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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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"EXPLORING THE RULES OF INTERPRETATION IN HIRAL P. HARSORA AND ORS VS KUSUM NAROTTAMDAS HARSORA AND ORS"

AUTHORED BY - HETAVI BARI

CHAPTER 1: ABSTRACT

This paper is the case analysis of Hiral P. Harsora and Ors vs Kusum Narottamdas Harsora and Ors. It questioned whether Section (q) of the PWDA Act, 2005, was constitutionally valid. Whether the term "Respondent" was limited to simply an adult male or would have included anyone who is in a "domestic connection" with the appellant were the main questions before the Hon'ble Supreme Court, along with whether the provision is in conflict with Article 14 of the Indian Constitution. This paper as has gone one step forward and analyzed the rules of interpretation used by the courts in deciding of the judgment. The key question in this case is whether a Domestic Violence Act, 2005, charge of violence can be filed against female relatives of an adult male. The paper conveys how the courts applied the literal rule at first. But, upon appeal the courts understood the limitation of literal rule and to determine the "mischief and defect" of the statute, the courts applied the mischief rule.

Keywords: Protection of Women from Domestic Violence Act, 2005 (PWDV); Mischief Rule; Literal Rule; Adult Male.

CHAPTER 2: RESERCH OBJECTVES

The main objective of the paper is to determine the applicability of various rules of interpretation namely, mischief rule and literal rule with reference to the case of Hiral P. Harsora and Ors vs Kusum Narottamdas Harsora and Ors. In this process the paper gives a detailed analysis of the case. It is noticed that at many times, the perpetrators, and abettors of domestic violence in given situations are also the women themselves. In the light of the same, the present research article discusses as to who can be 'Respondent' in a domestic violence complaint vis-à-vis the judgement of the Supreme Court in the case of Hiral P. Harsora and Ors. vs. Kusum Narottamdas Harsora and Ors.

CHAPTER 3: CASE DETAILS

CASE NAME: “*Hiral P. Harsora and Ors vs Kusum Narottamdas Harsora and Ors*¹”

DATE: 25th September 2016

COURT: Supreme Court of India

BENCH: Kurian Joseph, Rohinton Fali Nariman

CITATION: [2016 SCC OnLine SC 1118] or [(2016) 10 SCC 165]

FACTS OF THE CASE: In this case, a mother and daughter duo, namely Pushpa Narottam Harsora and Kusum Narottam Harsora, filed a case against their son/brother, his wife, and two sisters/daughters, alleging physical and mental harassment and domestic violence.

The respondents, including Pradeep (son/brother) and his family members, sought to discharge the wife and two sisters/daughters from the case, claiming that under Section 2(q) of the Protection of Women from Domestic Violence Act, 2005 (DV Act), only an "adult male" can be considered a respondent in a complaint filed under the Act.

The Metropolitan Magistrate rejected the respondents' application, but the respondents appealed the decision in the Bombay High Court. 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”.

Pushpa and Kusum then filed a writ petition in the Supreme Court of India, arguing that Section 2(q) of the DV Act was violative of Article 14 of the Constitution of India, which guarantees equality before the law and equal protection of the laws to all persons.

To have a clear picture of these facts a table with a chronological event of happenings related to the case has been curated below:²

¹ Hiral P. Harsora and Ors vs Kusum Narottamdas Harsora and Ors, 2016) 10 SCC 165.

² This table has been created by the researcher using information available on the reported judgment at Indian kanoon.

TIMELINE

April 3rd, 2007: Kusum Narottam Harsora) and her mother, Pushpa Narottam Harsora, filed a complaint against her brother, sister-in-law, and two sisters under the PWDA, 2005.

June 27th, 2007: the complaint was withdrawn.

October 2010: separate complaints were filed by the duo against the same respondents.

January 5th, 2012: An application was moved before the learned Metropolitan Magistrate for a discharge of respondent Nos. 2 to 4 stating that as the complaint was made under the 2005 Act, it can only be made against an adult male person and not females. The Metropolitan Magistrate passed an order in which such discharge was refused.

