**Hiral P. Harsora And Ors vs Kusum Narottamdas Harsora And Ors**

Brief Facts of the Case

* The present appeal arises out of a judgment dated 25.9.2014 of a Division Bench of the Bombay High Court.
* Here on 3.4.2007, Kusum Narottam Harsora and her mother Pushpa Narottam Harsora filed a complaint under the 2005 Act against their brother/son, his wife and two sisters/daughters, alleging various acts of violence against them. No action was taken on the fresh complaints that were filed subsequently. Nothing happened for a period of three years till both of the complainants filed separate complaints in October, 2010.
* The main issue here was the interpretation of a section 2(q) of the Protection of Women from [Domestic Violence Act](https://indiankanoon.org/doc/542601/), 2005, (hereinafter referred to as “the DV Act”). The particular section defined the term “respondents” for the purpose of this act.
* The Bombay High Court construed the provision in its literal sense and discharged the three female respondents from the complaint, as they concluded that the complaint could be filed only against an “adult male person”.
* The present case deals with the writ petition filed by the mother and daughter duo in which the constitutional validity of [Section 2(q)](https://indiankanoon.org/doc/582753/) has been challenged, with no prayer seeking any interference with the order given in their previous case.

Issues before the court

* Whether Section 2(q) of the DV Act violates Article 14 of the Constitution?
* Whether the rest of the DV Act can remain in force if amendments are made in respect of Section 2(q)?

Ratio of the case

* The court referred to the judgment of [*Shashikant Laxman Kale v. Union of India*](https://indiankanoon.org/doc/1061804/)[[1]](#footnote-2) and observed that 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.
* The court observed that the main object of the DV Act as reflected by its preamble is “[An Act](https://indiankanoon.org/doc/542601/) 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.”
* This court explained, gives a clarity as to the legislative intent of covering all sorts of violence against women in a domestic space and its necessary application on all the perpetrators and abettors, be it women themselves.
* The court further analyzed the different provisions and remedies under the act and concluded that how each of them fails to cover their objective if they are to be considered only in respect of an adult male person. This was mainly concluded as, exclusion of the female members of the household gives the opportunity to subject women to violence where an adult male person might not stand in the forefront, but put forward female members who can therefore harm or exclude the aggrieved person from the shared household with no complaints against them under this act.
* Also in cases of Monetary Relief Order and Protection Order, under section 20 and section 19 respectively, the remedies will not be fruitful as the same cannot be enforced against the female members of the shared household.
* The court further explained as to how the phrase “adult male members” also reduced its scope and unreasonably excluded the ‘non-adult males’, 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.
* The court further dealt with some cases of [Article 14](https://indiankanoon.org/doc/367586/) including [*Lachhman Dass v. State of Punjab*](https://indiankanoon.org/doc/459058/)*[[2]](#footnote-3)*, with which they explained that in the present case, the classification of “adult male person” clearly subverts the doctrine of equality.
* The court observed 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[[3]](#footnote-4), the words “adult male person” are contrary to the object of affording protection to women who have suffered from domestic violence “of any kind”.
* Further after striking down the words “adult male” before the word “person” in [Section 2(q)](https://indiankanoon.org/doc/582753/), dealing with the second issue the court analyzed the Doctrine of Severability which was propounded in the R.M.D. Chamarbaugwalla v. Union of India[[4]](#footnote-5) in reference to various other judgments.
* Further, the court explained and gained more clarity as to the legislative intent in respect of the interpretation the word respondent by referring to the Protection from Domestic Violence Bill, 2002 which had lapsed in the Parliament. The 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 DV Act.

Decision of the Court

* The court concluded that Section 2(q) of the DV Act violates Article 14 of the constitution and struck down the words “adult male” before the word “person” in the particular section. Consequently, the proviso to [Section 2(q)](https://indiankanoon.org/doc/582753/), being rendered otiose, was automatically deleted.
* The court held the rest of the act to be operative and that the same can be enforced to achieve the object of the legislation without the offending words.

1. (1990) 2 SCR 441 [↑](#footnote-ref-2)
2. (1963) SCR 353 [↑](#footnote-ref-3)
3. (2014) 8 SCC 682 [↑](#footnote-ref-4)
4. 1957 SCR 930 [↑](#footnote-ref-5)