Hiral P. Harsora And Ors vs Kusum Narottamdas Harsora And Ors on 6 October, 2016

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Bench: Kurian Joseph, Rohinton Fali Nariman

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10084 of 2016
(ARISING OUT OF SLP (CIVIL) NO. 9132 OF 2015)

HIRAL P. HARSORA AND ORS. …APPELLANTS

VERSUS

KUSUM NAROTTAMDAS HARSORA
AND ORS. …RESPONDENTS

J U D G M E N T

R.F. Nariman, J.

1. Leave granted.

2. The present appeal arises out of a judgment dated 25.9.2014 of a Division Bench of the Bombay High Court. It raises an important question as to the constitutional validity of Section 2(q) of the Protection of Women from Domestic Violence Act, 2005, (hereinafter referred to as "the 2005 Act").

3. On 3.4.2007, Kusum Narottam Harsora and her mother Pushpa Narottam Harsora filed a complaint under the 2005 Act against Pradeep, the brother/son, and his wife, and two sisters/daughters, alleging various acts of violence against them. The said complaint was withdrawn on 27.6.2007 with liberty to file a fresh complaint.

4. Nothing happened for over three years till the same duo of mother and daughter filed two separate complaints against the same respondents in October, 2010. An application was moved before the learned Metropolitan Magistrate for a discharge of respondent Nos. 2 to 4 stating that as the complaint was made under Section 2(a) read with Section 2(q) of the 2005 Act, it can only be made against an adult male person and the three respondents not being adult male persons were, therefore, required to be discharged. The Metropolitan Magistrate passed an order dated 5.1.2012 in which such discharge was refused. In a writ petition filed against the said order, on 15.2.2012, the Bombay High Court, on a literal construction of the 2005 Act, discharged the aforesaid three respondents from the complaint. We have been informed that this order has since attained finality.

5. The present proceedings arise because mother and daughter have now filed a writ petition, being writ petition No.300/2013, in which the constitutional validity of Section 2(q) has been challenged. Though the writ petition was amended, there was no prayer seeking any interference with the order dated 15.2.2012, which, as has already been stated hereinabove, has attained finality.

6. The Bombay High Court by the impugned judgment dated 25.9.2014 has held that Section 2(q) needs to be read down in the following manner:-

> "In view of the above discussion and in view of the fact that the decision of the Delhi High Court in Kusum Lata Sharma's case has not been disturbed by the Supreme Court, we are inclined to read down the provisions of section 2(q) of the DV Act and to hold that the provisions of "respondent" in section 2(q) of the DV Act is not to be read in isolation but has to be read as a part of the scheme of the DV Act, and particularly along with the definitions of "aggrieved person", "domestic relationship" and "shared household" in clauses (a), (f) and (s) of section 2 of the DV Act. If so read, the complaint alleging acts of domestic violence is maintainable not only against an adult male person who is son or brother, who is or has been in a domestic relationship with the aggrieved complainant- mother or sister, but the complaint can also be filed against a relative of the son or brother including wife of the son / wife of the brother and sisters of the male respondent. In other words, in our view, the complaint against the daughter-in-law, daughters or sisters would be maintainable under the provisions of the DV Act, where they are co- respondent/s in a complaint against an adult male person, who is or has been in a domestic

> relationship with the complainant and such co- respondent/s. It must, of course, be held that a complaint under the DV Act would not be maintainable against daughter-in-law, sister-in- law or sister of the complainant, if no complaint is filed against an adult male person of the family."

7. The present appeal has been filed against this judgment. Shri Harin P. Raval, learned senior advocate appearing on behalf of the appellants, assailed the judgment, and has argued before us that it is clear that the "respondent" as defined in Section 2(q) of the said Act can only mean an adult male person. He has further argued that the proviso to Section 2(q) extends "respondent" only in the case of an aggrieved wife or female living in a relationship in the nature of a marriage, in which case even a female relative of the husband or male partner may be arraigned as a respondent. He sought to assail the judgment on the ground that the Court has not read down the provision of Section 2(q), but has in fact read the proviso into the main enacting part of the said definition, something that was impermissible in law. He has argued before us that the 2005 Act is a penal statute and should be strictly construed in the event of any ambiguity. He further argued that in fact there was no ambiguity because the expression "adult male person" cannot be diluted in the manner done by the High Court in the impugned judgment. He cited a large number of judgments on the golden rule of literal construction, on how reading down cannot be equated to re-reading in constitutional law, and on how a proviso cannot be introduced into the main part of a provision so as to distort its language. He also cited before us judgments which stated that even though a statute may lead to some hardship, that would not necessarily render the provision unconstitutional nor, in the process of interpretation, can a Court mend or bend the provision in the face of the plain language used. He also cited judgments before us stating that given the plain language, it is clear that it is only for the legislature to make the changes suggested by the High Court.

8. Ms. Meenakshi Arora, learned senior counsel appearing on behalf of the respondents, countered each of these submissions. First and foremost, she argued that the 2005 Act is a piece of social beneficial legislation enacted to protect women from domestic violence of all kinds. This being the case, it is clear that any definition which seeks to restrict the reach of the Act would have to be either struck down as being violative of Article 14 of the Constitution or read down. According to her, given the object of the statute, which is discernible clearly from the statement of objects and reasons, the preamble, and various provisions of the 2005 Act which she took us through, it is clear that the expression "adult male person" is a classification not based on any intelligible differentia, and not having any rational relationship with the object sought to be achieved by the Act. In fact, in her submission, the said expression goes contrary to the object of the Act, which is to afford the largest possible protection to women from domestic violence by any person, male or female, who happens to share either a domestic relationship or shared household with the said woman. In the alternative, she argued that the High Court judgment was right, and that if the said expression is not struck down, it ought to be read down in the manner suggested to make it constitutional. She also added that the doctrine of severability would come to her rescue, and that if the said expression were deleted from Section 2(q), the Act as a whole would stand and the object sought to be achieved would only then be fulfilled. She referred to a large number of judgments on Article 14 and the doctrine of severability generally. She also argued that within the definition of "shared household" in Section 2(s) of the Act, the "respondent" may be a member of a joint family. She has adverted to the

amendment made to the Hindu Succession Act in 2005, by which amendment females have also become coparceners in a joint Hindu family, and she argued that therefore the 2005 Act is not in tune with the march of statutory law in other areas. She also countered the submission of Shri Raval stating that the 2005 Act is in fact a piece of beneficial legislation which is not penal in nature but which affords various remedies which are innovative in nature and which cannot be availed of in the ordinary civil courts. She added that Section 31 alone was a penal provision for not complying with a protection order, and went on to state that the modern rule as to penal provisions is different from that sought to be contended by Shri Raval, and that such rule requires the court to give a fair interpretation to the provisions of these statutes, neither leaning in favour of the accuser or the accused. She also added that given the beneficial statute that we have to strike down/interpret, a purposive construction alone should be given, and as the offending expression "adult male person" is contrary to such purpose and would lead to absurdities and anomalies, it ought to be construed in tune with the Act as a whole, which therefore would include females, as well, as respondents. She also pointed out that, at present, the sweep of the Act was such that if a mother-in-law or sister-in-law were to be an aggrieved person, they could only be aggrieved against adult male members and not against any opposing female member of a joint family – for example, a daughter-in-law or a sister-in- law. This will unnecessary stultify what was sought to be achieved by the Act, and would make the Act a dead letter insofar as these persons are concerned. She also argued that the Act would become unworkable in that the reliefs that were to be given would only be reliefs against adult male members and not their abettors who may be females.

