of the Union Territory of Delhi and the Superintendent of Tihar Central Jail be directed to permit her to have interview with her lawyer and the members
of her family without complying with the restrictions laid down in those sub-clauses.

**Judgment:** Justice Bhagwati decided that “that any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21.

This right is incorporated in the Act through the definition of physical abuse, which constitutes domestic violence (and is hence punishable under the Act). Physical abuse is said to consist of acts or conduct of such nature that they cause bodily pain, harm, or danger to life, limb or health, or impair the health or development of the aggrieved person. Apart from this, the Act also includes similar acts of physical violence and certain acts of physical violence as envisaged in the Indian Penal Code within the definition of domestic violence. By adoption of such an expansive definition, the Act protects the right of women against violence.”

**In my opinion** it is submitted that while considering the question of validity of conditions of detention courts must necessarily bear in mind the vital distinction between preventive detention and punitive detention. Punitive detention is intended to inflict punishment on a person, who is found by the judicial process to have committed an offence, while reventive detention is not by way of punishment at all, but it is intended to pre-empt a person from indulging in conduct injurious to the society.
2. **The right to dignity:**

In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*\(^{209}\)

The Supreme Court emphasised the fact that the right to life included in its ambit the right to live with human dignity, basing its opinion on a host of cases that had been decided in favour of this proposition. The right to dignity would include the right against being subjected to humiliating sexual acts. It would also include the right against being insulted. These two facets of the right to life find mention under the definitions of sexual abuse and emotional abuse, respectively. A praiseworthy aspect of the legislation is the very conception of emotional abuse as a form of domestic violence. The recognition of sexual abuse of the wife by the husband as a form of violation to the person is creditable, especially as such sexual abuse is not recognised by the IPC as an offence. These acts would fall within the confines of domestic violence as envisaged by the Act, though the definition would not be limited to it.

**In my opinion** the right to dignity and right to life would include the right against being subjected to humiliating sexual acts and the right against being insulted.

3. **The right to shelter:** In *Chameli Singh v. State of U.P.*\(^{210}\)

**Facts of the case:** The appellants are owners of the lands in Plot No. 16 of an extent of 5 bighas, 6 biswas and 14 biswas respectively in Village Bairam Nagar, Pargana Nahtaur, Tahsil Dhampur, District Bijnore. These lands along with other lands were notified by publication in the State

\(^{209}\) (1997) 11 SCC 123
\(^{210}\) AWS(SC)-1995-12-75
Gazette under Section 4(1) of the Land Acquisition Act, 1894 (for short, "the Act") on 23-7-1983 and the declaration under Section 6 was also published simultaneously dispensing with the inquiry under Section 5-A. The appellants challenged the validity of the notification under Section 4(1) and the exercise of the power given under Section 17(1) read with Section 17(4) dispensing with the inquiry under Section 5-A. Three contentions were raised and negatived by the Division Bench. The first contention was that since the lands are not waste or arable lands, notification under Section 17(4) in invalid. Secondly, it was contended that dispensing with the inquiry under Section 5-A is not justifiable as there is no urgency to take possession even though the land was acquired for providing houses to Scheduled Castes (for short, 'Dalits'). Thirdly, it was contended that on account of the acquisition, the appellants will be deprived of their lands which is the only source of their livelihood violating Article 21 of the Constitution. Thus this appeal by special leave was filed.

Decision: Justice Kirpal held “It was held that the right to life would include the right to shelter, distinguishing the matter at hand from Gauri Shankar v. Union of India where the question had related to eviction of a tenant under a statute. Ss. 6 and 17 of the Domestic Violence Act reinforce this right. Under S.6, it is a duty of the Protection Officer to provide the aggrieved party accommodation where the party has no place of accommodation, on request by such party or otherwise. Under S.17, the party’s right to continue staying in the shared household is protected. These provisions thereby enable women to use the various protections given to them without any fear of being left homeless.

Article 14 contains the equal protection clause. It affirms equality before the law and the equal protection of the laws. Article 14 prohibits
class legislation, but permits classification for legislative purposes. A law does not become unconstitutional simply because it applies to one set of persons and not another. Where a law effects a classification and is challenged as being violative of this Article, the law may be declared valid if it satisfies the following two conditions:

1. The classification must be based on some intelligible differentia,
2. There must be a rational nexus between this differentia and the object sought to be achieved by the law.

**E.P. Royappa v. State of Tamil Nadu**

1. **Facts of the case:** The petitioner was a member of the Indian Administrative Service in the cadre of the State of Tamil Nadu. In November, 1969, when the post of Chief Secretary to the State fell vacant the petitioner, as the best suited, was selected for the post. The draft order in regard to the appointment approved by the Chief Minister. But then State Government given permission to the creation of a temporary post of Deputy Chairman in the State Planning Commission in the grade of Chief Secretary for a period of one year and appointed the petitioner to that post providing that he shall be entitled to the same rank and payments as permissible to the post of Chief Secretary. He joined the post on 7 April, 1971.

2. Against this the petitioner made a representation that the continuance of the post of Deputy Chairman in the rank of Chief Secretary for a period of more than one year would be invalid under r. 4(2) of the Indian Administrative Service (Cadre) Rules, 1954. So on 27 June, 1972 the State Government created a temporary post of officer on Special Duty of Sales Tax dept. in the grade of Chief Secretary to the
Government and appointed the petitioner to that post. He did not join this post too and proceeded on leave. After the petitioner was transferred from the post of Deputy Chairman Planning Commission and appointed Officer on Special Duty.

While the post of the Chief Secretary still vacant a junior cadre officer to the petitioner had been appointed in that post. The petitioner in this writ petition under Article 32 of the Constitution asks for a mandamus or any other appropriate writ challenging the validity of his transfer from the post of Chief Secretary, first to the post of Deputy Chairman State Planning Commission and then to the post of officer on Special Duty. Also it was violative of Arts. 14 and 16 of the Constitution as the posts of Deputy Chairman, State Planning Commission and Officer on Special Duty were inferior in rank and status to that of Chief Secretary. And that it was made in mala fide exercise of power, not on account of necessities of administration or public service, but because the second respondent was annoyed with the petitioner on account of various incidents the respondent wanted him out of the way.

**Decision:** Justice Bhagwati delivered the majority judgment and held, “Any law that is arbitrary is considered violative of Article 14 as well. This provision is significant in putting a stop to arbitrariness in the exercise of State power and also in ensuring that no citizen is subjected to any discrimination. At the same time, it preserves the State’s power to legislate for a specific category of people.

Article 15 disallows discrimination on the grounds of religion, caste, sex, race, etc., but permits the State to make special provisions for certain classes of persons, including women and children.
The Domestic Violence Act promotes the rights of women guaranteed under Articles 14 and 15. Domestic violence is one among several factors that hinder women in their progress, and this Act seeks to protect them from this evil. It indeed effects a classification between women and men, protecting only women from domestic violence, but this classification is founded on an intelligible differential, namely, gender, and also has a rational nexus with the object of the Act. Further, the Act is far from arbitrary, in that it is a well-thought and necessary attempt to curtail domestic violence and eventually vanquish it. It is to be remembered that it is generally women who are the victims of domestic violence, and not men.

