



Case Comment: When Vulnerability is Not Enough: A Critical Analysis of *Indra Sarma v V.K.V. Sarma* and the Limits of the Domestic Violence Act

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INTRODUCTION

The Protection of Women from Domestic Violence Act 2005 (hereinafter ‘the DV Act’) was enacted to extend civil law remedies to women who suffer violence or exploitation within domestic settings, including those in informal relationships. Yet in *Indra Sarma v V.K.V. Sarma*,¹ a two-judge bench of the Supreme Court denied the protection of the DV Act to a woman who had cohabited with a man for eighteen years, suffered forced abortions and financial exploitation at his hands, and was ultimately abandoned without any means of maintenance. The sole reason for this denial was that the man she had lived with was already married at the commencement of their relationship. This case comment argues that the Court’s decision rested on three distinct errors: a misreading of *D. Velusamy v D. Patchaiammal*,² a failure to apply a purposive construction of the DV Act, and a conspicuous absence of constitutional analysis. Together, these errors produced an outcome that is

¹ *Indra Sarma v V K V Sarma* (2013) 15 SCC 755

² *D Velusamy v D Patchaiammal* (2010) 10 SCC 469

irreconcilable with the statute's own objects and with the constitutional guarantees of equality and dignity.

FACTS AND DECISION

The appellant, Ms Indra Sarma, an unmarried woman, began cohabiting with the respondent, Mr V.K.V. Sarma, a married man with two children, in 1992. The relationship continued for approximately eighteen years. During this period, the respondent allegedly compelled the appellant to undergo repeated abortions, misappropriated a sum of Rs. 1,00,000/- from her on the false pretext of purchasing land in her name, and ultimately abandoned her without any financial support. The appellant filed a petition under Section 12 of the DV Act³ seeking monetary relief and maintenance. The learned Magistrate allowed the petition and directed the respondent to pay maintenance of Rs. 18,000/- per month, a finding confirmed by the Sessions Court. The Karnataka High Court, however, set aside both orders, holding that the parties' relationship did not constitute a 'relationship like marriage' under Section 2(f) of the DV Act⁴, since the respondent was already married. The Supreme Court upheld the High Court.

The Court relied principally on the conditions laid down in *Velusamy* for a live-in relationship to qualify as a 'relationship like marriage': the parties must be of legal age to marry, must be otherwise qualified to enter into a legal marriage, must have voluntarily cohabited and held themselves out as spouses, and the relationship must have subsisted for a reasonable period. Since the respondent was already married, the Court held that the parties were not 'otherwise qualified to enter into a legal marriage' and accordingly excluded the relationship from the DV Act's protective scope.⁵

ANALYSIS

The Misreading of *Velusamy*: The central error in the Court's reasoning was the treatment of the *Velusamy* conditions as an exclusionary checklist rather than as interpretive guidelines. *Velusamy* was concerned with a different problem: preventing frivolous claims by parties to casual or transient relationships who sought to invoke the DV Act without any

³ Domestic Violence Act 2005, s 12

⁴ Domestic Violence Act 2005, s 2(f)

⁵ *Indra Sarma v V K V Sarma* (2013) 15 SCC 755

genuine domestic partnership. The conditions laid down in that case were intended to assist courts in identifying relationships that carry the hallmarks of a marital union, not to create a categorical bar against women whose partners happened to be already married.

This distinction is not merely textual. The Supreme Court has consistently held that conditions laid down in judicial decisions for the purposes of interpretive guidance are not to be elevated into statutory requirements that the legislature itself did not enact.⁶ Section 2(f) of the DV Act uses the expression 'relationship like marriage', not 'relationship between two persons legally competent to marry each other.' To read the former as importing the latter is to legislate from the bench in a manner that directly narrows the protective scope of a welfare statute. The Court in Indra Sarma did precisely this, and in doing so converted a remedial guideline into an exclusionary bar.

It is also worth noting the perverse incentive that the Court's reading creates. Under this construction, the less legally cognisable a woman's relationship, the less protection she receives. A woman who is deceived into a long-term relationship by a man who conceals his marital status, or who is trapped in such a relationship by economic dependence or social pressure, is placed in a worse legal position than a woman in a clearly documented live-in relationship between two unmarried persons. This outcome is the inverse of what a protective statute is designed to achieve.

The Failure of Purposive Construction: The DV Act's Statement of Objects and Reasons expressly records that the Act is intended to give effect to the constitutional principles in Article 15(3)⁷, reinforced by Article 39 of the Constitution⁸, and to provide effective protection to women who are victims of violence occurring within the family. The Malimath Committee Report (2003), which formed part of the legislative context of the Act, recommended that a man who maintains a woman as his companion for a reasonably long period should be under a statutory obligation to maintain her and that prolonged cohabitation should, in law, raise a presumption in favour of such protection.