9. Ms. Pinky Anand, learned Additional Solicitor General for India, more or less adopted the arguments of the counsel who appeared for the Union of India in the Bombay High Court. It was her submission that in view of the judgment in Kusum Lata Sharma v. State (Crl. M.C. No.75 of 2011 dated 2.9.2011) of the Delhi High Court, laying down that the mother-in-law is also entitled to file a complaint against the daughter-in-law under the provisions of the 2005 Act, and the SLP against the said judgment having been dismissed by the Supreme Court, her stand was that it would be open to a mother-in-law to file a complaint against her son as well as her daughter- in-law and other female relatives of the son. In short, she submitted that the impugned judgment does not require interference at our end.

10. This appeal therefore raises a very important question in the area of protection of the female sex generally. The Court has first to ascertain what exactly is the object sought to be achieved by the 2005 Act. In doing so, this Court has to see the statement of objects and reasons, the preamble and the provisions of the 2005 Act as a whole. In so doing, this Court is only following the law already laid down in the following judgments.

11. In Shashikant Laxman Kale v. Union of India, (1990) 2 SCR 441, this Court was faced with the constitutional validity of an exemption section contained in the Indian Income Tax Act, 1961. After referring in detail to Re: Special Courts Bill, 1979 2 SCR 476 and the propositions laid down therein on Article 14 generally and a few other judgments, this Court held:-

> "It is first necessary to discern the true purpose or object of the impugned enactment because it is only with reference to the true object of the enactment that the existence

of a rational nexus of the differentia on which the classification is based, with the object sought to be achieved by the enactment, can be examined to test the validity of the classification. In Francis Bennion's Statutory Interpretation, (1984 edn.), the distinction between the legislative intention and the purpose or object of the legislation has been succinctly summarised at p. 237 as under:

> "The distinction between the purpose or object of an enactment and the legislative intention governing it is that the former relates to the mischief to which the enactment is directed and its remedy, while the latter relates to the legal meaning of the enactment." There is thus a clear distinction between the two. While the purpose or object of the legislation is to provide a remedy for the malady, the legislative intention relates to the meaning or exposition of the remedy as enacted. While dealing with the validity of a classification, the rational nexus of the differentia on which the classification is based has to exist with the purpose or object of the legislation, so determined. The question next is of the manner in which the purpose or object of the enactment has to be determined and the material which can be used for this exercise. For determining the purpose or object of the legislation, it is permissible to look into the circumstances which prevailed at the time when the law was passed and which necessitated the passing of that law. For the limited purpose of appreciating the background and the antecedent factual matrix leading to the legislation, it is permissible to look into the Statement of Objects and Reasons of the Bill which actuated the step to provide a remedy for the then existing malady. In A. Thangal Kunju Musaliar v. M. Venkitachalam Potti [(1955) 2 SCR 1196 : AIR 1956 SC 246 : (1956) 29 ITR 349] , the Statement of Objects and Reasons was used for judging the reasonableness of a classification made in an enactment to see if it infringed or was contrary to the Constitution. In that decision for determining the question, even affidavit on behalf of the State of "the circumstances which prevailed at the time when the law there under consideration had been passed and which necessitated the passing of that law" was relied on. It was reiterated in State of West Bengal v. Union of India [(1964) 1 SCR 371 : AIR 1963 SC 1241] that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament, can be used for 'the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation'. Similarly, in Pannalal Binjraj v. Union of India [1957 SCR 233 : AIR 1957 SC 397 : (1957) 31 ITR 565] a challenge to the validity of classification was repelled placing reliance on an affidavit filed on behalf of the Central Board of Revenue disclosing the true object of enacting the impugned provision in the Income Tax Act."

12. To similar effect, this Court held in Harbilas Rai Bansal v. State of Punjab, (1996) 1 SCC 1, as follows:

> "The scope of Article 14 has been authoritatively laid down by this Court in innumerable decisions including Budhan Choudhry v. State of Bihar [(1955) 1 SCR 1045 : AIR 1955 SC 191] , Ram Krishna Dalmia v. Justice S.R. Tendolkar [1959 SCR

279 : AIR 1958 SC 538] , Western U.P. Electric Power and Supply Co. Ltd. v. State of U.P. [(1969) 1 SCC 817] and Mohd. Hanif Quareshi v. State of Bihar [1959 SCR 629 : AIR 1958 SC 731] . To be permissible under Article 14 of the Constitution a classification must satisfy two conditions namely (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different basis, but what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

The statement of objects and reasons of the Act is as under:

“Statement of Objects and Reasons of the East Punjab Urban Rent Restriction Act, 1949 (Act 3 of 1949).— Under Article 6 of the India (Provisional Constitution) Order, 1947, any law made by the Governor of the Punjab by virtue of Section 93 of the Government of India Act, 1935, which was in force immediately before 15-8-1947, is to remain in force for two years from the date on which the Proclamation ceased to have effect, viz., 14-8- 1947. A Governor's Act will, therefore, cease to have effect on 14-8-1949. It is desired that the Punjab Urban Rent Restriction Act, 1947 (Punjab Act No. VI of 1947), being a Governor's Act, be re-enacted as a permanent measure, as the need for restricting the increase of rents of certain premises situated within the limits of urban areas and the protection of tenants against mala fide attempts by their landlords to procure their eviction would be there even after 14-8-1949.

In order to achieve the above object, a new Act incorporating the provisions of the Punjab Urban Rent Restriction Act, 1947 with necessary modification is being enacted.” It is obvious from the objects and reasons quoted above that the primary purpose for legislating the Act was to protect the tenants against the mala fide attempts by their landlords to procure their eviction. Bona fide requirement of a landlord was, therefore, provided in the Act — as originally enacted — a ground to evict the tenant from the premises whether residential or non-residential.

