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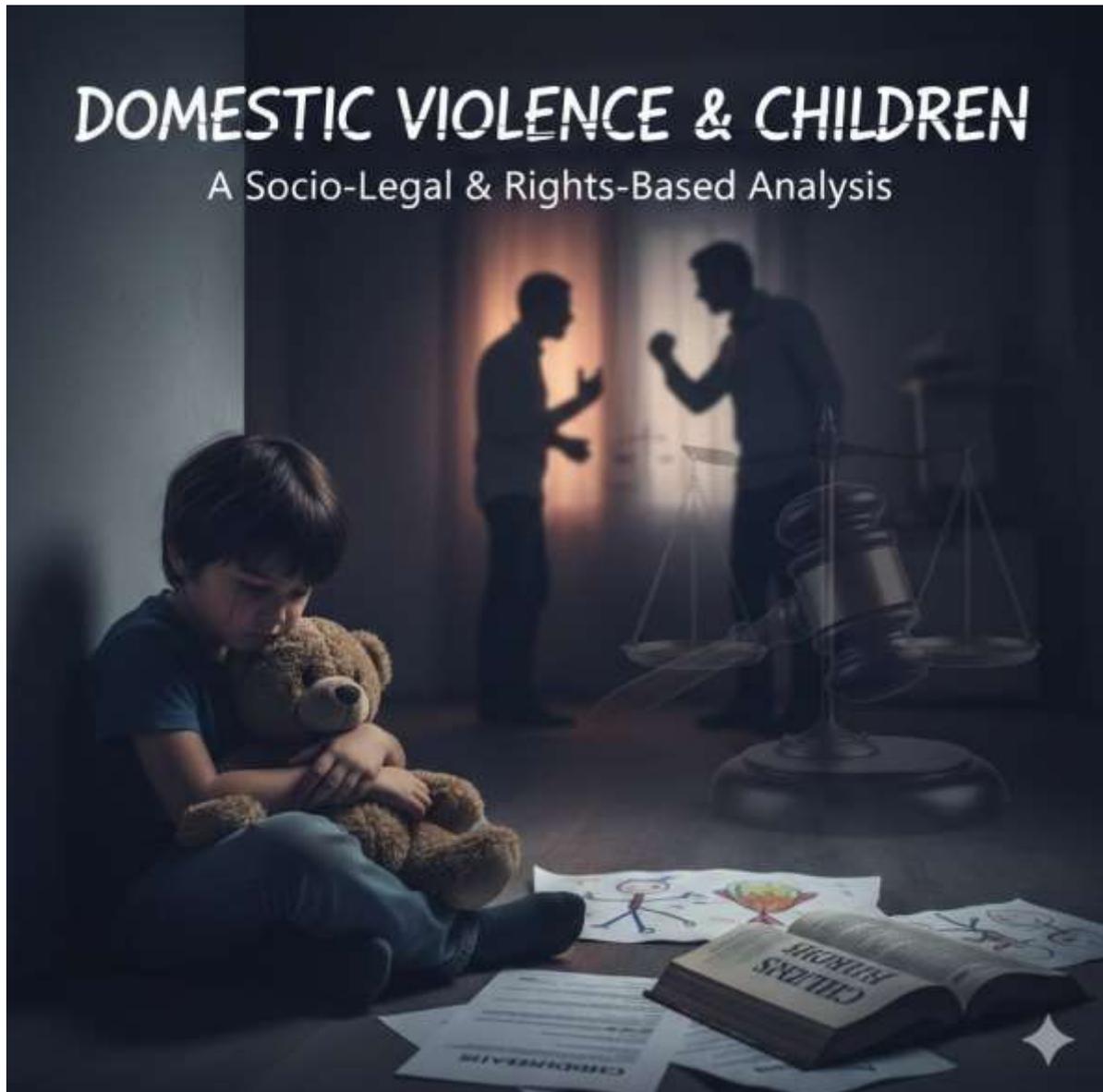
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# **DOMESTIC VIOLENCE AND ITS IMPACT ON CHILDREN: A SOCIO-LEGAL AND RIGHTS-BASED ANALYSIS**

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## Abstract

Domestic violence is widely recognised as a serious violation of human rights, yet its impact on children who witness or live within violent households remains inadequately addressed in legal and policy frameworks. Children exposed to domestic violence often suffer profound psychological, emotional, developmental, and social harm, even when they are not direct victims of physical abuse. Such exposure constitutes a form of child abuse in itself, undermining the child's right to dignity, safety, development, and participation. In India, domestic violence law has traditionally focused on adult victims particularly women while the experiences and rights of children within violent domestic environments have received limited independent attention.

This research paper undertakes a socio-legal and rights-based analysis of the impact of domestic violence on children in India. It examines the intersection of domestic violence law, child protection statutes, constitutional guarantees, and international human rights obligations to assess whether the existing legal framework adequately recognises and addresses the harm suffered by children. The study analyses the Protection of Women from Domestic Violence Act, 2005, the Juvenile Justice (Care and Protection of Children) Act, 2015, family law jurisprudence, and child rights discourse to highlight doctrinal gaps and enforcement challenges.

