*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on : August 28, 2014
%   *Judgment Delivered on : September 10, 2014*

\+   **FAO(OS) 196/2014**

NAVNEET ARORA ..... Appellant
Represented by: Mr.Chetan Lokur and Mr.Karan Mehta, Advocates for Mr.Viraj Datar, Advocate

versus

SURENDER KAUR AND ORS ..... Respondents
Represented by: Mr.Attin Shankar Rastogi, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

PRADEEP NANDRAJOG, J.

1. Late Sh.Harpal Singh Arora was the registered owner of property bearing municipal No.B-44, Vishal Enclave Rajouri Garden, New Delhi. He acquired ownership under a perpetual lease dated June 07, 1974 executed in his favour by the Municipal Corporation of Delhi. When he purchased the property on perpetual lease-hold basis, it consisted of only the ground floor. He constructed two floors above and sold them during his life time. He lived in the ground floor with his family comprising his wife Ms.Surinder Kaur and two sons named Raman Pal Singh and Gurpreet Singh and a daughter Sherry, who upon her marriage left the house.

2. Gurpreet Singh was married to Navneet Arora on May 15, 2001 and out of the wedlock a daughter was born to the couple on March 17, 2008. On a date not disclosed, Raman Pal Singh got married to Ms.Neetu. The

family comprising Harpal Singh Arora, his wife Surinder Kaur, two sons Gurpreet Singh and Raman Pal Singh together with their wives resided together as one family, with one kitchen, on the ground floor of B-44, Vishal Enclave.

3. Harpal Singh died intestate on June 01, 2008 and was survived by his wife, two sons and daughter as the legal heirs. Each one inherited one forth share in the said property and other assets of the deceased Harpal Singh. On June 13, 2008 the three siblings executed a relinquishment deed in favour of their mother and thus in the official records Surinder Kaur became the owner of the property.

4. Tragedy struck the family when Gurpreet Singh died on May 20, 2012. Unfortunately, difference cropped between Surinder Kaur and her daughter-in-law Navneet Arora wife of Gurpreet Singh. Navneet Arora and her daughter were occupying one out of the three bed rooms on the ground floor. One room was occupied by Raman Pal Singh and Neetu Arora. The third by Surinder Kaur.

5. Surinder Kaur filed a suit for permanent and mandatory injunction against Navneet Arora, Raman Pal Singh and his wife Neetu Arora. It related to the ground floor.

6. As was to be expected, Raman Pal Singh and Neetu Arora, obviously collusively, informed the Court that they would move out of the room occupied by them, but we take on record the fact that the two continue to reside on the ground floor of the property.

7. Navneet Arora filed a written statement pointing out that she had filed a civil suit registered as number 203/2013 challenging the relinquishment deed executed by her husband in favour of Surinder Kaur which was pending before the Civil Judge, Tis Hazari Courts, Delhi. She pleaded that

on the death of her husband his share would devolve upon her and her daughter and since the relinquishment deed was questioned by her, the suit filed by Surinder Kaur should await the decision in the suit filed by her. She claimed that she was living in her matrimonial house in her own right.

8. The learned Single Judge has held, vide impugned order dated March 21, 2014, that since Surinder Kaur was the owner of the property, it would not be a *'shared household'* of Navneet Arora in view of the law declared by the Supreme Court in the decision reported as (2007) 3 SCC 169 *S.R.Batra & Anr. vs. Taruna Batra*. The learned Single Judge has noted a few other decisions wherein it was held that an estranged daughter-in-law has no right to stay in the property owned by either her mother-in-law or her father-in-law. The learned Single Judge has held that at the old age of 60 Surinder Kaur would be entitled to a peaceful life.

9. The predecessor Division Bench before which the appeal came up for preliminary admission on April 30, 2014, having regard to the nature of the dispute, referred the parties to mediation. The mediation failed. The appeal was assigned to this Bench as per roster on August 14, 2014, and when it was brought to our notice that the parties are involved in multifarious litigation and two valuable assets being a shop at Jwala Heri market and a factory at Bahadurgarh, Haryana were lying locked, we had tried to effect a settlement between the parties and especially for the reason there is an outstanding loan in sum of approximately ₹2.36 crore for the house and ₹1.5 crore for the factory. The Bench had desired a solution where Navnit Arora could be provided a decent residential accommodation commensurate with her status in which she and her minor daughter could live and additionally some monthly made available to her for sustaining herself, and by way of reciprocity she could agree that the shop and the factory could be de-sealed,

to be used by her brother-in-law Raman Pal Singh, but unfortunately so bitter are the relations between the parties that in spite of everybody realising that a status quo would damage each one of them, they refused to budge. Little realizing that if the Cholamandalam Investment and Finance Company Limited enforces its right in the residential house for which as of August 26, 2014 the overdue amount was ₹2.36 crores, the house itself would be lost and if for the factory at Bahadurgarh the financial institution to which it was mortgaged also enforces the mortgaged, even the factory would be lost. We had expected Surinder Kaur and her son Raman Pal Singh, who had also been accompanying her to the Court, to take the lead because they were in a dominant position, but it did not happen because the two wanted reciprocity from Navneet as if she was in an equal position.

10. Thus, we are constrained to decide the appeal on merits.

11. Pithily stated, the question arising for the consideration of this Court revolves around the interpretation of the term '*shared household*' as envisaged under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 and if the present case stands squarely covered by the authoritative pronouncement of the Supreme Court of India reported as (2007) 3 SCC 169 *S.R Batra & Anr. v. Taruna Batra (Smt.)*.

12. Section 2(s) of the Protection of Women from Domestic Violence Act, 2005 reads as under:-

> *"2 (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."

13. Learned Counsel for Ms.Surinder Kaur had contended that in view of the decision of the Supreme Court in *Taruna Batra's* case (Supra), a daughter-in-law, as the present appellant before us, is precluded under the scheme of Protection of Women from Domestic Violence Act, 2005 to claim a '*right of residence*' in a premises exclusively owned by her mother-in-law even though she has admittedly resided therein with her husband and his family members in a domestic relationship. He would thus submit that the impugned order passed by the learned Single Judge suffers from no impropriety and is not liable to be interfered with in the present proceedings.

14. Since Ms.Surinder Kaur has planked her submissions on the decision of the Supreme Court in *Taruna Batra's* case (Supra) and we find that the conclusion expressed by the learned Single Judge in the impugned order is also essentially premised on the said decision, it would therefore be incumbent upon us to carefully examine the dictum in *Taruna Batra*'s case (Supra) with a view to ascertain the factual conspectus and the issues which fell for consideration of the Supreme Court, in order to appreciate the observations contained in the said judgment.

