



Right of Residence of Women under the Protection of Women from Domestic Violence Act, 2005

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ABSTRACT

Domestic violence is a serious concern and any discussion related to it has to be undertaken with an understanding that millions of women are fighting with such violence. Women across the world face such violence due to many reasons, one of the primary reason being the question of roof over her head i.e. residence. The protection of Women from domestic violence Act, 2005 (hereinafter referred to as PWD Act or The Act) lays down useful provisions for securing the right of residence. The present Article primarily focusses on such right, it analyses the reasons for domestic violence, the definition of such violence, provisions related to right of residence as incorporated in the PWD Act as well as the judicial interpretation of such provisions.

KEY WORDS

Domestic Violence, Residence Orders, Shared Household.

INTRODUCTION

It is common to hear statements like 'oh now a days there is no domestic violence and women are now fully empowered, in fact the law relating to such violence is only being misused time and again' and on the other hand there is a stark truth of existence of such violence. Domestic violence is a reality and such sweeping statements and perceptions can't put something as severe and as real as violence against women in their own homes at backstage. It has become a fashion to trivialize violence or offences against women either in name of women empowerment, praise of good old times' or misuse of law. The focus shifts from severity of offences to defense against misuse. It needs to be understood at the outset that any allegation

of misuse has to be plugged out by efficient investigation .Use of law can't be curbed or questioned.Its not sympathy but empathy which is required.

Reasons for Domestic Violence

Other than the general reasons of institutionalized or ingrained patriarchy , gender stereotyping, male entitlement and dominance, lack of education and awareness, millions of women face such violence primarily because of three specific reasons- absence of viable or proper supportgroups- if violence is happening in the woman's natal family then there is absolutely no place for her to go and seek support and if its happening in marital family, many a times parental family is unwilling to offer support primarily due to societal stigma or resource crunch and the community support groups are almost negligible. The second important reason is fear of losing children(if any) and the third and a very important reason is severe resource crunch especially the question of roof over her head i.e. residence.A victim of violence many a times is forced to endure violence as she doesn't have anywhere else to go , in such a scenario the right of residence of women assumes lot of significanceThe present Article primarily focuses on right of residence of the women under the PWD Act, 2005.

Introduction of the Protection of Women from Domestic Violence Act, 2005

Its not that before the PWD Act there were no remedies for victims of domestic violence at all, The criminal law remedies too punish cruelty against married women , however such remedies are mainly meant to punish the perpetrator and do not address the special needs of the victims, moreover before advent of the Act once a women decided to file a criminal complaint against her husband or his family members she was left with no other choice other than to leave her matrimonial home and there always lurked the danger of her children (if any) being separated from her.

Considering the above stated reasons and constitutional rights of women and also the international obligations of our country especially under 'Convention on Elimination of all Forms of Discrimination against Women' (CEDAW) 1979, The PWD Act was enacted in the year 2005. It is a well thought protective legislation which gives a mix of civil and criminal remedies.

Definition and General Provisions of PWD Act, 2005

The Act gives an expansive definition¹ of domestic violence as meaning to include any physical, psychological, sexual, verbal and economic violence. Generally the understanding is the violence is only physical, and examples like taunts over complexion, not having children, threats of a second marriage of husband are not perceived as violence, psychological and verbal violence are considered to be a lesser form of violence- the act acknowledges the various forms.

It has gone to untouched areas and has introduced new concepts like domestic relationship and shared household, and in its definition of a domestic relationship it includes relationships related by blood, marriage, in nature of marriage, adoptions and those in a joint family.

Enforcement machinery of the Act introduces novel agencies in form of protection officers and service providers other than the traditional machinery of police and magistrates. Progressive remedies like protection orders and residence orders are part of this legislation.

Right of Residence

This is perhaps one of the most important Rights given to the women under the PWD Act. There is a positive assertion in the Act that a women has a right to reside in the shared household. A progressive remedy in the form of residence orders is also provided in the Act With regard to the right of residence, three provisions are noteworthy-

1. **Section 2-Shared household:** The Act introduces a concept of shared household and defines it u/s 2 as-"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”.

Legislative intent is very clear that it is not concerned with proprietary right in the property to declare it as shared household.