The paper further explores judicial responses to cases involving children exposed to domestic violence, assessing whether courts sufficiently incorporate child-centric reasoning and best-interest principles. At a policy level, the study evaluates institutional mechanisms such as Child Welfare Committees, family courts, and protection officers, identifying systemic weaknesses in prevention, intervention, and rehabilitation. The paper concludes by proposing legal and policy reforms aimed at integrating child-centred approaches into domestic violence adjudication, strengthening protective mechanisms, and recognising children as rights-holders rather than collateral victims of domestic abuse.

**Keywords:** Domestic Violence, Children, Child Rights, Protection of Women from Domestic Violence Act, Juvenile Justice Act, Best Interest of the Child, India.

## Introduction

Domestic violence within the family is not an isolated act between adult partners but a pervasive social phenomenon with deep and lasting consequences for children who grow up in violent households. While legal discourse has traditionally conceptualised domestic violence as a gendered harm inflicted upon women, children who witness or are exposed to domestic violence experience profound psychological, emotional, and developmental trauma. Such exposure fundamentally undermines a child's right to dignity, security, and holistic development. Increasingly, domestic violence against a caregiver is recognised as a form of indirect child abuse, even where the child is not the direct recipient of physical violence.

In India, children constitute a significant proportion of the population living in households affected by domestic violence. The family, which is constitutionally and culturally perceived as a site of care and protection, often becomes a space of fear, instability, and emotional harm for children exposed to violence between parents or caregivers. Unlike visible forms of abuse, the harm caused by witnessing domestic violence is often invisible, cumulative, and normalised within familial structures. This invisibility poses serious challenges for legal recognition, policy intervention, and enforcement.<sup>2</sup>

Socio-legal research demonstrates that children exposed to domestic violence suffer adverse outcomes including anxiety, depression, post-traumatic stress, behavioural disorders, poor academic performance, and impaired social functioning. Long-term exposure can normalise violence, increasing the risk that children may either perpetuate or tolerate abuse in adulthood. Thus, domestic violence is not merely an interpersonal harm but a transgenerational rights violation with enduring societal consequences.

Despite these realities, Indian law has historically failed to conceptualise children as independent rights-holders in the context of domestic violence. The Protection of Women from Domestic Violence Act, 2005 (PWDVA) was enacted primarily to provide civil remedies to women facing abuse within domestic relationships. While the Act includes children within the definition of "aggrieved persons" and recognises their right to reliefs such as residence and protection orders, its primary focus remains adult victims. Children's experiences are often subsumed under the mother's claim, rather than assessed independently.

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<sup>2</sup> Ministry of Women and Child Development, *Study on Domestic Violence in India*.

Parallel child-centric legislation, particularly the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act), provides a framework for children in need of care and protection. The Act recognises emotional abuse and neglect as grounds for state intervention. However, the intersection between domestic violence law and child protection law remains weakly articulated. Institutional mechanisms under the JJ Act are rarely activated in cases where children witness domestic violence, unless the harm escalates into overt physical abuse or abandonment.

This legal fragmentation reflects a broader conceptual gap. Domestic violence is treated as a private dispute between adults, while child protection is triggered only in extreme cases. The lived reality of children exposed to sustained domestic violence marked by fear, instability, and emotional harm often falls through the cracks of both regimes. As a result, children remain “silent victims” of domestic violence, lacking recognition, voice, and effective remedies.

From a constitutional perspective, exposure to domestic violence directly implicates the rights of children under Articles 14, 15(3), 21, and 39(f) of the Constitution of India. Article 21, as expansively interpreted by the Supreme Court, guarantees the right to live with dignity, safety, and emotional well-being. For children, this right necessarily includes protection from environments that impair mental health and development. The Directive Principles further mandate that children be protected against moral and material abandonment. Failure to address domestic violence as a child rights issue therefore constitutes a constitutional deficiency.

International human rights law reinforces this obligation. 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, abuse, or maltreatment while in the care of parents or guardians. International jurisprudence increasingly recognises that witnessing domestic violence constitutes “mental violence” under the UNCRC. However, domestic incorporation of these standards remains uneven and largely symbolic.

Judicial responses in India reflect gradual but inconsistent progress. Courts have, in custody and guardianship disputes, acknowledged that exposure to domestic violence is contrary to the best interests of the child. Family courts and High Courts have increasingly considered domestic violence as a relevant factor in determining custody and visitation rights.

Nevertheless, such consideration is often incidental rather than central, and children's voices remain marginalised in adjudication.

At the policy level, institutional mechanisms such as Protection Officers under the PWDVA, Child Welfare Committees under the JJ Act, and family courts operate in silos. Lack of coordination, absence of child-specific protocols, and inadequate training prevent a holistic response to domestic violence affecting children. Rehabilitation and counselling services for child witnesses of domestic violence are limited, inconsistent, and often inaccessible.<sup>3</sup>

This paper proceeds on the premise that domestic violence must be reconceptualised not only as a violation of women's rights but also as a serious infringement of children's rights. It argues that children exposed to domestic violence are not collateral victims but direct rights-holders entitled to protection, participation, and rehabilitation. The study adopts a socio-legal and rights-based approach to examine how Indian law addresses or fails to address the impact of domestic violence on children.