The provisions of the Act, prior to the amendment, were uniformly applicable to the residential and non-residential buildings. The amendment, in the year 1956, created the impugned classification. The objects and reasons of the Act indicate that it was enacted with a view to restrict the increase of rents and to safeguard against the mala fide eviction of tenants. The Act, therefore, initially provided — conforming to its objects and reasons — bona fide requirement of the premises by the landlord, whether residential or non-residential, as a ground of eviction of the tenant. The classification created by the amendment has no nexus with the object sought to be achieved by the Act. To vacate a premises for the bona fide requirement of the landlord would not cause any hardship to the tenant. Statutory protection to a tenant cannot be extended to such an extent that the landlord is precluded from evicting the

tenant for the rest of his life even when he bona fide requires the premises for his personal use and occupation. It is not the tenants but the landlords who are suffering great hardships because of the amendment. A landlord may genuinely like to let out a shop till the time he bona fide needs the same. Visualise a case of a shopkeeper (owner) dying young. There may not be a member in the family to continue the business and the widow may not need the shop for quite some time. She may like to let out the shop till the time her children grow up and need the premises for their personal use. It would be wholly arbitrary — in a situation like this — to deny her the right to evict the tenant. The amendment has created a situation where a tenant can continue in possession of a non-residential premises for life and even after the tenant's death his heirs may continue the tenancy. We have no doubt in our mind that the objects, reasons and the scheme of the Act could not have envisaged the type of situation created by the amendment which is patently harsh and grossly unjust for the landlord of a non- residential premises." [paras 8, 9 &13]

13. In accordance with the law laid down in these judgments it is important first to discern the object of the 2005 Act from the statement of objects and reasons:-

STATEMENT OF OBJECTS AND REASONS

1. Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in its General Recommendation No. XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a woman is subjected to cruelty by her husband or his relatives, it is an offence under section 498A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

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

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

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

> family are also included. Even those women who are sisters, widows, mothers, single women, or living with the abuser are entitled to legal protection under the proposed legislation. However, whereas the Bill enables the wife or the female living in a relationship in the nature of marriage to file a complaint under the proposed enactment against any female relative of husband or the male partner, it does not enable any female relative of the husband or the male partner to file a complaint against the wife or the female partner.
>
> (ii) It defines the expression "domestic violence" to include actual abuse or threat or abuse that is physical, sexual, verbal, emotional or economic.

Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

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

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

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

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

14. A cursory reading of the statement of objects and reasons makes it clear that the phenomenon of domestic violence against women is widely prevalent and needs redressal. Whereas criminal law does offer some redressal, civil law does not address this phenomenon in its entirety. The idea therefore is to provide various innovative remedies in favour of women who suffer from domestic violence, against the perpetrators of such violence.

15. The preamble of the statute is again significant. It states:

> Preamble "An Act to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto."

16. What is of great significance is that the 2005 Act is to provide for effective protection of the rights of women who are victims of violence of any kind occurring within the family. The preamble also makes it clear that the reach of the Act is that violence, whether physical, sexual, verbal, emotional or economic, are all to be redressed by the statute. That the perpetrators and abettors of such violence can, in given situations, be women themselves, is obvious. With this object in mind, let us now examine the provisions of the statute itself.

17. The relevant provisions of the statute are contained in the following Sections:

> "2. Definitions.—In this Act, unless the context otherwise requires,—
>
> (a) "aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent;
>
> (f) "domestic relationship" means a relationship between two persons who live or have, at any point of time, lived together in a shared household, when they are related by consanguinity, marriage, or through a relationship in the nature of marriage, adoption or are family members living together as a joint family;
>
> (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.
>
> (s) "shared household" means a household where the person aggrieved lives or at any stage has lived in a domestic relationship either singly or along with the respondent and includes such a 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.

3. Definition of domestic violence.—For the purposes of this Act, any act, omission or commission or conduct of the respondent shall constitute domestic violence in case it—

(a) harms or injures or endangers the health, safety, life, limb or well- being, whether mental or physical, of the aggrieved person or tends to do so and includes causing physical abuse, sexual abuse, verbal and emotional abuse and economic abuse; or

(b) harasses, harms, injures or endangers the aggrieved person with a view to coerce her or any other person related to her to meet any unlawful demand for any dowry or other property or valuable security; or

(c) has the effect of threatening the aggrieved person or any person related to her by any conduct mentioned in clause (a) or clause (b); or

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

(i) "physical abuse" means any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the aggrieved person and includes assault, criminal intimidation and criminal force;

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

(iii) "verbal and emotional abuse" includes—

(a) insults, ridicule, humiliation, name calling and insults or ridicule specially with regard to not having a child or a male child; and

(b) repeated threats to cause physical pain to any person in whom the aggrieved person is interested.

(iv) "economic abuse" includes—

(a) deprivation of all or any economic or financial resources to which the aggrieved person is entitled under any law or custom whether payable under an order of a court or otherwise or which the aggrieved person requires out of necessity including, but not limited to, 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.

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.

18. Protection orders.—The Magistrate may, after giving the aggrieved person and the respondent an opportunity of being heard and on being prima facie satisfied that domestic violence has taken place or is likely to take place, pass a protection order in favour of the aggrieved person and prohibit the respondent from—

(a) committing any act of domestic violence;

(b) aiding or abetting in the commission of acts of domestic violence;

(c) entering the place of employment of the aggrieved person or, if the person aggrieved is a child, its school or any other place frequented by the aggrieved person;

(d) attempting to communicate in any form, whatsoever, with the aggrieved person, including personal, oral or written or electronic or telephonic contact;

(e) alienating any assets, operating bank lockers or bank accounts used or held or enjoyed by both the parties, jointly by the aggrieved person and the respondent or singly by the respondent, including her stridhan or any other property held either jointly by the parties or separately by them without the leave of the Magistrate;

(f) causing violence to the dependants, other relatives or any person who give the aggrieved person assistance from domestic violence;

(g) committing any other act as specified in the protection order.

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

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

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

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

(d) restraining the respondent from alienating or disposing of the shared household or encumbering the same;

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

(f) directing the respondent to secure same level of alternate accommodation for the aggrieved person as enjoyed by her in the shared household or to pay rent for the same, if the circumstances so require:

> Provided that no order under clause (b) shall be passed against any person who is a woman.
>
> (2) The Magistrate may impose any additional conditions or pass any other direction which he may deem reasonably necessary to protect or to provide for the safety of the aggrieved person or any child of such aggrieved person.
>
> (3) The Magistrate may require from the respondent to execute a bond, with or without sureties, for preventing the commission of domestic violence.
>
> (4) An order under sub-section (3) shall be deemed to be an order under Chapter VIII of the Code of Criminal Procedure, 1973 (2 of 1974) and shall be dealt with accordingly.
>
> (5) While passing an order under sub-section (1), sub-section (2) or sub-

section (3), the court may also pass an order directing the officer-in- charge of the nearest police station to give protection to the aggrieved person or to assist her or the person making an application on her behalf in the implementation of the order.