In my opinion it is submitted that at this stage, it is also essential to keep in mind Article 15(3) which empowers the State to make legislations like this for the benefit of women, thus creating an exception in their favour against the operation of Article 15(1).212

5.1 Journey through Judicial Pronouncements:

In Harvinder Kaur vs Harmander Singh213

Facts of the case: The husband petitioned for restitution of conjugal rights. The wife opposed. The Additional District Judge granted a decree of restitution of conjugal rights to the husband. From that decree the wife appeals to this Court, on appeal counsel for the wife attacked the constitutional validity of section 9 of the Hindu Marriage Act. The court issued 'notice to attorney-general. He appeared and argued' the case. This part of the judgment deals with the constitutional question.

212 Harini Sudersan & Niruphama Ramakrishnan: Domestic violence A Constitutional Perspective
213 AIR 1984 Delhi 66

The main reason for holding that section 9 offended Article 21 of the Constitution was that a decree for restitution of conjugal rights was an order "to coerce through: judicial process, the unwilling party to have sex against that person's consent and freewill with the decree-holder". This, he held, was "degrading to human dignity and monstrous to human spirit". The learned judge took the view that the British Indian courts "thoughtlessly imported that rule into our country and blindly enforced it among the Hindus and the Muims. The origin of this uncivilized remedy in our ancient country is only recent and is wholly illegitimate. Section 9 had merely aped the British and mechanically re-enacted that legal provision of the British ecclesiastical origin." In my opinion this view is based on a misconception of the true nature of the remedy of restitution of conjugal rights.

Justice A. Rohtagi further observed, “Introduction of constitutional law in the home is most inappropriate. It is like introducing a bull in a china shop. It will prove to be a ruthless destroyer of the marriage institution and all that it stands for. In the privacy of the home and the married life neither Article 21 nor Article 14- have anyplace. In a sensitive sphere which is atonce most intimate and delicate the introduction of the cold principles of constitutional law will have the

\(^{214}\) AIR 1983 AP 356
effect of weakening the marriage bond. That the restitution remedy was abolished in England in 1970 by Section 20 of the Matrimonial Proceedings and Properties Act 1970, on the recommendation of the Law Commission headed by Justice Scarmann is no ground to hold that it is unconstitutional in the Indian set-up.

The "domestic community" does not rest on contracts sealed with seals and sealing wax nor on constitutional law. It rests on that kind of moral cement which unites and produces “two-in-oneshop”.

5.2 Peculiar approach of Supreme Court on the issues relating to domestic violence

In Gokal Chand v. Parvin Kumari,\textsuperscript{215}

Decision: The court held that the continuous cohabitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long cohabition is a rebuttable one and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them. Polygamy, that is a relationship or practice of having more than one wife or husband at the same time, or a relationship by way of a bigamous marriage that is marrying someone while already married to another and/or maintaining an adulterous relationship that is having voluntary sexual intercourse between a married person who is not one’s husband or wife, cannot be said to be a relationship in the nature of marriage.

In my opinion it is submitted that “in the instant case, there was no necessity to rebut the presumption, since the appellant was aware that the respondent was a married person even before the commencement of their

\textsuperscript{215} AIR 1952 SC 231
relationship, hence the status of the appellant is that of a concubine or a mistress, who cannot enter into relationship in the nature of a marriage.

**American Jurisprudence, Second Edition, Vol. 24 (2008) speaks** of Rights and Remedies of property accumulated by man and woman living together in illicit relations or under void marriage, which reads as under:

“Although the courts have recognized the property rights of persons cohabiting without benefit of marriage, these rights are not based on the equitable distribution provisions of the marriage and divorce laws because the judicial recognition of mutual property rights between unmarried cohabitants would violate the policy of the state to strengthen and preserve the integrity of marriage, as demonstrated by its abolition of common-law marriage.”

In State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) & Ors., The issue is no more *res integra* and stands settled by a catena of decisions of this Court. For setting aside such an order, even if void, the party has to approach the appropriate forum. In Sultan Sadik v. Sanjay Raj Subba & Ors., This Court observed that there cannot be any doubt that even if an order is void or voidable, the same requires to be set aside by the competent court.

**In my opinion it** is submitted that it is permissible for a party to treat the judgment and order as null and void without getting it set aside from the competent court.

**In Lata Singh v. State of U.P.** It was observed that a live-in relationship between two consenting adults of heterosexual sex does not amount to any offence even though it may be perceived as immoral.

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216 AIR 1996 SC 906  
217 AIR 2004 SC 1377  
218 [AIR 2006 SC 2522]
However, in order to provide a remedy in Civil Law for protection of women, from being victims of such relationship, and to prevent the occurrence of domestic violence in the society, first time in India, the DV Act has been enacted to cover the couple having relationship in the nature of marriage, persons related by consanguinity, marriages etc. We have few other legislations also where reliefs have been provided to woman placed in certain vulnerable situations.

**In my opinion it is submitted**, “a relationship will fall within the expression “relationship in the nature of marriage” within the meaning of Section 2(f) of the DV Act, we should have a close analysis of the entire relationship, in other words, all facets of the interpersonal relationship need to be taken into account. We cannot isolate individual factors, because there may be endless scope for differences in human attitudes and activities and a variety of combinations of circumstances which may fall for consideration. Invariably, it may be a question of fact and degree, whether a relationship between two unrelated persons of the opposite sex meets the tests judicially evolved.

**In M. Meenakshi & Ors. v. Metadin Agarwal (dead) by Lrs. & Ors.,**219

**Facts of the case:** The Defendant in the suit together with his other co-sharers were owners of Survey No.71, West Marredpalli, Secunderabad. A proceeding under the Urban Land (Ceiling & Regulation) Act, 1976 (for short, 'the 1976 Act') was initiated against them. In the said proceeding at the hands of the landholders, excess land was directed to be

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219 (2006) 7 SCC 470,
vested in the Central Government. The owners were allowed to retain 1000 sq. metres of land each.

Allegedly, on that premise a piece of vacant land bearing Plot No.2 in Survey No.71 measuring 1000 sq. metres which had been allotted to the defendant was allowed to be retained by him. On or about 27.06.1978 he (original Owner) entered into an agreement with the Plaintiff for sale in respect thereof on a consideration of Rs.50/- sq. yard. As on the said date, a proceeding under the 1976 Act was pending, the agreement to sell was subject to the grant of permission by the competent authority under the said Act. It stipulated that in the event of refusal on the part of the competent authority to grant such permission, the advance paid to the Defendant would be refunded. It was further stipulated that in the event of refusal on the part of the vendor to execute the sale deed upon obtaining permission, if any, not only the amount paid by way of advance was to be refunded but also damages to the extent of Rs.15,000/- was to be paid by the Defendant to the Plaintiff. The application under Section 26 of the 1976 Act filed for seeking permission to sell the said land was rejected by the competent authority by an order dated 24.08.1978. An application was filed under Section 10 of the 1976 Act on 29.04.1980 which was again rejected by an order dated 26.06.1980 stating that no vacant land measuring 1000 sq. metres was available, in view of the order passed in the proceedings under the 1976 Act and as such no permission could be granted.
**Decision:** This Court considered the issue at length and observed that if the party feels that the order passed by the court or a statutory authority is non-est/void, he should question the validity of the said order before the appropriate forum resorting to the appropriate proceedings. The Court observed as under:

"It is well settled principle of law that even a void order is required to be set aside by a competent Court of law, inasmuch as an order may be void in respect of one person but may be valid in respect of another. A void order is necessarily not non-est.”