15. A microscopic analysis of the said decision would reveal that Ms.Taruna Batra was married to the son of S.R.Batra and his wife on April 14, 2000. After the marriage the couple started residing together as husband and wife at second floor, B-135, Ashok Vihar, Phase-I, Delhi. It was not in dispute that the said property exclusively belonged to S.R.Batra's wife i.e. the mother-in-law of Taruna Batra. It would be pertinent to note that S.R.Batra and his wife resided separately on the ground floor of the said

property. It was an admitted position that Ms.Taruna Batra had shifted to the residence of her parents owing to matrimonial acrimony with her husband. It was only much later that she sought to re-enter the suit property only to find a lock at the main entrance. In wake of such attending circumstances, she filed a suit seeking mandatory injunction to enable her to enter the house. It was the case of S.R.Batra and his wife before the Supreme Court and the Courts below that before any order came to be passed in the said suit, Ms.Taruna Batra along with her parents forcibly broke open the locks of the suit property. It was also contended by S.R.Batra and his wife that their son – Amit Batra, the husband of Taruna Batra, had shifted to his own flat at Mohan Nagar, Ghaziabad before the litigation between the parties had ensued.

16. Perusal of the judgment further reveals that the learned Trial Judge vide order dated March 04, 2003, had held that Ms.Taruna Batra was in possession of the suit property and consequently granted temporary injunction in her favour. The said order of the learned Trial Judge was assailed in appeal before the learned Senior Civil Judge, Delhi, who vide order dated September 17, 2004 held that Ms.Taruna Batra was not residing in the second floor of the suit premises and also observed that her husband – Amit Batra was not living in the suit property, therefore, the matrimonial home could not be said to be a place where only the wife was residing. Laying a challenge to the order of the Appellate Court, Ms.Taurna Batra invoked the supervisory jurisdiction of this Court by filing a petition under Article 227 of Constitution of India. The learned Single Judge of this Court was pleased to hold that the second floor of the suit property was the matrimonial home of Ms.Taruna Batra and the fact that her husband shifted to Ghaziabad later would not make Ghaziabad the matrimonial home.

17. The Supreme Court after taking into consideration the factual matrix highlighted above, was pleased to observe in paragraph 21 of its judgment that this Court fell in error by interfering with the findings of the learned Senior Civil Judge who had categorically held that Ms.Taruna Batra was not residing in the suit premises. The Supreme Court was of the considered view that findings of fact rendered by Courts below could not be upset in exercise of jurisdiction under Article 226 and 227 of the Constitution.

18. We may notice that the provisions of Protection of Women from Domestic Violence Act, 2005 were not pressed into service or taken into consideration by the Courts below, for the simple reason that the said Act was not enacted at the relevant point of time. However, at the stage of arguments before the Supreme Court the said Act was in force and consequently the learned Senior Counsel appearing on behalf of Ms.Taruna Batra invited the attention of the Supreme Court to the provisions of the said Act, in order to contend that the definition of the '*shared household*' in terms of Section 2(s) of the said Act includes a household where the person aggrieved lives *or at any stage had lived* in a domestic relationship.

19. While repelling the said submission the Supreme Court observed in paragraph 26 of the judgment that if the aforesaid submission were to be accepted then it would mean that wherever the husband and wife lived together in the past that property would become a '*share household*' for the purpose of the Act. It was quite possible that the husband and wife may have lived together at dozens of places such as the house of relatives of the husband and all such places would qualify as '*shared household*', thus entitling the wife to reside in all such places. The Court held that such an interpretation would lead to chaos and absurdity.

20. It was further observed in paragraph 30 of the judgment that the

definition of '*shared household*' in Section 2(s) of the Act was not happily worded and appeared to be a result of clumsy drafting which necessitated the Court to provide a sensible interpretation to avoid chaos in the society.

21. The learned Senior Counsel appearing on behalf of Ms.Taruna Batra also relied upon Section 19(1)(f) of the Act in order to contend that she should be given an alternative accommodation.

22. The Supreme Court negatived the said contention and observed that the claim for alternative accommodation could only be made against the husband and not against the in-laws or other relatives of the husband.

23. In paragraph 29 of the judgment the Supreme Court adverted their consideration to Section 17(1) of the Act and opined that the wife would only be entitled to claim a right of residence in a shared household and a '*shared household*' would only mean the house belonging to or taken on rent by the husband, or the house which belongs to '*the joint family'* of which the husband is a member. The Court proceeded to observe that the property in question neither belonged to the husband nor was it taken on rent by him and neither was the said property a joint family property of which the husband was a member. The said property was exclusively owned by the mother-in-law of Ms.Taruna Batra and thus could not be treated as a '*shared household*'.

24. Before we embark on the journey of culling-out the ratio of the above-noted decision, it would be instructive to take into consideration the luminous observations expressed by Earl of Halsbury L.C. in the celebrated pronouncement of the House of Lords in the decision reported as [1901] A.C. 495 <u>Quinn v. Leathem</u> –.

> "*Now, before discussing the case of Allen v. Flood – [1898] A.C. 1 and what decided therein, there are two observation of a general character which I wish to make, and one is to repeat*

what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expression which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

25. The said observations have been cited with approval since time immemorial by the Supreme Court. In the decision reported as (2007) 10 SCC 82 Sumtibai & Ors. v. Paras Finance Co. & Ors., the Supreme Court observed:

> *"10.As observed by this Court in State of Orissa v. Sudhansu Sekhar Misra - (1970) ILLJ 662 SC vide para 13:*
>
> *A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, LC said in Quinn v. Leathem, 1901 AC 495:*
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> *Now before discussing the case of Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may*

seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.

11. In Ambica Quarry Works v. State of Gujarat and Ors.(1987) 1 SCC 213 (vide para 18) this Court observed:
The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.

12. In Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd - (2003) 2 SC 111 (vide para 59), this Court observed:

It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.

13. As held in Bharat Petroleum Corporation Ltd. and Anr. v. N.R.Vairamani and Anr.- AIR 2004 SC 4778, a decision cannot be relied on without disclosing the factual situation. In the same Judgment this Court also observed:

Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclids theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

In London Graving Dock Co. Ltd. v. Horton - 1951 AC 737 Lord Mac Dermot observed:

The matter cannot, of course, be settled merely by treating the ipsissima ventral of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge.

In Home Office v. Dorset Yacht Co. -1970 (2) AER 294 Lord Reid said, Lord Atkin`s speech...is not to be treated as if it was a statute definition it will require qualification in new circumstances. Megarry, J. in (1971) 1 WLR 1062 observed: One must not, of course, construe even a reserved judgment of Russell L. J. as if it were an Act of Parliament. And, in Herrington v. British Railways Board -1972 (2) WLR 537Lord Morris said:

There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo, J.) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

* * *

Precedent should be followed only so far as it marks the path

of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it."

26. The said observations are indeed a lodestar and valuably guide us to appreciate the observations of the Supreme Court in *Taruna Batra's* case (Supra) in the correct perspective.

