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### Research Paper

## An Analytical Study of Protection of Women from Domestic Violence Act-2005 and Its Impact on Human Rights

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### ARTICLE DETAILS

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### ABSTRACT

To protect women against discrimination, the law empowers women through various ways by equipping them with right and power to enable them to fight against the patriarchal nature of society. The main purpose of this paper is to probe into the provisions made under the Protection of Women from the Domestic Violence Act, 2005 (PWDVA, 2005) and to explain the roles and responsibilities of different authorities under this Act. This paper analyses secondary data to find the reasons for the failure of the PWVA which includes highly uneven state-wise budgetary allocations, delays in passing orders, lack of clear directions to stakeholders about their roles and responsibilities for effective implementation. There is an urgent need to strengthen the PWDV Act for the victims to get fruitful justice on time.

### 1. Introduction

Domestic violence against women is a very common and emerging issue and it exists everywhere irrespective of the socio-economic and demographic status of a country. Although, there is no gender-specific profile of victims of domestic violence it is generally seen that the victims are mainly women. Almost, every class of women upper class to lower class, from educated to uneducated are victims of domestic violence for various reasons. They are tortured physically and mentally by their husband, in-laws in their matrimonial homes. For the protection of women from discrimination, the Indian Constitution has guaranteed in many ways to safeguard them and also to raise the dignity of and strengthening the empowerment of women. This constitutional provision besides a huge body of domestic legislations guarantees protection of women from male domination and act of supremacy due to patriarchy.

These include the protection offered to women through promulgating laws such as the Domestic Violence Act, 2005, The Hindu Succession Act 1956, The Improvement of Nikah 15 Nama Act, 2006, the Maternity Act, 1961, Gender Budgeting Programme, the National Policy of Empowerment of Women Programme and the Indian Penal Code with amendment and revision, i.e. through Article 376, 374 and 498. The main purpose of this study is to probe into the provisions made under the Protection of Women from the Domestic Violence Act, (PWDVA, 2005) and to explain the roles and responsibilities of various authorities under this Act. The PWDVA was passed in 2005 and came into force on October 26, 2006. It includes actual or threatened abuse against women in their homes, including those of a physical, sexual, verbal, emotional or economic nature.

This legislation is critical considering that more than two-thirds of married women, between the ages of 15 and 49, have experienced some form of sexual or domestic violence, including being beaten, raped, or forced to provide sex. Hence, this paper intends to study the problems of the judicial process in the implementation of PWDV Act. In this study, the authors highlight the vulnerabilities of the victim towards getting justice under the Act. Therefore, vulnerabilities of women lead to an

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increase in the emotional, economical, as well as, mental harassment from family and society which leads to the denial of justice for the victim. Domestic violence is sadly a reality in Indian society, a truism. In the Indian patriarchal setup, it became an acceptable practice to abuse women. There may be many reasons for the occurrence of domestic violence. From a feminist standpoint, it could be said that the occurrence of domestic violence against women arises out of the patriarchal setup, the stereotyping of gender roles, and the distribution of power, real or perceived, in society. Following such ideology, men are believed to be stronger than women and more powerful. They control women and their lives and as a result of this power play, they may hurt women with impunity.

The role of the woman is to accept her 'fate' and the violence employed against her meekly. The Protection of Women from Domestic Violence Act (or the Domestic Violence Act) is a laudable piece of legislation that was enacted in 2005 to tackle this problem. The Act in theory goes a long way towards protection of women in the domestic setup. It is the first substantial step in the direction of vanquishing the questionable public/private distinction traditionally maintained in the law, which has been challenged by feminists' time and again. Admittedly, women could earlier approach the Courts under the in cases of domestic violence. However, the kinds of domestic violence contemplated by this Act, and the victims recognized by it, make it more expansive in scope than the BNS. The BNS never used the term domestic violence to refer to this objectionable practice. In fact, the only similar class of offences addressed by the BNS dealt with cruelty to married women. All other instances of domestic violence within the household had to be dealt with under the offences that the respective acts of violence constituted under the BNS without any regard to the gender of the victim

### 1.1 Scope of the Act

The scope of this piece of legislation has been expounded in plethora of judgments by the High Courts and the Supreme Court in India. For instance, in a recent judgment the High Court of Gujarat in the case of *Bhartiben Bipinbhai Tamboli vs. State of Gujrat and ors*, 2018 (1) Crimes 11 (Guj) while extensively discussing the provisions under the Domestic Violence Act remarked that: The domestic violence in this country is rampant and several women encounter violence in some form or the other or almost every day. However, it is the least reported form of cruel behaviour. A woman resigns her fate to the never-ending cycle of enduring violence and discrimination as a daughter, a sister, a wife, a mother, a partner, a single woman in her lifetime. This non-retaliation by women coupled with the absence of laws addressing women's issues, ignorance of the existing laws enacted for women and societal attitude makes the women vulnerable.

