THE 'SHARED HOUSEHOLD' ARGUMENT & OTHER FUNDAMENTALS: THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (43 OF 2005)

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PREFACE

According to the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the 'DVA') any harm, injury to health, safety, life, limb or well being or any other act or threatening or coercion by any adult member of the family to any woman who is or has been in a domestic or family relationship constitutes domestic violence.

According to Section 2(s) of the DVA, "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 the respondent is a member, irrespective of whether the respondent or the aggrieved person has any right, title or interest in the shared household.

Further, according to Section 2 (q) of the DVA, "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 the DVA:
- Provided that an aggrieved wife or female living in a relationship in the **nature of marriage** may also file a complaint against a relative of the husband or the male partner.

In the matter of: ***Hiral P. Harsora & Ors*** **V/s** ***Kusum Narottamdas Harsora & Ors***, (2016) 10 SCC 165, the Hon'ble Supreme Court of India ordered that the words "adult male" appearing in Section 2(q) of the DVA should stand deleted, since those words did not square with Article 14 of the Constitution of India, 1950.

Analysis of Precedents:

1. ***"If a household where the aggrieved person at any stage had lived in a domestic relationship is to constitute a 'shared household' then it would lead to chaos"***

   In the matter of: ***S.R. Batra*** **V/s** ***Taruna Batra***, (2007) 3 SCC 169, it was held that:

   a. The wife can claim the right of residence in terms of Section 17 (1) of the DVA, only in a 'shared household' and a 'shared household' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member.

   b. The house which is the exclusive property of the mother-in-law can never be said to be a 'shared household' entitling the daughter-in-law to claim a right of residence therein.

   c. It would be wholly incorrect to state that 'shared household' would include a household where the aggrieved person lives or at any stage had lived in a domestic relationship. If 'shared household' would include *a household where the aggrieved person at any stage had lived in a domestic relationship* then it would lead to chaos, because in that event every place where the husband and wife had resided would be a shared household. The definition of 'shared household' in Section 2 (s) of the DVA is a result of clumsy drafting and it has to be given a sensible interpretation.

   d. Under Section 17 (1) of the DVA, the wife is only entitled to claim a right to residence in a 'shared household'. A 'shared household' only means the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member.

   e. As per Sections 18 and 19 of the Hindu Adoption and Maintenance Act, 1956, liability in regard to maintenance of wife is upon her husband and only on his death does it become the liability of the father-in-law.

   f. 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, that is to say that a

residence belonging to the mother-in-law or father-in-law would not be a 'shared household' within the meaning of Section 2 (s) of the DVA and that a daughter-in-law can have no right of residence therein in terms of Section 17 (1) of the DVA.

2. ***"Living as 'joint family' means living under one roof and having a common kitchen"***

   In the matter of: ***Navneet Arora* V/s *Surinder Kaur & Ors***, (213) 2014 DLT 611 (DB), the Hon'ble High Court of Delhi explaining the decision rendered by the Hon'ble Supreme Court of India in the matter of *S.R. Batra* (Supra) observed that, the decision rendered in the matter of *S.R. Batra* (Supra) was rendered in the fact situation wherein Taruna Batra (the aggrieved daughter-in-law) and her husband (Amit Batra) had been residing on the first floor, whereas the mother-in-law (the owner of the house) along with her husband (father-in-law) were residing on the ground floor, thus, the daughter-in-law was not residing in a 'shared household' vis-à-vis her mother-in-law and father-in-law, as understood in the legalistic sense as the residence and kitchen were separate. In *Navneet Arora* (Supra) it was held that the report in the matter of *S.R. Batra* (Supra) is only an authority for the proposition that under the DVA, a wife is precluded from claiming the right of residence in the premises not owned by the husband, where she has lived with her husband separately, but not as a member of the 'joint family' along with the relatives of the husband who own the premises; however, if the couple live with the relatives of the husband as members of 'joint family' along with the relatives of the husband in premises owned by such relatives of the husband, then such residence will fall within the meaning of 'shared household' giving the wife the right of residence therein irrespective of the fact whether her husband has any right, title or interest therein. In *Navneet Arora* (Supra) it was explained that living as 'joint family' meant living under one roof and having a common kitchen.

