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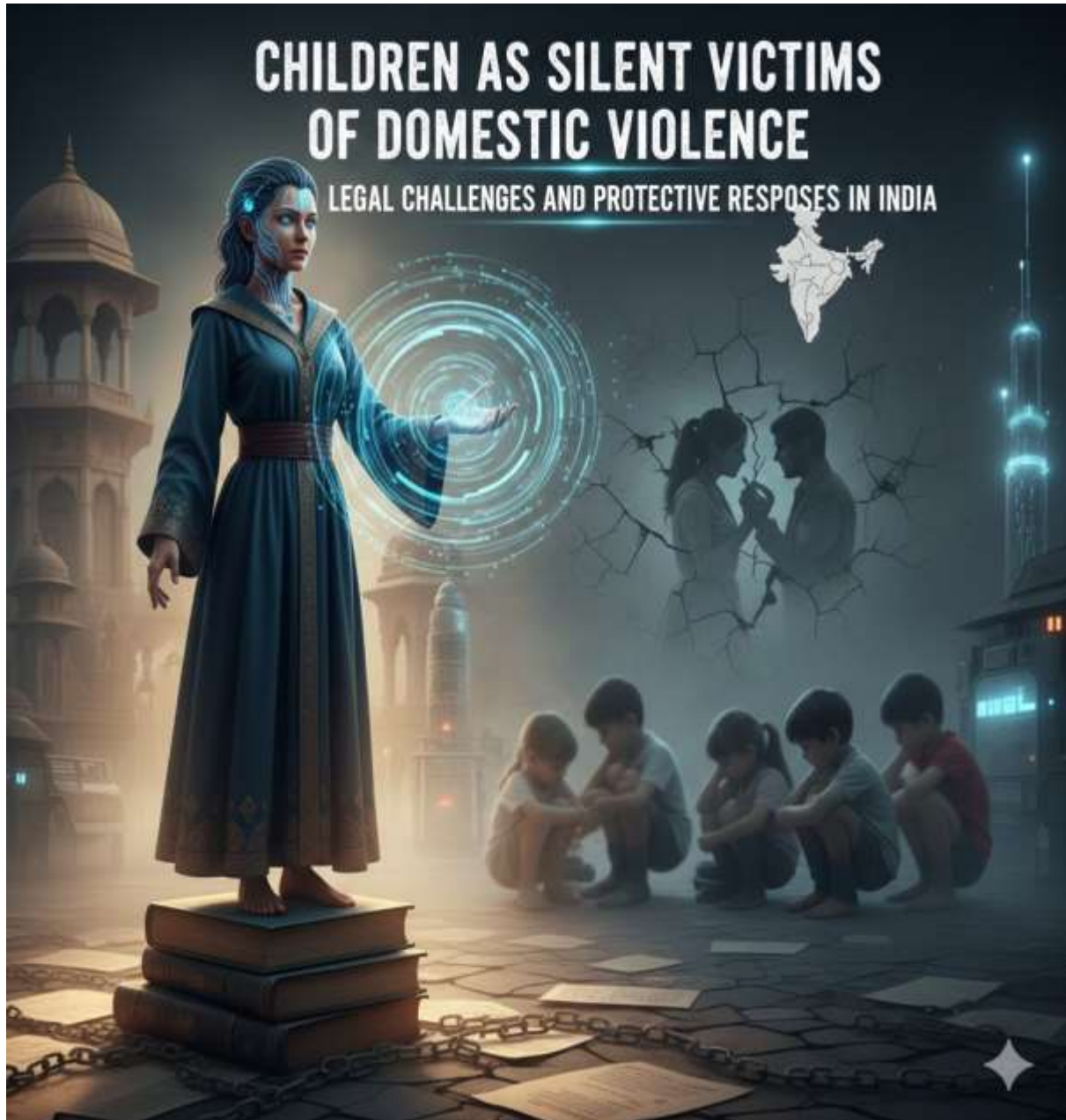
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CHILDREN AS SILENT VICTIMS OF DOMESTIC VIOLENCE: LEGAL CHALLENGES AND PROTECTIVE RESPONSES IN INDIA

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Abstract

Children living in households affected by domestic violence are often the most vulnerable yet least visible victims of abuse. While legal and policy frameworks in India predominantly conceptualise domestic violence as a harm inflicted upon adult women, children who witness, hear, or otherwise experience violence within the family environment suffer deep and lasting psychological, emotional, and developmental harm. Such children are frequently described as “silent victims” because their suffering remains unarticulated, under-reported, and inadequately recognised by law and institutions. The private nature of domestic violence, coupled with cultural emphasis on family unity and parental authority, further contributes to the invisibility of children’s experiences.

This research paper undertakes a critical examination of the legal challenges associated with recognising and protecting children as silent victims of domestic violence in India. It analyses how existing legal frameworks particularly the Protection of Women from Domestic Violence Act, 2005, the Juvenile Justice (Care and Protection of Children) Act, 2015, and family law jurisprudence address or fail to address the harm suffered by children who are indirectly exposed to violence. The paper argues that Indian law largely treats children as incidental dependents rather than as independent rights-holders entitled to protection, participation, and rehabilitation.