27. As highlighted earlier, while deciding *Taruna Batra*'s case (Supra) the Supreme Court took into consideration the fact that after the marriage Ms.Taruna Batra and her husband - Amit Batra started living at the second floor of the suit premises, whereas the in-laws resided separately on the ground floor of the suit property. In view of the said state of affairs, it is palpably evident that Ms.Taruna Batra and her husband were not living together with Ms.Taruna Batra's in-laws, as members of '*joint family*' in the legal-sense and the second floor of the suit-property would not qualify as the '*shared household*' in terms of Section 2(s) of the Act. The fact that the husband and wife resided on a separate floor altogether is indicative of the fact that they were not living as a '*joint family*' with the in-laws of Ms.Taruna Batra.

28. It is a settled proposition that to constitute a '*joint family*' the members thereof must not only reside together but partake meals prepared from a common kitchen, whereas it appears from the perusal of the judgment rendered in *Taruna Batra*'s case (Supra) that there was nothing to indicate that the kitchen was common.

29. The term '*Joint Family*' has not been defined under the Act. We find that the General Clauses Act, 1897 is also conspicuously silent in this regard. Therefore, this Court must traverse beyond to ascertain the true meaning and import of the term '*Joint Family*'.

30. It has been pertinently observed in the decision reported as (1914) 1KB 641 Camden (Marquis) v. IRC:-

> "*It is for the court to interpret the statute as best it can. In so doing the court may no doubt assist itself in the discharge of its duty by any literary help which it can find, including of course the consultation of standard authors and references to well known and authoritative dictionaries.*"

31. The Supreme Court has observed in the decision reported as 1985 Supp SCC 280 State of Orissa v. Titaghur Paper Mills Co. Ltd. that the court may take the aid of dictionaries to ascertain the meaning of a word in common parlance, where the word has not been statutorily defined or judicially interpreted.

32. The Supreme Court in its decision reported as (2004) 1 SCC 256 S. Samuel v. Union of India, held that when a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in the common parlance. The Court sounded a note of caution that in selecting one out of the various meanings of a word, regard must always be had to the context, as it is a fundamental rule that the meaning as words and expressions used in an Act must take their colour from the context in which they appear.

33. Advanced Law Lexicon Dictionary, P. Ramanatha Aiyar, Third Edition, Wadhwa-Nagpur defines '*Joint-Family*' in the following terms:-

> "*Joint Family: "Joint Family" means a family of which the members live together,* ***have a common mess*** *and are descendants from a common ancestor and shall include wives or husbands, as the case may be, of its member, but shall exclude married daughters and their children. [Manipur Municipalities Act (43 of 1994), S. 2(27)]…*"[Emphasis Supplied]

34. Iravati Karve opines that a '*Joint Family*' is a group of people who generally live under one roof, *who eat food cooked at one hearth,* who hold property in common, who participate in common worship and are related to each other as some particular type of kindred. ['**Kinship Organisation in India', Asia Publishing House, Mumbai, 1968**]

35. We may also note that the Act secures *'right of residence'* for an '*aggrieved person*' in a *'shared household' which may belong to the 'joint family' of which 'respondent' is a member, irrespective of whether the 'respondent' or the 'aggrieved person' has any right, title or interest in the 'shared household'.*

36. The term '*Household*' is defined by Wharton's Law Lexicon, Fifteenth Edition, Universal Law Publishers in the following terms;-

> "*...Means the member of a family related to each other by blood, marriage or adoption and normally residing together and sharing meal or holding a common ration card.* ***[National Rural Employment Guarantee Act, 2005, S. 2(f)]***"

37. This Court in its decision reported as 80 (1999) DLT 611 *Hari Sharma v. Amarjit Singh Ramana* whilst arriving at the conclusion that the husband and wife were living together as a family and the relations between them were cordial, ascribed importance to the fact that they were sharing a common kitchen.

38. It thus bears no reiteration that in *Taruna Batra*'s case (Supra), Ms.Taruna Batra and her husband - Amit Batra were not residing with the Appellants as members of '*joint family*' in a '*shared household*' as understood in the legalistic sense, the residence and kitchen being separate.

39. Thus,Ms.Taruna Batra could not derive any benefit from the

provisions of the Protection of Women from Domestic Violence Act, 2005 as she or her husband, either singly or jointly, had no right, title, interest or equity in the second floor of the suit property and neither was the couple residing as members of '*Joint Family*' with her in-laws and her mother-in-law was the exclusive owner of the suit property.

40. In paragraph 29 of the judgment the Court pertinently observed:-

> "*29. ...The property in question in the present case neither belongs to Amit Batra nor was it taken on rent by him nor is it a joint family property of which the husband Amit Batra is a member. It is the exclusive property of Appellant 2, mother of Amit Batra. Hence it cannot be called a "shared household".* "
>
> [Emphasis Supplied]

41. The submission of the learned Senior Counsel appearing on behalf of the Ms.Taruna Batra, as noted in paragraph 24 of the judgment, that merely because Ms.Taruna Batra had lived in the property in question in the past, it fell within the ambit of '*shared household*' was rejected by the Supreme Court, which was of the considered opinion that such a view would lead to chaos in the society since the wife may insist on claiming '*right of residence*' in virtually any property in which she may have resided together with her husband in the past.

42. Furthermore, the Supreme Court also observed that in view of the admitted fact that Ms.Taruna Batra had shifted to the residence of her parents owing to matrimonial disputes with her husband and was thus no longer in possession of the said portion of suit property, the question of protecting her possession could not arise. The very foundation of her claim for injunction restraining the in-laws from dispossessing her was thus wholly misconceived.

43. In light of the foregoing discussion, we are of the view that *Taruna*

Batra's case (Supra) is only an authority for the proposition that a wife is precluded under the law from claiming '*right of residence*' in a premises, owned by the relatives of the husband, wherein she has lived with her husband separately, but not as a member of the '*joint family*' along with the relatives of the husband who own the premises.

44. However, in the later eventuality, if a couple live as members of '*joint family*' in a domestic relationship with the relatives of the husband in a premises owned by such relatives of the husband, statutory prescription would indeed enable the wife to claim '*right of residence*' since it would fall within the realm of '*shared household*' as contemplated under Section 2(s) of the Act *irrespective of whether she or her husband has any right, title or interest in the 'shared household'*.

45. We may notice that Section 19(1)(a) of the Act clears the cloud, if any, as it mandates in unequivocal terms that a Magistrate disposing an application under sub-Section (1) of Section 12, may, on being satisfied that domestic violence has taken place, pass a residence order 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'*.

46. It is a settled tenet of construction of statutes that a statute must be read as a whole and not in a truncated manner.