**In my opinion** it is submitted that an order cannot be declared to be void in collateral proceedings and that too in the absence of the authorities who were the authors thereof.

**In S.R. Batra And Anr vs Smt. Taruna Batra** 220

**Facts of the case:**

The facts of the case are that respondent Smt. Taruna Batra was married to Amit Batra, son of the appellants, on 14.4.2000.

After the marriage respondent Taruna Batra started living with her husband Amit Batra in the house of the appellant no.2 in the second floor. It is not disputed that the said house which is at B-135, Ashok Vihar,

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Phase-I, Delhi belongs to the appellant no.2 and not to her son Amit Batra.

Amit Batra filed a divorce petition against his wife Taruna Batra, and it is alleged that as a counter blast to the divorce petition Smt. Taruna Batra filed an F.I.R. under Sections 406/498A/506 and 34 of the Indian Penal Code and got her father-in-law, mother-in-law, her husband and married sister-in-law arrested by the police and they were granted bail only after three days. Smt. Taruna Batra had shifted to her parent's residence because of the dispute with her husband. She alleged that later on when she tried to enter the house of the appellant no.2 which is at property No. B-135, Ashok Vihar, Phase-I, Delhi she found the main entrance locked and hence she filed Suit No. 87/2003 for a mandatory injunction to enable her to enter the house. The case of the appellants was that before any order could be passed by the trial Judge on the suit filed by their daughter-in-law, Smt. Taruna Batra, along with her parents forcibly broke open the locks of the house at Ashok Vihar belonging to appellant No. 2, the mother-in-law of Smt. Taruna Batra. The appellants alleged that they have been terrorized by their daughter-in-law and for some time they had to stay in their office. Their son Amit Batra, husband of the respondent, had shifted to his own flat at Mohan Nagar, Ghaziabad before the above litigation between the parties had started. The learned trial Judge decided both the applications for temporary injunction filed in suit no.87/2003 by the parties by his order on 4.3.2003. He held that the petitioner was in possession of the second floor of the property and he granted a temporary injunction restraining the appellants from interfering with the possession of Smt. Taruna Batra, respondent herein. Against the aforesaid order the appellants filed an appeal before the Senior Civil Judge, Delhi who by his order dated 17.9.2004 held that Smt. Taruna
Batra was not residing in the second floor of the premises in question. He also held that her husband Amit Batra was not living in the suit property and the matrimonial home could not be said to be a place where only wife was residing. He also held that Smt. Taruna Batra had no right to the properties other than that of her husband. Hence, he allowed the appeal and dismissed the temporary injunction application. Aggrieved, Smt. Taruna Batra filed a petition under Article 227 of the Constitution which was disposed of by the impugned judgment. Hence, these appeals.

The learned Single Judge of the High Court in the impugned judgment held that “the second floor of the property in question was the matrimonial home of Smt. Taruna Batra. He further held that even if her husband Amit Batra had shifted to Ghaziabad that would not make Ghaziabad the matrimonial home of Smt. Taruna Batra. The Learned Judge was of the view that mere change of the residence by the husband would not shift the matrimonial home from Ashok Vihar, particularly when the husband had filed a divorce petition against his wife. On this reasoning, the learned Judge of the High Court held that Smt. Taruna Batra was entitled to continue to reside in the second floor of B-135, Ashok Vihar, Phase-I, Delhi as that is her matrimonial home.”

With respect, we are unable to agree with the view taken by the High Court.

**Decision:** The Bench of S.B. Sinha, Markandey Katju JJ held (judgment was delivered by Justice Katzu), “It is only the legislature which can create a law and not the Court. The courts do not legislate, and whatever
may be the personal view of a Judge, he cannot create or amend the law, and must maintain judicial restraint.

There is no such law in India, like the British Matrimonial Homes Act, 1967, and in any case, the rights which may be available under any law can only be as against the husband and not against the father-in-law or mother-in-law.

Here, the house in question belongs to the mother-in-law of Smt. Taruna Batra and it does not belong to her husband Amit Batra. Hence, Smt. Taruna Batra cannot claim any right to live in the said house.

**In my opinion it is submitted** that this narrow conception of property and ownership is the foundation of capitalist societies, not shared by other systems of jurisprudence. In Hindu law, for example, the notion of the coparcenery quite clearly vested the right to ownership of property and the right of usage in a multiplicity of users, who were entitled to use it by virtue of being in the domestic relationship. While ownership was vested with three generations of males, the women of the coparcenery married into the family, in their capacity of mothers and daughter-in-laws, had the undisputed right to reside in it. The coparcenery was quite literally the "shared household"; a joint family was defined as being "joint in food and worship". The PWDVA built on these notions and secularised this concept, thus making the right to reside available to women of all religious communities. The broad definition of the "shared household" in the PWDVA is in keeping with the family patterns in India, where married couples continue to live with their parents in homes owned by the parents.
In Jagraj Singh v. Birpal Kaur,\textsuperscript{221}

**Facts of the case:** The present appeal by special leave has been filed by the appellant-husband against the interim order dated May 04, 2006 passed by the High Court of Punjab & Haryana at Chandigarh in F.A.O. No. 13-M of 2005 issuing non-bailable warrant against him. Brief facts of the case are that marriage of the appellant and respondent was solemnized on July 6, 1993 at Barnala, District Sangrur, Punjab and from the said wedlock, a son was born to them on April 9, 1994, but he died in September, 1995. It is the case of the husband that after marriage, he went to Brunei, Darusslame in January, 1994. Respondent-wife also joined him after some days. There she appeared in an interview for a job of Pharmacist. But she was not selected for the said job and returned to the matrimonial home on February 15, 1994 and then came back to India and lived with her parents. In the meantime, relations between them became strained and on December 23, 2002, respondent-wife filed a petition for divorce under Section 13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'the Act') on the ground of desertion and cruelty in the Court of District Judge, Faridkot, Punjab. Appellant, through his Special Power of Attorney, filed written statement contending inter alia that Faridkot Court had no territorial jurisdiction to hear and try the petition. He also denied the allegations of cruelty and desertion.

**Decision:** C.K. Thakker, Lokeshwar Singh JJ held, “This Court held that conjugal rights are not merely creature of statute but inherent in the very institution of marriage.

\textsuperscript{221} AIR 2007 SC 2083
In my opinion it is submitted that the approach of a court of law in matrimonial matters should be "much more constructive, affirmative and productive rather than abstract, theoretical or doctrinaire". The court should not give up the effort of reconciliation merely on the ground that there is no chance for reconciliation or one party or the other says that there is no possibility of living together. Therefore, it is merely a misgiving that the courts are not concerned and obligated to save the sanctity of the institution of marriage.