Adopting a rights-based and socio-legal approach, the study examines judicial trends, institutional responses, and policy mechanisms to assess whether protective responses are adequate, accessible, and child-centred. It highlights doctrinal ambiguity, institutional silos, and cultural biases that impede effective intervention. The paper further situates domestic law within the framework of constitutional guarantees and international child rights obligations, particularly under the United Nations Convention on the Rights of the Child.

Keywords: *Children, Domestic Violence, Silent Victims, Child Rights, Protection of Women from Domestic Violence Act, Juvenile Justice Act, India*

Introduction

Domestic violence within the family has long been recognised as a serious social and legal problem in India, primarily through the lens of violence against women. However, this focus has inadvertently obscured the experiences of children who live within violent households and silently endure its consequences. Children exposed to domestic violence often occupy an ambiguous legal position: they may not be the direct recipients of physical harm, yet they are deeply affected by the atmosphere of fear, instability, and emotional trauma that characterises violent domestic environments. These children are aptly described as “silent victims” because their suffering remains largely invisible within legal discourse, institutional responses, and societal consciousness.²

The invisibility of children in domestic violence contexts is rooted in the private nature of family life and deeply entrenched cultural norms that prioritise family unity over individual well-being. Domestic violence is frequently treated as an interpersonal dispute between adults, with children viewed as passive dependents rather than as individuals with distinct rights and interests. As a result, the harm suffered by children psychological distress, developmental disruption, and erosion of emotional security often goes unrecognised and unremedied.

Empirical and psychological research consistently demonstrates that children exposed to domestic violence experience outcomes similar to those suffered by direct victims of abuse. These include anxiety, depression, post-traumatic stress disorder, behavioural problems, and impaired cognitive and social development. Exposure to violence during formative years can normalise aggression and contribute to intergenerational cycles of violence. Yet, despite this evidence, legal frameworks in India have been slow to conceptualise exposure to domestic violence as a form of child abuse warranting independent legal intervention.

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) represents a landmark development in addressing domestic violence through civil remedies. While the Act includes children within its scope and recognises emotional abuse, its primary orientation remains adult-centric. Children’s interests are typically addressed indirectly through the protection of women, and the Act does not articulate a clear framework for recognising or responding to children as

² Law Commission of India, *Report on Domestic Violence and Child Protection* (Government of India).

independent victims. Consequently, children's experiences are often subsumed within adult claims, reinforcing their legal invisibility.

Parallel child protection legislation, particularly the Juvenile Justice (Care and Protection of Children) Act, 2015, offers a child-centred framework grounded in principles of best interest, safety, and rehabilitation. However, this framework is rarely activated in cases where children witness domestic violence but are not physically abused. Institutional reluctance to intervene in "family matters" and narrow interpretations of emotional abuse limit the application of child protection mechanisms in domestic violence contexts.

This fragmentation reflects a broader conceptual challenge. Domestic violence law and child protection law operate in parallel rather than in coordination, leaving children exposed to violence without comprehensive protection. Institutional actors including Protection Officers, Child Welfare Committees, and family courts often assume that responsibility lies elsewhere, resulting in jurisdictional gaps and inaction. The absence of integrated protocols for identifying and responding to children exposed to domestic violence exacerbates this problem.³

From a constitutional perspective, the failure to protect children from domestic violence raises serious concerns. Article 21 of the Constitution of India guarantees the right to life with dignity, which includes emotional security and healthy development. For children, this right necessarily encompasses protection from environments that impair mental health and well-being. Additionally, Article 39(f) of the Directive Principles mandates that children be protected against moral and material abandonment. Exposure to domestic violence directly contravenes these constitutional commitments.

International human rights law further reinforces the obligation to protect children from domestic violence. The United Nations Convention on the Rights of the Child (UNCRC), to which India is a party, requires States to protect children from all forms of physical or mental violence while in the care of parents or guardians. International jurisprudence increasingly recognises witnessing domestic violence as a form of "mental violence" under Article 19 of the UNCRC. However, domestic incorporation of these standards remains uneven and largely symbolic.

³ Ministry of Women and Child Development, *Study on Domestic Violence and Children*.

Judicial responses in India demonstrate gradual yet inconsistent progress. Courts have occasionally acknowledged that exposure to domestic violence is contrary to the best interests of the child, particularly in custody and visitation disputes. Nevertheless, such recognition is often incidental and lacks a coherent doctrinal foundation. Judicial emphasis on reconciliation and parental access continues to overshadow child safety and emotional well-being in many cases.

Policy responses remain similarly inadequate. Domestic violence policy is primarily reactive, triggered by complaints from adult victims, with limited emphasis on preventive or child-centred intervention. Awareness programmes, counselling services, and rehabilitation mechanisms for children exposed to domestic violence are sporadic and unevenly implemented. The absence of trauma-informed, child-sensitive policy frameworks perpetuates the silence surrounding children's suffering.

