

**Indian Criminal Justice System and Domestic Violence Act, 2005**

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**Abstract**

The challenges facing the domestic violence and criminal abuse especially amongst women has become a subject of intersectional analysis. From the starting of domestic violence and injustice to the end, advocates have recognized different laws and legal enforcement mechanisms and considers them as critical components to keep the women safe. The laws and the formal legislation should be strongly implemented to hold the offenders accountable for their violent behavior. Since the past few decades, law reforms have become a focus of domestic violence advocacy. There are legal systems which express domestic violence as criminal conduct. The definition of violence have come up over the years which includes not only physical violence but mental, emotional and financial violence with other forms of cruelty as well. The patriarchal system has deeply rooted the Indian society and created a criminal injustice system. This laid the foundation stone for the abuse of all the women. Although the root behind that crime is very much difficult to decipher but there are critical reasons behind domestic violence and criminal injustice. This is traced to the stereotyping of gender roles and distribution of power.

**Keywords:** criminal justice system, domestic violence, legislation, sexual, violence, abuse, provisions, legal

**I. Indian Criminal Justice System**

The pandemic has revealed different issues of criminal justice system and digitalization of judicial process. The present criminal justice system is a continuous effort by the rulers who controlled the affairs of the country. The people are working hard at the CPS and the criminal justice system to stop violation again women and protect these victims of domestic violence act. The victims face anxieties through the criminal justice process and there is a need to improve the outcome for them and their families. A domestic abuse best practice framework was adopted in 2019 which brought huge success and insights from across the criminal justice system. The criminal justice system is considered to be the legacy of the British system. This has four subsystems that are police (enforcement), courts (adjudication), and corrections (prisons and communities) as well as legislature

(parliament). The criminal justice system deals with the formal agencies which include crime prevention, prosecution, investigation, punishment, and coercion. This is an instrument of social control. The criminal justice system of India ensures acceptable behavior from all victims, criminals, and witnesses. Now the *question arises how should the approach of the delivery of the criminal justice system be?*

The answer to the above question is:

- **Deterrence:** The logic behind deterrence is the imposition of criminal punishment which deters people from committing crimes. This includes an award of the death penalty which deters potential perpetrators.
- **Retribution:** This theory says that if any person commits any wrongful act does so based on a rational and conscious decision. This covers Section 171 E of the IPC which provides one-year punishment or penalty or both for bribery.
- **Incapacitation:** In this theory, justice is served as pre-emptive curtailment which protects the society at large. This propagates the prevention of future crime and restricts the offender's liberty. This covers curfews, house arrests, imprisonment, and electronic monitoring.
- **Rehabilitation:** This theory can include different educational and vocational programs like counseling or skill training. It advocates criminal behavior and determines them by social pressures and psychological difficulties. This includes Section 48 of the Juvenile Justice Act (JJ Act) which provides rehabilitation facilities.
- **Reparation:** This theory is victim-centric, thus restitution and compensation to the victims are key objectives of the criminal justice system. This covers Section 357 of crpc which provides compensation in any case of injury or loss.

**II. Pillars of Indian Criminal Justice System**

Firstly, *legal framework* is a very important thing to talk about. It consists of state legislative assemblies, international treaties and extradition. There was a case where Siddharth Vashisht was accused under Section 201 and 302 of IPC as well as Section 120 B of the Arms Act. The second pillar is *enforcement* which includes state police and union police. An incident where FIR was lodged by Shayan Munshi on April 30, 1999. The third pillar is *prosecutors*. The main work of the prosecutor is to check the whole procedure of arrest to Investigation and trial. The fourth one is *adjudication*. This includes Supreme Court, High court and all the subordinate courts. Here the case was lost by the

prosecution and the accused Siddharth Vasishth was acquitted. The last but not the least is **correction** which covers prisons for adults and juvenile justice board of child welfare committees (age less than 18 years).