The reason why most cases of domestic violence are never reported is due to the social stigma of the society and the attitude of the women themselves, where women are expected to be subservient, not just to their male counterparts but also to the male relatives. Till the year 2005, the remedies available to a victim of domestic violence were limited. The women either had to go to the civil court for a decree of divorce or initiate prosecution in the criminal court for the offence punishable under Section 498A. In both the proceedings, no emergency relief is available to the victim. Also, the relationships outside the marriage were not recognized. This set of circumstances ensured that a majority of women preferred to suffer in silence, not out of choice but of compulsion. Having regard to all these facts, the parliament thought fit to enact Domestic Violence Act. The main Object of the Act is protection of women from violence inflicted by a man or/and a woman. It is a progressive Act; whose sole intention is to protect the women irrespective of the relationship she shares with the accused. The definition of an aggrieved person under the Act is so wide that it is taken within its purview even women who are living with their partners in a live-in relationship.

*Domestic Violence Act* : The Domestic Violence Act, officially known as the Protection of Women from Domestic Violence Act 2005, was brought into force by the Indian government from October of 2006. The Domestic Violence Act was originally passed by Parliament in August of 2005 and subsequently assented to by the President in September of the same year. In November of 2007, the Domestic Violence act was ratified by four of the twenty-eight state governments in India. The Domestic Violence Act, for the first time in the nation's history, formally defined an act of domestic violence. The definition has since been used in thousands of court cases, both of a civil and criminal nature, to prosecute those individuals who commit violent actions against their spouses or loved ones.

*Constitutional Perspective*: The enactment in question was passed by the Parliament with recourse to Article 253 of the Constitution. This provision confers on the Parliament the power to make laws in pursuance of international treaties, conventions, etc. The Domestic Violence Act was passed in furtherance of the recommendations of the United Nations Committee on the CEDAW. The Act encompasses all the provisions of the Specific Recommendations which form a part of General Recommendation No.19, 1992.

*1.2 Review of Important Provisions*: The Act, in a bold break from prior legislations, gives a very expansive definition to the term "domestic violence", a term hitherto not even used in legal parlance. Domestic violence is defined in a comprehensive way in S.3 of the Act, comprising: Physical, mental, verbal, emotional, sexual and economic abuse, Harassment for dowry, Acts of threatening to abuse the victim or any other person related to her. The Act thus deals with forms of abuse that were either not addressed earlier, or that were addressed in ways not as broad as done here. For instance, it includes in its ambit sexual

abuse like marital rape which, though excluded under dowry BNS, can now be legally recognized as a form of abuse under the definition of sexual abuse in this Act. The definition also encompasses claims for compensation arising out of domestic violence and includes maintenance similar to that provided for BNSS. Nevertheless, the claim for compensation is not limited to maintenance as allowed by that provision. It is noteworthy that the maintenance available under this section must be in correspondence with the lifestyle of the aggrieved party. Lastly, the Act identifies emotional abuse as a form of domestic violence, including insults on account of the victim's not having any children or male children.

**1.3 Protection of Women and Fundamental Rights:** The Statement of Objects and Reasons declares that the Act was being passed keeping in view the fundamental rights guaranteed under Articles 14, 15 and 21. Article 21 confers the right to life and liberty in negative terms, stating that it may not be taken away except by procedure established by law, which is required, as a result of judicial decisions, to be fair, just and reasonable. The right to life has been held to include the following rights (which are reflected in the Act), among others:

**The right to be free of violence:** In *Francis Coralie Mullin v. Union Territory Delhi*, Administrator, AIR 1981 SC 746, the Supreme Court stated, any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21. This right is incorporated in the Act through the definition of physical abuse, which constitutes domestic violence (and is hence punishable under The Act). Physical abuse is said to consist of acts or conduct of such nature that they cause bodily pain, harm, or danger to life, limb or health, or impair the health or development of the aggrieved person. Apart from this, the Act also includes similar acts of physical violence and certain acts of physical violence as envisaged in the Indian Penal Code within the definition of domestic violence. By adoption of such an expansive definition, the Act protects the right of women against violence.

