RIGHT TO RESIDENCE OF DAUGHTER-IN-LAW

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INTRODUCTION

"The progress of any society depends on its ability to protect and promote the rights of its women", the Supreme Court remarked, alluding to the wise words of B.R. Ambedkar while delivering a historic verdict on 16th October 2020.[1] In a similar vein, other philosophers (Friedrich Engels) have traced back the origins of female subjugation to the development of private property in primordial societies. While this may be the subject of debate and deliberation, it cannot be denied that the notions of property and patriarchy have since been inextricably intertwined.

To say that law exists in a vacuum is misplaced belief. Rather, law is shaped by the customs and beliefs of the society that it is part of. Seen from this lens, the recent verdict of the Apex Court in *Satish Chander Ahuja v. Sneha Ahuja* (*Ahuja*)[2] is historic not only for upholding the right of residence of a daughter-in-law, but also, because it is a testimony to the evolving values of our society. It is a harbinger of the larger change that confronts us, and finds its articulations in the judicial pronouncements of our times.

STATUTORY PROVISIONS

Section 17(1) of the Protection of Women from Domestic Violence Act, 2005[3] (hereinafter referred to as DVA) confers to women (read daughter-in-law), the right to residence in a 'shared household', irrespective of the existence of any 'right, title or beneficial interest.'

Section 17(2) of the said Act[4] offers protection to women from eviction from this 'shared household', except in accordance with '*procedure established by law*'. Section 2(s) of the DVA[5] defines a 'shared household', the interpretation of which was at the heart of the legal dispute which arose in a number of cases.

The Maintenance and Welfare of Parents and Senior Citizens Act 2007[6] (hereinafter referred to as Welfare Act), on the other hand, grants a right to peaceful life in their

property to the parents and in-laws.

The provisions, much less the intentions of the two statutes seem to be in dissonance with each other. It is precisely this disharmony the courts sought to interpret, and thus rectify, in the leading case of *Ahuja*.

EVOLUTION THROUGH JUDICIAL PRONOUNCEMENTS

The genesis of disharmony lies in the usage of the expression 'shared household'. There is a line of long-standing judgments that have sought to define this amorphous term. The main issue in this regard is whether the title of the husband in the disputed property is material for the daughter-in-law to claim the right to residence. The Supreme Court endorsed a narrow view on this matter, in the landmark case of *S.R Batra and Anr.v. Taruna Batra*[7] (*Batra*). It interpreted the expression 'shared household' as a household wherein the husband had a right in the property, or where the property was jointly held by the family, of which the husband was a member. This effectively excluded places where the woman resided in a space without a legal right of her husband from the purview of a 'shared household'. The judgement did, however, provide an exception, stating that the daughter-in-law has a right to continued accommodation in cases where she has no alternate accommodation, or the same is not provided by her husband.

Affirming this stance, the Supreme Court in *Vimlaben Ajitbhai Patel and Ors. v. Vatslabeen Ashokbhai Patel and Ors*.[8] (*Vimlaben*) held that a woman cannot claim accommodation as a matter of right in a property owned solely by her in-laws, and can therefore be evicted by means of a civil decree, thereby denying her a right to residence. The two cases were considered regressive the trajectory of feminist jurisprudence.

In *Shumita Didi Sandhu v. Sanjay Singh Sandhu & Ors*. (2010)[9], the Delhi High Court held that as per the provisions of the DVA, the right to residence of a woman extends only to 'commensurate property' owned by the husband or the in-laws, which does not allow her exclusive right to her marital house.[10]

A series of judgements delivered by the Delhi High Court, however, digressed from the iron norms set out by the Supreme Court in *Batra* and *Vimlaben*, holding, in essence, that the right to residence is '*not dependent on title but mere factum of residence*'[11]. While acknowledging this proposition in *Preeti Satija v. Raj Kumari and Anr.*[12] and *Navneet Arora Vs. Surender Kaur and Ors*.[13], the Court, however, did not grant any relief to the aggrieved

parties. It is interesting to note that in *Eveneet Singh v. Prashant Chaudhri & Ors.*[14], the Court denied shared inhabitation to the daughter-in-law on the grounds that the illness of her mother-in-law might be exacerbated. It directed the husband to provide for an alternate accommodation within 10 weeks' time, failing which the daughter-in-law would be entitled to reside in the property again.