### III. Steps need to be taken further to revamp India's Criminal Justice System

A central role has to be given to the victims. The victim impact statements must be used, increased victim participation in criminal trials can improve the efficacy of the criminal justice system. New types of punishment must be introduced with changing socio economic framework with restorative justice. The chapter schemes and classification of offences can be reworked. There has to be some police reforms which covers legislative changes with police organizations. Different committees have been formed such as Ribeiro Committee, Padmanabhiah Committee and Malimath Committee. There has to be improvement in capacity and infrastructure with technological scaling up. The investigation methodologies has to be improved by giving priority to human rights. There has to be litigation management and plea bargaining. Prosecution process reforms like improving coordination between investigation and prosecuting wings can improve the criminal justice system of India. The judges must be trained in writing very precise and clear judgments.

### IV. Domestic Violence Act, 2005

#### A. Introduction

Domestic Violence have been defined as a huge crime which justifies the intervention of criminal justice system. It shows the history of domestic violence act as a criminal offence and thus the system of justice response to woman battering incidents. Domestic violence is considered a violation of law. In this patriarchal society, men have abused and mistreated their wives, had marital relationship with other women and a lot more. This discusses the definition of offence and includes details and debates around the offense. The legal and social changes of domestic violence are reviewed around the criminal justice system and altered it. This has further approached to the domestic violence. The findings of criminal justice system and domestic violence and regarding the current controversies, law enforcement, and unfolding trends to address the domestic violence act through the criminal justice system. The term domestic Violence means causing injury, hurt, or danger to the health, safety, limb, and well-being of the individual, whether mental or physical injury. It is also defined as causing injury to a woman with a bad intention to coerce her or someone else related to meet the demand for dowry. Different kinds of abuses are covered

under the domestic violence act, 2005. **Physical abuse** means to hurt or injury of any kind which includes assault, criminal intimidation, and criminal force.

**Sexual abuse** means any act or conduct of a sexual nature which can be forced sexual intercourse, such as forcing the person to indulge in sex, watch pornography, or any obscene material. Sexual abuse also covers women who are being used forcefully to entertain others by doing any act of sexual nature which can be humiliating, abusing, degrading as well as violating a person's dignity and self-respect. **Verbal and Emotional Abuse** covers accusations of any particular character or conduct. This includes abusive words or insults for not bringing dowry or for not having a male child etc. Preventing someone not to attend school or college, preventing someone not to work after marriage, repeated threats to a woman to not go outside at night and many other cases, preventing someone from marrying a person of their choice, etc all come under verbal and Emotional Abuse.

**Economic Abuse** means not providing monetary support or money to someone for maintaining a woman or her children. It also includes not providing food, medicine, etc. Throwing the women out of the house, not giving access to any part of the house because of their caste or any illness, obstructing someone from carrying employment, selling mangalsutra or pawing stridhan or any valuable thing without the consent of any person, taking away a person's salary or wages as well nonpayment of bills like water, electricity all comes under economic Abuse.

#### B. Who is covered under the Domestic Violence Act, 2005?

The domestic violence act, 2005 covers all the women of the society who are mothers, sisters, wives, widows, and partners who are living in a shared household. The relationship may be in the form of marriage or adoption. The family members who are living in a joint family, their relationships are also included. But the exception is that no female relative of the husband or any male partner can file a complaint against the wife of the husband or any female partner. This includes mothers-in-law. Mother in law cannot file a complaint or application against the daughter-in-law, but the application can be filed against the daughter-in-law if the case is of abetting her son to commit violence against her.

#### C. Who can file a complaint and against whom it can be filed?

Any woman who is subjected to domestic violence or any woman who alleges any act of domestic violence by the offender or any person can file a complaint on their behalf. A child can also get relief under the Domestic Violence Act, 2005. A minor cannot apply, so the mother on behalf of her

child whether male or female can apply. In many cases where the mother is making an application to the court for herself, the children can be added as co-applicants. The complaint can be filed against any man or any adult male member who is engaged in a domestic relationship with a woman. The complaint can be filed against the relatives of the husband or male partners. This includes both the male and female relatives of the male partner. The complaint can be filed to a police officer or protection officer or a service provider (NGO) or a magistrate.