The paper undertakes a doctrinal analysis of relevant statutes, judicial decisions, and policy frameworks, complemented by socio-legal insights into child development and family dynamics. It seeks to identify gaps in legal recognition, institutional response, and policy design, and to propose reforms that integrate child-centred principles into domestic violence adjudication and child protection mechanisms. Ultimately, the study aims to contribute to a more coherent and rights-sensitive framework that acknowledges the lived experiences of children and upholds their constitutional and human rights within the family.

### **Objectives of the Study**

The primary objective of this research is to examine domestic violence through a child-centred and rights-based lens, focusing on the lived experiences and legal invisibility of children exposed to violence within the home. While domestic violence law in India has evolved significantly to recognise women's rights, the study seeks to assess whether children affected by such violence are adequately recognised as independent rights-holders rather than incidental or derivative victims.

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<sup>3</sup> HelpAge India & UNICEF, *Child Witnesses of Domestic Violence* (Policy Report).

A key objective of the study is to analyse the extent to which existing legal frameworks particularly the Protection of Women from Domestic Violence Act, 2005 and the Juvenile Justice (Care and Protection of Children) Act, 2015 acknowledge and address the psychological, emotional, and developmental harm suffered by children who witness domestic violence. The research aims to identify doctrinal gaps in statutory recognition and remedial design.<sup>4</sup>

Another objective is to evaluate judicial responses to domestic violence cases involving children, especially in custody, guardianship, visitation, and protection proceedings. The study examines whether courts consistently apply the “best interests of the child” principle and whether children’s voices and welfare are meaningfully incorporated into adjudication.

The research further seeks to explore the socio-legal consequences of exposure to domestic violence on children, including intergenerational transmission of violence, behavioural and emotional harm, and long-term social costs. By integrating socio-legal insights with doctrinal analysis, the study aims to contextualise legal shortcomings within broader social realities.

Finally, the study aims to propose legal and policy reforms to integrate child-centred approaches into domestic violence adjudication, strengthen institutional coordination, and ensure effective protection, participation, and rehabilitation of children affected by domestic violence.

### **Research Questions**

The research is guided by the following questions:

1. How does Indian law conceptualise the impact of domestic violence on children, and to what extent are children recognised as independent victims and rights-holders?
2. Does the Protection of Women from Domestic Violence Act, 2005 adequately address the needs and rights of children exposed to domestic violence?
3. How effectively does the Juvenile Justice (Care and Protection of Children) Act, 2015 respond to cases where children witness domestic violence without being direct victims of physical abuse?

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<sup>4</sup> Protection of Women from Domestic Violence Act, 2005; Juvenile Justice (Care and Protection of Children) Act, 2015.

4. How have Indian courts applied the “best interests of the child” principle in domestic violence–related custody and protection disputes?
5. What legal and policy reforms are necessary to adopt a holistic, rights-based approach to protecting children from the impact of domestic violence?

### **Hypothesis**

The study proceeds on the hypothesis that Indian law inadequately recognises and addresses the impact of domestic violence on children. It is hypothesised that the adult-centric focus of domestic violence legislation, coupled with fragmented child protection mechanisms, results in systemic under-protection of children exposed to domestic violence. The study further hypothesises that while judicial intervention has partially acknowledged child-centric concerns, the absence of an integrated rights-based framework continues to marginalise children’s experiences and voices.

### **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 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 relevant family law statutes. Judicial pronouncements relating to custody, guardianship, and child welfare in domestic violence contexts form a central component of the analysis.<sup>5</sup>

Secondary sources include books, peer-reviewed journal articles, reports of the Law Commission of India, policy documents issued by governmental and international organisations such as UNICEF, and empirical studies on the psychological impact of domestic violence on children. These sources are used to contextualise legal doctrine within social and developmental realities.

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

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<sup>5</sup> Guardians and Wards Act, 1890.

## Literature Review

Scholarly engagement with domestic violence in India has grown substantially over the past two decades, largely driven by feminist legal scholarship, human rights discourse, and judicial expansion of women's constitutional protections. However, within this expanding body of literature, the impact of domestic violence on children particularly children who witness violence rather than experience direct physical abuse remains insufficiently theorised and under-integrated into legal analysis. Existing scholarship often treats children as peripheral or derivative victims, rather than as independent rights-holders whose developmental and psychological interests warrant direct legal protection.<sup>6</sup>

Early Indian scholarship on domestic violence focused predominantly on women's vulnerability within patriarchal family structures. Feminist legal scholars highlighted how domestic violence is sustained by economic dependency, social stigma, and lack of institutional support.<sup>7</sup> While these studies occasionally acknowledged the presence of children in violent households, children were primarily discussed in terms of their role as dependents of abused women rather than as subjects of harm in their own right. As a result, the child-centric consequences of domestic violence remained largely invisible in doctrinal discourse.