This paper proceeds on the premise that children exposed to domestic violence are not merely secondary victims but direct bearers of rights whose protection is a constitutional and moral imperative. It argues that legal invisibility of children as silent victims undermines the effectiveness of domestic violence law and perpetuates cycles of harm. Adopting a socio-legal and rights-based approach, the study examines the legal challenges associated with recognising and protecting children exposed to domestic violence and evaluates existing protective responses in India.

The paper undertakes a doctrinal analysis of relevant statutes, judicial decisions, and institutional mechanisms, complemented by insights from child psychology and international human rights law. It seeks to identify gaps in legal recognition, institutional response, and policy design, and to propose reforms aimed at developing integrated, child-centred, and trauma-informed protective frameworks. By foregrounding children's lived experiences, the study aims to contribute to a more inclusive and constitutionally grounded approach to domestic violence in India.

Objectives of the Study

The primary objective of this research is to examine the phenomenon of children as silent victims of domestic violence within the Indian legal framework and to assess the adequacy of existing protective responses. The study seeks to move beyond adult-centric conceptions of

domestic violence and foreground children as independent rights-holders whose experiences of harm demand direct legal recognition and redress.

A key objective is to analyse how Indian domestic violence law conceptualises children's exposure to violence and whether such exposure is recognised as a form of abuse warranting independent intervention. The study evaluates the extent to which the Protection of Women from Domestic Violence Act, 2005 acknowledges children's psychological and emotional harm and provides effective remedies tailored to their needs.

Another objective is to assess the role of child protection legislation, particularly the Juvenile Justice (Care and Protection of Children) Act, 2015, in responding to children exposed to domestic violence. The research examines whether institutional mechanisms under the Act are effectively triggered in such cases and whether emotional harm is treated as a sufficient basis for protection.

The study further aims to critically evaluate judicial responses to cases involving children exposed to domestic violence, with particular emphasis on custody, visitation, and guardianship disputes. It seeks to determine whether courts consistently apply the best interests of the child principle and whether children's voices and lived experiences are meaningfully considered.⁴

Finally, the research aims to identify doctrinal, institutional, and policy gaps that perpetuate the invisibility of children as silent victims and to propose reforms that integrate child-centred, rights-based, and trauma-informed approaches into domestic violence law and policy in India.

Research Questions

The research is guided by the following questions:

1. How does Indian law conceptualise children exposed to domestic violence, and to what extent are they recognised as independent victims and rights-holders?
2. Does the Protection of Women from Domestic Violence Act, 2005 adequately address the harm suffered by children who witness domestic violence?

⁴ *Vivek Singh v Romani Singh* (2017) 3 SCC 231.

3. How effectively does the Juvenile Justice (Care and Protection of Children) Act, 2015 respond to emotional and psychological harm arising from exposure to domestic violence?
4. How have Indian courts addressed the impact of domestic violence on children in custody, visitation, and protection proceedings?
5. What legal and policy reforms are necessary to develop integrated, child-centred protective responses for children as silent victims of domestic violence?

Hypothesis

This study proceeds on the hypothesis that Indian law inadequately recognises and responds to children as silent victims of domestic violence. It is hypothesised that the adult-centric orientation of domestic violence legislation, combined with fragmented child protection mechanisms and cultural emphasis on family unity, results in systemic under-protection of children exposed to violence. The study further hypothesises that while judicial intervention has shown incremental sensitivity towards child welfare, the absence of an integrated rights-based framework continues to marginalise children's voices and experiences.⁵

Research Methodology

This research adopts a doctrinal and socio-legal methodology. Primary sources include constitutional provisions, statutory enactments, and judicial decisions of the Supreme Court of India and various High Courts. Key statutes analysed include the Protection of Women from Domestic Violence Act, 2005; the Juvenile Justice (Care and Protection of Children) Act, 2015; the Guardians and Wards Act, 1890; and the Family Courts Act, 1984. Judicial pronouncements concerning domestic violence, child custody, guardianship, and child welfare form a central component of the analysis.

Secondary sources comprise books, peer-reviewed journal articles, Law Commission of India reports, governmental policy documents, and reports by international organisations such as UNICEF and the World Health Organization. Psychological and socio-legal studies on the impact of domestic violence on children are utilised to contextualise legal analysis within lived realities.

⁵ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

The methodology is analytical and prescriptive. It seeks not only to identify gaps and inconsistencies in law and institutional practice but also to propose reforms grounded in constitutional values, child rights jurisprudence, and international human rights norms.⁶

Literature Review

Academic literature on domestic violence in India has expanded considerably since the late 1990s, largely influenced by feminist legal scholarship, constitutional jurisprudence, and human rights discourse. However, within this growing body of work, children exposed to domestic violence remain marginalised and under-theorised. Existing literature predominantly conceptualises domestic violence as a gendered harm affecting adult women, with children appearing only incidentally as dependents or secondary beneficiaries of legal protection. This framing has contributed to the continued invisibility of children as “silent victims” within legal and policy discourse.