February 15th, 2012: In a writ petition filed against the said order, the Bombay High Court, discharged the aforesaid three respondents.

Unknown date: Mother and daughter have now filed a writ petition, in which the constitutional validity of Section 2(q) has been challenged.

September 25th, 2014: Judgment for the present date was given. Although the writ petition was amended, there was no prayer seeking any interference with the order dated 15.2.2012, which, as has already been stated hereinabove, has attained finality.

TABLE 1: TIMELINE

ISSUES OF THE CASE:

- Whether the section 2(q) is contrary to the original objective of the act 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?

RULES: Acts and sections touched upon in the present case under discussion are as follows:

❖ The Protection of Women from Domestic Violence Act, 2005

Section 2(f); Section 2(q); Section 2(s)

❖ Article 14 in The Constitution of India 1949

❖ The Hindu Succession Act, 1956

❖ Section 125 in The Code of Criminal Procedure, 1973

❖ Section 498A Indian Penal Code

JUDGMENT: The Bombay High Court by the impugned judgment has held that:

- “The two judges Bench of the Apex Court held that the words “Adult male person” shall be struck down in Section 2(q) of the Act.
- The arguments of Senior Counsel Arora regarding the application of doctrine of severability were accepted and the doctrine of Severability was applied to read down the provision of “Adult male” and the rest of the Section was held valid and constitutional.
- The judges placed reliance on the Statement of Objects of the Act and the Preamble of the Act and thereby did not restrict themselves by applying the literal interpretation principle.
- Further, the Court made very important observations regarding the safety of women which includes the fact that a non- adult can participate or abet an act of domestic violence against the aggrieved and hence the word “adult” is struck down.³
- The Court also recognised that violence can be perpetrated against a woman by other women and this includes sexual violence. Thus, with the rest of the provision intact, respondents can include anyone without any difference being made on the basis of gender or age.”

³ Ayush Verma, Hiralal P. Harsora and Ors. V. Kusum Narottamdas Harsora and Ors, IPLEADERS (Jan. 06, 2021), <https://blog.ipleaders.in/hiralal-p-harsora-ors-v-kusum-narottamdas-harsora-ors/>.

CHAPTER 4: RULES OF INTERPRETATION

In the case of “Hiral P. Harsora and Ors vs Kusum Narottamdas Harsora and Ors,” the court was required to interpret the definition of "respondent" under the PWDVA, which includes any adult male person who is or has been in a domestic relationship with the aggrieved person and against whom the aggrieved person seeks any relief under the Act.

The question before the court was whether the term "adult male" in the definition of "respondent" included “male relatives of the husband or male members of the family” who were not in a “domestic relationship with the aggrieved person”.

LITERAL RULE

The literal rule of interpretation is a principle used in legal and statutory interpretation that requires that the words of a statute be given their plain, ordinary, and grammatical meaning, without adding, subtracting, or modifying any of the words used.⁴

The court at first instance applied the literal rule of interpretation and held that the term "adult male" should be interpreted in its plain and ordinary sense, which means a male person who has attained the age of majority. The court observed that the definition of "respondent" under the PWDVA was clear and unambiguous and did not include male relatives of the husband or male members of the family who were not in a domestic relationship with the aggrieved person. (When read with Section 2(f) & (s) of the act⁵)

Thus, the literal rule of interpretation was applied in this case because the language used in the PWDVA was clear and unambiguous, and there was no need to go beyond the plain and ordinary meaning of the term "adult male."

The literal rule assumes that the words used by the legislature have a clear and unambiguous meaning. However, this approach can sometimes lead to unintended or absurd results. In such cases, courts may use other methods of interpretation, such as the purposive or contextual approach, to determine the intent behind the law.

MISCHIEF RULE

In this case the court applied the mischief rule of interpretation in addition to the literal rule.

The court used the mischief rule to determine the purpose of the Protection of Women from

⁴Alekhya Reddy, *Literally Interpreting the Law: An Appraisal of the Literal Rule of Interpretation in India*, Manupatra (September 2018), <https://manupatra.com/roundup/338/Articles/Literally%20interpreting%20the%20Law.pdf>.