The enactment of the Protection of Women from Domestic Violence Act, 2005 prompted a new wave of legal scholarship analysing the scope, objectives, and remedial architecture of the Act. Commentators praised the Act's civil-law orientation, broad definition of domestic violence, and recognition of economic and emotional abuse.<sup>8</sup> However, literature critiques the Act for its adult-centric design. Although children are included within the definition of "aggrieved persons," scholarly analysis reveals that the Act does not sufficiently articulate children's rights, participation, or long-term rehabilitation needs. Reliefs granted to children are often incidental to those granted to mothers, reinforcing children's secondary legal status.<sup>9</sup> Parallel literature on child protection law, particularly under the Juvenile Justice (Care and Protection of Children) Act, 2015, focuses on children in conflict with law and children in need of care and protection. Scholars analysing the JJ Act emphasise its child-centric philosophy, best-interest principle, and rehabilitative approach. However, this literature rarely engages with

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<sup>6</sup> Law Commission of India, *Report on Domestic Violence and Child Protection* (Government of India).

<sup>7</sup> Flavia Agnes, *Law and Gender Inequality* (Oxford University Press).

<sup>8</sup> Protection of Women from Domestic Violence Act, 2005.

<sup>9</sup> Indira Jaising, 'Domestic Violence Law in India: A Critical Review' (2006) *Economic and Political Weekly*.

domestic violence as a distinct category of harm triggering child protection mechanisms. Emotional and psychological harm resulting from witnessing domestic violence is acknowledged in theory but seldom analysed in enforcement or adjudication contexts.

Judicial commentary and case-law analysis form a growing strand of scholarship addressing the intersection of domestic violence and child welfare. Scholars examining custody and guardianship decisions note that Indian courts increasingly consider exposure to domestic violence as a relevant factor in determining the best interests of the child. Supreme Court decisions have recognised that children's welfare cannot be separated from the emotional environment in which they are raised. However, literature highlights inconsistency in judicial reasoning, with some courts prioritising parental rights or reconciliation over child safety and well-being.

Socio-legal and psychological literature provides critical insights into the developmental impact of domestic violence on children. Empirical studies consistently demonstrate that children exposed to domestic violence suffer from anxiety, depression, post-traumatic stress disorder, impaired cognitive development, and behavioural problems. Longitudinal studies indicate that such exposure increases the likelihood of substance abuse, criminal behaviour, and perpetuation of violence in adulthood. While these findings are well-documented in social science literature, legal scholarship has not adequately integrated these insights into doctrinal and policy analysis.

International child rights literature increasingly recognises witnessing domestic violence as a form of child abuse. Scholars interpreting the United Nations Convention on the Rights of the Child argue that "mental violence" under Article 19 includes exposure to domestic violence.<sup>10</sup> Comparative legal studies highlight jurisdictions that have adopted child-centric domestic violence frameworks, including mandatory risk assessments, child-inclusive protection orders, and specialised therapeutic interventions. Indian legal scholarship has referenced these developments but has not systematically examined their relevance or adaptability within India's constitutional and socio-cultural context.

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<sup>10</sup> United Nations Convention on the Rights of the Child, art 19.

Policy-oriented literature, including reports by UNICEF, the Law Commission of India, and governmental bodies, acknowledges the harmful impact of domestic violence on children. However, such reports often adopt a descriptive approach, focusing on prevalence and welfare outcomes rather than interrogating legal accountability and rights-based remedies. There is limited engagement with how institutional silos between domestic violence authorities, child protection agencies, and family courts undermine effective intervention.

A significant gap in existing literature is the absence of an integrated socio-legal analysis that treats children exposed to domestic violence as direct victims of rights violations. Most studies examine domestic violence law and child protection law in isolation, without analysing their intersection or cumulative impact on children's rights. Moreover, constitutional dimensions particularly Articles 21, 14, and 39(f) remain underexplored in the context of domestic violence-affected children.

This study seeks to fill these gaps by adopting a rights-based and child-centred analytical framework. By integrating doctrinal analysis, judicial trends, socio-legal insights, and international child rights norms, the research aims to reconceptualise domestic violence as a violation not only of women's rights but also of children's constitutional and human rights. The literature review thus establishes the need for deeper post-literature analysis focusing on legal fragmentation, institutional failures, and reform imperatives issues addressed in the subsequent sections of this paper.

## **Legal Framework Governing Domestic Violence and Child Protection in India**

The legal regulation of domestic violence and child protection in India is characterised by fragmentation across multiple statutes, each addressing a different dimension of harm. While this plural framework offers a wide range of remedies in theory, it fails to provide a coherent, child-centred response to domestic violence experienced by children. Children exposed to domestic violence fall at the intersection of women's protection law, child welfare legislation, family law, and constitutional guarantees. This section critically analyses these legal frameworks to assess whether they meaningfully recognise and address the impact of domestic violence on children.