Early feminist scholarship in India played a crucial role in challenging the private–public divide that shielded domestic violence from legal scrutiny. Scholars highlighted how patriarchal family structures, economic dependency, and cultural norms perpetuate violence against women within the household. While these studies occasionally acknowledged the presence of children in violent homes, children were primarily discussed in terms of their welfare being contingent upon the safety of the mother. The independent psychological and developmental harm suffered by children rarely received sustained attention.

Following the enactment of the Protection of Women from Domestic Violence Act, 2005, legal scholarship shifted towards analysing the scope, effectiveness, and implementation of the Act. Commentators welcomed the Act’s broad definition of domestic violence, inclusion of emotional and economic abuse, and civil-law orientation. However, critical analyses point out that despite the formal inclusion of children within the definition of “aggrieved persons,” the Act remains fundamentally adult-centric. Literature highlights that children’s remedies under the Act such as custody orders or residence rights are derivative and lack an independent rights-based framework.⁷

⁶ Gautam Bhatia, *The Transformative Constitution* (HarperCollins 2019).

⁷ Indira Jaising, ‘Domestic Violence Law in India: A Critical Review’ (2006) *Economic and Political Weekly*.

Parallel scholarship on child protection law, particularly under the Juvenile Justice (Care and Protection of Children) Act, 2015, focuses on children in need of care and protection, rehabilitation, and reintegration. Scholars praise the JJ Act's child-centric philosophy and incorporation of the best interests principle. However, this body of literature rarely engages with domestic violence as a routine and systemic source of emotional and psychological harm to children. Exposure to domestic violence is seldom analysed as a trigger for child protection intervention unless accompanied by physical abuse or abandonment.

Judicial scholarship analysing custody and guardianship disputes provides partial engagement with children's experiences of domestic violence. Commentators note that Indian courts increasingly consider domestic violence as a relevant factor in determining child custody and visitation. Supreme Court jurisprudence emphasising emotional and psychological welfare of children has been widely discussed. Yet, literature also points to inconsistency in judicial reasoning, with many decisions prioritising parental rights, reconciliation, and family unity over child safety and autonomy.

Socio-legal and psychological literature provides some of the most compelling evidence regarding the harm suffered by children exposed to domestic violence. Empirical studies consistently show that such children experience anxiety, depression, post-traumatic stress, behavioural disorders, and impaired social functioning. Longitudinal studies suggest that exposure to domestic violence increases the risk of intergenerational transmission of violence, substance abuse, and criminal behaviour. Despite the robustness of this evidence, legal scholarship has not sufficiently integrated psychological insights into doctrinal and policy analysis.

International child rights literature has increasingly recognised children exposed to domestic violence as direct victims of abuse. Scholars interpreting the United Nations Convention on the Rights of the Child argue that "mental violence" under Article 19 includes witnessing domestic violence. Comparative legal studies highlight jurisdictions that have adopted explicit statutory recognition of children as victims of domestic violence, mandatory reporting obligations, and child-inclusive protection orders. Indian scholarship has referenced these developments but has not undertaken systematic comparative analysis or proposed concrete pathways for domestic incorporation.

Policy-oriented literature, including reports by the Law Commission of India, UNICEF, and governmental bodies, acknowledges the adverse impact of domestic violence on children.⁸ However, such reports tend to adopt a descriptive and welfare-oriented approach, focusing on prevalence and service delivery rather than legal accountability and enforceable rights. There is limited engagement with how institutional fragmentation between domestic violence authorities, child protection agencies, and family courts undermines effective protection.

A significant gap in the existing literature is the absence of a unified, rights-based analysis that conceptualises children exposed to domestic violence as silent victims of constitutional and human rights violations. Most studies examine domestic violence law and child protection law in isolation, without analysing their intersection or cumulative effect on children's lived realities. Constitutional dimensions particularly Articles 14, 21, and 39(f) remain under-explored in the context of children's exposure to domestic violence.

This study seeks to address these gaps by adopting an integrated socio-legal and rights-based framework. By analysing statutes, judicial trends, institutional responses, and international child rights norms together, the research aims to reconceptualise children exposed to domestic violence as direct victims entitled to recognition, participation, and protection. The literature review thus establishes the necessity for deeper post-literature analysis focusing on legal challenges, institutional failures, and protective responses issues examined in the subsequent sections of this paper.

Legal Challenges in Recognising Children as Silent Victims of Domestic Violence

One of the most persistent obstacles in addressing domestic violence in India is the law's failure to recognise children as direct victims when they are exposed to violence within the household. Despite overwhelming psychological and sociological evidence demonstrating the profound harm suffered by children who witness domestic violence, Indian legal frameworks continue to treat such children as peripheral actors rather than rights-bearing victims. This section critically analyses the legal challenges that perpetuate the invisibility of children as silent

⁸ Ministry of Women and Child Development, *Study on Domestic Violence and Children*.

victims of domestic violence, focusing on doctrinal limitations, procedural barriers, and constitutional contradictions.⁹

A. Adult-Centric Construction of Domestic Violence Law

The Protection of Women from Domestic Violence Act, 2005 was enacted to address the systemic failure of criminal law in protecting women from domestic abuse. While progressive in many respects, the Act's conceptual foundation remains adult-centric. Domestic violence is primarily framed as harm inflicted upon women within domestic relationships, with children appearing only as dependents or incidental beneficiaries.