⁵ Protection of Women from Domestic Violence Act, 2005, § 2(f), No. 43, Acts of Parliament, 2005 (India).
Protection of Women from Domestic Violence Act, 2005, § 2(s), No. 43, Acts of Parliament, 2005 (India).

Domestic Violence Act (PWDVA), 2005 and whether the term "adult male" should be interpreted to include male relatives of the husband or male members of the family who were not in a domestic relationship with the aggrieved person.

According to section 498 of the IPC⁶, a woman who experiences cruelty from her husband or his family members may file a criminal complaint against them, but there was no equivalent provision in civil law. The Protection of Women from Domestic Violence Act, 2005 was introduced as a civil law remedy to address this issue and safeguard women from becoming domestic abuse victims. The act's legislative purpose was to offer different cutting-edge remedies for women who experience domestic abuse and against those who commit such violence. The court in this instance used the preamble, the statement of objects and reasons, and the provisions of the 2005 Act to identify the primary purpose of the Act. The court noted that the statute was introduced to provide women with the broadest protection from domestic abuse by any person, male or female, who just so happens to share a home or a domestic partnership with that lady.

The court also noted that the term "adult male" was added to the definition of "respondent" under the PWDVA to ensure that male abusers were held accountable for their actions. The court then applied the mischief rule to interpret the term "adult male" considering the purpose of the Act and the mischief it was intended to remedy. 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.⁷

The court agreed that it's not necessary that violence will be committed by only men, enen women can be committing such offence. There violence can be physical, sexual, verbal or even economic. For example, a daughter-in-law or a sister-in-law will be in contraction with the object of the act. Also, the inclusion of the term "Adult Male" ensures that anyone between the ages of 16 and 17 cannot engage in violence, which would result in absurdities and anomalies.⁸

⁶ Indian Penal Code, § 498, Act No. 45 of 1860 (India).

⁷ ANANYA BALI, *Doctrine of Reasonable Classification as an Exception to the Right to Equality*, 2(2) INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES 139 (2019), <https://www.ijlmh.com/wp-content/uploads/Doctrine-of-Reasonable-Classification-as-an-Exception-to-the-Right-to-Equality.pdf>.

⁸ Vedant M. Maske, *Hiral P Harsora And Ors. V. Kusum Narottamdas Harsora*, 1

“The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redress) Act, 2013,” which seeks to protect women in a different setting, was also mentioned by the court. Section 2(m) of this Act⁹ defines "respondent" as a person against whom the aggrieved woman has filed a complaint under Section 9¹⁰. The "Protection of Women from Domestic Violence Act, 2005" has been referred to in *Shashikant Laxman Kale v. Union of India* to determine the scope of protection of women generally.¹¹

After considering the purpose of the PWDVA and the mischief it was intended to remedy, the court held that the problem that the PWDVA was intended to address was not limited to male abusers who were in a domestic relationship with the aggrieved person, but also extended to male relatives of the husband or male members of the family who resided together with the aggrieved person and were related to the husband or any other male member of the family by blood, marriage, or adoption.

The court applied the mischief rule because the language used in the definition of "respondent" under the PWDVA was not entirely clear and could be interpreted in more than one way. The court noted that the purpose of the PWDVA was to protect women from domestic violence.

CHAPTER 5: JUDGMENTS THAT FOLLOWED SUIT

Satish Chander Ahuja vs. Sneha Ahuja (2016)¹²: In this case, the Delhi High Court held that a complaint under the Domestic Violence Act can be filed against a wife's in-laws if they have been living together in a shared household.

Vinay Varma V/s Kanika Pasricha & Anr¹³: In this case the court has observed that “One of the objects of the DVA is to provide for the rights of women to reside in their “matrimonial home” or “shared household” irrespective of whether their husband or in-laws have a title to the property. The DVA protects one of the three basic necessities of human life for woman viz. “shelter”.”