(6) While making an order under sub-section (1), the Magistrate may impose on the respondent obligations relating to the discharge of rent and other payments, having regard to the financial needs and resources of the parties.

(7) The Magistrate may direct the officer-in-charge of the police station in whose jurisdiction the Magistrate has been approached to assist in the implementation of the protection order.

(8) The Magistrate may direct the respondent to return to the possession of the aggrieved person her stridhan or any other property or valuable security to which she is entitled to.

20. Monetary reliefs.— (1) While disposing of an application under sub-section (1) of section 12, the Magistrate may direct the respondent to pay monetary relief to meet the expenses incurred and losses suffered by the aggrieved person and any child of the aggrieved person as a result of the domestic violence and such relief may include but is not limited to—

(a) the loss of earnings;

(b) the medical expenses;

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

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

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

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

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

(5) The respondent shall pay the monetary relief granted to the aggrieved person within the period specified in the order under sub-section (1).

(6) Upon the failure on the part of the respondent to make payment in terms of the order under sub-section (1), the Magistrate may direct the employer or a debtor of the respondent, to directly pay to the aggrieved person or to deposit with the court a portion of the wages or salaries or debt due to or accrued to the credit of the respondent, which amount may be adjusted towards the monetary relief payable by the respondent.

26. Relief in other suits and legal proceedings.—

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

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

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

31. Penalty for breach of protection order by respondent.— (1) A breach of protection order, or of an interim protection order, by the respondent shall be an offence under this Act and shall be punishable with imprisonment of either description for a term which may extend to one year, or with fine which may extend to twenty thousand rupees, or with both.

(2) The offence under sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.

(3) While framing charges under sub-section (1), the Magistrates may also frame charges under section 498A of the Indian Penal Code (45 of 1860) or any other provision of that Code or the Dowry Prohibition Act, 1961 (28 of 1961), as the case may be, if the facts disclose the commission of an offence under those provisions."

18. It will be noticed that the definition of "domestic relationship" contained in Section 2(f) is a very wide one. It is a relationship between persons who live or have lived together in a shared household and are related in any one of four ways - blood, marriage or a relationship in the nature of marriage, adoption, or family members of a joint family. A reading of these definitions makes it clear that domestic relationships involve persons belonging to both sexes and includes persons related by blood or marriage. This necessarily brings within such domestic relationships male as well as female in-laws, quite apart from male and female members of a family related by blood. Equally, a shared household includes a household which belongs to a joint family of which the respondent is a member. As has been rightly pointed out by Ms. Arora, even before the 2005 Act was brought into force on 26.10.2006, the Hindu Succession Act,1956 was amended, by which Section 6 was amended, with effect from 9.9.2005, to make females coparceners of a joint Hindu family and so have a right by birth in the property of such joint family. This being the case, when a member of a joint Hindu family will now include a female coparcener as well, the restricted definition contained in Section 2(q) has necessarily to be given a relook, given that the definition of 'shared household' in Section 2(s) of the Act would include a household which may belong to a joint family of which the respondent is a member. The aggrieved person can therefore make, after 2006, her sister, for example, a respondent, if the Hindu Succession Act amendment is to be looked at. But such is not the case under Section 2(q) of the 2005 Act, as the main part of Section 2(q) continues to read "adult male person", while Section 2(s) would include such female coparcener as a respondent, being a member of a joint family. This is one glaring anomaly which we have to address in the course of our judgment.

19. When Section 3 of the Act defines domestic violence, it is clear that such violence is gender neutral. It is also clear that physical abuse, verbal abuse, emotional abuse and economic abuse can all be by women against other women. Even sexual abuse may, in a given fact circumstance, be by one woman on another. Section 3, therefore, in tune with the general object of the Act, seeks to outlaw domestic violence of any kind against a woman, and is gender neutral. When one goes to the remedies that the Act provides, things become even clearer. Section 17(2) makes it clear that the aggrieved person cannot be evicted or excluded from a shared household or any part of it by the "respondent" save in accordance with the procedure established by law. If "respondent" is to be read as only an adult male person, it is clear that women who evict or exclude the aggrieved person are

not within its coverage, and if that is so, the object of the Act can very easily be defeated by an adult male person not standing in the forefront, but putting forward female persons who can therefore evict or exclude the aggrieved person from the shared household. This again is an important indicator that the object of the Act will not be sub-served by reading "adult male person" as "respondent".

20. This becomes even clearer from certain other provisions of the Act. Under Section 18(b), for example, when a protection order is given to the aggrieved person, the "respondent" is prohibited from aiding or abetting the commission of acts of domestic violence. This again would not take within its ken females who may be aiding or abetting the commission of domestic violence, such as daughters-in-law and sisters-in-law, and would again stultify the reach of such protection orders.

21. When we come to Section 19 and residence orders that can be passed by the Magistrate, Section 19(1)(c) makes it clear that the Magistrate may pass a residence order, on being satisfied that domestic violence has taken place, and may restrain the respondent or any of his relatives from entering any portion of the shared household in which the aggrieved person resides. This again is a pointer to the fact that a residence order will be toothless unless the relatives, which include female relatives of the respondent, are also bound by it. And we have seen from the definition of "respondent" that this can only be the case when a wife or a common law wife is an aggrieved person, and not if any other woman belonging to a family is an aggrieved person. Therefore, in the case of a wife or a common law wife complaining of domestic violence, the husband's relatives including mother-in-law and sister-in-law can be arrayed as respondents and effective orders passed against them. But in the case of a mother-in-law or sister-in-law who is an aggrieved person, the respondent can only be an "adult male person" and since his relatives are not within the main part of the definition of respondent in Section 2(q), residence orders passed by the Magistrate under Section 19(1)(c) against female relatives of such person would be unenforceable as they cannot be made parties to petitions under the Act.

22. When we come to Section 20, it is clear that a Magistrate may direct the respondent to pay monetary relief to the aggrieved person, of various kinds, mentioned in the Section. If the respondent is only to be an "adult male person", and the money payable has to be as a result of domestic violence, compensation due from a daughter-in-law to a mother-in-law for domestic violence inflicted would not be available, whereas in a converse case, the daughter-in-law, being a wife, would be covered by the proviso to Section 2(q) and would consequently be entitled to monetary relief against her husband and his female relatives, which includes the mother-in-law.