47. It would be apposite to reproduce the observations comprised in '**Maxwell on the Interpretation of Statutes**' by P. St. J. Langan, Twelfth Edition, 1976, N.M. Tripathi Private Ltd., at Pg. 47:-

> "*It was resolved in the case of Lincoln College- (1595) 3 Co. Rep. 58b that the good expositor of an Act of Parliament should "make construction on all the parts together, and not of one*

part only of itself." Lord Davey in Canada Sugar Refining Co. Ltd. v. R- [1898] A.C. 735 observed that "every clause of a statute is to be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute."..."

[Emphasis Supplied]

48. The Supreme Court in its decision reported as AIR 1963 SC 1241 *State of W.B. v. Union of India*, held that the Court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with the other parts of the law, and the setting in which the clause to be interpreted occurs.

49. We are of the view that the plain language of the Act. viz. Section 2(s) read in conjunction with Section 19 (1)(a) is unambiguous and enables an aggrieved person to claim '*right of residence*' in a household even though the aggrieved person or the respondent may have no right, title or interest in the said household, if the aggrieved person and the respondent have lived therein by establishing a domestic relationship with the joint family of which the respondent is a member and to which such household belongs.

50. We may profitably refer to the authoritative treatise on statutory interpretation, '**Craies on Statute Law**' by S.G.G. Edgar, Seventh Edition, First Indian Reprint, Universal Law Publishing Co., Pg. 65, wherein the author has taken note of a long line of English decisions on the subject commencing from (1832) 2 D. & Cl. (H.L.) 480 *Warburton v. Loveland*; (1864) 2 H. & C. 431 *Att.- Gen. v. Sillem*; (1881) 8 Q.B.D. 125 *Att.- Gen. V. Noyes*; (1889) 24 Q.B.D. 1 *Hornsey L.B. v. Monarch Investment Building Society*; [1891] A.C. 401 *M'Cowan v. Baine*; [1897] A.C. 22 *Salomon v. Salomon*; [1922] 1 A.C. 1 *Sutters v. Briggs*; [1959] 1 W.L.R. 995 *I.R.C. v.*

Collco Dealings, Same v. Lucbor Dealings; [1954] 1 Q.B. 439 (D.C.), Cf. Gluchowska v. Tottenham Borough Council wherein it has been held that where the language of an Act is clear and explicit, effect must be given to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature.

51. Further at Page 91, it has been pertinently observed:-

> "*...In Abel v. Lee reported as (1871) L.R. 6 C.P. 365, it was observed by Willes J. that no doubt the general rule is that the language of an Act is to be read according to its ordinary grammatical construction unless so reading it would entail some absurdity, repugnancy, or injustice... But I utterly repudiate the notion that it is competent to a judge to modify the language of an Act in order to bring it in accordance with his views of what is right or reasonable."* [Emphasis Supplied]

52. As we understand, the principle underlying the conclusions expressed in the above-extracted decisions is the fundamental rule '*verbis legis non est recedendum*' which means that the words of a statute must not be varied. In a democratic constitutional framework as ours, the legislature enjoys the mandate of the nation and the direct representatives of the citizens essentially fill the House. As a general principle subject to some recognised exceptions, the legislature enjoys the exclusive power to enact the laws suited for the citizenry taking into account the needs and conditions prevalent in the society with which they are supposed to be cognizant and sensitised. *Per Contra*, it is the solemn duty of the Courts to apply and interpret the laws enacted by the legislature whilst adjudicating the disputes brought before it. The Courts do not make any interpretation contrary to the express words of an enactment. It is often remarked *"Speech after all is the index of the mind- Index animi sermo est."* Any interpretation jettisoning from consideration the express words employed by the legislature or treating

them as mere '*surplusage*' would tantamount to judicial re-drafting, which is impermissible as it would fall foul of the doctrine of separation of powers recognised under our Constitution.

53. However we may clarify that even if doubts arise owing to defects in legislative drafting and a provision is capable of more than one construction, that construction should be preferred which furthers the policy of the Act and is more beneficial to those in whose interest the Act may have been passed and the doubt, if any, should be resolved in their favour [AIR 1961 SC 1491 *Jivabhai v. Chhagan,* (2008) 9 SCC 527 *Union of India v. Prabhakaran Vijaya Kumar*]

54. There can be no quarrel that Protection of Women from Domestic Violence Act, 2005 is a social-welfare legislation enacted for the benefit and amelioration of women.

55. In the decision of the Supreme Court reported as (1982) 1 SCC 159 *Chinnamarkathian alias Muthu Gounder v. Ayyavoo alias Periana Counder*, it was observed that it is a well- settled canon of construction that in construing the provisions of such enactments, the Court should adopt that construction with advances, fulfils and furthers the object the Act rather than the one which would defeat the same and render the protection illusory.

56. Thus, it would be clearly impermissible to impose artifices and restrict the amplitude of protection made available to women under the said Act.

57. In this connection, we may reproduce the observations of Lord Reid in the decision reported as [1963] A.C. 349 *Att.-Gen. for Northern Ireland v. Gallagher*, wherein it was pertinently observed-

> *"We cannot encroach on its legislative function by reading in some limitation which we may think was probably intended but which cannot be inferred from the words of the Act."*

58. On the first blush it may appear quite jarring to certain quarters of the society that by enacting the Protection of Women from Domestic Violence Act, 2005 the legislature has invested a '*right of residence*' in favour of wives qua premises in which they or their husband admittedly have no right, title or interest and such premises are in fact owned by the relatives of the husband.

59. It may be highlighted that the Act does not confer any title or proprietary rights in favour of the aggrieved person as misunderstood by most, but merely secures a '*right of residence*' in the '*shared household*'. Section 17(2) clarifies that the *aggrieved person may be evicted* from the '*shared household*' but only *in accordance with the procedure established by law*. The legislature has taken care to *calibrate and balance the interests* of the family members of the respondent and mitigated the rigour by expressly providing under the *provisio* to Section 19 (1) that whilst adjudicating an application preferred by the aggrieved person *it would not be open to the Court to pass directions for removing a female member of the respondents family from the 'shared household'*. Furthermore, in terms of Section 19 (1) (f), the Court *may direct the respondent to secure same level of 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*.

60. The seemingly '*radical*' provisions comprised in the Protection of Women from Domestic Violence Act, 2005 must be understood and appreciated in light of the prevalent culture and ethos in our society.

61. The broad and inclusive definition of the term *'shared household'* in the Protection of Women from Domestic Violence Act, 2005 is in consonance with the family patterns in India, where married couple continue

to live with their parents in homes owned by parents.