In See S. Khushboo v. Kanniammal and another\(^{222}\)

**Facts:** The appellant is a well known actress who has approached this Court to seek quashing of criminal proceedings pending against her. As many as 23 Criminal Complaints were filed against her, mostly in the State of Tamil Nadu, for the offences contemplated under Sections 499, 500 and 505 of the Indian Penal Code, 1860 [hereinafter `IPC`] and Sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986 [hereinafter `Act 1986`]. The trigger for the same were some remarks made by the appellant in an interview to a leading news magazine and later on the same issue was reported in a distorted manner in another periodical. Faced with the predicament of contesting the criminal proceedings instituted against her in several locations, the appellant had approached the High Court of Madras, praying for the quashing of these proceedings through the exercise of its inherent power under Section 482 of the Code of Criminal Procedure, 1973 [hereinafter

\(^{222}\) (2010) 5 SCC 600.
`Cr.PC.`]. The High Court rejected her plea vide impugned judgment and order dated 30.4.2008. At the same time, in order to prevent the inconvenience of litigating the same subject-matter in multiple locations directed that all the cases instituted against the appellant be consolidated and tried together by the Chief Metropolitan Magistrate, Egmore (Chennai). Aggrieved by the aforesaid judgment, the appellant approached this Court by way of a batch of Special Leave Petitions.

**Judgment:** K.G. Balakrishnan, Deepak Verma, B.S. Chauhan held, “Such relationship, it may be noted, may endure for a long time and can result pattern of dependency and vulnerability, and increasing number of such relationships, calls for adequate and effective protection, especially to the woman and children born out of that live-in-relationship. Legislature, of course, cannot promote pre-marital sex, though, at times, such relationships are intensively personal and people may express their opinion, for and against.

**Meghmala & Ors. v. G. Narasimha Reddy & Ors.,**\(^{223}\)

**Facts of the case:** These appeals have been preferred against the Judgment and Order dated 26.04.2007 of the High Court of Andhra Pradesh, at Hyderabad, passed in Writ Petition Nos. 19962-19963 of 2006, by which the High Court has allowed the said petitions against the Judgment and order of the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (hereinafter called, "Act 1982"), dismissing the review application No. 397/2005 in LGC No. 76/1996 and in LGCSR 357/2005.

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\(^{223}\) (2010) 8 SCC 383
Judgment: P. Sathasivam, B.S. Chauhan JJ held “Fraud and deception are synonymous. "Fraud is an anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine". An act of fraud on court is always viewed seriously.

In D. Velusamy v. D. Patchaammal,224

Facts: The appellant herein has alleged that he was married according to the Hindu Customary Rites with one Lakshmi on 25.6.1980. Out of the wedlock with Lakshmi a male child was born, who is now studying in an Engineering college at Ooty. The petitioner is working as a Secondary Teacher in Thevanga Higher Secondary School, Coimbatore. It is alleged that the appellant herein (respondent in the petition under Section 125 Cr.P.C.) deserted the respondent herein (petitioner in the proceeding under Section 125 Cr.P.C.) two or three years after marrying her in 1986. In her petition under Section 125 Cr.P.C. she alleged that she did not have any kind of livelihood and she is unable to maintain herself whereas the respondent (appellant herein) is a Secondary Grade Teacher drawing a salary of Rs.10000/- per month. Hence it was prayed that the respondent (appellant herein) be directed to pay Rs.500/- per month as maintenance to the petitioner.

Decision: Justice Katju and Justice Thakur delivered the judgment and decided, “This Court considered the expression "domestic relationship" under Section 2(f) of the Act 2005 placing reliance on earlier judgment in Savitaben Somabhai Bhatiya v. State of Gujarat & Ors.,225 held that

224 (2010) 10 SCC 469
225 (2005) 3 SCC 636
relationship "in the nature of marriage" is akin to a common law marriage.”

In my opinion it is submitted that however, the couple must hold themselves out to society as being akin to spouses in addition to fulfilling all other requisite conditions for a valid marriage.

In Inderjit Singh Grewal V. State of Punjab and Anr.226

Facts of the case: The instant appeal reveals a very sorry state of affair where the wife files a criminal complaint before the competent court to initiate criminal proceedings against her husband alleging that they had obtained decree of divorce by playing fraud upon the court without realising that in such a fact-situation she herself would be an accomplice in the crime and equally responsible for the offence. More so, the appeal raises a substantial question of law as to whether the judgment and decree of a competent Civil Court can be declared null and void in collateral proceedings, that too, criminal proceedings. Judgment: Sathasivam, B.S. Chauhan JJ held, “hat permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court.”

In my opinion it is submitted that in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice.

In V.D. Bhanot Vs. Savita Bhanot227

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226 Criminal appeal no. 1635 of 2011
227 2012(1)ACR654(SC)
**Facts:** The Special Leave Petition was directed against the judgment and order dated 22nd March, 2010, passed by the Delhi High Court in Cr.M.C.No.3959 of 2009 filed by the Respondent wife, Mrs. Savita Bhanot, questioning the order passed by the learned Additional Sessions Judge on 18th September, 2009, dismissing the appeal filed by her against the order of the Metropolitan Magistrate dated 11th May, 2009.

**Decision:** Justice Altmas Kabir held “the situation comes squarely within the ambit of Section 3 of the PWD Act, 2005, which defines "domestic violence" in wide terms, and, accordingly, no interference is called for with the impugned order of the High Court.”

*In my opinion* it is submitted that it was rightly held that even if wife who had shared household in past but was no longer doing so when Act came into force would still be entitled to protection under Act order of High Court modified.”

In *Sou. Sandhya Manoj Wankhade V. Manoj Bhimrao Wankhade and Ors.*

**Facts of the case:** This Appeal was directed against the judgment and order dated 5th March, 2010, passed by the Nagpur Bench of the Bombay High Court in Crl. W.P. No.588 of 2009, inter alia, directing the Appellant to vacate her matrimonial house and confirming the order of the Sessions Judge deleting the names of the other Respondents from the proceedings. The Appellant herein was married to the Respondent No.1 on 20th January, 2005, and the marriage was registered under the

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228 2012(2)ALT(Cri)391
provisions of the Special Marriage Act, 1954. After her marriage, the Appellant began to reside with the Respondent No.1 at Khorej Colony, Amravati, where her widowed mother-in-law and sister-in-law, the Respondent Nos.2 and 3 respectively, were residing. According to the Appellant, the marriage began to turn sour after about one year of the marriage and she was even assaulted by her husband and by the other respondents. It is her specific case that on 16th June, 2007, she was mercilessly beaten by the Respondent No.1, which incident was reported to the police and a case under Section 498-A I.P.C. came to be registered against him.

Mr. Satyajit A. Desai, learned Advocate appearing for the Respondents, defended the orders passed by the Sessions Judge and the High Court and urged that the term "relative" must be deemed to include within its ambit only male members of the husband's family or the family of the male partner. Learned counsel submitted that when the expression "female" had not been specifically included within the definition of "respondent" in Section 2(q) of the Domestic Violence Act, 2005, it has to be held that it was the intention of the legislature to exclude female members from the ambit thereof.

Judgment:

Bench of Altamas Kabir, Cyriac Joseph JJ held, “having carefully considered the submissions made on behalf of the respective parties, we are unable to sustain the decisions, both of the learned Sessions Judge as also the High Court, in relation to the interpretation of the expression "respondent" in Section 2(q) of the Domestic Violence Act, 2005. For the sake of reference, Section 2(q) of the above-said Act is extracted hereinbelow :-
"2(q). "respondent" means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner."

From the above definition it would be apparent that although Section 2(q) defines a respondent to mean any adult male person, who is or has been in a domestic relationship with the aggrieved person, the proviso widens the scope of the said definition by including a relative of the husband or male partner within the scope of a complaint, which may be filed by an aggrieved wife or a female living in a relationship in the nature of a marriage.