JOURNAL OF LEGAL RESEARCH AND JURIDICAL SCIENCES, (2022), <https://jlrjs.com/wp-content/uploads/2022/04/44.-VEDANT.pdf>.

⁹ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 2(m), No. 14, Acts of Parliament, 2013 (India).

¹⁰ Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, § 9, No. 14, Acts of Parliament, 2013 (India).

¹¹ *Shashikant Laxman Kale And Anr vs Union Of India And Anr*, 1990 AIR 2114.

¹² *Satish Chander Ahuja v. Sneha Ahuja*, (2016) 8 SCC 480.

¹³ *Vinay Varma V/s Kanika Pasricha & Anr*, CM (M) 1582/ 2018.

“**Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade**,¹⁴” : the Supreme Court has held that: *“it is true that the expression “female” has not been used in the proviso to section 2(q), but, on the other hand if the Legislature intended to exclude females from the ambit of the complaint, which can be filed by an aggrieved wife, females would have been specifically excluded. No restrictive meaning has been given to the expression “relative”, nor has the said expression been specifically defined in the Domestic Violence Act, 2005, to make it specific to males only. In such circumstances, it is clear that the legislature never intended to exclude female relatives of the husband or male partner from the ambit of a complaint that can be made under the provisions of the Domestic Violence Act, 2005.”*

In this case, the Bombay High Court held that a wife's right to reside in a shared household cannot be denied by her husband or in-laws, even if they own the property.

CHAPTER 6: JUDICIAL REASONING

The mother-in-law is also allowed to submit a complaint against the daughter-in-law under the terms of the 2005 Act, the court said in the case of *Kusum Lata Sharma v. State and Anr.*, and the Special Leave Petition against the aforementioned verdict was denied by the Supreme Court, the court stated, *“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”*.

The Court further examined the issue of the application and impact of this verdict on the remaining provisions of the DV Act, 2005 after deciding on the section's validity. If the term "Adult Male" is declared illegal under section 2(q), would the remaining clauses also be declared invalid, or will the doctrine of severability apply in this case?

“While deciding on this issue the court referred its own judgments in the case of *Corporation of Calcutta v. Calcutta Tramways Co. Ltd*¹⁵ and *Cellular Operators Association of India v. TRAI*¹⁶, and relied on the doctrine of severability propounded in *R.M.D. Chamarbaugwalla v. Union of India*¹⁷. 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

¹⁴ *Sandhya Manoj Wankhade v. Manoj Bhimrao Wankhade*, (2018) 2 SCC 577.

¹⁵ *Corporation of Calcutta v. Calcutta Tramways Co. Ltd.*, (1899) 26 I.A. 242.

¹⁶ *Cellular Operators Association of India v. TRAI*, (2016) 7 SCC 703.

¹⁷ *R.M.D. Chamarbaugwalla v. Union of India*, AIR 1957 SC 628.

offending words.¹⁸”

JUSTIFICATION

“It is noticed other important legislations like POSH don’t make such classifications. Most of the female centric legislations have a gender-neutral respondent base.¹⁹ Therefore making this a significant step towards equality for all. The genesis of the legislation along with the other legislations on the subject was, as can be seen necessitated by the harassment which was faced by women. The main purpose of this legislation is equality before law and equal protection of laws regardless of religion, caste, community, and faith.²⁰ These days the cases of Domestic Violence are not just on women, even men are facing the problems of Domestic Violence, and now that the provision allows women to be respondents, such cases can be dealt with as well, under this provision.”