3. ***"Daughter-in-law has no right in the self-acquired property of her parents-in-law if she along with her husband live separately, or, she along with her husband do not live as a joint family with the parents-in-law"***

   If the house exclusively belongs to the father-in-law and if his son is living separately, then the daughter-in-law has no right to live in the house of the father-in-law. The property cannot be claimed to be a shared household (See: *Suman* V/s *Tulsi Ram*, 2015 (1) RCR (Civil) 304).

4. ***"To state that 'residence order' cannot be passed with regard to property which is situated outside State is incorrect. In the DVA there is nothing which debars the Magistrate to pass such order with regard to property situated outside State"***

   In the matter of: ***Ajay Kaul & Ors* V/s *State of J&K & Ors***, CRMC No. 274/2016 & I.A. Nos. 01/2017, 01/2016, High Court of Jammu & Kashmir, Date of Decision: 01.02.2019, Coram: Sanjay Kumar Gupta, J., it was held that:

   a. Under the DVA, 'domestic relationship' arises in respect of an aggrieved person if the aggrieved person had lived together with the 'respondent' in a shared household.
   b. If there is a joint family where father has several sons with daughters-in-law living in a house and ultimately sons, one by one or together, decide that they should live separate with their own families and they establish separate household and start living with their respective families separately at different places, it cannot be said that wife of each of the sons can claim a right to live in the house of the father-in-law because at one point of time she along with her husband had lived in the shared household.
   c. Section 12 of the DVA *per se* does not hold that a Magistrate on receipt of complaint is obligated to call for a domestic incident report, before passing any order on an application. It is not mandatory for a Magistrate to obtain a domestic incident report before the Magistrate passes any order provided under various sections of the DVA. Hence, receipt of domestic incident report is not a pre-requisite for issuing a notice to the 'respondent'. The Magistrate on the basis of an application supported by affidavit, on being satisfied can even grant *ex-parte* orders in favour of the aggrieved person under Sections 18, 19, 20, 21 or 22 of the DVA.
   d. Proviso to Section 12 (1) of the DVA only stipulates that the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the Service Provider. Section 12 (1) of the DVA does not directly stipulate that a report 'shall' be called for, before any relief can be granted. An argument that report of Protection Officer is *sine qua non* for issuing process in petition under Section 12 of the DVA is not maintainable.
   e. The expression 'temporarily resides' in Section 27 of the DVA implies something more than a causal stay and implies some concrete intention to stay at a particular place. The temporary residence means where an aggrieved person is compelled to

take shelter or to take job or do some business, in view of domestic violence within her matrimonial home. Temporary residence includes a place where an aggrieved person is compelled to reside in view of commission of domestic violence. Section 27 of the DVA permits a court to entertain a complaint of a person residing temporarily within its jurisdiction as after being subjected to domestic violence it may not be possible for a woman to reside within the same jurisdiction as where the incident of domestic violence occurred. Parental home is the 'natural residence' of the victim after she is meted out with domestic violence or she is thrown out of her matrimonial house.

f. From bare perusal of Section 23 of the DVA, it is limpid that Section 23 of the DVA empowers the Magistrate to grant *ex-parte* interim relief(s) as the Magistrate deems just and proper during pendency of application under Section 12 of the DVA. Section 23 of the DVA consists of two parts where Section 23 (1) of the DVA empowers the Magistrate to pass *ex-parte* interim orders during pendency of main petition under Section 12 of the DVA, and, Section 23 (2) of the DVA empowers the Magistrate to pass *ad-interim* order during pendency of interim petition under Section 23 (1) of the DVA.

g. The purpose of Section 23 of the DVA is to save the victim from vagrancy, continuous harassment, and dispossession of victim from place of residence or shared household, alienation of such place of residence or shared household. If the Magistrate is satisfied that an application *prima facie* discloses that the 'respondent' is committing, or has committed an act of domestic violence or that there is a likelihood that the 'respondent' may commit an act of domestic violence, the Magistrate may grant an *ex-parte* order on the basis of the affidavit in such form, as may be prescribed, of the aggrieved person under Sections 18, 19, 20, 21 or as the case may be.

h. From bare perusal of Sections 19 and 20 of the DVA, it is limpid that the Magistrate under the DVA has been vested with power to pass appropriate order of residence in 'shared household' as well as order of monetary relief. To state that 'residence order' cannot be passed with regard to property which is situated outside State is incorrect. In the DVA there is nothing which debars the Magistrate to pass such order with regard to property situated outside State. The aim and object of the DVA

can be gathered from the language used in the preamble of the DVA which states that it is an Act to provide for more effective protection of the rights of women guaranteed under the Constitution of India, 1950, who are victims of violence of any kind occurring within the family and for matters connected therewith and incidental thereto. If it is held that the Magistrate cannot pass order with regard to property situated outside State, then very purpose of the DVA would be defeated.