62. D. Ross and Aileen, '**The Hindu Family in its Urban Setting**' (Oxford Univ., 1961), p. 8, have observed –

> "*In the Indian societal set up, it is not uncommon for sons to reside with their parents and their other family members in a common household. The concept of nuclear household, though on a rise, is yet to gain strong held on Indian soil and even therein as well, the parents residing with the son, is taken as an acceptable and appreciable conduct.*" [Emphasis Supplied]

63. The joint family has always been the preferred family type in the Indian culture, and most Indians at some point in their lives have participated in joint family living. [**Nandan, Y. and Eames, E. (1980), 'Typology and Analysis of the Asian-Indian Family', In Saran, P. and Eames, E. (Eds.), The New Ethnics: Asian Indians in the United States, Praeger, New York**]

64. With efflux of time and changes in the socio-economic and cultural milieu of our society, there has been transformation in the structure, functions, roles, relationships and values of the family. With greater urbanization, the concept of joint family may indeed be on a steady decline.

65. Extended family is in fact a transitory phase between joint and nuclear family system. [**Singh, J.P. (2004), 'The contemporary Indian family', In Adams, B.N and Trost, J. (Eds.), 'Handbook of World Families', Sage Publications Inc., California**.]

66. According to an article published in '**The Hindu**' on 16.03.2012, the Census, 2011 indicates that even as the country as a whole has been switching over to the nuclear family system, several States in north India seem to be rather reluctant to follow the trend wholeheartedly. 27 % of the households in Uttar Pradesh still had two or more married couples living

together — far more than the national average of 18 % for such families. Uttar Pradesh was followed by Rajasthan, Haryana, Punjab, Gujarat, Bihar, Jharkhand and Madhya Pradesh. In Rajasthan, 25 % of the households were found to be joint families, while in Haryana the corresponding figure was 24.6%, Punjab 23.9 %, Gujarat 22.9 %, Bihar and Jharkhand 20.9 % and Himachal Pradesh 20 %.In contrast, in south India, in Andhra Pradesh only 10.7 % of the households were joint families, in Tamil Nadu 11.2 %, in Pondicherry 11.4 %, in Karnataka 16.2 % and Kerala 16.6 %.In West Bengal 15.5 % of the households were joint families, in Maharashtra 17.6 %, in Madhya Pradesh 17.7 %, in Odisha 12.32 % and in Goa 12.6 %.There are still some pockets in north India where households have five married couples or more living together.

67. Interestingly, the Census, 2011 also reveals that the percentage of Joint Families in Mumbai has considerably increased over the decade. The number of households with joint families has gone up by 77% in the suburbs and 35% in the island city. [**Article published in the Times of India-Mumbai Edition dated 24-03-2012**.]

68. However, be that as it may, it emerges beyond pale of doubt that the practice of living in joint family and having common-households is not alien to the Indian society, perhaps unlike many western civilisations.

69. We may also highlight that though the practice of residing together as joint family is undoubtedly common amongst those who subscribe to the tenets of Hindu religion and the concept of '*Hindu Undivided Family (HUF)*' is well recognised, however, the institution of joint family seems to be a characteristic feature of the Indian sub-continent, and even adherents of Islam have also been known to reside together in common households.

70. B.R.Verma in his treatise on Islamic Personal Law titled

'**Mohammedan Law**' (In India, Pakistan and Bangladesh), Sixth Edition, 1986, Law Publishers at page 399-400 observes that it is very common in the areas of State of Andhra Pradesh, formerly belonging to Madras State for descendent Mohammedans to live and trade together and also acquire properties together.

71. We may hasten to add that the term '*Joint Family*' employed by the legislature in Protection of Women from Domestic Violence Act, 2005 is not to be confused with '*Hindu Undivided Family*'. The '*Hindu Undivided Family*' is only a species of '*Joint Family*'; which has a wider connotation.

72. As we have noticed earlier, the term '*Joint Family*' has not been defined under the Act. We may seek guidance from other statutes where the term '*Joint Family*' has been defined as it may throw some light upon its meaning. However, we are conscious of the limitation of such practice as highlighted by Lord Reid in the decision reported as [1955] A.C. 377 (H.L.) London Corpn. v. Cusack- Smith wherein he observed that:-

> "*...It does not necessarily follow that if parliament uses the same words in quite a different context they must retain the same meaning...*"

73. '*Joint Family*' in the case of Hindu means a Hindu Undivided Family and, in the case of other persons, a group of members of which are by custom, joint in possession or residence. [**Punjab Apartment Ownership Act (Punjab Act No. 13 of 1995) S.2(c); and Punjab Apartment and Property Regulation Act (14 of 1995) S.2(s)**]

74. Section 2(16) of the Gujarat Agricultural Land Ceiling Act, 1960 defines '*Joint Family*'. For the purposes of the said act '*Joint Family*' means an undivided Hindu family and in the case of other persons, a group or unit the members of which by custom or usage are joint in estate or residence.

75. Section 2(m) of the Gujarat Ownership of Flats Act, 1973 defines '*Joint Family*' as an undivided Hindu family and in the case of other persons, a group or unit the members of which are by custom joint in possession or residence.

76. Thus, it is unequivocally evinced from a perusal of the definitions enacted by various state legislatures in different enactments, that the term '*Joint Family*' has a wider import than '*Hindu Undivided Family*'; which stands subsumed therein.

77. The Gujarat High Court in its decision reported as 2012 Cri. L.J. 1187 *Pritiben Jiteshbhai Upadhyay v. Jiteshbhai Virendrabhai Upadhyay & Ors.*, while dealing with a case under the Protection of Women from Domestic Violence Act, 2005, noticed the fact that the term '*Joint Family*' was not defined under the Act and in order to assign a meaning to the same the Court cited with approval the definition comprised in Encyclopaedia Britannica 2008. The same may be reproduced herein below:

> "*Joint family.- family in which members of a unilineal descent group (a group in which descent through either the female or the male line is emphasized) live together with their spouses and offspring in one homestead and under the authority of one of the members. The joint family is an extension of the nuclear family (parents and dependent children), and it typically grows when children of one sex do not leave their parents' home at marriage but bring their spouses to live with them. Thus, a patrilineal joint family might consist of an older man and his wife, his sons and unmarried daughters, his sons' wives and children, and so forth. For a man in the middle generation, belonging to a joint family means joining his conjugal family to his family of orientation (i.e., into which he was born).*"

78. We find that the meaning of the term '*Joint Family*' for the purpose of Protection of Women from Domestic Violence Act, 2005 as approved by the

Gujarat High Court contains no reference to '*Hindu Undivided Family*'.

79. The Protection of Women from Domestic Violence Act is a secular legislation and has been enacted for the benefit of women in India irrespective of their religious affiliations like the provisions of Section 125 of the Code of Criminal Procedure, 1973. Section 1 of the Act that prescribes the extent of applicability of the Act makes no reservations based on religion. Furthermore, if the legislature intended to engraft a special provision in the context of Hindus, nothing prevented them from expressly using the term '*Joint Hindu Family*' or '*Hindu Undivided Family*', as found in Income Tax Act, 1961 and host of other legislations.