Although Section 2(a) of the Act includes children within the definition of "aggrieved persons," the statute does not articulate a coherent framework for recognising children as independent victims. Reliefs such as custody, residence, and monetary support are framed in relation to the woman complainant. As a result, children's experiences of fear, trauma, and psychological harm are legally subsumed under adult narratives, reinforcing their invisibility.

This structural design reflects a deeper doctrinal assumption: that protecting women automatically protects children. Such an assumption fails to acknowledge that children experience domestic violence differently and require tailored protective and rehabilitative responses.

B. Doctrinal Fragmentation Between Domestic Violence Law and Child Protection Law

A major legal challenge lies in the fragmented operation of domestic violence law and child protection law. The Juvenile Justice (Care and Protection of Children) Act, 2015 provides a child-centric framework recognising emotional abuse and neglect as grounds for intervention. However, exposure to domestic violence is rarely treated as sufficient to trigger child protection mechanisms.¹⁰

This fragmentation results in a jurisdictional vacuum. Domestic violence authorities assume that child protection agencies will intervene, if necessary, while Child Welfare Committees often regard domestic violence as outside their mandate unless there is direct physical abuse. The absence of statutory coordination between the PWDVA and the JJ Act perpetuates systemic inaction and leaves children without comprehensive protection.

⁹ Law Commission of India, *Report on Domestic Violence and Child Protection* (Government of India).

¹⁰ Juvenile Justice (Care and Protection of Children) Act, 2015, s 2(14).

C. Evidentiary Challenges and the Invisibility of Psychological Harm

Legal systems traditionally prioritise tangible, visible harm. Psychological trauma suffered by children exposed to domestic violence is inherently difficult to document and prove. Children may lack the vocabulary to articulate their experiences, and courts often require corroborative evidence that is rarely available in domestic settings.

The absence of mandatory psychological assessment or trauma-informed evaluation in domestic violence proceedings further exacerbates this challenge. Without expert testimony or structured inquiry, courts may underestimate or overlook the severity of harm suffered by children, reinforcing their status as silent victims.

D. Procedural Barriers and Lack of Child Participation

Procedural law poses another significant obstacle. Children are rarely impleaded as parties in domestic violence proceedings, nor are they routinely heard by courts. Judicial reluctance to engage directly with children stems from concerns about retraumatisation, parental conflict, and lack of child-friendly procedures.

While these concerns are valid, the result is procedural exclusion that denies children agency and voice. This exclusion contravenes international child rights principles recognising children's right to be heard in matters affecting them. The lack of participation mechanisms perpetuates adult-centric adjudication and silences children's lived experiences.

E. Cultural Norms and Judicial Deference to Family Privacy

Legal challenges are compounded by socio-cultural norms that prioritise family unity and parental authority. Domestic violence is often treated as a private matter, and judicial intervention is tempered by concern for preserving family structures. Courts frequently emphasise reconciliation and mediation, even in cases involving violence.

Such deference to family privacy disproportionately harms children, whose safety and well-being may be subordinated to adult compromise. Cultural reluctance to disrupt family life reinforces silence and discourages recognition of children's suffering as a legal wrong.

F. Constitutional Contradictions and Under-Enforcement of Child Rights

The failure to recognise children as silent victims stands in tension with constitutional guarantees. Article 21 of the Constitution guarantees the right to life with dignity, which includes emotional security and psychological well-being. For children, exposure to domestic

violence directly undermines this right. Additionally, Article 39(f) mandates that children be protected against moral and material abandonment.

Despite these constitutional commitments, domestic violence adjudication rarely frames children's exposure to violence as a constitutional violation. Courts tend to address child welfare indirectly through custody arrangements rather than recognising exposure itself as a rights infringement. This under-enforcement reflects a disconnect between constitutional values and statutory interpretation.

G. Absence of Preventive Legal Mechanisms

Another critical legal challenge is the absence of preventive mechanisms recognising children's vulnerability to domestic violence. Legal intervention is typically reactive, triggered after violence escalates or adult complaints are filed. There is no statutory obligation to assess risk to children at early stages or to provide preventive support.¹¹

This reactive approach allows harm to accumulate and normalises children's exposure to violence as an unfortunate by-product of adult conflict rather than a preventable rights violation.

H. Assessment of Legal Challenges

The cumulative effect of adult-centric statutes, doctrinal fragmentation, evidentiary barriers, procedural exclusion, cultural norms, and constitutional under-enforcement is systemic invisibility of children as silent victims of domestic violence. Legal frameworks condemn domestic violence in principle yet tolerate children's exposure in practice. Addressing these challenges requires reconceptualising domestic violence as a child rights issue and restructuring legal responses accordingly.

Judicial Responses and Protective Mechanisms for Children Exposed to Domestic Violence

The judiciary occupies a central position in responding to domestic violence affecting children, particularly in custody, guardianship, visitation, and protection proceedings. In the absence of an explicit statutory framework recognising children exposed to domestic violence as independent victims, courts have attempted often inconsistently to fill doctrinal gaps through purposive interpretation and reliance on the "best interests of the child" principle. This section

¹¹ World Health Organization, *Preventing Intimate Partner and Sexual Violence*.

critically examines judicial responses and existing protective mechanisms, highlighting both progressive developments and persistent limitations.