23. When we come to Section 26 of the Act, the sweep of the Act is such that all the innovative reliefs available under Sections 18 to 22 may also be sought in any legal proceeding before a civil court, family court or criminal court affecting the aggrieved person and the respondent. The proceeding in the civil court, family court or criminal court may well include female members of a family, and reliefs sought in those legal proceedings would not be restricted by the definition of "respondent" in the 2005 Act. Thus, an invidious discrimination will result, depending upon whether the aggrieved person chooses to institute proceedings under the 2005 Act or chooses to add to the reliefs available in either a pending proceeding or a later proceeding in a civil court, family court or criminal court. It

is clear that there is no intelligible differentia between a proceeding initiated under the 2005 Act and proceeding initiated in other fora under other Acts, in which the self-same reliefs grantable under this Act, which are restricted to an adult male person, are grantable by the other fora also against female members of a family. This anomaly again makes it clear that the definition of "respondent" in Section 2(q) is not based on any intelligible differentia having any rational relation to the object sought to be achieved by the 2005 Act. The restriction of such person to being an adult male alone is obviously not a differentia which would be in sync with the object sought to be achieved under the 2005 Act, but would in fact be contrary to it.

24. Also, the expression "adult" would have the same effect of stultifying orders that can be passed under the aforesaid sections. It is not difficult to conceive of a non-adult 16 or 17 year old member of a household who can aid or abet the commission of acts of domestic violence, or who can evict or help in evicting or excluding from a shared household an aggrieved person. Also, a residence order which may be passed under Section 19(1)(c) can get stultified if a 16 or 17 year old relative enters the portion of the shared household in which the aggrieved person resides after a restraint order is passed against the respondent and any of his adult relatives. Examples can be multiplied, all of which would only lead to the conclusion that even the expression "adult" in the main part is Section 2(q) is restrictive of the object sought to be achieved by the kinds of orders that can be passed under the Act and must also be, therefore, struck down, as this word contains the same discriminatory vice that is found with its companion expression "male".

25. Shri Raval has cited a couple of judgments dealing with the provisions of the 2005 Act. For the sake of completeness, we may refer to two of them.

26. In Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade, (2011) 3 SCC 650, this Court, in a petition by a married woman against her husband and his relatives, construed the proviso to Section 2(q) of the 2005 Act. This Court held:

> "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 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." [Para 16]

27. In Indra Sarma v. V.K.V. Sarma, (2013) 15 SCC 755, the appellant entered into a live-in relationship with the respondent knowing that he was a married person. A question arose before this Court as to whether the appellant could be said to be in a relationship in the nature of marriage. Negativing this contention, this Court held:

> "The appellant, admittedly, entered into a live-in relationship with the respondent knowing that he was a married person, with wife and two children, hence, the generic proposition laid down by the Privy Council in Andrahennedige Dinohamy v. Wijetunge Liyanapatabendige Balahamy [(1928) 27 LW 678 : AIR 1927 PC 185] , that

> where a man and a woman are proved to have lived together as husband and wife, the law presumes that they are living together in consequence of a valid marriage will not apply and, hence, the relationship between the appellant and the respondent was not a relationship in the nature of a marriage, and the status of the appellant was that of a concubine. A concubine cannot maintain a relationship in the nature of marriage because such a relationship will not have exclusivity and will not be monogamous in character. Reference may also be made to the judgments of this Court in Badri Prasadv. Director of Consolidation [(1978) 3 SCC 527] and Tulsa v. Durghatiya [(2008) 4 SCC 520] .

We may note that, in the instant case, there is no necessity to rebut the presumption, since the appellant was aware that the respondent was a married person even before the commencement of their 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. The long- standing relationship as a concubine, though not a relationship in the nature of a marriage, of course, may at times, deserves protection because that woman might not be financially independent, but we are afraid that the DV Act does not take care of such relationships which may perhaps call for an amendment of the definition of Section 2(f) of the DV Act, which is restrictive and exhaustive.

Parliament has to ponder over these issues, bring in proper legislation or make a proper amendment of the Act, so that women and the children, born out of such kinds of relationships be protected, though those types of relationship might not be a relationship in the nature of a marriage." [Paras 57, 59 & 64]

28. It may be noted that in Badshah v. Urmila Badshah Godse & Anr., (2014) 1 SCC 188, this Court held that the expression "wife" in Section 125 of the Criminal Procedure Code, includes a woman who had been duped into marrying a man who was already married. In so holding, this Court held:

> "Thus, while interpreting a statute the court may not only take into consideration the purpose for which the statute was enacted, but also the mischief it seeks to suppress. It is this mischief rule, first propounded in Heydon case [(1584) 3 Co Rep 7a : 76 ER 637] which became the historical source of purposive interpretation. The court would also invoke the legal maxim construction of ut res magis valeat quam pereatin such cases i.e. where alternative constructions are possible the court must give effect to that which will be responsible for the smooth working of the system for which the statute has been enacted rather than one which will put a road block in its way. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation should be avoided. We should avoid a construction which would reduce the legislation to futility and should accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result. If this interpretation is not accepted, it would amount to giving a premium to the husband for defrauding the wife. Therefore, at least for the purpose of claiming maintenance under Section 125 Cr.P.C, such a woman is to be treated as the legally wedded wife."[Para 20]

29. We will now deal with some of the cases cited before us by both the learned senior advocates on Article 14, reading down, and the severability principle in constitutional law.

30. Article 14 is in two parts. The expression "equality before law" is borrowed from the Irish Constitution, which in turn is borrowed from English law, and has been described in State of U.P. v. Deoman Upadhyaya, (1961) 1 SCR 14, as the negative aspect of equality. The "equal protection of the laws" in Article 14 has been borrowed from the 14th Amendment to the U.S. Constitution and has been described in the same judgment as the positive aspect of equality namely the protection of equal laws. Subba Rao, J. stated:

> "This subject has been so frequently and recently before this court as not to require an extensive consideration. The doctrine of equality may be briefly stated as follows: All persons are equal before the law is fundamental of every civilised constitution. Equality before law is a negative concept; equal protection of laws is a positive one. The former declares that every one is equal before law, that no one can claim special privileges and that all classes are equally subjected to the ordinary law of the land; the latter postulates an equal protection of all alike in the same situation and under like circumstances. No discrimination can be made either in the privileges conferred or in the liabilities imposed. But these propositions conceived in the interests of the public, if logically stretched too far, may not achieve the high purpose behind them. In a society of unequal basic structure, it is well nigh impossible to make laws suitable in their application to all the persons alike. So, a reasonable classification is not only permitted but is necessary if society should progress. But such a classification cannot be arbitrary but must be based upon differences pertinent to the subject in respect of and the purpose for which it is made." [at page 34]

31. In Lachhman Dass v. State of Punjab, (1963) 2 SCR 353, Subba Rao, J. warned that over emphasis on the doctrine of classification or an anxious and sustained attempt to discover some basis for classification may gradually and imperceptibly deprive Article 14 of its glorious content. That process would inevitably end in substituting the doctrine of classification for the doctrine of equality. This admonition seems to have come true in the present case, as the classification of "adult male person" clearly subverts the doctrine of equality, by restricting the reach of a social beneficial statute meant to protect women against all forms of domestic violence.