It is true that the expression "female" has not been used in the proviso to Section 2(q) also, but, on the other hand, if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded, instead of it being provided in the proviso that a complaint could also be filed against a relative of the husband or the male partner. No restrictive meaning has been given to the expression "relative", nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only.

**In my opinion it is submitted**, “in such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005.
In Deoki Panjhiyara vs Shashi Bhushan Narayan Azad and Anr. 229

**Facts:** The appellant, who was married to the respondent in the year 2006, had filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as ‘the DV Act’) seeking certain reliefs including damages and maintenance. During the pendency of the aforesaid application the appellant filed an application for interim maintenance which was granted by the learned trial court on 13.02.2008 at the rate of Rs.2000/- per month. The order of the learned trial court was affirmed by the learned Sessions Judge on 09.07.2008. As against the aforesaid order, the respondent (husband) filed a Writ Petition before the High Court of Jharkhand.

While the Writ Petition was pending, the respondent sought a recall of the order dated 13.02.2008 on the ground that he could subsequently come to know that his marriage with the appellant was void on the ground that at the time of the said marriage the appellant was already married to one Rohit Kumar Mishra.

**Judgment:** P. Sathasivam, Ranjan Gogoi JJ held, “Mere production of a marriage certificate issued under Section 13 of the Special Marriage Act, 1954 in support of the claimed first marriage of the appellant with Rohit Kumar Mishra was not sufficient for any of the courts, including the High Court, to render a complete and effective decision with regard to the marital status of the parties and that too in a collateral proceeding for maintenance. Consequently, we hold that in the present case until the invalidation of the marriage between the appellant and the respondent is

229 2013(1)ACR1089

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made by a competent court it would only be correct to proceed on the basis that the appellant continues to be the wife of the respondent so as to entitle her to claim all benefits and protection available under the DV Act, 2005.

Our above conclusion would render consideration of any of the other issues raised wholly unnecessary and academic. Such an exercise must surely be avoided.

In my opinion the interference made by the High Court with the grant of maintenance in favour of the appellant was not at all justified. Accordingly, the order dated 09.04.2010 passed by the High Court is set aside. In Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade and ors., it was held by Justice Altams Kabir that only female relatives can file a suit under the said Act.

In Indra Sarma v. V.K.V. Sarma

**Facts:** Appellant and respondent were working together in a private company. The Respondent, who was working, as a Personal Officer of the Company, was a married person having two children and the appellant, aged 33 years, was unmarried. Constant contacts between them developed intimacy and in the year 1992, appellant left the job from the above-mentioned Company and started living with the respondent in a shared household. Appellant’s family members, including her father, brother and sister, and also the wife of the respondent, opposed that live-

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230 2012(2)ALT(Cri)391
231 2014(1)ABR615
in-relationship. She has also maintained the stand that the respondent, in fact, started a business in her name and that they were earning from that business. After some time, the respondent shifted the business to his residence and continued the business with the help of his son, thereby depriving her right of working and earning. Appellant has also stated that both of them lived together in a shared household and, due to their relationship, appellant became pregnant on three occasions, though all resulted in abortion. Respondent, it was alleged, used to force the appellant to take contraceptive methods to avoid pregnancy. Further, it was also stated that the respondent took a sum of Rs.1,00,000/- from the appellant stating that he would buy a land in her name, but the same was not done. Respondent also took money from the appellant to start a beauty parlour for his wife. Appellant also alleged that, during the year 2006, respondent took a loan of Rs.2,50,000/- from her and had not returned. Further, it was also stated that the respondent, all along, was harassing the appellant by not exposing her as his wife publicly, or permitting to suffix his name after the name of the appellant. Appellant also alleged that the respondent never used to take her anywhere, either to the houses of relatives or friends or functions. Appellant also alleged that the respondent never used to accompany her to the hospital or make joint Bank account, execute documents, etc. Respondent’s family constantly opposed their live-in relationship and ultimately forced him to leave the company of the appellant and it was alleged that he left the company of the appellant without maintaining her.

**Relief Claimed:**

1) Pass a Protection Order under Section 18 of the DV Act prohibiting the respondent from committing any act of domestic violence against the appellant and her relatives, and further prohibiting the
respondent from alienating the assets both moveable and immovable properties owned by the respondent;

2) Pass a residence order under Section 19 of the DV Act and direct the respondent to provide for an independent residence as being provided by the respondent or in the alternative a joint residence along with the respondent where he is residing presently and for the maintenance of Rs.25,000/- per month regularly as being provided earlier or in the alternative to pay the permanent maintenance charges at the rate of Rs.25,000/- per month for the rest of the life;

3) Pass a monetary order under Section 20 of the DV Act directing the respondent to pay a sum of Rs.75,000/- towards the operation, pre and post operative medication, tests etc and follow up treatments;

4) Pass a compensation order under Section 22 of the DV Act to a sum of Rs.3,50,000/- towards damages for misusing the funds of the sister of the appellant, mental torture and emotional feelings; and

5) Pass an ex-parte interim order under Section 23 of the DV Act directing the respondent to pay Rs.75,000/- towards the medical expenses and pay the maintenance charges @ Rs.25,000/- per month as being paid by the respondent earlier.

**Judgment:** K.S. Radhakrishnan, J. held that “Live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal.
We are, in this case, concerned with the question whether a “live-in relationship” would amount to a “relationship in the nature of marriage” falling within the definition of “domestic relationship” under Section 2(f) of the Protection of Women from Domestic Violence Act, 2005 (for short “the DV Act”) and the disruption of such a relationship by failure to maintain a women involved in such a relationship amounts to “domestic violence” within the meaning of Section 3 of the Domestic Violence Act.”

**In my opinion it is submitted that** “Domestic Violence” is undoubtedly a human rights issue, which was not properly taken care of in this country even though the Vienna Accord 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence was undoubtedly a human rights issue. UN Committee on Convention on Elimination of All Forms of Discrimination Against Women in its general recommendations had also exhorted the member countries to take steps to protect women against violence of any kind, especially that occurring within the family, a phenomenon widely prevalent in India.

**In ChanmuniyaVs.Chanmuniya Virendra Kumar Singh Kushwaha and Anr.** 232

**Facts of the case:** Sarju Singh Kushwaha had two sons, Ram Saran (elder son) and Virendra Kumar Singh Kushwaha (younger son and the first respondent). The appellant, Chanmuniya, was married to Ram Saran and had 2 daughters-Asha, the first one, was born in 1988 and Usha, the second daughter, was born in 1990. Ram Saran died on 7.03.1992. Thereafter, the appellant contended that she was married off to the first

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232 2011(1)ALD(Cri)370
respondent as per the customs and usages prevalent in the Kushwaha community in 1996. The custom allegedly was that after the death of the husband, the widow was married off to the younger brother of the husband. The appellant was married off in accordance with the local custom of Katha and Sindur. The appellant contended that she and the first respondent were living together as husband and wife and had discharged all marital obligations towards each other. The appellant further contended that after some time the first respondent started harassing and torturing the appellant, stopped her maintenance and also refused to discharge his marital obligations towards her.

In Shalu OjhaVs. Prashant Ojha233

Facts: The appellant is a young woman who got married to the respondent on 20.04.2007 in Delhi according to Hindu rites and customs, pursuant to certain information placed by the respondent on the website known as “Sycorian Matrimonial Services Ltd.”.