**1.4 Objective:** To examine the implementation process of the Protection of Women from Domestic Violence Act (PWDVA, 2005) in India.

## 2. Data Source and Methodology

To find out the ambiguities of the Protection of Women from Domestic Violence Act different secondary data sources were used for analysing the loopholes of PWDV Act i.e., Government of India- National Crime Record Bureau, National Family Health Survey (NFHS-3 and NFHS-4), other available studies/surveys and researches. The data was analysed by using descriptive statistics method.

## 3. Present Status of Domestic Violence against Women in India

According to the National Family Health Survey (NFHS-4, 2015-16), in India, almost one-third (31) percent of ever-married women have ever experienced spousal physical, sexual, or emotional violence by their current husband (for currently married women) or their most recent husband (for formerly married women). In the state of Manipur, 55 percent of ever-married women experienced emotional, physical or sexual violence in the age of 15-49 years. It has followed by Telangana (46 percent), Bihar (45.2 percent), and Tamil Nadu (44.6 per cent).

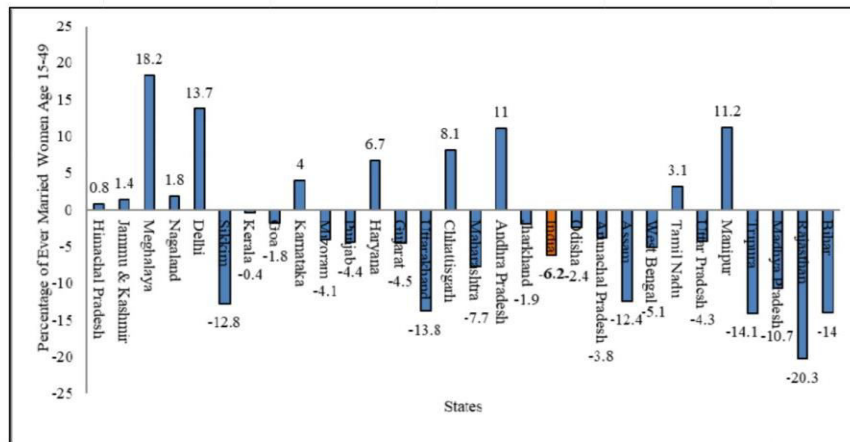
On the other hand, women in Sikkim, Himachal Pradesh and Uttarakhand experienced the lowest percentage of emotional, physical or sexual violence in the age of 15-49 years i.e. 4 percent, 7 percent, and 14 percent respectively. The following figures show the state-wise percentage change in ever-married women who have ever experienced spousal violence between the 10 years interval (NFHS 3 and 4). The percentage of women who have ever experience of spousal or domestic violence by their husband has declined in the 10 years since NFHS-3. Overall, there has been a decline from 37 percent to 31 percent. That means India has seen a 6-point decline in the percentage of women who have experienced domestic violence in their lifetime.

According to NFHS-3's 2005-06 survey, Bihar was found to be the most-violent state where domestic violence against women was high compared to other states. It has decreased to 14 percent in NFHS-4. It has followed by Madhya Pradesh (-10.7 percent), Rajasthan (-20.3 percent), Uttar Pradesh (-4.3 percent) and West Bengal (-5.1 percent). On the other hand, North-Eastern states such as, Meghalaya (18.2), Manipur (11.2) and Nagaland (1.8) have shown an increase in the percentage of women who have experienced domestic violence in 10 years. Besides, central and southern states such as Chhattisgarh, Andhra Pradesh, Karnataka and Tamil Nadu have experienced an increase in the percentage of domestic violence, according to the 2015-16 survey. As we know, National Capital Region of India is a high-performing region in terms of economic and governance, however, it is experiencing an increasing trend in domestic violence, i.e. 30 percentage in 2015-16 as compared to 16.3 percent in 2005-06.

Along with this line, Kerala is also one of the exceptions where the literacy rate is very high but there has been no change in domestic violence percentage in the 10 years since NFHS-3. Hence, it can be drawn from the above that a higher percentage of married women are experiencing spousal violence in the eastern and south eastern part of India i.e. Manipur, Bihar, Andhra Pradesh and Tamil Nadu where more than 40 percent of women are the victim of domestic violence.