## **A. Protection of Women from Domestic Violence Act, 2005**

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) represents India's most significant legislative response to domestic violence. Enacted as a civil law remedy, the Act aims to provide immediate protection, residence, and monetary relief to women subjected to violence within domestic relationships. While the Act formally includes children within its protective scope, its design and implementation remain predominantly adult-centric.<sup>11</sup>

### **1. Recognition of Children under the PWDVA**

Section 2(a) of the Act defines an "aggrieved person" to include any woman, and children who are subjected to domestic violence. Section 2(b) further defines "child" as any person below the age of eighteen years. Domestic violence is defined broadly under Section 3 to include physical, emotional, verbal, sexual, and economic abuse. Exposure to domestic violence, therefore, can fall within the ambit of emotional abuse affecting children.

Despite this inclusive definition, the Act does not clearly articulate children's independent rights or remedies. Reliefs granted to children such as custody orders, residence orders, or monetary relief are typically ancillary to the mother's claim. Children rarely appear as autonomous claimants, and their experiences are often subsumed under the narrative of violence against the woman. This structural limitation undermines recognition of children as direct victims of domestic violence.

### **2. Custody and Protection Orders**

Section 21 of the PWDVA empowers courts to grant temporary custody of children to the aggrieved woman. Courts have, in some cases, denied visitation rights to abusive fathers where exposure to violence was found to be detrimental to the child's welfare. However, such decisions are discretionary and unevenly applied. The Act does not mandate child-specific risk assessments or psychological evaluation before granting visitation or shared custody, leaving children vulnerable to continued exposure to violence.

### **3. Absence of Rehabilitation and Child-Centric Remedies**

A major limitation of the PWDVA is its failure to provide long-term rehabilitative measures for children affected by domestic violence. The Act focuses on immediate protection rather than addressing the psychological trauma and developmental harm

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<sup>11</sup> Protection of Women from Domestic Violence Act, 2005, Preamble.

suffered by child witnesses. Counselling services, where provided, are inconsistent and inadequately resourced. The absence of child-specific rehabilitation reflects the Act's primary orientation towards adult victims rather than holistic family welfare.

## **B. Juvenile Justice (Care and Protection of Children) Act, 2015**

The Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) provides a comprehensive framework for children in need of care and protection. The Act adopts a child-centric approach, grounded in principles of best interest, safety, and rehabilitation. However, its engagement with domestic violence as a form of child abuse remains limited in practice.

### **1. Emotional Abuse and Exposure to Violence**

Section 2(14) of the JJ Act defines a "child in need of care and protection" to include children who are mentally or emotionally abused or whose parents are unfit to care for them. In theory, sustained exposure to domestic violence should qualify as emotional abuse triggering child protection mechanisms. Yet, in practice, Child Welfare Committees (CWCs) rarely intervene unless domestic violence escalates into direct physical abuse or abandonment.<sup>12</sup>

This narrow interpretation reflects institutional reluctance to intervene in "family matters" and a lack of recognition of emotional harm as a standalone basis for protection. As a result, many children remain outside the protective reach of the JJ Act despite clear indicators of psychological harm.

### **2. Institutional Silos and Lack of Coordination**

The JJ Act operates through CWCs, while the PWDVA is implemented through Protection Officers and Magistrates. There is no statutory mechanism for coordination between these institutions in cases involving children exposed to domestic violence. This siloed functioning leads to fragmented responses, with neither system assuming full responsibility for child protection.

## **C. Family Law and Custody Jurisprudence**

Family law statutes and guardianship jurisprudence play a critical role in determining children's living arrangements in domestic violence contexts. Courts are guided by the "best interests of the child" principle, which has been judicially recognised as paramount.

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<sup>12</sup> Ministry of Women and Child Development, *Study on Child Protection and Domestic Violence*.

In custody disputes, courts have increasingly considered domestic violence as a relevant factor affecting child welfare. The Supreme Court in *Vivek Singh v Romani Singh* emphasised that the child's emotional and psychological well-being must guide custody decisions. However, family courts often prioritise parental reconciliation and access over child safety, particularly in the absence of direct abuse against the child.

Visitation orders frequently fail to incorporate safeguards such as supervised visitation or therapeutic intervention, exposing children to continued conflict and trauma. This reflects a broader judicial tendency to treat domestic violence as an issue between adults, with insufficient child-centric analysis.

#### **D. Constitutional Framework and Child Rights**

The Constitution of India provides a strong normative foundation for protecting children from the impact of domestic violence. Article 21 guarantees the right to life with dignity, which includes emotional security and psychological well-being. For children, this right necessarily encompasses protection from violent and harmful domestic environments.

Directive Principles such as Article 39(f) mandate that children be protected against moral and material abandonment and be given opportunities to develop in a healthy manner. Judicial interpretation has increasingly read these principles into enforceable rights, particularly in child welfare cases.

Despite this constitutional backing, enforcement remains inconsistent due to lack of statutory integration and institutional capacity. Constitutional values have yet to be fully operationalised within domestic violence adjudication affecting children.