32. We have also been referred to D.S. Nakara v. Union of India, (1983) 1 SCC 305. This judgment concerned itself with pension payable to Government servants. An office Memorandum of the Government of India dated 25.5.1979 restricted such pension payable only to persons who had retied prior to a specific date. In holding the date discriminatory and arbitrary and striking it down, this Court went into the doctrine of classification, and cited from Re: Special Courts Bill, (1979) 2 SCR 476 and Maneka Gandhi v. Union of India, (1978) 2 SCR 621, and went on to hold that the burden to affirmatively satisfy the court that the twin tests of intelligible differentia having a rational relation to the object sought to be achieved by the Act would lie on the State, once it has been established that a particular piece of legislation is on its face unequal. The Court further went on to hold that the petitioners challenged only that part of the scheme by which benefits were admissible

to those who retired from service after a certain date. The challenge, it was made clear by the Court, was not to the validity of the Scheme, which was wholly acceptable to the petitioners, but only to that part of it which restricted the number of persons from availing of its benefit. The Court went on to hold:

> "If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would its upward revision permit a homogeneous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalisation was considered necessary for augmenting social security in old age to government servants then those who, retired earlier cannot be worst off than those who retire later. Therefore, this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of dividing pensioners with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later will permit totally unequal treatment in the matter of pension? One retiring a day earlier will have to be subject to ceiling of Rs 8100 p.a. and average emolument to be worked out on 36 months' salary while the other will have a ceiling of Rs 12,000 p.a. and average emolument will be computed on the basis of last 10 months' average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalising the pension scheme. In fact this arbitrary division has not only no nexus to the liberalised pension scheme but it is counter-productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Article 14 is wholly violated inasmuch as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours' difference in matter of retirement would have a traumatic effect. Division is thus both arbitrary and unprincipled. Therefore, the classification does not stand the test of Article 14." [para 42]

33. We were also referred to Rattan Arya and others v. State of Tamil Nadu and another, (1986) 3 SCC 385, and in particular, to the passage reading thus:-

> "We may now turn to S.30(ii) which reads as follows:

> "Nothing contained in this Act shall apply to any residential building or part thereof occupied by anyone tenant if the monthly rent paid by him in respect of that building or part exceeds four hundred rupees."

By one stroke, this provision denies the benefits conferred by the Act generally on all tenants to tenants of residential buildings fetching a rent in excess of four hundred rupees. As a result of this provision, while the tenant of a non-residential building is protected, whether the rent is Rs. 50, Rs. 500 or Rs. 5000 per month, a tenant of a residential building is protected if the rent is Rs. 50, but not if it is Rs. 500 or Rs. 5000 per month. Does it mean that the tenant of a residential building paying a rent of Rs. 500 is better able to protect himself than the tenant of a non- residential building paying a rent of Rs. 5000 per month? Does it mean that the tenant of a residential building who pays a rent of Rs. 500 per month is not in need of any statutory protection? Is there any basis for the distinction between the tenant of a residential building and the tenant of a non-residential building and that based on the rent paid by the respective tenants? Is there any justification at all for picking out the class of tenants of residential buildings paying a rent of more than four hundred rupees per month to deny them the |rights conferred generally on all tenants of buildings residential or non-residential by the Act? Neither from the Preamble of the Act nor from the provisions of the Act has it been possible for us even to discern any basis for the classification made by S.30(ii) of the Act."(Para 3)

34. In Subramanian Swamy v. CBI, (2014) 8 SCC 682, a Constitution Bench of this Court struck down Section 6A of the Delhi Police Special Establishment Act on the ground that it made an invidious distinction between employees of the Central Government of the level of Joint Secretary and above as against other Government servants. This Court, after discussing various judgments dealing with the principle of discrimination (when a classification does not disclose an intelligible differentia in relation to the object sought to be achieved by the Act) from para 38 onwards, ultimately held that the aforesaid classification defeats the purpose of finding prima facie truth in the allegations of graft and corruption against public servants generally, which is the object for which the Prevention of Corruption Act, 1988 was enacted. In paras 59 and 60 this Court held as follows:

> "It seems to us that classification which is made in Section 6-A on the basis of status in government service is not permissible under Article 14 as it defeats the purpose of finding prima facie truth into the allegations of graft, which amount to an offence under the PC Act, 1988. Can there be sound differentiation between corrupt public servants based on their status? Surely not, because irrespective of their status or position, corrupt public servants are corrupters of public power. The corrupt public servants, whether high or low, are birds of the same feather and must be confronted with the process of investigation and inquiry equally. Based on the position or status in service, no distinction can be made between public servants against whom there are allegations amounting to an offence under the PC Act, 1988.
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> Corruption is an enemy of the nation and tracking down corrupt public servants and punishing such persons is a necessary mandate of the PC Act, 1988. It is difficult to

> justify the classification which has been made in Section 6-A because the goal of law in the PC Act, 1988 is to meet corruption cases with a very strong hand and all public servants are warned through such a legislative measure that corrupt public servants have to face very serious consequences. In the words of Mathew, J. in Shri Ambica Mills Ltd. [State of Gujarat v. Shri Ambica Mills Ltd., (1974) 4 SCC 656 :
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> 1974 SCC (L&S) 381 : (1974) 3 SCR 760] : (SCC p. 675, paras 53-54) "53. The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify. ...
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> 54. A reasonable classification is one which includes all who are similarly situated and none who are not." Mathew, J., while explaining the meaning of the words, "similarly situated" stated that we must look beyond the classification to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some positive public good. The classification made in Section 6-A neither eliminates public mischief nor achieves some positive public good. On the other hand, it advances public mischief and protects the crimedoer. The provision thwarts an independent, unhampered, unbiased, efficient and fearless inquiry/investigation to track down the corrupt public servants." [paras 59 and 60]

35. In a recent judgment, reported as Union of India v. N.S. Ratnam, (2015) 10 SCC 681, this Court while dealing with an exemption notification under the Central Excise Act stated the law thus:-

> "We are conscious of the principle that the difference which will warrant a reasonable classification need not be great. However, it has to be shown that the difference is real and substantial and there must be some just and reasonable relation to the object of legislation or notification. Classification having regard to microscopic differences is not good. To borrow the phrase from the judgment in Roop Chand Adlakha v. DDA [1989 Supp (1) SCC 116 : 1989 SCC (L&S) 235 : (1989) 9 ATC 639] : "To overdo classification is to undo equality." [para 18]

36. A conspectus of these judgments also leads to the result that the microscopic difference between male and female, adult and non adult, regard being had to the object sought to be achieved by the 2005 Act, is neither real or substantial nor does it have any rational relation to the object of the legislation. In fact, as per the principle settled in the Subramanian Swamy judgment, the words "adult male person" are contrary to the object of affording protection to women who have suffered from domestic violence "of any kind". We, therefore, strike down the words "adult male" before the word "person" in Section 2(q), as these words discriminate between persons similarly situate, and far from being in tune with, are contrary to the object sought to be achieved by the 2005 Act.