5. ***"An aggrieved person is entitled to the reliefs flowing out from the DVA only if the aggrieved person is able to establish that domestic violence has been exercised on her"***

   In the matter of: ***Sangita Saha*** **V/s** ***Abhijit Saha & Ors***, Special Leave to Appeal (Crl) Nos. 2600-2601/2016, Supreme Court of India, Date of Decision: 28.01.2019, Coram: L. Nageswara Rao & M.R. Shah, JJ., it was held that an aggrieved person is entitled to the relief(s) flowing out from the DVA only if the aggrieved person is able to establish domestic violence that is, any incident of torture or demand of money or physical violence by the respondent(s).

6. ***"In order to constitute 'relationship in the nature of marriage', a legal marriage between the two individuals must be possible"***

   In the matter of: ***Reshma Begum*** **V/s** ***State of Maharashtra & Anr***, Criminal Revision Application No. 82 of 2017, High Court of Bombay, Date of Decision: 25.07.2018, Coram: Mangesh S. Patil, J., it was held that:

   a. According to Section 2 (f) of the DVA, 'domestic relationship' means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a *relationship in the nature of marriage*, adoption or are family members living together as a joint family.

   b. The words 'relationship in the nature of marriage' would mean a relationship in which:

      I. The couple hold themselves out to society as being akin to spouses, however, it is necessary that the couple must be of the legal age to contract marriage.

      II. Furthermore, the couple must be otherwise qualified to enter into a legal marriage.

III. Lastly, the couple must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time.

c. It is limpid that all live-in-relationships are not covered by the provision of Section 2 (f) of the DVA. It is only those live-in-relationships which qualify to be the relationships in the nature of marriage which are governed by Section 2 (f) of the DVA. In order to constitute 'relationship in the nature of marriage', a legal marriage between the two individuals must be possible.

d. One cannot put an interpretation to Section 2 (f) of the DVA which would promote an adulterous relationship which is an offence punishable under Section 494 of the Indian Penal Code, 1860.

7. ***"Economic abuse also constitutes domestic violence and economic abuse has been defined by Explanation I (iv) to Section 3 of the DVA"***

In the matter of: ***Lalita Toppo* V/s *State of Jharkhand & Anr***, Criminal Appeal No. 1656/2015, Supreme Court of India, Date of Decision: 30.10.2018, Coram: Chief Justice Ranjan Gogoi, Justice Uday Umesh Lalit & Justice K.M. Joseph, it was held that:

a. Under the provisions of the DVA, the victim that is the estranged wife or live-in-partner is entitled to more relief than what is contemplated under Section 125 of the Code of Criminal Procedure, 1973, namely, to a 'shared household'.

b. It is significant to note that 'economic abuse' also constitutes domestic violence and economic abuse has been defined by Explanation I (iv) to Section 3 of the DVA.

8. ***"Husband often seeks to evade his responsibilities upon marital discord breaking out"***

In the matter of: ***Preeti Satija* V/s *Raj Kumari & Anr***, (207) 2014 DLT 78 (DB), it was observed that-

"*…The facts of this case contain the classic elements of a husband seeking to evade his responsibilities upon marital discord breaking out. He allegedly disappeared and was "disowned" by his mother. The appellant's mother-in law then instituted the suit, to dispossess the daughter-in-law and her grandchildren, claiming that she no longer has any relationship with her son or her daughter-in-law. She based her claim to ownership of the suit property on a will. The daughter-in-law has not admitted the will. Nor has it been proved in probate proceedings. Often, sons move out, or transfer properties or*