80. Recently a similar view was echoed by the Gauhati High Court in its recent decision reported as 2014 Cri. L.J. 2162 *Md. Rajab Ali & Ors. v. Mustt. Manjula Khatoon*, wherein it was observed:

> "*17. It is not uncommon that members of a Mahomedan family live in commensality. However, they do not form a joint family in the sense in which the expression is usedin the Hindu Law. There is no provision of Mahomedan Law recognizing a joint family.*
>
> *18. Therefore, bearing in mind the purpose for which the D.V. Act was enacted, which is, to provide more effective protection of the rights of women guaranteed under the Constitution, who are victims of violence of any kind as occurring within the family and for matters connected therewith or incidental thereto, the expression "joint family" occurring in definition of "domestic relationship" and "shared household" has to be given an interpretation which will be consistent with the object of the Act for the purpose of maintainability and obtaining certain reliefs under D.V. Act, and therefore, I am of the opinion that expression "joint family" would mean a household where members of a family live in commensality and not a "joint family" as is understood in Hindu Law. Any other interpretation has the potential to exclude a vast majority of the shared households in the country, which cannot be the*

intention of the legislature, having regard to the avowed object of the Act." [Emphasis Supplied]

81. Taking into account the international treaty obligations and the hardships faced by women folk over centuries while living under peculiar family institutions transcending religious boundaries, the legislature rose to the occasion and introduced the Protection of Women from Domestic Violence Bill, 2005.

82. Pt. Jawaharlal Nehru in his speech delivered at the annual conference of the Indian Branch of the International Bar Association, New Delhi on 31st March 1951 aptly remarked:-

> " *There should not be any lag between the development of law and the needs of a changing society. There should be the closest possible co-operation between jurists and economists or politicians whose object is to study the changing social fabric.*"
> *[Extracts of speech as reported in the Hindustan Times and National Herald dated 1st April 1951]*

83. The said Bill was introduced in Lok Sabha on 22.08.2005 by the government of the day and after debate it was passed by the House on 24.08.2005. Thereafter, the Rajya Sabha passed the same on 29.08.2005 and consequently the presidential assent was received on 13.09.2005.

84. With a view foster better understanding of the legislation, cognizance may be taken of the attending circumstances in wake of which the legislation was enacted. The Statement of Object and Reasons accompanying the Bill and the parliamentary debates that ensued on the floor of the House provide valuable insights and bring to fore the circumstances engulfing our nation which necessitated the legislation.

85. We are conscious that any interpretation flowing from the speeches

made in the parliamentary debates by individuals cannot be a safe guide of the legislative intent of the entire house and therefore cannot be dispositive of the matter to halt the Court in its solemn pursuit of deciphering the true legislative intent. However, it assumes significance that it is permissible under the law of our land to refer to the text of such debates and place reliance thereon to the limited extent viz. for discerning the state of affairs prevalent in the society at the point of time when the Bill was introduced and the mischief/evils which were sought to be suppressed by such a legislative enactment.

86. In the judgment reported as AIR 1951 SC 41 *Chiranjit Lal Chowdhury v. Union of India* the Supreme Court pertinently observed:-

> "*...legislative proceedings cannot be referred to for the purpose of constructing an Act or any of its provisions, but I believe that they are relevant for the proper understanding of the circumstances under which it was passed and the reasons which necessitated it.*"

87. In the decision reported as (1975) 3 SCC 862 *Anandji Haridas & Co.(P) Ltd. v. Engg. Mazdoor Sangh,* the Supreme Court clarified that no external evidence such as Parliamentary debates, reports of the committees of the legislature or even the statement made by the Minister on the introduction of a measure or by the framers of the Act is admissible to construe those words. It is only when the statute is not exhaustive or where the language is ambiguous, uncertain, clouded or susceptible of more than one meaning or shades of meaning that external evidence as to the evils, if any, which the statute was intended to remedy or the circumstances which led to the passing of the statute may be looked into for the purpose of ascertaining the object which the legislature had in view in using the words

in question.

88. In the decision reported as (1990) 4 SCC 366 <u>*Shashikant Laxman Kale v. Union of India,*</u> the Supreme Court recognized the vital distinction between the use of material (external aids) for the purpose of finding them is chief dealt by the Act and the circumstances which necessitated the passing of such legislation as distinguished from its use for finding the meaning of the Act. The former course was held to be permissible.

89. In this regard it would be relevant to recount the words of Lord Atkinson in the decision reported as (1911) AC 641 <u>*Keates v. Lewis Merthyr Consolidated Collieries Ltd.*</u>:-

> *"In connection of statutes it is, of course, at all times and under all circumstances permissible to have regard to the state of things existing at the time the statute was passed and to the evils, which as appears from the provisions, it was designed to remedy."*

90. The said observations have been cited by approval by the Supreme Court in its judgment reported as AIR 1953 SC 58 <u>*D.N Banerjee v. P.R. Mukherjee*</u> and (1981) 2 SCC 585 <u>*Sonia Bhatia v. State of U.P.*</u>

91. The practice of referring to *travaux preparatories* such as parliamentary history - debates, Statement of Object and Reasons appended to the Bill etc. as evidence of the circumstances which necessitated the passing of a piece of legislation and reliance upon the Constituent Assembly debates in interpreting the provisions of the Constitution has been consistently approved by the Supreme Court since time immemorial and is evinced by line of decisions : AIR 1956 SC 246 <u>*A Thangal Kunju Musaliarv. M Venkatachalam Potti;*</u> (1969) 1 SCC 839 <u>*A.V.S Narasimha Rao v. Stateof A.P*</u>; AIR 1993 SC 477 <u>*Indira Sawhney v. Union of India*</u>; (2001) 7 SCC126

S.R Chaudhuri v. State of Punjab; and (2003) 7 SCC 224 Karnataka Small Scale Industries Development Corporation Ltd. v. Commissioner of Income Tax.

92. The Statement of Objects and Reasons appended with the Protection of Women from Domestic Violence Bill, 2005 itself evidences the imminent need for enacting such a legislation. The relevant portion is reproduced herein below :-

> "*Statement of Objects and Reasons.- 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 of Action (1995) both 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 subject to cruelty by her husband or his relatives, it is an offence under Section 498A of the Indian Penal Code, 1860. The civil law does not address this phenomenon in its entirety.*
>
> *3. It is, therefore, proposed to enact a law keeping view the rights guaranteed under article 14,15 and 21 of the constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrence of domestic violence in the society...*" [Emphasis Supplied]

93. We may highlight that the said Bill was introduced by Smt.Kanti Singh, the then Minister of State in the Ministry of Human Resource Development and it would be noteworthy to extract certain introductory

remarks of her address to the Lok Sabha on 23.08.2005.