In *Vinay Verma v. Kanika Pasricha & Anr.*,[15] The Delhi High Court issued six guidelines to be followed by courts while ascertaining the meaning and scope of the expression 'shared household' under section 2(s) of the DVA Act.[16] Although these were commended for their inclusion of considerations of the nature of the subsisting relationship with the parents-in-laws as well as alternate accommodation for the daughter-in-law, it was criticized for fear that a blanket law may not account for the diverse circumstances in each case.

CURRENT POSITION

It is in this context that the judgement in *Ahuja*[17] becomes of utmost importance. In this 'course correcting' judgement, as aptly called by Civil judge Sonam Singh[18], the Apex Court categorically held that the 'shared household', within the scope of the DVA, was based on uninterrupted inhabitation, immaterial of the identity of the owner. The Court, employing the rule of Purposive Interpretation, held that the intention behind the enactment of the DVA was defeated by the Supreme Court decisions in *Batra* and *Vimlaben*. The Court enunciated that the sole criterion for the determination of what constitutes a 'shared household' is uninterrupted and shared cohabitation with the family for a long time. Several questions which were left unanswered by the previous judgements have now attained new meaning.

The judgement, with utmost meticulousness, interpreted that the usage of the term 'means' in the first part of section 2(s) provides an exhaustive definition, whereas the term 'includes' in the second half warrants an inclusive interpretation. Reading the two parts holistically, the Court arrived at the decision that the 'right, title or interest' of the party is not necessary to constitute a 'shared-household'.

The Court further held that the expression '*at any stage has lived*' under section 2(s) of DVA refers to the place of residence immediately prior to her exclusion from the property, and not any other place the aggrieved person has lived in.

The Court delved into the meaning and scope of the term '*save in accordance with the procedure established by law*' under sections 17(2)[19] and 26[20] of the DVA, in order to

determine the extent of maintainability of a suit for mandatory and permanent injunction.

Drawing analogy from Shanti Kumar Panda v. Shakuntala Devi[21], the Court held that the procedure, as envisioned by the DVA, includes that the suit be filed by appropriate parties and before competent courts.

Conjointly reading section 2, 12, 17, 19 and 26 of the DVA, the Apex Court held that proceedings under the DVA and a civil suit for mandatory and permanent eviction are independent in nature, and pendency of the former cannot be a ground for barring proceedings under the latter.

The implications of judgement are manifold. First, if the parents-in-law are able to prove their sole and uninterrupted right over the disputed property, the daughter in law now has the right to stay at that property till the time a new accommodation is provided for by the husband.

Second, the civil courts will now be bound to take the issue of alternate accommodation of the daughter-in-law into consideration while executing a decree regarding the right of possession in favour of the parents-in-law. Questions arising as to what will happen if the husband defaults on the payment of rent of the alternate accommodation of his wife remain unclear.

CONCLUSION

While the nature and substance of the DVA and the Welfare Act are *prima facie* overlapping, they cannot be said to be in contradiction. The courts, hitherto, had leaned on the side of the latter, denying the civil rights against dispossession and homelessness to women, often unjustly. The recent judgement in *Ahuja*[22], in this regard, is a bulwark for progressive jurisprudence. What must be kept in mind, however, is that the judgement does not provide a complete panacea. Taking this judgement as a touchstone, laws must be defined and interpreted harmoniously in this area of intersectionality, which posits to protect the interests of equally disenfranchised groups. The Court's observation that the daughter-in-law's right to residence is not indefeasible, especially when pitted against the rights of parents-in-law as homeowners[23], emphasizes on the essential values which underpin a judicial system- a just balance of rights.

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