A. Best Interests of the Child as the Governing Judicial Standard

Indian courts have repeatedly affirmed that the “best interests of the child” must be the paramount consideration in all matters concerning children. This principle has been invoked in custody and guardianship disputes arising out of domestic violence. In *Vivek Singh v Romani Singh*, the Supreme Court emphasised that a child’s emotional, psychological, and moral welfare outweighs parental rights and preferences.

Exposure to domestic violence has increasingly been considered relevant to assessing a child’s best interests. Courts have recognised that a violent domestic environment is incompatible with a child’s healthy development. However, this recognition often remains implicit and discretionary rather than articulated as a clear legal rule treating exposure to violence as harm in itself.

B. Custody and Visitation Orders in Domestic Violence Contexts

Custody and visitation decisions represent the most frequent judicial engagement with children exposed to domestic violence. Courts have, in some cases, denied custody or restricted visitation rights of abusive parents, particularly where violence is severe or ongoing. High Courts have upheld protective measures to shield children from continued exposure to abusive behaviour.

Nevertheless, a dominant judicial tendency remains to preserve parental access and family unity. Courts often assume that maintaining contact with both parents is inherently beneficial, even where there is evidence of domestic violence. Unsupervised visitation orders are sometimes granted without adequate risk assessment or safeguards, exposing children to retraumatisation. This reflects a continuing adult-centric bias in judicial reasoning.

C. Supervised Visitation and Protective Safeguards

In a limited number of cases, courts have ordered supervised visitation or imposed conditions to protect children from harm. Such measures include restrictions on location, duration, and presence of third parties. While these safeguards demonstrate judicial awareness of risk, they are applied inconsistently and lack statutory guidance.

The absence of uniform standards for supervised visitation results in uneven protection. Implementation is often weak due to lack of infrastructure, trained personnel, and monitoring

mechanisms. As a result, even protective judicial orders may fail to translate into effective on-ground safety for children.

D. Role of Family Courts and Counselling Mechanisms

Family courts play a crucial role in adjudicating disputes involving domestic violence and children. However, family court processes often prioritise counselling, mediation, and reconciliation. While these approaches may be appropriate in non-violent disputes, their application in domestic violence cases raises serious concerns.

Judicial insistence on reconciliation can pressure victims into compromise and expose children to continued conflict. Counselling mechanisms frequently lack trauma-informed approaches and may not adequately address power imbalances or children's fear. The absence of specialised child psychologists and trained counsellors further limits the effectiveness of family court interventions.

E. Limited Engagement with Child Protection Frameworks

Courts rarely invoke the Juvenile Justice (Care and Protection of Children) Act, 2015 in domestic violence proceedings, even where children display clear signs of emotional or psychological harm. Judicial reluctance to activate child protection mechanisms reflects institutional silos and concern over excessive state intervention in family life.

This reluctance results in fragmented protection. Domestic violence proceedings address adult remedies, while child protection authorities remain disengaged unless harm escalates. Courts thus miss opportunities to provide holistic protection and rehabilitation for children as silent victims.

F. Constitutional Reasoning and Judicial Creativity

Courts occasionally rely on constitutional principles particularly Article 21 to justify protective measures for children. The right to live with dignity has been interpreted to include emotional security and psychological well-being. However, constitutional reasoning is often implicit and case-specific rather than systematically developed as a doctrine recognising exposure to domestic violence as a constitutional wrong against children.

Judicial creativity has partially mitigated legislative gaps, but reliance on case-by-case intervention produces inconsistency and uncertainty. Without clear statutory mandates, judicial protection remains uneven and dependent on individual judges' sensitivity.

G. Limitations of Judicial Intervention

Despite progressive trends, judicial intervention faces inherent limitations. Courts operate within adversarial processes ill-suited to addressing children's complex emotional needs. Time constraints, procedural rigidity, and lack of child-sensitive infrastructure constrain effective engagement. Moreover, judicial over-reliance on reconciliation and parental rights continues to undermine child-centred outcomes.

H. Assessment of Judicial and Protective Responses

Judicial responses to children exposed to domestic violence reflect cautious progress but remain insufficient. Courts have recognised the relevance of domestic violence to child welfare but have not consistently treated exposure itself as harm warranting independent protection. Protective mechanisms are fragmented, discretionary, and poorly implemented. Without legislative clarity and institutional reform, judicial intervention alone cannot ensure comprehensive protection for children as silent victims.

Protective Responses, Policy Gaps, and Reform Imperatives

The preceding analysis reveals that children exposed to domestic violence remain inadequately protected despite the existence of multiple legal and institutional mechanisms. While Indian law formally condemns domestic violence, protective responses for children as silent victims are fragmented, reactive, and insufficiently child-centred. This section critically examines existing protective responses, identifies key policy gaps, and proposes reform imperatives aimed at developing a coherent, rights-based framework for safeguarding children from domestic violence.