CRITISICM

The decision is significant and will aid in solving more domestic violence cases and protecting more victims, however the arguments made to invalidate the phrase were a little dubious and flawed. While this judgment has proposed its own cure for the restricted application of PWDVA, it has done so by extending the legislation to those who have historically been at the weaker end of gendered power relations in Indian society. This judgment also poses the serious challenge of PWDVA being misused against women and minors through frivolous complaints.²¹

The reasoning of court to investigate other legislation’s definitions in order to rectify its own, does not make sense, as it is not the court’s duty to bring uniformity in all the related legislations, specifically in a case which deals with only one such legislation’s one particular subsection definition, i.e., Section 2(q) of “The Protection of Women from Domestic Violence Act, 2005”. Secondly, the legislations looked upon were “The Hindu Succession Act, 1956”,

¹⁸Rashmi Agagwani, ‘Respondent’ under the Protection of Women from Domestic Violence Act vis-à-vis Hiral P. Harsora v. Kusum Narottamdas Harsora & Ors, LEGALDESIRE (2016), <https://legaldesire.com/respondent-under-the-protection-of-women-from-domestic-violence-act-vis-a-vis-hiral-p-harsora-v-kusum-narottamdas-harsora-ors-2016/>.

¹⁹ Guest Post: Transitioning PoSH – Is the Act Fit to Protect Trans Women?, BeingBrief (Oct. 18, 2021), <https://www.beingbrief.in/editorial/guest-post-transitioning-posh-is-the-act-fit-to-protect-trans-women/>.

²⁰ Pooja Tiwari, Reflection on Domestic Violence Act, 2005 and Role of Judiciary for Balancing the Rights of Women, SCC Online Blog (Jan. 29, 2021), <https://www.sconline.com/blog/post/2021/01/29/reflection-on-domestic-violence-act-2005-and-role-of-judiciary-for-balancing-the-rights-of-women/>.

²¹ Sai Vinod, Editorial: The Pandemic and the Indian Constitutional Order, 7 Indian Journal of Constitutional Law 1 (2020), https://ijcl.nalsar.ac.in/wp-content/uploads/2020/07/7IndianJConstLi_Editorial.pdf.

and the amendment in question was taken place on 9th September 2005, whereas “The Protection of Women from Domestic Violence Act, 2005” was enacted on 13th September 2005. That means the amendment of “The Hindu Succession Act, 1956”²² was done before the enactment of the said act, so if the Legislators did not deem it necessary to refer to the amendment while enacting “The Protection of Women from Domestic Violence Act, 2005”, the court need not take the said task upon itself.

Men have also been excluded from the definition of a "aggrieved person" under S. 2, yet there have been instances in which women have subjected males to domestic abuse by mistreating them emotionally, financially, and in some circumstances even physically. Hence, legislation to combat domestic violence against men should either be made more comprehensive or implemented separately.

The deleting was of the word “adult male” and not just male compartments. The question one needs to ask here is if we don’t let the minors of our country take responsibility for contracts entered or let them drive or adopt how one can let them become hold liability under DV act.

CHAPTER 7: IMPACT OF THE JUDGMENT & A WAY FORWARD

The societal values and cultural standards have altered because of modernization and westernisation in the rapidly evolving world of today. Men used to be thought of as the family's protector, but today both sexes work equally to support their families and manage their houses by splitting costs and contributing equally to revenue. So, if society is treating men and women equally and providing them the same social status, it should also consider that women can commit the same crimes as men. Men are no longer stronger than women, hence it is improper to categories crimes based on gender.²³ This verdict opened the doors for the protection of women and their rights. The fact that a respondent can be anyone irrespective of gender or age makes sure that women can proceed against any act of violence as provided under Section 3 of the Act against them.²⁴ This judgment overruled the prior judgment of *Ajay Kant and Ors. vs Smt. Alka Sharma*.²⁵ Which gave completely opposite judgment.

²² The Hindu Succession Act, 1956, Act No. 30 of 1956 (India).

²³ LexLife. "Tag: Domestic Violence." LexLife Blog. Wordpress.com, <https://lexlife68840978.wordpress.com/tag/domestic-violence/>. (Accessed March 6, 2023).

²⁴ Case Comment, Hiral P. Harsora and Ors. v. Kusum Narottamdas Harsora and Ors., Law Essential (Apr. 11, 2017), <https://lawessential.com/case-comments-1/f/hiral-p-harsora-and-ors-vs-kusum-narottamdas-harsora-and-ors?blogcategory=Case+Comments>.