According to the appellant, she was thrown out of the matrimonial home within four months of the marriage on 14.8.2007. Thereafter, the respondent started pressurizing the appellant to agree for dissolution of marriage by mutual consent. As the appellant did not agree for the same, the respondent filed a petition for divorce being H.M.A. No.637 of 2007 under Section 13(1) of the Hindu Marriage Act, 1955 on 17.10.2007 before the Additional District Judge, Tis Hazari Courts, Delhi.

233 2014(3)ACR3165(SC)
Decision: J. Chelameswar, A.K. Sikri Justtices decided, “This Court categorically observed that - it is open to the petitioner to execute the order of maintenance passed by the learned Metropolitan Magistrate and requested the High Court to dispose of the appeal of the respondent expeditiously.”

In my opinion it is submitted that this is an unfortunate case where the provisions of the Protection of Women from Domestic Violence Act, 2005 are rendered simply a pious hope of the Parliament and a teasing illusion for the appellant.

5.3 High Court verdicts:

In Lieutenant C.W. Campbell v. John A.G. Campbell234

Decision: It was held “, the House of Lords held that cohabitation, with the required repute, as husband and wife, was proof that the parties between themselves had mutually contracted the matrimonial relation. A relationship which may be adulterous at the beginning may become matrimonial by consent. In Captain De Thoren v. The Attorney-General235 the House of Lords held, “that the presumption of marriage is much stronger than a presumption in regard to other facts. In my opinion it is submitted that where a man and woman are proved to have lived together as man and wife, the law will presume, unless the contrary is clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage.

234 [(1867) Law Rep. 2 HL 269].
235 [(1876) 1 AC 686].
In India, the same principles have been followed in the case of A. Dinohamy v. W.L. Balahamy,\textsuperscript{236} in which the Privy Council laid down the general proposition that where a man and woman are proved to have lived together as man and wife, the law will presume, unless, the contrary is clearly proved, that they were living together in consequence of a valid marriage, and not in a state of concubinage.

In the case of \textit{Gokal Chand v. Parvin Kumari}\textsuperscript{237}

**Decision:** This Court held that continuous co-habitation of man and woman as husband and wife may raise the presumption of marriage, but the presumption which may be drawn from long co-habitation is rebuttable and if there are circumstances which weaken and destroy that presumption, the Court cannot ignore them. In a subsequent decision, in Dwarika Prasad Satpathy v. Bidyut Prava Dixit & Anr.,\textsuperscript{238} the Court held that the standard of proof of marriage in a Section 125 proceeding is not as strict as is required in a trial for an offence under Section 494 of IPC. The learned Judges explained the reason for the aforesaid finding by holding that an order passed in an application under Section 125 does not really determine the rights and obligations of parties as the section is enacted with a view to provide a summary remedy to neglected wives to obtain maintenance.

**In my opinion it is submitted** that maintenance cannot be denied where there was some evidence on which conclusions of living together could be reached.

\textsuperscript{236} AIR 1927 P.C. 185
\textsuperscript{237} AIR 1952 SC 231
\textsuperscript{238} (1999) 7 SCC 675
In **Meena Chodhary v. Commissioner of Police Delhi**\(^{239}\)

**Facts:** The appeal was directed against the judgment of the learned Single Judge dated 7th January, 2009. The appellant had filed a writ petition against certain police officers as also respondent No. 4, Mr. Basant Kumar Chaudhary, who she stated is her husband and one Mr. Jaspal Singh who is said to be a R/o B-108, Hill View Apartments, Vasant Vihar, Delhi. The writ petition was filed by the appellant (the original petitioner in the writ petition) inter alia to seek a writ of mandamus to direct the police authorities to provide her full security of life, liberty and property. She also sought a writ of mandamus to direct the police authorities from obstructing her from using the residential premises bearing No. B-108, Hill View Apartments, Vasant Vihar, Delhi and to direct the said respondent to allow her to occupy and use the said premises.

**Decision:** Ajit Prakash Shah Justice held, “We also find no fault with the finding of the learned Single Judge that the appellant could not have asserted a right of residence in the said apartment even if she is assumed to be the legally wedded wife of respondent No. 4, till the said apartment continued to remain the property of the mother of respondent No. 4.

**In my opinion** it is submitted that the court has right pointed the observation on the issue of right to residence.

**5.4 Rajasthan High Court**

In **Khushi Mohd. and Ors.Vs.Smt. Aneesha**\(^{240}\)

\(^{239}\) 2015(1)JCC267
**Decision:** Justice Vinit Kothari held, “the Domestic Violence Act, 2005 (Act No. 43 of 2005) was enacted by the Parliament 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 for matters connected therewith or incidental thereto.”

**In my opinion it is submitted that** 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.

**In Kaniz FatimaVs. State of Rajasthan & Anr.**

**Facts of the case are:** Complainant/Respondent No.2 Smt. Sagir Bano filed a complaint under Sections 12, 18, 19, 20, 21, 22, 23(2) of the Protection of Women From Domestic Violence Act, 2005 (for short 'the Act of 2005') in the Court of Additional Chief Judicial Magistrate No.4, Kota against six accused persons, wherein petitioner Smt. Kaniz Fatima was impleaded as accused No.3. Petitioner filed an application before the trial Court on 22.01.2008 to delete her name on the ground that no complaint under the provisions of the Act of 2005 can be filed against female as female does not fall within the meaning of respondent as defined under Section 2(q) of the Act. The trial Court on the basis of judgment of this Court in Smt. Sarita Vs. Smt. Umrao, 2008(1) Rajasthan Criminal Decisions, Page- 97, wherein the learned Single Judge of this Court took a view that term relative under proviso to Section 2(q) is quite broad and it includes all relations of husband irrespective of gender or

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240 2011(3)Crimes7(Raj.)
241 2012(1)Crimes605
sex, female can be a party to proceedings as respondent under the Act of 2005, dismissed petitioner's application dated 22.01.2008 vide order dated 25.07.2008. Being aggrieved with the above order, an appeal was preferred by petitioner, but the same was also dismissed by the Special Court, Women Atrocities and Dowry Cases, Kota, vide judgment dated 05.11.2008. Thereafter, petitioner preferred present petition under Section 482 Cr.P.C. before this Court.

**Decision:** Justice R. S. Chauhan held, “In our view, both the Sessions Judge and the High Court went wrong in holding otherwise, possibly being influenced by the definition of the expression respondent in the main body of Section 2(q) of the aforesaid Act.”

**In my opinion** it is submitted that since the question formulated in the present case has already been considered and decided by the Hon'ble Apex Court in Sandhya Manoj Wankhade's case (supra), therefore, reference is answered, that a complaint can be maintained under the provisions of the Act of 2005 against females relatives of the husband or male partner.