### 3.1 Protection of Women from Domestic Violence Act 2005

The Protection of Women from Domestic Violence Act (PWDVA) was passed in 2005 and came into force on October 26, 2006. This is civil law aimed at providing immediate support to women facing domestic violence. The PWDV Act is different from criminal law, which is directed at providing punishment to perpetrators of violence (those who commit violence) through imprisonment or fines. The advantage of a civil law is that it is victim-oriented and the woman is not dependent on the police to initiate action and provides legal remedies pertaining to civil reliefs such as injunctions, compensation and monetary relief.



**Fig 1:** State-wise Percentage Change in Ever-married women who have ever experienced Domestic Violence

**Source:** Authors calculation on NFHS-3 and NFHS-4

There can be no arrests made on a complaint filed under this law.

**Domestic violence** ÷ According to the PWDV Act 2005, domestic violence is defined as, “any form of abuse causing harm or injury to the physical and/or mental health of the woman or compromising her life and safety or any harassment for dowry or to meet any other unlawful demand and a threat to cause injury or harm,

**Domestic Relationship** ÷ Domestic relationships are relationships between a woman and a man living in a shared household. Domestic relationships can be through marriage (i.e. wives, daughters-in-law, sisters-in-law, widows etc. With other members of the family), blood relationship (i.e. mother-sons, sister-brothers, daughters-fathers, widows etc.) and other relations through adoption, relationships like marriage (including live-in relationship, bigamous etc.

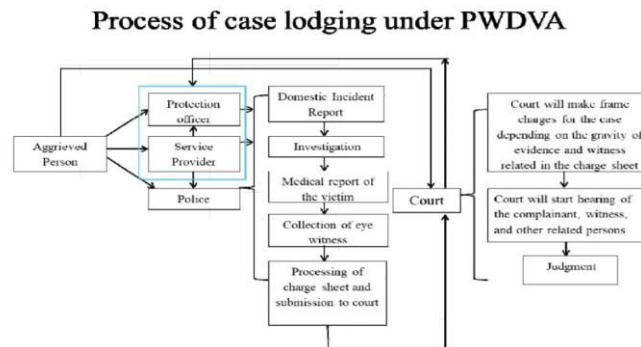
**Aggrieved Persons** ÷ Aggrieved person means any woman who is, or has been, in a relationship with the respondent who claims to have been subjected to any act of domestic violence by the respondent.

**Shared household:** A household where the victim lives or at any time, has lived with domestic violence, either. singly or along with the perpetrator, and includes such households whether owned, tenanted, either jointly by the victim and the perpetrator, or owned or tenanted by either of them, in respect of which either of them or both jointly or singly have any right.

**Respondent** ÷ Respondent means any adult male person who is, or has been in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act and also an aggrieved wife or female living in a relationship like marriage also may file a complaint against a relative of the husband or the male partner. On the other hand, the law explains that a mother-in-law cannot file an application against her daughter-in-law according to Section-2 (q) however, in cases where a mother-in-law is facing violence at the hands of her son and daughter-in-law, she can file an application against her son and daughter-in-law as abetting the act of violence perpetrated by son and she cannot ask for the removal of daughter-in-law from the shared household.

The law provides that if an abused woman requires, she has to be provided alternate accommodation and in such situations, the accommodation and her maintenance has to be paid for by her husband or partner. The law significantly recognises the needs of an abused woman for emergency relief which will have to be provided by the husband. A woman cannot be stopped from making a complaint/application alleging domestic violence. She has the right to the services and assistance of the Protection Officer and Service Providers, stipulated under the provisions of the law. Section 2 also

#### 4. Right and remedies of PWDV Act ÷



**Fig 2:** Process of case lodging of domestic violence. **Source.** Cited from Sarkar, K. 2024

The PWDVA identifies three important rights, i.e. “the right to be free from violence, the right to reside, and the right to seek remedies”.

1. The right to be free from violence means, this law recognises the right of a woman to live in a violence-free home and provides legal remedies if this right is violated.
2. The right to reside in a shared household.
3. The right to seek remedies provided, if a woman, who is the victim of domestic violence, will have the right to the services of the police, shelter homes and medical establishments. She also has the right to simultaneously file her complaint BNS of the BNS provide a large number of options for legal redressal. She can claim through the court’s Protection Order, Residence Orders, Monetary Relief, and Custody Order for her children.