2. **Section 17²:** This provision provides that every woman in a domestic relationship shall have the right to reside in the shared household and the aggrieved person cannot be evicted from the shared household except in accordance with the procedure established by law

A perusal of Section 17 of the DV Act shows that, a right is conferred on an aggrieved person to reside in a shared household even in the absence of any act of domestic violence.

3. **Section 19³:** Section 19- Residence orders-

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

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

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

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

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

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

or

(f) Directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require: Provided that no order under clause (b) shall be passed against any person who is a woman.

This provision provides for residence orders. Residence orders can take various forms including restraining the respondent from dispossessing the aggrieved person or disturbing her possession regardless of any legal or equitable interest of the respondent in the shared household, direction to the respondent to remove himself from such household, restraining of the respondent or any of his relatives from entering any portion of such household where the aggrieved person resides, restraint on respondent from disposing the shared household, restraint from renouncement of the rights from such household, arranging for a similar level of alternate accommodation or payment of rent for such accommodation. Reasonably necessary additional conditions for security of aggrieved person or her children may also be imposed.

Residence order is a very effective remedy provided by the Act, it empowers the magistrate to pass a single or combination of reliefs intended to secure the right of residence of the women. Together these provisions create enough safeguard for securing the right of residence of the women.

Role of Judiciary

Three landmark cases must be looked into to chart out the entire judicial journey regarding the right of residence—SR Batra⁴, V.k Ahuja v. Sneha Ahuja⁵ and Prabha Tyagi v. Kamlesh Devi⁶. The decision in the case of Tarana Batra was overruled in Ahujas case.

1. **SR Batra v. Tarana Batra case:** In this case the husband and wife lived in a house owned by mother of the husband. It was held by the Apex court that the house owned by mother does not come within the definition of shared household u/s 2 (s) of the Act. The court restricted the definition of shared household under the DV Act to “*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.*” based on the observation that anything to the contrary would be absurd and lead to chaos.

In a country like India where many sons stay in the self-acquired property of the parents, such interpretation came as a major blow to rights to daughters-in-law to enforce the right to reside in a shared household against in-laws.

2. **Satish Chander Ahuja v. Sneha Ahuja:** In the year 2020 the Supreme Court in this case held that the words “lives or at any stage has lived in a domestic relationship” have to be given its normal and purposeful meaning. The Act of 2005 was enacted to give a higher right in favour of woman. It has been enacted to provide for more effective protection of the rights of the woman who are victims of violence of any kind occurring within the family. The Act has to be interpreted in a manner to effectuate the very purpose and object of the Act. Section 2(s) read with Sections 17 and 19 of Act, 2005 grants an entitlement in favour of the woman of the right of residence under the shared household irrespective of her having any legal interest in the same or not.

The definition of shared household is clear and exhaustive definition. The object and purpose of the Act was to grant a right to aggrieved person, a woman of residence in shared household. The interpretation which is put by this Court in S.R. Batra Vs. Tarana Batra (supra) if accepted shall clearly frustrate the object and purpose of the Act. The court was of view that the judgement in that case did not lay down the correct law.

The estranged wife’s right to claim residence in a shared household has been enlarged by virtue of the judgement of the Supreme Court. It has been held that an estranged wife is entitled to the right of residence in a shared household, irrespective of her having any legal interest in the same or not. This includes the right to reside in a shared household belonging to the husband’s relatives as well. There are certain preliminary conditions that need to be fulfilled as contemplated by the Supreme Court as follows:

- (i) The aggrieved wife has to satisfy by providing evidence that domestic violence has taken place. Only once the court is convinced that domestic violence has taken place can the above-mentioned relief be granted.
- (ii) The aggrieved wife lives or have lived at any stage in the household in question. In cases where she was excluded from the premises or temporarily absent, such considerations would not deny her protection under the Act.
- (iii) A shared household will not include any and all places the estranged wife lives or has lived at any stage in a domestic relationship. It would refer to places where she lives or has lived with some degree of permanency. A mere fleeting or casual living at different places shall not make it a shared household.