In *Sabana (Smt.) @ Chand Bai and Anr. Vs. Mohd. Talib Ali and Anr.*

**Facts of the case:** Smt. Sabana @ Chand Bai, the petitioner, and Mr. Mohammed Talib Ali, the respondent, entered into marriage on 15.10.2001 according to the Muslim customs and rites. The petitioner alleges that from the very beginning of the marriage, she was treated with physical and mental cruelty by the respondent and the members of her in-laws family. Even during pregnancy and thereafter, the respondent and the members of his family did not take care of the petitioner. It is alleged that on 15.4.2002, despite her pregnancy, she was not only assaulted but was ousted from matrimonial home and thus, in the compelling

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242 2014 ALLMR(Cri)
circumstances, she left for her paternal home. Out of the wedlock, a son was born on 14.10.2002. On 6.2.2003, after a compromise had been reached between the parties, the petitioner returned to her matrimonial home. While she stayed at her matrimonial home, the respondent repudiated the paternity of the child. As a matter of fact, the petitioner had to undergo an operation for removal of uterus and therefore, the respondent and his family members started harassing her saying that she is no more fit for procreating children. On 13.2.2003, she was again beaten and sent back to her paternal home. On 2.5.2003, the respondent filed an application seeking divorce from the petitioner. On 12.7.2003, the petitioner lodged an FIR with the police against the respondent, alleging commission of the offences under Sections 498A & 406 IPC. Subsequently, on 20.9.2003, she also filed an application seeking maintenance under Section 125 Cr.P.C. before the Family Court, Jodhpur. During the pendency of the litigation between the parties, on 4.9.2004, the parties entered into compromise and the petitioner again returned to the matrimonial home. But, the parties could not live together and on 13.5.2005, the petitioner was again dumped at her paternal place by the respondent. Thereafter, on 26.2.2007, after coming into force of the Protection of Women from Domestic Violence Act, 2005 ("the Act"), the petitioner-Sabana filed an application under Sections 12, 17 to 20 and 23 of the Act before the court of competent jurisdiction i.e. Additional Chief Judicial Magistrate (Economic Offences), Jodhpur. The application was contested by the respondent by filing a reply thereto. The parties led their evidence. After due consideration of the evidence on record and rival submissions, the trial court arrived at the finding that after coming into force of the Act i.e. with effect from 26.10.2006, the petitioner never resided with the respondent and therefore, the question of her being subjected to domestic violence by the respondent, does not arise. Relying upon a decision of this court dated 7.1.2009 rendered in the matter of
"Hema @ Hemlata (Smt.) & Anr. vs. [reported in 2009(1) Cr.L.R.(Raj.), 291], the court held that any act of violence committed prior to coming into force of the Act cannot be made basis for initiating proceedings under the Act and, therefore, the petitioner cannot be said to be an aggrieved person. Accordingly, the petition preferred by the petitioner under Section 12 r/w Sections 17, 18, 19 & 20 of the Act was dismissed by the trial court vide order dated 5.6.2010. Aggrieved thereby, the petitioner preferred an appeal before the Court of Session, which stands dismissed vide order dated 19.4.2011, which is impugned in this revision petition before this Court.

Decision: Justice Lodha and Amitava Roy held, “The Court needs to eschew from taking an interpretation which would not only be violative of the rights conferred upon the citizens under Article 14 of the Constitution but would also result in denying the benefit of the beneficial provisions of the Act to the women who have been subjected to domestic violence and are compelled to live separately from the respondent on account of his own acts of omission or commission. Such an interpretation would at least partly defeat the legislative intent behind enactment of the Protection of Women from Domestic Violence Act, 2005, which was to provide an efficient and expeditious civil remedy to them, in order either to protect them against occurrence of domestic violence, or to give them compensation and other suitable reliefs, in respect of the violence to which they have been subjected.

In my opinion it is submitted that any such interpretation of the provisions incorporated creating to different classes of victims subjected to domestic violence based on fortuitous circumstances shall be discriminatory and fall foul of Article 14 of the Constitution of India.”

5.5 Other High Courts:
In Neeraj Goswami and Others Vs. State of U.P. and Anr. 243

**Facts of the case:** Sri Surender Mohon, has prayed for direction to expunge the remarks made against him in the order dated 21.11.1994 passed in the writ petition filed by Dr. (Mrs.) Neeraj Bala Goswami. For the purpose of appreciating the prayer, some background facts may be reiterated.

A young soldier Sri Shyamai Goswami of Meerut gave an exemplary display of courage risking his own life for the defence of his motherland during indo-Chinese war in 1962, when he was in an army detachment in a forward area in Chusul. At the gravest risk of his life, he fought undauntedly against a heavy detachment of Chinese army and by that process became severely wounded. Later on, he was rescued and treated. But his legs had to be amputated. In recognition of his gallantry and exemplary courage and devotion to duty, he was awarded the highest gallantly award for an army personnel: "Mahavir Chakra". In the year 1992, the Government of U.P. gave Col. Goswami a land measuring about 2 bighas 11 biswas and on getting a dealership of licence of L.P.G. from Indian Oil Corporation. Col. Goswami used to run the said Gas Agency. Col. Goswami married the petitioner, Dr. Neeraj Bala Goswami, but it appears that the conjugal life had to suffer a rough weather. At the time of his death, his wife used to live separately. In April 1992, Col. Goswami was found murdered in his house in the campus of Goswami Gas Agency. After the death of Col. Goswami, dispute as to ownership of the Gas Agency and right to carry on the said agency arose between his widow Dr. Neeraj Goswami and the sisters of Col. Goswami, particularly

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243 2013(2)ACR1335
Sm. Ashoka Trikha, who claimed to be a partner of Col. Goswami long before his death.

The applicant is the husband of one of the real sisters of Col. Goswami, Sm. Deepashree Mohon respondent no.14. He is a very senior member of the Indian Administrative Service. While holding a very senior assignment as an IAS Officer in Utter Pradesh Cadre, the applicant wrote two letters one dated 10th August 1993 to the Executive Director of Indian Oil Corporation and the other dated May 5, 1994 addressed to the Principal Secretary, Home Department of the State of U.P. In the order dated 21.11.1994 it was observed that "we are of the view that respondent No.3 Sri Surendra Mohon had acted with gross impropriety and in violation of the office by addressing letters dated 10th August 1993 to the Executive Director of Indian Oil Corporation and letter dated 5th May 1994 to the Principal Secretary, Home Department of the State when his wife and other near relations were involved in the matter. We strongly disapprove of his conduct."

Decision: Justice Hansaria held “the temporary residence, as envisaged under the Act is such residence where an aggrieved person is compelled to take shelter or compelled to take job or do some business, in view of domestic violence perpetuated on her or she either been turned out of the matrimonial home or has to leave the matrimonial home. This temporary residence does not include residence in a lodge or hostel or an inn or residence at a place only for the purpose of filing a domestic violence case. This temporary residence must also be a continuing residence from the date of acquiring residence till the application under Section 12 is disposed of and it must not be a fleeing residence where a woman comes only for the purpose of contesting the case and otherwise does not reside there.
Geeta Mehrotra and another v. State of U.P. and another,\textsuperscript{244}

**Facts of the case:** This appeal by special leave in which the court granted leave has been filed by the appellants against the order dated 6.9.2010 passed by the High Court of Judicature at Allahabad in Crl. Miscellaneous Application No.22714/2007 whereby the High Court had been pleased to dispose of the application moved by the appellants under Section 482 Cr.P.C. for quashing the order of the Magistrate taking cognizance against the appellants under Sections 498A/323/504/506 IPC read with Section 3/4 of the Dowry Prohibition Act with an observation that the question of territorial jurisdiction cannot be properly decided by the High Court under Section 482 Cr.P.C. for want of adequate facts.”