#### **E. International Obligations and Domestic Incorporation**

India's obligations under the United Nations Convention on the Rights of the Child (UNCRC) reinforce the duty to protect children from all forms of physical and mental violence. 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. Indian courts occasionally reference international norms but rarely use them as a basis for developing child-specific domestic violence jurisprudence. The gap between international obligation and domestic implementation persists.

## **F. Assessment of the Legal Framework**

The existing legal framework provides partial and fragmented protection to children exposed to domestic violence. While statutory tools exist across multiple regimes, none offers a comprehensive, child-centred response. Children remain legally invisible protected indirectly through women's rights or welfare mechanisms rather than recognised as direct victims of rights violations. This fragmentation necessitates reform aimed at integration, child-centric adjudication, and preventive intervention.

### **Impact of Domestic Violence on Children: Psychological, Social, and Rights-Based Dimensions**

The impact of domestic violence on children extends far beyond immediate physical safety concerns and penetrates deeply into the psychological, emotional, social, and constitutional dimensions of childhood. Children who grow up in violent households experience harm even when they are not the direct targets of abuse. Exposure to domestic violence fundamentally disrupts a child's sense of security, trust, and emotional stability, producing long-term consequences that law and policy have only partially recognised. This section adopts a socio-legal and rights-based perspective to analyse the multidimensional harm suffered by children exposed to domestic violence and its implications for legal accountability.<sup>13</sup>

#### **A. Psychological Impact of Exposure to Domestic Violence**

Psychological research consistently establishes that children exposed to domestic violence experience trauma comparable to direct victims of abuse. Such children exhibit heightened levels of anxiety, depression, fear, sleep disturbances, and post-traumatic stress symptoms. The home, which should function as a site of emotional safety, becomes a space of unpredictability and fear. This inversion of the protective role of family has severe developmental consequences.

Children often internalise blame for violence occurring between parents or caregivers, leading to feelings of guilt and helplessness. Younger children may regress developmentally, while adolescents may display aggression, withdrawal, or risk-taking behaviour. These psychological injuries are frequently invisible to legal institutions, which prioritise physical harm over

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<sup>13</sup> Law Commission of India, *Report on Domestic Violence and Child Protection* (Government of India).

emotional trauma. The law's failure to adequately recognise psychological harm results in systemic under-protection of children living in violent households.<sup>14</sup>

## **B. Social and Developmental Consequences**

Exposure to domestic violence adversely affects children's social development, educational outcomes, and interpersonal relationships. Studies indicate that such children often struggle with concentration, academic performance, and peer relationships. School environments may reflect behavioural issues stemming from unresolved trauma, resulting in disciplinary action rather than support.

At a broader societal level, domestic violence contributes to the intergenerational transmission of violence. Children exposed to violence are statistically more likely to accept violence as a normal conflict-resolution mechanism, increasing the risk that they may either perpetrate or tolerate abuse in adulthood. This cycle transforms domestic violence from a private family issue into a public social problem with long-term consequences for community safety and social cohesion.

## **C. Exposure to Domestic Violence as a Violation of Child Rights**

From a rights-based perspective, exposure to domestic violence constitutes a violation of children's fundamental rights under domestic and international law. Article 21 of the Constitution of India guarantees the right to life with dignity, which encompasses emotional security, mental health, and healthy development. For children, this right is inseparable from the quality of the domestic environment in which they are raised.

Directive Principles under Article 39(f) further mandate that children be protected against moral and material abandonment and be given opportunities to develop in conditions of freedom and dignity. A household characterised by fear, violence, and instability directly contravenes these constitutional commitments. Yet, domestic violence adjudication rarely treats children's exposure as an independent constitutional violation.

Internationally, the United Nations Convention on the Rights of the Child obligates States to protect children from all forms of physical and mental violence. Article 19 explicitly includes mental violence, which international child rights bodies interpret to include witnessing domestic abuse. Failure to recognise exposure as harm therefore places domestic legal frameworks at odds with international obligations.

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<sup>14</sup> Ministry of Women and Child Development, *Study on Domestic Violence and Child Mental Health*.

#### **D. Legal Invisibility and Marginalisation of Child Victims**

Despite the severity of harm, children exposed to domestic violence remain legally invisible in many proceedings. Domestic violence cases are framed as disputes between adults, with children appearing as dependents rather than victims. Courts frequently focus on reconciliation, access, and parental rights without sufficiently assessing the child's lived experience of violence.

This invisibility is reinforced by institutional practices. Protection Officers, family courts, and magistrates often lack training in child psychology and trauma-informed adjudication. Children are rarely given an opportunity to be heard, contrary to child participation principles under domestic and international law. As a result, children's voices and experiences are marginalised in decisions that profoundly affect their lives.

#### **E. Custody, Visitation, and Continued Exposure to Harm**

Custody and visitation decisions represent a critical site where legal invisibility manifests most acutely. Courts often prioritise parental access and reconciliation, sometimes granting unsupervised visitation to abusive parents. While the "best interests of the child" principle is formally invoked, its application is inconsistent and frequently adult-centric.