> *"SHRIMATI KANTI SINGH: Sir, I would like to extend my thanks to you for allowing me to move protection of women from Domestic Violence Bill, 2005. Presently lakhs of women in the country are subject to domestic violence. Various kinds of violence like gender discrimination, domestic violence, dowry related violence and sexual exploitation of women are rampant all over the country. The reason behind this trend discriminatory approach of the society towards women. This phenomena is not confined to a particular caste, religion or community, rather it is pervading in every Section of the society."* [Emphasis Supplied]

94. During the address it was also highlighted that the provisions comprised in the Bill were unparalleled and not present in the existing law. Thus, in view of such attending circumstances the Bill would assume greater significance.

95. Attention of the members of the House was drawn to the fact that the Bill would cover relationships not merely restricted to matrimony but also take within its fold relations in the nature of marriage, consanguinity, adoption and family members living together as joint family.

96. It was also noted that Indian civilization and culture had a unique set of values. India was amongst the few countries where members of family prefer to live in close bondage.

97. A perusal of the debates palpably reveals that there was consensus across the party lines that the position of women in our society was unfortunately subservient and they were living in deplorable conditions. Independence had been attained from the foreign rulers, yet no efforts were made to strengthen democracy in the household.

98. Statistics highlighting alarming increase in crimes against women,

including high incidence of domestic violence were also placed for the consideration of the House.

99. Cognizance was also taken by the Parliament of the fact that women suffer immense hardships when they are thrown out of their marital home in middle of the night. In most cases, the victim suffers the pain and humiliation mutely for the fear of being rendered homeless.

100. Thus, we find that one of the crucial entitlements assured to the women under the said Bill was the right of residence i.e. the right not to be dispossessed from her marital home. However, owing to the wider scope of applicability of the Act the word '*shared household*' has been employed and not '*matrimonial household*'.

101. Economic dependence of women on their husbands increases the vulnerability of women, who continue to be in violent relationships for fear of dispossession and destitution. The fear of being rendered shelterless is overwhelming, particularly for women in the urban setting, where housing is expensive and beyond the access of ordinary middle and low income groups.

102. Sydeny Brandon in M. Brandon (ed.), '**Violence in Family**', 1976, p. 1, expressed her anguish in the following words : –

> "*Statistically it is safer to be on streets after dark with a stranger than at home in the bosom of one's family, for it is there that accident, murder and violence are likely to occur*".

103. In her treatise on Family Law, Volume 2, Oxford University Press, pg. 213 Flavia Agnes has expressed a view that even before the enactment of the Protection of Women from Domestic Violence Act, 2005 the Courts in India protected the possession and a right of occupation of women to their matrimonial household in view of the consideration that women contribute to the domestic unit, both economically and through services rendered by

performing domestic duties. This was in contrast to the traditional view that since the title is in the name of the husband or his family members, it is the sole prerogative of the person holding the title to permit residence in these premises. It was earlier believed that the contract of marriage did not include within its realm the right in equity to reside in the matrimonial home. Though statutory provision was lacking, tentatively and gradually, the Courts started awarding recognition to women's right to matrimonial residence.

104. Significantly, even before the enactment of the Protection of Women from Domestic Violence Act, 2005 a Division Bench of the Calcutta High Court in its decision reported as II (2003) DMC 809 V.Mala Viswanathan v. P.B Viswanathan, unequivocally observed:-

> "*...Once a person becomes part of a house by reason of marriage, her right to reside in her matrimonial house cannot be denied...*"

105. The Andhra Pradesh High Court in its decision reported as AIR 1985 AP 207 Bharat Heavy Plates and Vessels Ltd., Visakhapatnam, had categorically recognised such obligation cast upon the husband and extensively discussed the equitable considerations accruing therefrom in favour of the wife to reside in her '*matrimonial home*', though at the relevant point of time there was no legislation akin to the Protection of Women from Domestic Violence Act, 2005.

106. In its landmark decision rendered by a Three-Judge Bench of the Supreme Court reported as (2005) 3 SCC 313 B.P Achala Anand v. S.Appi & Anr. the Court recognized the right of a wife to her matrimonial home and laid a principle hitherto unknown in law, that a deserted wife would be entitled to contest the suit for eviction instituted against her husband.

107. The Protection of Women from Domestic Violence Act, 2005 gives statutory recognition to the salutary principle that was sought to be advanced through judge made laws in the vacuum of legislative prescription. The ideological framework which underscores the enactment is that a husband is bound to provide his wife a roof over her head and that she has a right to live in that house without the fear of violence.

108. Recently, the Supreme Court in its decision dated 26.11.2013 in Criminal Appeal No. 2009/2013 *Indra Sarma v. V.K.V. Sarma* pertinently observed:

> "*15. "Domestic Violence" is undoubtedly a human rights issue, which was not properly taken care of in this country even though the Vienna Accord 1994 and the Beijing Declaration and Platform for Action (1995) had acknowledged that domestic violence was undoubtedly a human rights issue. UN Committee on Convention on Elimination of All Forms of Discrimination Against Women in its general recommendations had also exhorted the member countries to take steps to protect women against violence of any kind, especially that occurring within the family, a phenomenon widely prevalent in India. Presently, when a woman is subjected to cruelty by husband or his relatives, it is an offence punishable Under Section 498A Indian Penal Code. The Civil Law, it was noticed, did not address this phenomenon in its entirety. Consequently, the Parliament, to provide more effective protection of rights of women guaranteed under the Constitution Under Articles 14, 15 and 21, who are victims of violence of any kind occurring in the family, enacted the DV Act.*
>
> *x x x*
>
> *24. Marriages in India take place either following the personal Law of the Religion to which a party is belonged or following the provisions of the Special Marriage Act. Marriage, as per the Common Law, constitutes a contract between a man and a woman, in which the parties undertake to live together and support each other. Marriage, as a concept, is also nationally and internationally recognized. O'Regan, J., in Dawood and*

Anr. v. Minister of Home Affairs and Ors. *2000 (3) SA 936 (CC) noted as follows:*

Marriage and the family are social institutions of vital importance. Entering into and sustaining a marriage is a matter of intense private significance to the parties to that marriage for they make a promise to one another to establish and maintain an intimate relationship for the rest of their lives which they acknowledge obliges them to support one another, to live together and to be faithful to one another. Such relationships are of profound significance to the individuals concerned. But such relationships have more than personal significance at least in part because human beings are social beings whose humanity is expressed through their relationships with others. Entering into marriage therefore is to enter into a relationship that has public significance as well.

The institutions of marriage and the family are important social institutions that provide for the security, support and companionship of members of our society and bear an important role in the rearing of children. The celebration of a marriage gives rise to moral and legal obligations, particularly the reciprocal duty of support placed upon spouses and their joint responsibility for supporting and raising children born of the marriage. These legal obligations perform an important social function. This importance is symbolically acknowledged in part by the fact that marriage is celebrated generally in a public ceremony, often before family and close friends...."[Emphasis Supplied]

109. The malaise of Domestic Violence is not restricted to India but it is a global phenomenon stemming from the secondary status accorded to women across different cultures since advent of civilisation.