Having struck down these two words from the definition of "respondent" in Section 2(q), the next question that arises is whether the rest of the Act can be implemented without the aforesaid two words. This brings us to the doctrine of severability – a doctrine well-known in constitutional law and propounded for the first time in the celebrated R.M.D. Chamarbaugwalla v. Union of India,

1957 SCR 930. This judgment has been applied in many cases. It is not necessary to refer to the plethora of case law on the application of this judgment, except to refer to one or two judgments directly on point.

37. An early application of the aforesaid principle is contained in Corporation of Calcutta v. Calcutta Tramways Co. Ltd., [1964] 5 S.C.R. 25, in which a portion of Section 437(i)(b) of the Calcutta Municipal Act, 1951 was struck down as being a procedural provision which was an unreasonable restriction within the meaning of Article 19(6) of the Constitution. Chamarbaugwalla's case was applied, and it was ultimately held that only the portion in parenthesis could be struck down with the rest of the Act continuing to apply.

38. Similarly, in Motor General Traders v. State of A.P., (1984) 1 SCC 222, Section 32(b) of the Andhra Pradesh Buildings (Lease, Rent & Eviction) Control Act, 1960 which exempted all buildings constructed on and after 26.8.1957, was struck down as being violative of Article 14 of the Constitution. This judgment, after applying Chamarbaugwalla's case in para 27, and D.S. Nakara's case in para 28, stated the law thus:-

> "On a careful consideration of the above question in the light of the above principles we are of the view that the striking down of clause (b) of Section 32 of the Act does not in any way affect the rest of the provisions of the Act. The said clause is not so inextricably bound up with the rest of the Act as to make the rest of the Act unworkable after the said clause is struck down. We are also of the view that the Legislature would have still enacted the Act in the place of the Madras Buildings (Lease and Rent Control) Act, 1949 and the Hyderabad House (Rent, Eviction and Lease) Act, 1954 which were in force in the two areas comprised in the State of Andhra Pradesh and it could not have been its intention to deny the beneficial effect of those laws to the people residing in Andhra Pradesh on its formation. After the Second World War owing to acute shortage of urban housing accommodation, rent control laws which were brought into force in different parts of India as pieces of temporary legislation gradually became almost permanent statutes. Having regard to the history of the legislation under review, we are of the view that the Act has to be sustained even after striking down clause (b) of Section 32 of the Act. The effect of striking down the impugned provision would be that all buildings except those falling under clause (a) of Section 32 or exempted under Section 26 of the Act in the areas where the Act is in force will be governed by the Act irrespective of the date of their construction." [para 29]
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> 39. In Satyawati Sharma v. Union of India, (2008) 5 SCC 287, Section 14(1)(e) of the Delhi Rent Control Act was struck down in part, inasmuch as it made an invidious distinction between bonafide requirement of two kinds of landlords, the said ground being available for residential premises only and not non residential premises. An argument was made that if the Section was struck down only in part, nothing more would survive thereafter. This was negatived by this Court in the following words:

"In view of the above discussion, we hold that Section 14(1)(e) of the 1958 Act is violative of the doctrine of equality embodied in Article 14 of the Constitution of India insofar as it discriminates between the premises let for residential and non-residential purposes when the same are required bona fide by the landlord for occupation for himself or for any member of his family dependent on him and restricts the latter's right to seek eviction of the tenant from the premises let for residential purposes only. However, the aforesaid declaration should not be misunderstood as total striking down of Section 14(1)(e) of the 1958 Act because it is neither the pleaded case of the parties nor the learned counsel argued that Section 14(1)(e) is unconstitutional in its entirety and we feel that ends of justice will be met by striking down the discriminatory portion of Section 14(1)(e) so that the remaining part thereof may read as under: "14. (1)(e) that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable accommodation;

***" While adopting this course, we have kept in view well-recognised rule that if the offending portion of a statute can be severed without doing violence to the remaining part thereof, then such a course is permissible—R.M.D. Chamarbaugwalla v. Union of India [AIR 1957 SC 628] and Lt. Col. Sawai Bhawani Singh v. State of Rajasthan[(1996) 3 SCC 105] .

As a sequel to the above, the Explanation appearing below Section 14(1)(e) of the 1958 Act will have to be treated as redundant." [paras 41 – 43]

40. An application of the aforesaid severability principle would make it clear that having struck down the expression "adult male" in Section 2(q) of the 2005 Act, the rest of the Act is left intact and can be enforced to achieve the object of the legislation without the offending words. Under Section 2(q) of the 2005 Act, while defining 'respondent', a proviso is provided only to carve out an exception to a situation of "respondent" not being an adult male. Once we strike down 'adult male', the proviso has no independent existence, having been rendered otiose.

41. Interestingly the Protection from Domestic Violence Bill, 2002 was first introduced in the Lok Sabha in 2002. This Bill contained the definition of "aggrieved person", "relative", and "respondent" as follows:

"2. Definitions.

In this Act, unless the context otherwise requires,-

"aggrieved person" means any woman who is or has been a relative of the respondent and who alleges to have been subjected to acts of domestic violence by the

respondent;" xxxx

i) "relative" includes any person related by blood, marriage or adoption and living with the respondent;

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

42. We were given to understand that the aforesaid Bill lapsed, after which the present Bill was introduced in the Lok Sabha on 22.8.2005, and was then passed by both Houses. It is interesting to note that the earlier 2002 Bill defined "respondent" as meaning "any person who is....." without the addition of the words "adult male", being in consonance with the object sought to be achieved by the Bill, which was pari materia with the object sought to be achieved by the present Act. We also find that, in another Act which seeks to protect women in another sphere, namely, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, "respondent" is defined in Section 2(m) thereof as meaning a person against whom the aggrieved woman has made a complaint under Section 9. Here again it will be noticed that the prefix "adult male" is conspicuous by its absence. The 2002 Bill and the 2013 Act are in tune with the object sought to be achieved by statutes which are meant to protect women in various spheres of life. We have adverted to the aforesaid legislation only to show that Parliament itself has thought it reasonable to widen the scope of the expression "respondent" in the Act of 2013 so as to be in tune with the object sought to be achieved by such legislations.