²⁵ *Ajay Kant And Ors. vs Smt. Alka Sharma* 2008 CriLJ 264

There have been significant changes overall, since this act was enacted, which highlights a dire need for new changes which will inculcate more adaptive and inclusive provision that set right with today's world.

“Further, in recent times cases of misusing this legislation have been seen, hence, it becomes utterly necessary to impose proper checks and balances, so that no party is punished against the principles of natural justice.²⁶ The act takes away any gender bias and the abettors and perpetrators of domestic violence are treated equally under the Act. This quantum step has ensured that the victims of domestic violence are not rendered remediless under any garb whatsoever.²⁷”

Despite this verdict, acts of domestic violence haven't decreased. They have increased in an unprecedented rate throughout the lockdown period. Causes include social causes like economic hardship, drug addiction, upbringing etc., and even biological, psychological factors.²⁸ However, the legal system also has an important role to play. Further there is a lack of awareness regarding the legal provisions and there is need for awareness and sensitization programmed to be carried out by the State in this regard. Women have a right to life and liberty and the State has a duty to ensure that these rights of women aren't breached. Women should be encouraged to report such incidents instead of stigmatizing them socially whenever they speak up. Only then will women be able to enjoy their life and liberty to the complete extent. It is important that these definitions under the act become more inclusive to give equality to all. Further, there is need for spreading of awareness and knowledge about the availability of such provision. Also, The Domestic Violence Act should be interpreted considering its objectives, which are to prevent and protect victims of domestic violence. The courts should interpret the act in a broad and liberal manner to achieve its objectives.

CHAPTER 8: CONCLUSION

There are always three sides to a narrative: the true story, the two persons recounting it, and their respective versions. Instead of hastily drawing conclusions based on gender, it is the role

²⁶ Anuradha Mishra, Critique: Domestic Violence Act – A Ray of Hope, LatestLaws.com (Oct. 4, 2016), <https://www.latestlaws.com/articles/critique-domestic-violence-act-a-ray-of-hope/>.

²⁷ Rishabh Sharma, Respondent under the Protection of Women from Domestic Violence Act vis-à-vis Hiral P. Harsora v. Kusum Narottamdas Harsora & Ors. (2016), Legal Desire (Nov. 22, 2017), <https://legaldesire.com/respondent-under-the-protection-of-women-from-domestic-violence-act-vis-a-vis-hiral-p-harsora-v-kusum-narottamdas-harsora-ors-2016/>.

²⁸ MyAdvo, Domestic Violence Against Women in India: Laws, Protection & More, MyAdvo Blog (last updated Sept. 15, 2021), <https://www.myadvo.in/blog/domestic-violence-against-women/>.

of the law to discover the truth by speaking with both sides. The judiciary must conduct examinations, investigations, and trainings in order to determine its version of truth or the actual truth. The sad truth is that men are abused, but this fact is not acknowledged by many people in our society, leaving them with nowhere to turn because they are afraid to defy the social norms that are established by applying gender stereotypes to them.

Domestic Violence can be filed by any woman on any relative, including women, who subjected her to Domestic Violence!

The judgement talks about the term “adult male” being struck down from the Section 2(q) of “The Protection of Women from Domestic Violence Act, 2005” because it is in violation to the Article 14 of “The Constitution of India, 1949”. But keeping the rest of the section intact.

In this case, the Court found that the literal interpretation of the definition of "domestic relationship" under the Act would lead to an absurd result, as it would exclude certain categories of relationships which were intended to be covered by the Act. Therefore, the Court applied the mischief rule to interpret the definition in a manner that would give effect to the intention of the legislature and provide protection to women in all types of domestic relationships.

The Court noted that the use of the mischief rule was justified in this case because the Act was enacted with the specific purpose of protecting women from domestic violence, and a literal interpretation that excluded certain relationships would defeat that purpose. The Court's application of the mischief rule in this case demonstrates the flexibility of statutory interpretation in Indian law, where both literal and purposive approaches can be used depending on the circumstances of the case.