

HIRAL P HARSORA AND ORS. V. KUSUM NAROTTAMDAS HARSORA

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This paper is the case analysis of Civil Appeal no. 10084 of 2016, arising out of the Special Leave Petition (Civil) No. 9132 of the year 2015. The appeal challenged the constitutional validity of Section (q) of the PWDA Act, 2005. The primary issues before the Hon'ble Supreme Court were to determine whether the definition of the term 'Respondent' was restricted to only an 'adult male' or will it included anyone who is in a 'domestic relationship' with the appellant and whether the provision is contradictory to Article 14 of the Indian Constitution.

FACTS OF THE CASE

On April 3, 2007, Kusum Narottam Harsora (Original Complainant) and her mother, Pushpa Narottam Harsora, filed a complaint against her brother, sister-in-law, and two sisters under the PWDA, 2005. She accused the respondents of different acts of violence. Furthermore, on June 27, 2007, the complaint was withdrawn. Later two complaints were filed against the same respondents. The complaints were dismissed on the 5th of January 2012 by the metropolitan magistrate on the basis that Section 2(a) read with Section 2(q) of the PWDA Act can only be lodged against adult males. On the 15th of February, 2012, the Bombay High Court denied the complaint's discharge based on its literal construction of Section 2. (q). The Bombay High Court ruled in favor of the respondents (original complainants), stating that the DV Act can be used against adult males as well as female relatives of adult males if the individual is in a domestic relationship with the complainant. As a result, the Appellants (Original Respondents) filed a writ suit contesting Section 2(q) of the PWDA Act, 2005's constitutional validity.

RULE OF LAW

The following are the statutory provisions referred by the Bench in this case:

Section 2(q) r/w Section 2 (a), (f) and (s) of the Protection of Domestic Violence Act, 2005

Section 2. Definitions.—In this Act, unless the context otherwise requires, — (q) “respondent”

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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. Article 14 of the Indian Constitution: - “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

ISSUES

- Whether the section 2(q) is contrary to the original intent and objective of the act sought to be achieved?
- Whether the section 2(q) of the DV act, 2005 is unconstitutional as it violates the Art.14 of the Indian constitution?
- Whether striking down of the expression ‘Adult Male’ under section 2(q) renders the rest of the provisions invalid or doctrine of severability will apply here?

ANALYSIS AND COMMENTS

Previously adequate remedy on the issue of domestic violence was only available in criminal law on the other hand the civil law did not however address this phenomenon in its entirety. As per section 498 of IPC, if a woman is subjected to cruelty by her husband or his relatives then she can file a criminal complaint against them but such provision was not there in civil law. To address this issue, The Protection of Women from Domestic Violence Act, 2005 was introduced as 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. The legislative intent behind the act was to provide various innovative remedies in favour of women who suffer from domestic violence, against the perpetrators of such violence. In the present case, court relied on statement of objects and reasons, the preamble and the provisions of the 2005 Act as a whole to determine the main object of the Act. The Court observed that the act was brought 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 that woman. The Court was of the view that, violence can also be committed by women be it physical, sexual, verbal or even economic hence considering that the appellant 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 will be in

contraction with the object of the act. Also, inclusion of the term 'Adult male' means anyone who is 16-17 yrs old can't commit violence which would lead to absurdities and anomalies. The court also referred to the another Act with similar objective 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.

In view of the Delhi high court judgment in the case of Kusum Lata Sharma v. State and Anr., where the court laid 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 Special Leave Petition against the said judgment having been dismissed by the Supreme Court, court agreed The Court went on to add that, "It is evident that there is no intelligible differentia between a proceeding initiated under the 2005 Act and proceeding brought in other form 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".

After deciding on the validity of the section the Court further addressed the issue of the application and effect of this judgment on the rest of the provisions of DV Act, 2005. The question before court was whether striking down of the expression 'adult Male' under section 2(q) renders the rest of the provisions invalid or doctrine of severability will apply here? While deciding on this issue the court referred its own judgments in the case of Corporation of Calcutta v. Calcutta Tramways Co. Ltd⁴ and Cellular Operators Association of India v. TRAI², and relied on the doctrine of severability propounded in R.M.D. Chamarbaugwalla v. Union of India.³ The doctrine of severability states that where a specific provision of a legislation violates a constitutional limitation but is severable from the remainder of the statute, the Court will declare only that offending provision unconstitutional, not the entire statute.

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 Section is left intact and can be enforced to achieve the object of the legislation without the offending words. To conclude the court decided that the elimination of the phrase "adult male" from the category of respondent under section 2 (q) will have no effect on the other sections and the purview of

¹ Corporation of Calcutta v. Calcutta Tramways Co. Ltd, (1964) 5 SCR 25

² Cellular Operators Association of India v. TRAI, (2016) 7 SCC 703

³ R.M.D. Chamarbaugwalla v. Union of India, (1957) SCR 930

'Respondent' in the case of domestic violence is broad enough to cover everyone, regardless of gender or age and hence the section 2(q) and its proviso stand deleted since these words do not square with Article 14 of the Constitution of India.

CONCLUSION

The Hon'ble Supreme Court affirmed the Bombay High Court's judgment, which ruled in favour of the respondents. Because it violates Article 14 of the Indian Constitution, the term "adult male" was removed from the definition of Respondent under Section 2(q). The term was found to be devoid of intelligible differentia and was not in tune with the PWDA, 2005's main objective. Furthermore, because the scope of Section 2(q) has been widened, the provision clause has no practical use and has been deleted. It was also stated that the rest of the Section is unaffected due to this judgment.



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