⁶ *State of Jharkhand & Ors v Ambay Cements & Anr* AIR 2005 SC 4168

⁷ Constitution of India 1950, art 15(3)

⁸ Constitution of India 1950, art 39

It is a settled canon of statutory construction that welfare legislation must be construed broadly and in a manner that advances the remedy rather than curtails it.⁹ The Court in *Indra Sarma* acknowledged the appellant's vulnerability, noting that women in such relationships 'invariably suffer' upon abandonment, yet denied her the very remedy the Act was designed to provide. This is not purposive construction; it is the defeat of the statute's purpose by its own language, read narrowly. In *Deoki Panjhiyara v Shashi Bhushan Narayan Azad*,¹⁰ the Supreme Court had recognised that the DV Act must be construed to give effect to its protective object and that courts must not permit a hyper-technical reading to defeat women's claims. The bench in *Indra Sarma* departed from this approach without adequate justification.

The legislature's deliberate use of the phrase 'relationship like marriage' rather than 'valid marriage' or 'legally recognised union' is itself a strong indicator of legislative intent to cover precisely those informal arrangements where a woman's vulnerability is real but her legal status is ambiguous. Courts are not permitted to read into a statute a condition that the legislature has not enacted, particularly where doing so defeats the Act's purpose.¹¹

The Absence of Constitutional Analysis: Perhaps the most significant omission in the Court's judgment is the complete absence of constitutional analysis. Three constitutional provisions bear directly on the question before the Court, and none was meaningfully engaged.

First, Article 14¹² guarantees equality before the law and equal protection of the law. A construction of Section 2(f) that denies the DV Act's protection to women in relationships with already-married men creates a classification within the class of women in domestic relationships. There is no intelligible differentia that justifies this classification, and it bears no rational nexus to the Act's protective object. The vulnerability of a woman abandoned after eighteen years of cohabitation does not diminish because her partner was already

⁹ *Workmen of American Express v Management of American Express International Banking Corporation* AIR 1986 SC 458; *Regional Director, ESI Corporation & Anr v Francis De Costa & Anr* (1993) Supp 4 SCC 100

¹⁰ *Deoki Panjhiyara v Shashi Bhushan Narayan Azad & Anr* (2013) 2 SCC 137

¹¹ *The Commissioner of Income-Tax, Madhya Pradesh and Bhopal v Sodra Devi* AIR 1957 SC 832; *Seaford Court Estates Ltd v Asher* [1949] 2 KB 481

¹² Constitution of India 1950, art 14

married; if anything, her exposure is greater, since she can seek no remedy in matrimonial law.

Second, Article 15(3) permits the State to make special provisions for women and children and is the express constitutional foundation of the DV Act as recorded in its own Objects and Reasons. A reading of Section 2(f) that excludes the most economically and socially vulnerable women from the Act's protection is irreconcilable with this constitutional mandate.

Third, and most fundamentally, Article 21¹³ guarantees the right to life and personal liberty, which the Supreme Court has consistently held to include the right to live with dignity. In *K.S. Puttaswamy v Union of India*¹⁴, a nine-judge constitutional bench held that the right to dignity inheres in every individual. A woman who cohabited with a man for eighteen years, bore the physical cost of forced abortions, suffered financial exploitation, and was then abandoned without any legal remedy is denied the very dignity that Article 21 protects. The Court in *Indra Sarma* did not address this dimension at all.

A PROPOSED FRAMEWORK

A constitutionally consistent reading of 'relationship like marriage' under Section 2(f) would not require the parties to be legally competent to marry each other. Instead, it would ask whether the following conditions are satisfied: first, the parties cohabited in a shared household; second, the relationship was of sufficient duration to establish domestic interdependence; and third, the woman was placed in a position of vulnerability, whether economic, physical, or emotional, as a direct consequence of the relationship. These conditions are grounded in the Act's own protective purpose and avoid the perverse outcomes generated by the Court's approach.

This framework does not seek to legitimise informal relationships or to overrule *Velusamy*. It accepts that the *Velusamy* guidelines remain useful in identifying genuine domestic partnerships as opposed to casual liaisons. What it resists is the elevation of those guidelines

¹³ Constitution of India 1950, art 21

¹⁴ *Justice K S Puttaswamy (Retd) & Anr v Union of India & Ors* (2017) 10 SCC 1

into a categorical exclusion that the legislature did not enact and that the Constitution does not permit.

CONCLUSION

The decision in *Indra Sarma v V.K.V. Sarma* represents a missed opportunity to give effect to the DV Act's constitutional mandate. By misreading *Velusamy*, failing to apply a purposive construction of the Act, and neglecting the constitutional framework of Articles 14, 15(3), and 21,¹⁵ the Court denied protection to a woman whose vulnerability was, on the facts, beyond dispute. The judgment illustrates a broader doctrinal risk: that interpretive conditions developed to prevent abuse of a protective statute can, if rigidly applied, become the very instrument of its defeat. Future benches would do well to revisit this decision and to affirm that the DV Act's protection extends to all women whose domestic circumstances expose them to violence and exploitation, regardless of the formal legal status of the relationship in which that exploitation occurred.

¹⁵ Constitution of India 1950, arts 14, 15(3) and 21