**Protection Order:** This can also be termed as ‘stop violence’ order. Through this order, the court can direct the other party to immediately stop the acts of violence.

**Residence Order:** The order aims to prevent the aggrieved person’s dispossession and to prevent any act that impacts upon her peaceful occupation of the shared household. It means, in cases where the woman has been thrown out of the house (shared household) and she wants to return. To her house, this order is to ensure that the woman has a shelter that is safe for her.

**Monetary Relief:** To reimburse the aggrieved person’s actual expenses incurred due to domestic violence, such as medical expenditure and the loss of earning, as well as maintenance and also for mental torture and emotional distress caused to the aggrieved person, which may be in addition to orders for monetary relief, this order also be known as Compensation Order.

**Custody Order:** (Section-21): A woman can ask for temporary custody order for children. This is to prevent the woman from being separated from her children. If a husband violates any of the above rights of the aggrieved woman, it will be deemed a punishable offence. Charges can be framed by a magistrate, in addition to the charges under this Act. Further, the offences are cognizable and non-bailable. Punishment for violation of the rights enumerated above could extend to one year’s imprisonment and/or a maximum fine.

#### 5. Role of authorities in processing case of domestic violence ÷

The aggrieved person may make a complaint to the court through NGO, Police Station, and Protection Officer or directly to the court. When a complaint comes before legal authorities, the following steps are to be taken to file a case. After getting the charge sheet from the legal authorities (i.e. Protection Officers, Service Providers and the police) court will set in motion the procedure of judicial adjudication (to be settled in 60 days) as follows **Figure 2:** Process of case lodging of domestic violence.

#### 6. Loopholes in the Implementation of Act 2005

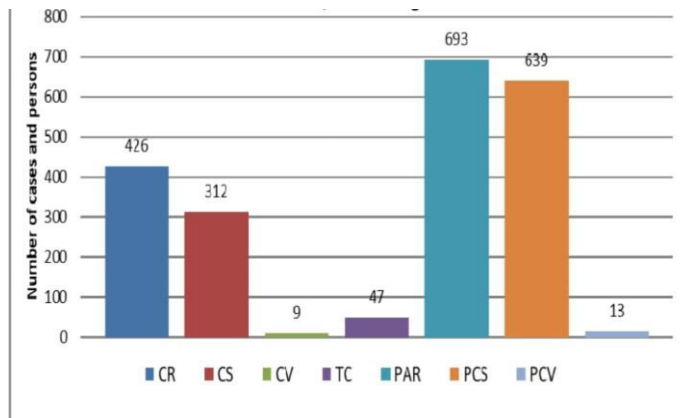
**Implementation process is very slow** -The Government introduced The Protection of Women from Domestic Violence Act (PWDVA) in the year of 2005, but the implementation process is very slow. If we see the following figure, a total of 426 cases were registered under the Protection of Women from Domestic Violence Act, 2005 during 2024. The conviction rate is 19.1 per cent (9 cases convicted out of 47 cases in which trial is completed) under the PWDV Act. Besides, only 13 persons were convicted under the PWDVA. Hence, we can say that the judiciary process creates a delay in according justice and cases are not being addressed properly.

#### 7. Un-clarified responsibility and Disparities in Implementation ÷

The protection officers must prepare the domestic incident reports (DIR) in the prescribed form and make an application to a Magistrate. Also, service providers have the power to record the DIRs if the aggrieved person desires so. Therefore, the duty of each role still seems undefined. There are major disparities in the implementation of the law in various states. For example, while Maharashtra appointed 3,730 protection officers, Assam had only 22 on its rolls, and West Bengal had 20 protection officers.

## 8. Shaking Responsibilities

The Act has, by and large, affected those who have access to quality legal aid. Though the Act provides for state legal aid, the quality of services in such cases is really poor. The state has passed on all responsibility to the service providers. They have to provide medical aid to abused women, arrange for short-stay homes and arrange for compensation. It becomes a burden on these providers who do not have the proper finances. On the other hand, most lawyers are not aware of the concept of service providers (SP) and therefore do not coordinate with them in providing adequate legal services, according to the Lawyers



**Fig. 3. Registered Cases.** *Source: National Crime Records Bureau, 2024*

*Cases registered (CR): Cases charge-sheeted (CS), Cases convicted (CV), Cases in which trial completed (TC), Persons arrested (PAR), Persons charge-sheeted (PCS) and Persons convicted (PCV).*

Collective report: (LCWRI, 2013). Furthermore, the judiciary is hardly aware of the role of the SPs, for either filing in the Domestic Incident Report (DIR), or counselling.