A. Existing Protective Responses and Their Limitations

Protective responses for children exposed to domestic violence currently operate through a combination of domestic violence mechanisms, family courts, and child protection institutions. However, these responses are neither systematic nor coordinated.

Under the Protection of Women from Domestic Violence Act, 2005, children may receive incidental protection through custody orders, residence orders, or monetary relief granted to the mother. While such reliefs can mitigate immediate harm, they do not address children's psychological trauma or long-term developmental needs. The absence of child-specific rehabilitation measures reflects the Act's adult-centric orientation.

Family courts constitute another key protective forum. Courts may impose visitation restrictions or custody arrangements aimed at protecting children from abusive parents. However, these interventions are discretionary, inconsistent, and often undermined by reconciliation-centric approaches. Without structured risk assessment or trauma-informed protocols, family court protection remains fragile.

Child protection institutions under the Juvenile Justice (Care and Protection of Children) Act, 2015 possess the mandate to intervene in cases of emotional abuse and neglect. Yet, exposure to domestic violence is rarely treated as sufficient grounds for intervention unless accompanied by physical abuse. This narrow operationalisation of harm significantly limits institutional protection.

B. Policy Gaps and Institutional Fragmentation

One of the most significant policy gaps lies in the absence of explicit recognition of children exposed to domestic violence as victims requiring protection. Policy frameworks continue to treat domestic violence as an adult issue and child protection as a separate domain. This separation results in institutional silos and jurisdictional ambiguity.

Protection Officers, Child Welfare Committees, family courts, and police authorities operate independently, with limited information sharing or coordinated response. As a result, children often fall through systemic gaps, receiving piecemeal or no protection. The absence of integrated case management undermines early intervention and comprehensive care.

C. Lack of Trauma-Informed and Child-Sensitive Practice

Another critical deficiency is the lack of trauma-informed and child-sensitive practices across institutions. Most domestic violence responses focus on legal remedies rather than therapeutic intervention. Children exposed to violence rarely receive psychological counselling or rehabilitation support. Where services exist, they are sporadic, under-resourced, and unevenly distributed.

Institutional actors often lack training in child psychology and trauma, resulting in inadequate assessment of children's needs. Legal proceedings themselves may retraumatise children by exposing them to adversarial conflict without adequate safeguards.

D. Preventive and Early-Intervention Failures

Domestic violence policy in India remains predominantly reactive. Interventions are triggered after violence escalates, often at significant cost to children's well-being. Preventive strategies

such as early identification of at-risk families, community-based support, and school-based intervention are limited.

Educational institutions, healthcare providers, and community organisations are rarely integrated into domestic violence prevention frameworks. The absence of mandatory reporting or referral mechanisms for professionals working with children limits early detection of harm.

E. Reform Imperatives

1. Statutory Recognition of Children as Victims

A foundational reform imperative is the explicit statutory recognition of children exposed to domestic violence as victims in their own right. Amendments to the PWDVA should clarify that exposure to domestic violence constitutes harm to children, triggering independent protection and rehabilitation measures. Such recognition would align domestic law with constitutional and international child rights standards.

2. Integration of Domestic Violence and Child Protection Frameworks

Legal and policy frameworks governing domestic violence and child protection must be integrated. Mandatory coordination between Protection Officers and Child Welfare Committees should be established in cases involving children. Joint case management and information sharing would prevent children from being overlooked.

3. Mandatory Risk Assessment and Safeguards

Courts should be required to conduct child-centred risk assessments in domestic violence cases involving children. Custody and visitation decisions must incorporate safeguards such as supervised visitation, no-contact orders, and therapeutic intervention where exposure to violence is established. Judicial discretion should be guided by structured protocols rather than informal assumptions.

4. Trauma-Informed Adjudication and Services

Trauma-informed practice must be institutionalised across legal and welfare systems. Training in child psychology, trauma, and rights-based adjudication should be mandatory for judges, Protection Officers, counsellors, and child protection authorities. Accessible counselling and rehabilitation services for children must be prioritised.

5. Preventive and Community-Based Approaches

Policy reform must emphasise prevention and early intervention. Schools, healthcare providers, and community organisations should be empowered and trained to identify and respond to domestic violence affecting children. Awareness campaigns and parenting programmes can reduce risk and break cycles of violence.

Constitutional and Human Rights Dimensions of Children as Silent Victims of Domestic Violence

The failure to recognise and adequately protect children exposed to domestic violence is not merely a legislative or policy deficiency; it raises serious constitutional and human rights concerns. When children are compelled to grow up in violent domestic environments without effective state intervention, the harm transcends private family disputes and enters the domain of constitutional accountability. This subsection analyses domestic violence affecting children through the lens of constitutional guarantees and international human rights obligations, highlighting the normative foundations for stronger protective responses.

A. Article 21 and the Right to a Dignified Childhood

Article 21 of the Constitution of India guarantees the right to life and personal liberty, which the Supreme Court has expansively interpreted to include the right to live with dignity, emotional security, and psychological well-being. For children, this right necessarily encompasses the right to grow up in a safe, non-violent environment conducive to healthy development. Exposure to domestic violence directly undermines this constitutional guarantee by subjecting children to fear, instability, and trauma within their own homes.