Continued exposure to violent parents through visitation can retraumatise children and undermine their recovery. The absence of mandatory risk assessment, supervised visitation protocols, or therapeutic support reflects systemic failure to protect children from ongoing harm. Such decisions may satisfy formal parental rights while violating children's substantive right to safety and well-being.

#### **F. Intersectional Vulnerabilities**

The impact of domestic violence on children is shaped by intersecting vulnerabilities such as gender, disability, socio-economic status, and caste. Children from marginalised communities often face compounded barriers to protection due to poverty, lack of access to support services, and institutional bias. Girls may be subjected to additional control and surveillance, while children with disabilities are particularly vulnerable to neglect and abuse.<sup>15</sup>

A rights-based legal framework must therefore recognise that children's experiences of domestic violence are not uniform and require differentiated responses tailored to specific vulnerabilities.

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<sup>15</sup> National Commission for Protection of Child Rights, *Child Vulnerability and Abuse Report*.

## **G. Implications for Legal and Policy Reform**

Recognising the multidimensional impact of domestic violence on children necessitates a shift in legal and policy paradigms. Law must move beyond episodic protection of adult victims to holistic safeguarding of children's rights. Exposure to domestic violence should be explicitly recognised as harm triggering state intervention, rehabilitation, and child-centred remedies. Without such recognition, children remain trapped in cycles of violence that law formally condemns but substantively tolerates. Addressing this gap is essential not only for protecting individual children but also for upholding constitutional values of dignity, equality, and social justice.

## **Judicial Responses to Domestic Violence Affecting Children: Trends and Limitations**

The judiciary plays a crucial role in mediating the impact of domestic violence on children, particularly in custody, guardianship, visitation, and protection proceedings. Indian courts have increasingly acknowledged that children exposed to domestic violence suffer harm that extends beyond the immediate victimisation of women. However, judicial responses remain uneven, oscillating between child-centric reasoning and adult-focused reconciliation. This section critically examines judicial trends to assess whether courts have effectively integrated children's rights and best-interest principles into domestic violence adjudication.

### **A. Recognition of Domestic Violence as a Factor in Child Welfare**

Indian courts have consistently held that the "best interests of the child" constitute the paramount consideration in matters concerning custody and guardianship. In *Vivek Singh v Romani Singh*, the Supreme Court emphasised that a child's emotional, psychological, and moral welfare must guide custody determinations. Exposure to domestic violence has increasingly been recognised as relevant to assessing such welfare.

High Courts have, in several cases, denied custody or restricted visitation rights of parents found to be violent or abusive, recognising that continued exposure to such behaviour is detrimental to the child. These decisions reflect growing judicial sensitivity to the indirect harm suffered by children living in violent households. However, such recognition is often implicit rather than articulated as a violation of children's rights.

## **B. Custody and Visitation: Balancing Parental Rights and Child Safety**

Custody and visitation disputes constitute the primary forum in which courts address the impact of domestic violence on children. While courts formally invoke the best-interest principle, its application is frequently compromised by competing concerns such as parental rights, reconciliation, and societal expectations of family unity.

Courts have, in many cases, granted visitation rights to abusive parents on the assumption that maintaining parental bonds is inherently beneficial. Such assumptions often disregard the child's lived experience of fear, trauma, and instability. The absence of mandatory risk assessments, supervised visitation protocols, or child psychological evaluations weakens judicial capacity to make informed, child-centred decisions.

## **C. Children's Voices and Participation in Judicial Proceedings**

A significant limitation of judicial response lies in the marginalisation of children's voices. Despite recognition of child participation as a core principle of child rights jurisprudence, children are rarely heard directly in domestic violence-related proceedings. Courts often rely on parental submissions or welfare reports that may not accurately reflect the child's perspective.

This exclusion undermines children's agency and contravenes international standards under the UNCRC, which recognise the child's right to be heard in matters affecting them. Judicial reluctance to engage directly with children reflects discomfort with participatory adjudication and lack of child-sensitive procedures.

## **D. Domestic Violence Proceedings and Child Protection Law**

Judicial engagement with the intersection between domestic violence law and child protection law remains limited. Courts rarely invoke the Juvenile Justice (Care and Protection of Children) Act, 2015 in domestic violence cases, even where children exhibit clear indicators of emotional or psychological harm.

This doctrinal separation results in fragmented protection. Domestic violence courts focus on adult remedies, while child protection mechanisms remain dormant unless harm escalates to physical abuse or abandonment. Judicial reluctance to activate child protection frameworks reflects broader institutional silos rather than legal impossibility.

## **E. Constitutional Reasoning and Its Limits**

Courts occasionally invoke constitutional principles such as dignity, liberty, and equality to

justify protective measures for children. Article 21 has been interpreted to include the right to emotional well-being and safe upbringing. However, constitutional reasoning is often applied implicitly rather than explicitly framed as a child rights violation.