As per Ahuja’s Ruling the intention of the parties and the nature of the living, including the nature of the household, have to be considered. The ownership of the house may be in the name of the mother-in-law or father-in-law but it will not impact the right of a daughter-in-law to claim residence in such a house. The Supreme Court also opined that in order to claim right to alternate accommodation or payment of rent, the husband would have to be a party to the petition as the right to maintenance can only be claimed from the husband. It also stated that the right to residence is not an indefeasible right of residence in a shared household especially when the daughter-in law is pitted against an aged father-in-law and mother-in-law. Therefore, the Court clearly indicated that the rights of both the parties must be balanced.

3. **Prabha Tyagi v. Kamlesh Devi:** The Apex court taking note of the terms “*lives or at any stage has lived*” under Section 2(s) of the DV Act, went a step ahead and provided an expanded interpretation

of the term right to residence. It invoked the concept of “constructive residence” and held that “*if a woman has the right to reside in the shared household under Section 17 of the DV Act and such a woman becomes an aggrieved person or victim of domestic violence, she can seek reliefs under the provisions of the DV Act including enforcement of her right to live in a shared household.*”

Infact this judgement is similar to a previously given Madras High court judgement in *Vandana v. Srikanth*⁷- wherein the High Court held that Sec. 2 (s) of the Act is of a wide purport and the usage of the words ‘living’ certainly brings into its fold the ‘right to live. A women having a relationship which has legal sanction gets right to live in shared household and would be entitled for protection u/s 17 even if she did not live in shared household at the time of institution of proceedings or had never lived in the shared household at any point of time in the past.

This High Court judgement much before PrabhaTyagi’s case had distinguished the judgment in S.R. Batra’s case and recognized that a woman may not be able to enter her matrimonial home immediately after marriage for various reasons, such as a honeymoon or ceremonial obligations, The Court observed that a strict interpretation of Section 2(s) of the DV Act would leave women without remedies despite a valid marriage. Therefore, a shared household must include a household where an aggrieved person has a right to live, regardless of physical residence. The Madras High Court distinguished the judgment in *S.R. Batra* to prevent husbands from taking advantage of the decision by alienating property before disputes arise in order to deny the wife a shared household under the Act.

CONCLUSION

The definition of a shared household emphasizes on the establishment of a domestic relationship and investigation into the ownership of the said house has been deemed unnecessary by the Hon’ble Supreme Court. The right to residence in a shared household can be enforced against the husband as well as the mother-in-law, father-in-law and/ or any other relative of the husband as the case may be if the aggrieved wife has been in a domestic relationship with such persons. The right to reside in a shared household is applicable to every woman in a domestic relationship, whether they are related by blood, marriage or through a relationship in the nature of marriage, adoption or are living together as part of a joint family. The right to reside can be claimed by such persons whether or not they have any right, title or beneficial interest in the said house.

Aggrieved woman can also seek alternate accommodation and in such a case concept of shared household shall not be attracted. Such an alternative accommodation would be on par with the shared household. It is generally required to be of half the area of the shared residence.

The Apex court has also clearly stated that senior citizens are also entitled to live peacefully, the rights of the aged in laws and that of the daughter in law need to be balanced.

It is clear that Act nowhere is putting focus on proprietary rights. It is not putting materialism before matrimony it is an extension of the deeper principle of women’s rights. Envisaging the various scenarios that may render women helpless despite existing laws, the Apex court’s has provided much needed interpretation of the provisions of the Act, thereby achieving the objects of effective protection of the residence rights to aggrieved women.

REFERENCES

1. Section 3 of the Act
2. Section 17-

Right to reside in a shared household.-(1) Notwithstanding anything contained in any other law for the time being in force, every woman in a domestic relationship shall have the right to

reside in the shared household, whether or not she has any right, title or beneficial interest in the same. (2) The aggrieved person shall not be evicted or excluded from the shared household or any part of it by the respondent save in accordance with the procedure established by law

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

(3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence. - The competent court may provide for alternate accommodation or order for payment of rent to an aggrieved wife as contemplated under the provisions of the Act.

4. AIR 2007 Supreme Court 1118.
5. (2020)12 S.C.R 189.
6. 2022 live law(SC)474.
7. 2007(6) MLJ 205.