Judicial interpretation of Article 21 has increasingly recognised that dignity is not limited to physical survival but includes mental health and emotional integrity. Children exposed to domestic violence suffer sustained violations of this right, even in the absence of physical injury. Yet, domestic violence adjudication rarely frames children's exposure as an Article 21 violation, thereby weakening constitutional enforcement in this domain.

B. Article 14 and Unequal Protection of Children

Article 14 guarantees equality before the law and equal protection of the laws. The differential treatment of children exposed to domestic violence, compared to children subjected to direct physical abuse, raises concerns of unequal protection. While the legal system readily intervenes in cases of visible abuse, children suffering emotional and psychological harm due to domestic violence often remain outside the protective net.

This selective recognition reflects implicit hierarchies of harm within the legal system, privileging physical injury over psychological trauma. Such an approach is inconsistent with modern understandings of child rights and violates the principle of substantive equality embedded in Article 14.

C. Directive Principles and the State's Protective Obligation

Article 39(f) of the Directive Principles of State Policy mandates that children be protected against moral and material abandonment and be given opportunities to develop in conditions of freedom and dignity. Domestic violence within the family constitutes moral abandonment in its most acute form, as it exposes children to harmful environments without adequate state safeguards.

Although Directive Principles are not directly enforceable, the Supreme Court has repeatedly held that they must inform interpretation of fundamental rights. Failure to integrate Article 39(f) into domestic violence adjudication affecting children reflects a constitutional gap between principle and practice.

D. Children's Right to Be Heard and Participatory Justice

A core aspect of children's rights jurisprudence is the recognition of children as active participants rather than passive recipients of protection. Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) recognises the child's right to be heard in all matters affecting them. Indian courts have endorsed this principle in custody and guardianship cases, yet children exposed to domestic violence are rarely given an opportunity to express their views.

Procedural exclusion of children reinforces their silence and marginalisation. Without participatory mechanisms, courts risk making decisions that overlook children's lived experiences and perpetuate harm under the guise of family preservation.

E. International Human Rights Obligations

India's obligations under the UNCRC require protection of children from "all forms of physical or mental violence" while in the care of parents or guardians. International bodies increasingly interpret mental violence to include witnessing domestic abuse. Persistent failure to recognise and address such exposure places India in tension with its international commitments.

Comparative jurisprudence demonstrates a growing global consensus that children exposed to domestic violence are victims of rights violations warranting independent protection. Indian law's reluctance to fully internalise these standards underscores the need for constitutional and rights-based reform.

F. Constitutional Morality and the Limits of Family Privacy

The doctrine of constitutional morality demands that constitutional values prevail over social

practices that perpetuate injustice. While family privacy is an important value, it cannot be invoked to justify systemic harm to children. Domestic violence affecting children is not a private matter immune from constitutional scrutiny; it is a public wrong that demands state intervention.

Judicial deference to family unity at the cost of child safety reflects a misapplication of constitutional values. A rights-based approach requires rebalancing family autonomy with the state's obligation to protect vulnerable children.

G. Normative Significance of a Rights-Based Approach

Viewing children as silent victims through a constitutional and human rights lens transforms domestic violence from a welfare issue into a matter of enforceable rights. It strengthens the normative foundation for legislative reform, judicial intervention, and policy innovation. Recognising exposure to domestic violence as a constitutional wrong compels the state to move beyond symbolic protection towards substantive enforcement.

Conclusion

Children exposed to domestic violence remain among the most vulnerable yet invisible victims of abuse within Indian society. This research has demonstrated that such children suffer profound psychological, emotional, and developmental harm, even when they are not direct targets of physical violence. Despite this reality, Indian law continues to marginalise children's experiences, treating them as incidental dependents rather than as independent rights-holders entitled to protection and redress.

The analysis reveals that existing legal framework particularly the Protection of Women from Domestic Violence Act, 2005 and the Juvenile Justice (Care and Protection of Children) Act, 2015 operate in silos and remain adult-centric in design and implementation. Judicial responses, though evolving, are inconsistent and constrained by cultural emphasis on family unity and reconciliation. Policy frameworks lack trauma-informed, preventive, and integrated approaches necessary to address children's lived realities.

From a constitutional perspective, exposure to domestic violence violates children's rights to dignity, equality, and healthy development under Articles 14, 21, and 39(f) of the Constitution of India. International obligations under the United Nations Convention on the Rights of the Child further reinforce the duty to protect children from mental and emotional violence. Failure

to recognise children as silent victims therefore constitutes both a constitutional and human rights deficit.

The paper argues for a paradigm shift towards a child-centred, rights-based, and preventive framework. Explicit recognition of children as victims, integration of legal regimes, trauma-informed adjudication, and community-based prevention are essential to ensure meaningful protection. Breaking the silence surrounding children's experiences of domestic violence is not merely a policy choice but a constitutional imperative central to justice, dignity, and the future of society.

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