## 9. Vulnerabilities of the victim ÷

According to the Lawyers Collective Report (LCWRI, 2013), none of the Courts has been able to achieve the PWDVA provision of a timeline of 60 days for passing of orders and this creates a delay in delivering justice. Therefore, the victim finds herself in a helpless condition. This condition leads to an increase in emotional, economical as well as mental harassment from family and society which weakens the victim's case and increase the vulnerabilities of the victim towards getting justice under the Act.

## 10. Conclusion

Though the Government of India has passed much legislation to protect women, yet they are oppressed from time to time and it has become a complex problem. As such, the efforts of educators, social workers, health workers and members of women groups, government authorities, NGOs, police, people from different professional backgrounds and the community in general, are required to combat the domestic violence to a greater extent. Further, there is an urgent need to strengthen the PWDV Act and also need to provide family counselling services and set up separate shelter homes for women and children in all districts. Sufficient budget allocation is necessary for effective implementation of the Act. All officials and stakeholders working under PWDVA 2005 should be given an adequate budget on time. The budget has to be allocated for wider legal awareness among the public about the PWDVA, training for capacity building and creation of proper infrastructure. There is an urgent need to strengthen the PWDV Act for the victims to get meaning justice on time.

## References

- AnubhaShekhar Sinha, MP (2016). Domestic Violence and Effectiveness of Law Enforcement Agencies-A Panel Data Study. EPW.
- Bande, S (2017). Protection of Women from Domestic Violence Act 2005. Retrieved December 4, 2017, from YouTube: <https://www.youtube.com/watch?v=fbGZZOUR581>
- CARE (2016). State Facilitated Support Services under PWDV Act 2005: A Review of Status of Implementation in Bihar.
- Chaudhary, S (2013). Domestic Violence in India. Journal of Indian Research, 146-152.
- Flavia Agnes, A D (2015). Protection of Women from Domestic Violence. Review of Women's Studies, 44
- International Institute for Population Sciences (2007). India National Family Health Survey (NFHS-3), 2005-06. Mumbai: IIPS.
- (2018). India National Family Health Survey (NFHS-4), 2015-16. Mumbai: IIPS.
- Indiatimes (2016). They Worship Durga, Still Every 6<sup>th</sup> Woman in Kolkata is Tortured by Her Husband. Kolkata, West Bengal, India. October 16.
- Jhamb, B (2011). The Missing Link in the Domestic Violence Act. Economic and Political Weekly, 26.

- Johnson, SK (2004). Profiling Domestic Violence – A Multi-Country Study. Calverton: ORC Macro.
- Lahiri, R (2009). The Protection of Women From Domestic Violence Act: The Current Situation. HRLN.
- LCWRI (2009). Ending Domestic Violence Through Non-Violence: A Manual for PWDVA Protection Officers. New Delhi: Lawyers Collective.
- (2013). Manual on the Best Practices under the Protection of Women from Domestic Violence Act, 2005. New Delhi: Lawyers Collective.
- National Crime Records Bureau (2014). (National Crime Records Bureau) Retrieved from Open Government Data Platform India: <https://data.gov.in/catalog/district-wise-crimes-committed-against-women>.
- Rege, S (2008). Ethical Guidelines for Counselling Women Facing Domestic Violence. Mumbai: Centre for Enquiry into Health and Allied Themes (CEHAT) and Dilaasa.
- Report on India's domestic violence law highlights major loopholes (n.d.). Retrieved from <http://www.lawyerscollective.org/wri/publications/stayingalive>
- Sarkar, K (2015). Domestic Violence Against Women in West Bengal A Critical Study of Selected Geographical Areas. New Delhi: Bharti Publications.
- The National Mission for Empowerment of Women (NMEW) and The Lawyer's Collective Women's Rights Initiative (LCWRI) (2013). Resource Tool for Monitoring and Evaluating the Implementation of the Protection of Women from Domestic Violence Act, 2005. New Delhi: Lawyers Collective (Women's Rights Initiative).