110. We may highlight that Flavia Agnes in her treatise on '*Family Law*' (Supra), Pg 208-209 has outlined the struggle English women had to carry out for the right to own property, for a share in the matrimonial property,

and for the right of residence in the matrimonial home. Until the mid nineteenth century, married women in England did not have a right to divorce and they had no right to own property. According to the Blackstonian principles then prevailing in England, after marriage, the women lost right over her own property. Marriage virtually meant legal death for the woman. The husband became the custodian of her person and her property, and he could deal with it as per his own whims and fancies. Finally, in 1935, the distinction between a married and an unmarried woman was whittled down and married women became full owner of their own individual property, even during the subsistence of marriage. Through this enactment, the abhorrent Blackstonian principle that women are the property/chattel of their husbands and they are not entitled to hold property in their name during the subsistence of marriage, was finally laid to rest. However, since the matrimonial home was owned by the husband, he could dispossess her and she had no remedy in law against such dispossession.

111. We find that progressive judgments of legendary judges like Lord Denning, paved the way and gave impetus to the equitable jurisprudence that a deserted wife could not be dispossessed automatically from the matrimonial home by the creditors of her bankrupt husband. It was thus recognised that it was the duty of the husband to provide roof over the head of his wife. The legislature in England perhaps took stock of the situation and enacted the Matrimonial Homes Act, 1967 and a series of other legislations successively to secure the rights of married women.

112. We may incidentally notice that even in the United Kingdom, legislature has enacted a provision viz. Section 37 of the Family Law Act, 1996 which enables the Court to pass orders regulating the *inter se* conduct of the spouses, when the spouses occupy a dwelling house which is their

matrimonial house, even though *neither of them have a right to remain in occupation* by virtue of a beneficial estate or interest or contract or any enactment giving the right to remain in occupation.

113. Perhaps drawing inspiration from the laudable provisions comprised in Protection of Women from Domestic Violence Act, 2005 enacted by the Parliament of India, the legislature of Bangladesh and Pakistan have followed suite and enacted similar legislations.

114. Interestingly, we find that the definition of '*shared residence*' under Section 2(16) of the Bangladesh Domestic Violence (Prevention and Protection) Act, 2010 and the term '*household*' as defined under Section 2(g) of the Pakistan Domestic Violence (Prevention and Protection) Act, 2012 is conspicuously similar to the conception of '*shared household*' as envisaged under Section 2(s) of the Protection of Women from Domestic Violence Act, 2005. The said legislations also recognize the rights of married women to occupy the '*shared residence*'/ '*household*' belonging to '*joint family*' notwithstanding the fact that they themselves or their husband may have no right, title of interest in the same.

115. The Bombay High Court, in its decision reported as II (2011) DMC 250 Ishpal Singh Kahai v. Ramanjeet Kahai, while dealing with a case under the Protection of Women from Domestic Violence Act, 2005, was pleased to observe that it is not material to consider in whose name the matrimonial home stands. The Court extensively discussed the legislative history and noticed that prior to the Domestic Violence Act title of parties was oft considered in grant or refusal of the relief of injunction against an abusive husband. The Domestic Violence Act came to be enacted essentially to grant statutory protection to victims of violence in the domestic sector who had no proprietary rights owing to which the civil law protection could not be

availed by them. Furthermore, the Court took into consideration various provisions of the Act, including Section 2(s), Section 17 and Section 19(1)(a) of the said Act to conclude that there was no place for proprietary rights in the scheme of Domestic Violence Act as it was an extension of the deeper and profounder principle of women's right as a concomitants of human rights. The Court lodged a caveat that the Domestic Violence Act provided essentially a temporary remedy in the form of residence orders and such orders did not in any manner confer proprietary rights in the matrimonial home but merely protected occupation/possession.

116. We may however allay fears that if a couple lives with the relatives of the husband for a short duration as mere '*guests/visitors*', in such an eventuality the fact that they live under the same roof and partake meals from the same kitchen along with the relatives of the husband (who own the premises and have extended their hospitality), would not be construed to imply that the couple lived as members of '*joint family*', entitling the wife to claim a '*right of residence*' therein.

117. Corpus Juris Secundum, Donald J. Kiser, American Law Book Company has ascribed the following connotation to the term '*Family*'.

> "*...The word "family" is further defined to mean a collective body of persons, consisting of parents or children, or other relatives, domestics, or servants, residing together in one house or upon the same premises; a collective body of persons, who form one household, under one head and one domestic government, who have reciprocal nature or moral duties to support and care of each other, such persons as habitually reside under one roof and form one domestic circle, or such as are dependent on each other for support, or among whom there is a legal or equitable obligation to furnish support; those, who live under the same roof with the families, who form his fireside; an entire house...*" [Emphasis Supplied]

118. A '*guest or a visitor*' enjoys hospitality by partaking meals with the '*family*' of the '*host*' that are prepared from a '*common kitchen*' and may with the consent of the '*host*' also live in the same '*household*' for a short-duration. However, such a '*guest or visitor*' does not get subsumed as part of the '*family*' of the '*host*' in the legal sense as understood in the Protection of Women from the Domestic Violence Act, 2005 so as to constitute a '*joint family*' and render such premises a '*shared household*' for the purpose of the Act. Such a '*guest or a visitor*' *does not habitually reside* in the household of the '*host*' and this lack of continuity/permanence snaps the possibility of any legal obligation arising under law.

119. Reverting back to the facts of the instant case, before Navneet Arora married Gurpreet Singh, he was living as one family with his parents Harpal Singh and Surinder Kaur. His brother Raman Pal Singh and his sister Sherry were also residing in the same house. The kitchen was one. The two sons and their father were joint in business and the kitchen used to be run from the income of the joint business. They were all living on the ground floor. Sherry got married and left the house. Navneet married Gurpreet. Raman Pal married Neetu. The two daughter-in-laws joined the company not only of their husbands but even of their in-laws in the same joint family house i.e. the ground floor of B-44, Vishal Enclave, Rajouri Garden, New Delhi. All lived in commensality. Navneet never left the joint family house. She was residing in the house when her husband died. She continued to reside there even till today. Under the circumstances her right to residence in the suit property cannot be denied, and as regards issues of title, we have already observed that the right of residence under the Protection of Women from Domestic Violence Act, 2005, the same would have no bearing. She may enforce it in civil proceedings. But her right of residence in the shared

household cannot be negated.

120. We allow the appeal and set aside the impugned order dated March 21, 2014.

121. We would comment to the parties to amicably resolve their disputes because the status quo is damaging all and since Surinder Kaur and her son Raman Pal Singh are the dominant parties, we would comment to them to take the first step forward.

122. No costs.

(PRADEEP NANDRAJOG)
JUDGE

(MUKTA GUPTA)
JUDGE

SEPTEMBER 10, 2014
skb/mamta