**Judgment:** Gyan Sudha mishra and Thakur JJ hel, “it just and legally appropriate to quash the proceedings initiated against the appellants Geeta Mehrotra and Ramji Mehrotra as the FIR does not disclose any material which could be held to be constituting any offence against these two appellants. Merely by making a general allegation that they were also involved in physical and mental torture of the complainant-respondent No.2 without mentioning even a single incident against them as also the fact as to how they could be motivated to demand dowry when they are only related as brother and sister of the complainant’s husband, we are pleased to quash and set aside the criminal proceedings in so far as these appellants are concerned and consequently the order passed by the High Court shall stand overruled. The appeal accordingly is allowed.”

5.6 **Foreign Cases:**

\textsuperscript{244} AIR 2013 SC 181 : 2013 (1) All LJ 261).
In Dawood and Another v. Minister of Home Affairs and Others²⁴⁵

Judgment: O’Regan, J., held, “Marriage and the family are social institutions of vital importance. Entering into and sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound significance to the individuals concerned. But such relationships have more than personal significance at least in part because human beings are social beings whose humanity is expressed through their relationships with others. Entering into marriage therefore is to enter into a relationship that has public significance as well.

In my opinion it is submitted, “The institutions of marriage and the family are important social institutions that provide for the security, support and companionship of members of our society and bear an important role in the rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. These legal obligations perform an important social function. This importance is symbolically acknowledged in part by the fact that marriage is celebrated generally in a public ceremony, often before family and close friends....”

RELATIONSHIP IN THE NATURE OF MARRIAGE:

²⁴⁵ 2000 (3) SA 936 (CC)
Modern Indian society through the DV Act recognizes in reality, various other forms of familial relations, shedding the idea that such relationship can only be through some acceptable modes hitherto understood. Section 2(f), as already indicated, deals with a relationship between two persons (of the opposite sex) who live or have lived together in a shared household when they are related by:

a) Consanguinity

b) Marriage

c) Through a relationship in the nature of marriage

d) Adoption

e) Family members living together as joint family.

**Distinction**

Distinction between the relationship in the nature of marriage and marital relationship has to be noted first. Relationship of marriage continues, notwithstanding the fact that there are differences of opinions, marital unrest etc., even if they are not sharing a shared household, being based on law. But live-in-relationship is purely an arrangement between the parties unlike, a legal marriage. Once a party to a live-in-relationship determines that he/she does not wish to live in such a relationship, that relationship comes to an end. Further, in a relationship in the nature of marriage, the party asserting the existence of the relationship, at any stage or at any point of time, must positively prove the existence of the
identifying characteristics of that relationship, since the legislature has used the expression “in the nature of”.

- **Domestic relationship** between an unmarried adult woman and an unmarried adult male: Relationship between an unmarried adult woman and an unmarried adult male who lived or, at any point of time lived together in a shared household, will fall under the definition of Section 2(f) of the DV Act and in case, there is any domestic violence, the same will fall under Section 3 of the DV Act and the aggrieved person can always seek reliefs provided under Chapter IV of the DV Act.

- **Domestic relationship** between an unmarried woman and a married adult male: Situations may arise when an unmarried adult women knowingly enters into a relationship with a married adult male. The question is whether such a relationship is a relationship “in the nature of marriage” so as to fall within the definition of Section 2(f) of the DV Act.

- **Domestic relationship** between a married adult woman and an unmarried adult male: Situations may also arise where an adult married woman, knowingly enters into a relationship with an unmarried adult male, the question is whether such a relationship would fall within the expression relationship “in the nature of marriage”.

- **Domestic relationship** between an unmarried woman unknowingly enters into a relationship with a married adult male: An unmarried woman unknowingly enters into a relationship with a married adult male, may, in a given situation, fall within the definition of Section 2(f) of the DV Act and such a relationship may be a relationship in
the “nature of marriage”, so far as the aggrieved person is concerned.

- Domestic relationship between same sex partners (Gay and Lesbians): DV Act does not recognize such a relationship and that relationship cannot be termed as a relationship in the nature of marriage under the Act. Legislatures in some countries, like the Interpretation Act, 1984 (Western Australia), the Interpretation Act, 1999 (New Zealand), the Domestic Violence Act, 1998 (South Africa), the Domestic Violence, Crime and Victims Act, 2004 (U.K.), have recognized the relationship between the same sex couples and have brought these relationships into the definition of Domestic relationship. Section 2(f) of the DV Act though uses the expression “two persons”, the expression “aggrieved person” under Section 2(a) takes in only “woman”, hence, the Act does not recognize the relationship of same sex (gay or lesbian) and, hence, any act, omission, commission or conduct of any of the parties, would not lead to domestic violence, entitling any relief under the DV Act.

**In Stack v. Dowden,**246 Baroness Hale of Richmond held, “Cohabitation comes in many different shapes and sizes. People embarking on their first serious relationship more commonly cohabit than marry. Many of these relationships may be quite short-lived and childless. But most people these days cohabit before marriage….. So many couples are cohabiting with a view to marriage at some later date – as long ago as 1998 the British Household Panel Survey found that 75% of current cohabitants expected to marry, although only a third had firm plans.

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246 [2007] 2 AC 432
In MW v. The Department of Community Services, Gleeson, CJ, made the following observations “Finn J was correct to stress the difference between living together and living together ‘as a couple in a relationship in the nature of marriage or civil union’. The relationship between two people who live together, even though it is a sexual relationship, may, or may not, be a relationship in the nature of marriage or civil union. One consequence of relationships of the former kind becoming commonplace is that it may now be more difficult, rather than easier, to infer that they have the nature of marriage or civil union, at least where the care and upbringing of children are not involved.”

In Lynam v. The Director-General of Social Security, the Court considered whether a man and a woman living together ‘as husband and wife on a bona fide domestic basis’ and Fitzgerald, J. said, “Each element of a relationship draws its colour and its significance from the other elements, some of which may point in one direction and some in the other. What must be looked at is the composite picture. Any attempt to isolate individual factors and to attribute to them relative degrees of materiality or importance involves a denial of common experience and will almost inevitably be productive of error. The endless scope for differences in human attitudes and activities means that there will be an almost infinite variety of combinations of circumstances which may fall for consideration. In any particular case, it will be a question of fact and degree, a jury question, whether a relationship between two unrelated

247 [2008] HCA 12
248 (1983) 52 ALR 128
persons of the opposite sex meets the statutory test.” In Tipping, J. in Thompson v. Department of Social Welfare249

It was held, “in deciding the marital status following things may be taken into consideration;

(1) Whether and how frequently the parties live in the same house.

(2) Whether the parties have a sexual relationship.

(3) Whether the parties give each other emotional support and companionship.

(4) Whether the parties socialize together or attend activities together as a couple.

(5) Whether and to what extent the parties share the responsibility for bringing up and supporting any relevant children.

(6) Whether the parties share household and other domestic tasks.

(7) Whether the parties share costs and other financial responsibilities by the pooling of resources or otherwise.

(8) Whether the parties run a common household, even if one or other partner is absent for periods of time.

(9) Whether the parties go on holiday together.

(10) Whether the parties conduct themselves towards, and are treated by friends, relations and others as if they were a married couple.”

249 (1994) 2 SZLR 369 (HC).