ownership rights, or shares in immovable properties, at the hint of trouble or discord with their wives, in favour of their relatives. Likewise, the parents of the husband often in such cases "disown" them after the son moves out from the common or "joint" premises owned by either or both his parents, when there is outbreak of marital discord. Courts have to be cautious in their approach, while entertaining and short circuiting suits for possession, which are in effect directed against the plaintiffs' daughter-in-law, or else the right of residence in shared households would be a mere chimera, a teasing illusion which the law grandly promises, but is seldom, if ever, able to enforce. In fact, the strategy of "disowning" sons, through public notices or advertisement, is not to be taken lightly. For example, even if a son is disowned by either parent, the death of that parent would, if intestate, still lead to devolution of property upon that son. Indeed, a mere proclamation does not have a dispositive legal effect, breaking all legally relevant familial ties. Thus, absent a deed of relinquishment or other formal deed of partition of the family or separation between the members, the Court must be cautious in denying statutory rights to wives, as against members of the husband's family, on the basis of such tentative facts. To the contrary, if the Court is to place reliance on such acts, benefits enacted by the 2005 Act in favour of the wife would be bypassed on account of alleged, and possibly fleeting, discords between the husband and his family. Indeed, such an approach is neither legally tenable, nor viable given the scheme of the Act…"

9. ***"The property which neither belongs to the husband nor is taken on rent by him, nor is a joint family property in which the husband is a member, cannot be regarded as a shared household"***

   In the matter of: ***Neha Jain & Anr*** **V/s** ***Gunmala Devi Jain & Anr***, RSA No. 282/2015, High Court of Delhi, Date of Decision: 30.07.2015, Coram: Vipin Sanghi, J., it was observed that:

   "*…I may also refer to another decision of this Court in Sudha Mishra Vs. Surya Chandra Mishra, 211 (2014) DLT 537, decided by a learned Single Judge of this Court. In this decision, the learned Single Judge took note of another Division Bench judgment of this Court in Shumita Didi Sandhu Vs. Sanjay Singh Sandhu & Others, 174 (2010) DLT 79 (DB), wherein the Division Bench relying on S.R. Batra (supra), inter alia, observed as follows:*

"Insofar as Section 17 of the said Act is concerned, a wife would only be entitled to claim a right of residence in a "shared household" and such a household would only mean the house belonging to or taken on rent by the husband, or the house which belongs to the joint family of which the husband is a member. The property which neither belongs to the husband nor is taken on rent by him, nor is it a joint family property in which the husband is a member, cannot be regarded as a "shared household". Clearly, the property which exclusively belongs to the father-in-law or the mother-in-law or to them both, in which the husband has no right, title or interest, cannot be called a "shared household". The concept of matrimonial home, as would be applicable in England under the Matrimonial Homes Act, 1967, has no relevance in India."…"

10. ***"Law permits a married woman to claim maintenance against her in-laws only in a situation covered under Section 19 of the Hindu Adoption & Maintenance Act, 1956"***
    In the matter of: ***Kanhaiya Lal & Anr*** **V/s** ***Nathi Lal***, RSA No. 27/2017, High Court of Delhi, Date of Decision: 16.02.2017, Coram: Pratibha Rani, J., it was held that, none of the statute dealing with the rights of a married woman in India, be it the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Adoption & Maintenance Act, 1956 or the DVA confer any right of maintenance, including residence, for the married woman as against the parents of her husband. Law permits a married woman to claim maintenance against her in-laws only in a situation covered under Section 19 of the Hindu Adoption & Maintenance Act, 1956.
11. ***"An application seeking visitation rights to the child preferred by the father (respondent) under Section 21 (Custody Orders) of the DVA is maintainable"***
    In the matter of: ***Payal Sudeep Laad*** **V/s** ***Sudeep Govind Laad & Anr***, Criminal Application No. 186/2018, High Court of Bombay, Date of Decision: 02.11.2018, Coram: Prakash D. Naik, J., it was held that, on plain reading of Section 21 of the DVA and the language employed therein it can be said that court may at any stage of hearing of the application for protection order or for any other relief under the DVA grant temporary custody of child or children to the aggrieved person that is, mother or the person making an application on her behalf and can further specify (if necessary) the arrangements for visit of such child (or children) by the father. The proviso attached to Section 21 of the DVA stipulates that if the Magistrate is of the opinion that any visit

of the father (respondent) may be harmful to the interest of the child (or children), the Magistrate can (and is empowered to) refuse such visit.

EXCURSUS

a. A daughter-in-law has no right in the property which is exclusively owned by her parents-in-law and further, such property of the parents-in-law is not a 'shared household' under the provisions of the DVA.
b. As per the mandate of Section 2 (q) of the DVA read with the dictum of the Hon'ble Supreme Court of India in the matter of *Hiral P. Harsora & Ors* (Supra), the term "respondent" is to mean any 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 the DVA.