43. Having struck down a portion of Section 2(q) on the ground that it is violative of Article 14 of the Constitution of India, we do not think it is necessary to go into the case law cited by both sides on literal versus purposive construction, construction of penal statutes, and the correct construction of a proviso to a Section. None of this becomes necessary in view of our finding above.

44. However, it still remains to deal with the impugned judgment. We have set out the manner in which the impugned judgment has purported to read down Section 2(q) of the impugned Act. The doctrine of reading down in constitutional adjudication is well settled and has been reiterated from time to time in several judgments, the most recent of which is contained in Cellular Operators Association of India v. TRAI, (2016) 7 SCC 703. Dealing with the doctrine of reading down, this Court held:-

"But it was said that the aforesaid Regulation should be read down to mean that it would apply only when the fault is that of the service provider. We are afraid that such a course is not open to us in law, for it is well settled that the doctrine of reading

down would apply only when general words used in a statute or regulation can be confined in a particular manner so as not to infringe a constitutional right. This was best exemplified in one of the earliest judgments dealing with the doctrine of reading down, namely, the judgment of the Federal Court in Hindu Women's Rights to Property Act, 1937, In re [Hindu Women's Rights to Property Act, 1937, In re, 1941 SCC OnLine FC 3 : AIR 1941 FC 72] . In that judgment, the word “property” in Section 3 of the Hindu Women's Rights to Property Act was read down so as not to include agricultural land, which would be outside the Central Legislature's powers under the Government of India Act, 1935. This is done because it is presumed that the legislature did not intend to transgress constitutional limitations. While so reading down the word “property”, the Federal Court held: (SCC OnLine FC) “... If the restriction of the general words to purposes within the power of the legislature would be to leave an Act with nothing or next to nothing in it, or an Act different in kind, and not merely in degree, from an Act in which the general words were given the wider meaning, then it is plain that the Act as a whole must be held invalid, because in such circumstances it is impossible to assert with any confidence that the legislature intended the general words which it has used to be construed only in the narrower sense: Owners of SS Kalibia v.Wilson [Owners of SS Kalibia v. Wilson, (1910) 11 CLR 689 (Aust)] , Vacuum Oil Co. Pty. Ltd. v. Queensland [Vacuum Oil Co. Pty. Ltd. v. Queensland, (1934) 51 CLR 677 (Aust)] , R. v. Commonwealth Court of Conciliation and Arbitration, ex p Whybrow & Co. [R. v. Commonwealth Court of Conciliation and Arbitration, ex p Whybrow & Co., (1910) 11 CLR 1 (Aust)] and British Imperial Oil Co. Ltd. v.Federal Commr. of Taxation [British Imperial Oil Co. Ltd. v. Federal Commr. of Taxation, (1925) 35 CLR 422 (Aust)] .” (emphasis supplied) This judgment was followed by a Constitution Bench of this Court in DTC v.Mazdoor Congress [DTC v. Mazdoor Congress, 1991 Supp (1) SCC 600 :

1991 SCC (L&S) 1213] . In that case, a question arose as to whether a particular regulation which conferred power on an authority to terminate the services of a permanent and confirmed employee by issuing a notice terminating his services, or by making payment in lieu of such notice without assigning any reasons and without any opportunity of hearing to the employee, could be said to be violative of the appellants' fundamental rights. Four of the learned Judges who heard the case, the Chief Justice alone dissenting on this aspect, decided that the regulation cannot be read down, and must, therefore, be held to be unconstitutional. In the lead judgment on this aspect by Sawant, J., this Court stated: (SCC pp. 728-29, para 255) “255. It is thus clear that the doctrine of reading down or of recasting the statute can be applied in limited situations. It is essentially used, firstly, for saving a statute from being struck down on account of its unconstitutionality. It is an extension of the principle that when two interpretations are possible—one rendering it constitutional and the other making it unconstitutional, the former should be preferred. The unconstitutionality may spring from either the incompetence of the legislature to enact the statute or from its violation of any of the provisions of the Constitution. The second situation which summons its aid is where the provisions of the statute are

vague and ambiguous and it is possible to gather the intention of the legislature from the object of the statute, the context in which the provision occurs and the purpose for which it is made. However, when the provision is cast in a definite and unambiguous language and its intention is clear, it is not permissible either to mend or bend it even if such recasting is in accord with good reason and conscience. In such circumstances, it is not possible for the court to remake the statute. Its only duty is to strike it down and leave it to the legislature if it so desires, to amend it. What is further, if the remaking of the statute by the courts is to lead to its distortion that course is to be scrupulously avoided. One of the situations further where the doctrine can never be called into play is where the statute requires extensive additions and deletions. Not only it is no part of the court's duty to undertake such exercise, but it is beyond its jurisdiction to do so. (emphasis supplied)" [paras 50 and 51]

45. We may add that apart from not being able to mend or bend a provision, this Court has earlier held that "reading up" a statutory provision is equally not permissible. In B.R. Kapur v. State of T.N., (2001) 7 SCC 231, this Court held:

"Section 8(4) opens with the words "notwithstanding anything in sub-section (1), sub-section (2) or sub-section (3)", and it applies only to sitting members of Legislatures. There is no challenge to it on the basis that it violates Article 14. If there were, it might be tenable to contend that legislators stand in a class apart from non-legislators, but we need to express no final opinion. In any case, if it were found to be violative of Article 14, it would be struck down in its entirety. There would be, and is no question of so reading it that its provisions apply to all, legislators and non-legislators, and that, therefore, in all cases the disqualification must await affirmation of the conviction and sentence by a final court.

That would be "reading up" the provision, not "reading down", and that is not known to the law." [para 39]

46. We, therefore, set aside the impugned judgment of the Bombay High Court and declare that the words "adult male" in Section 2(q) of the 2005 Act will stand deleted since these words do not square with Article 14 of the Constitution of India. Consequently, the proviso to Section 2(q), being rendered otiose, also stands deleted. We may only add that the impugned judgment has ultimately held, in paragraph 27, that the two complaints of 2010, in which the three female respondents were discharged finally, were purported to be revived, despite there being no prayer in Writ Petition No.300/2013 for the same. When this was pointed out, Ms. Meenakshi Arora very fairly stated that she would not be pursuing those complaints, and would be content to have a declaration from this Court as to the constitutional validity of Section 2(q) of the 2005 Act. We, therefore, record the statement of the learned counsel, in which case it becomes clear that nothing survives in the aforesaid complaints of October, 2010. With this additional observation, this appeal stands disposed of.

.....J.

(Kurian Joseph)

.....J.

New Delhi; (R.F. Nariman)

October 6, 2016.