#### **D. Domestic Relationship: Definition**

A domestic relationship is a relationship between any two persons who used to live together or are living together in a shared household. This can include consanguinity relationships, marriage relationships in any nature of marriage. A shared household is defined as a household where the woman has lived with a man in a domestic relationship. As long as the domestic relationship subsists, she can file an application for relief and is entitled to relief under the Domestic Violence Act, 2005. That does not mean she has to live in a shared household at the time of application. All the women who are engaged in a domestic relationship have the right to live in a shared household, even if she is not having any interest, right, or title in it.

#### **E. Provision for shelter home and Medical Aid**

A protection officer or service aid can request any person in charge of a shelter home or medical facility to provide shelter and medical aid to the aggrieved person. An application has to be filed with the magistrate. The aggrieved person or the protection officer can file an application to the magistrate. Even any person on behalf of the aggrieved person can file an application. The service provider and the protection officer must assist all the women who are subjected to domestic violence and are victims of it.

#### **Orders passed by a Magistrate under Domestic Violence Act, 2005**

The magistrate can direct the aggrieved person or the respondent to undergo a counseling process. They will direct that the woman should be allowed to stay in the household and not be excluded from it. If it becomes necessary, the proceedings may be conducted in camera. A protection order can be issued which protects the women. The monetary relief is granted by the magistrate to meet the expenses which have been incurred and the losses suffered by the aggrieved person only as of the result of domestic violence. The compensation for the damages is granted to the aggrieved person for the injuries caused. This can include mental torture and emotional distress which is caused by domestic violence. Custody orders are granted which can be temporary custody

of any child or children to the person who has faced injury or damage. As a result, if there is a breach of the order of the magistrate, this offense is punishable under law. The aggrieved person can file a complaint under Section 498 A JPC. The reliefs under this act can also be asked in other legal proceedings like divorce, maintenance, etc.

#### **F. Domestic Incident Report (DIR)**

The service provider (NGO) and protection officer has to prepare a DIR in Form 1 which is provided in the domestic violence Act, 2005 upon receipt of the complaint of the domestic violence. The documents have to be submitted to the magistrate and the copies of the same have to be given to the police officer of the concerned police station. The protection officer and service provider can help the aggrieved woman to apply for relief if she desires so. A copy of the DIR Form has to be annexed with such an application. The victims of domestic violence not only will be entitled to relief under the Domestic Violence Act, 2005 but also have a remedy under civil law. This is a potent weapon that fights against all odds and evils of domestic violence against all women and is very much prevalent and remains invisible in the public domain.

#### **G. Very Important judicial pronouncements/Cases**

- *Surekha Mote vs. State of Maharashtra High Court of Bombay*

The court held that Section 12 of the PWDV Act was considered and the provisions to section 12. This does not mean that Protection officers were not appointed. The magistrate has jurisdiction which frustrates the object of the act which says that the complaint can be directly entertained by the magistrate officer if there is no protection officer.

- *Shalu Bansals Case Delhi*

Here the high court directed that the respondent should provide rent for separate residence as the amount of maintenance to the aggrieved person.

#### **V. Conclusion**

The main objective of the criminal justice system is to prevent crime and create a peaceful society. However, the CJS has been unsuccessful in providing speedy and prompt justice to people. The legislation genesis with other legislations can be seen necessitated by the harassment which was faced by all the women. At certain times, the relief and maintenance were not enough. This does not discuss the provisions of matrimonial homes. The main purpose of this kind of legislation is equality and equal protection irrespective of religion and community. Many difficulties come up with complaints under the Domestic Violence Act, 2005 and it seems like the entire family is suffering and sent

to jail without pre-conciliations. The aspect of jurisdiction is required to be seen as litigation under the Domestic Violence Act, 2005 which goes to the magisterial court whereas for another divorce, maintenance, and restitution of conjugal rights. This is required to be looked into by the legislation.

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