The absence of explicit constitutional framing limits the transformative potential of judicial intervention. Without recognising exposure to domestic violence as an independent constitutional wrong against children, judicial remedies remain discretionary and inconsistent.

#### **F. Emphasis on Reconciliation and Its Consequences**

A recurring judicial theme is emphasis on reconciliation and preservation of family unity. While reconciliation may be appropriate in certain contexts, its prioritisation in domestic violence cases can expose children to continued harm. Courts sometimes encourage mediation or settlement without adequately assessing risks to children, thereby subordinating child safety to adult compromise.

This approach reflects a persistent cultural bias favouring family cohesion over individual rights, particularly children's rights. Judicial insistence on reconciliation without safeguards undermines the protective purpose of domestic violence law.

#### **G. Inconsistency and Lack of Uniform Standards**

Judicial responses vary widely across jurisdictions and even within the same court. Lack of uniform standards regarding assessment of domestic violence impact on children results in unpredictability and uneven protection. Decisions often depend on individual judges' sensitivity rather than structured legal principles.

The absence of binding guidelines on child-centred adjudication in domestic violence cases contributes to this inconsistency, reinforcing the need for legislative and policy reform.

#### **H. Assessment of Judicial Role**

While courts have taken important steps towards recognising the impact of domestic violence on children, judicial intervention remains reactive and fragmented. Courts operate within statutory constraints and cultural assumptions that limit child-centred adjudication. Without systemic reform and clear legislative guidance, judicial efforts alone cannot ensure consistent protection of children's rights.

## **Policy Gaps and Institutional Challenges in Protecting Children from Domestic Violence**

Despite legislative recognition of domestic violence and an expanding child protection framework, children exposed to domestic violence continue to receive inadequate and inconsistent protection in India. This failure is not solely attributable to legal gaps but is deeply rooted in policy design, institutional fragmentation, and implementation deficits. Existing mechanisms operate in silos, prioritise adult-centric remedies, and lack trauma-informed approaches necessary to address the complex needs of children living in violent households.

### **A. Adult-Centric Design of Domestic Violence Policy**

Domestic violence policy in India is primarily oriented towards adult victims, particularly women. The Protection of Women from Domestic Violence Act, 2005 was enacted as a gender-specific remedial statute, and while it acknowledges children, it does not place them at the centre of intervention. Policy frameworks conceptualise children as dependents whose protection flows indirectly from the protection of their mothers.

This adult-centric design obscures children's independent experiences of harm. Children are rarely identified as primary beneficiaries of domestic violence interventions, resulting in limited child-specific assessments, remedies, or follow-up support. Policy silence on children's independent rights reinforces legal invisibility and undercuts effective protection.

### **B. Role and Limitations of Protection Officers**

Protection Officers (POs) under the PWDVA play a critical role in facilitating access to justice, conducting domestic incident reports, and coordinating support services. However, POs are often inadequately trained to identify and respond to the impact of domestic violence on children. Their assessments tend to focus on adult complainants, with limited attention to children's emotional and psychological well-being.

Moreover, POs are overburdened, under-resourced, and frequently assigned multiple administrative responsibilities. Lack of child-specific training and absence of standardised protocols for engaging with child witnesses of violence significantly weaken institutional response. Without trauma-informed assessment tools, the harm suffered by children remains undocumented and unaddressed.

### **C. Child Welfare Committees and Reluctance to Intervene**

Child Welfare Committees (CWCs) under the Juvenile Justice (Care and Protection of Children) Act, 2015 are mandated to protect children in need of care and protection. However, CWCs rarely intervene in cases involving domestic violence unless there is direct physical abuse, abandonment, or homelessness. Exposure to domestic violence is often not treated as sufficient grounds for intervention.

This reluctance reflects institutional discomfort with intervening in family environments and a narrow interpretation of “emotional abuse.” CWCs often defer to domestic violence authorities, while domestic violence mechanisms assume that child protection agencies will intervene resulting in jurisdictional ambiguity and inaction.

### **D. Family Courts and Counselling-Centric Approaches**

Family courts play a central role in custody, guardianship, and visitation disputes arising from domestic violence. However, family court processes frequently emphasise counselling, mediation, and reconciliation. While such approaches may be appropriate in non-violent disputes, they are ill-suited to cases involving domestic violence affecting children.

Counselling-centric approaches often prioritise restoration of family harmony over child safety. Mediation may pressure victims into compromise and expose children to continued trauma. The absence of mandatory child-risk assessment, specialised counsellors, and trauma-informed judicial processes undermines effective child protection.

### **E. Lack of Trauma-Informed and Child-Sensitive Systems**

A critical policy failure is the absence of trauma-informed systems across domestic violence and child protection institutions. Trauma-informed practice recognises the psychological impact of violence and seeks to avoid re-traumatisation. In India, institutional responses remain procedural rather than therapeutic.

Children exposed to domestic violence rarely receive psychological counselling, therapeutic intervention, or long-term rehabilitation support. Where services exist, they are unevenly distributed and poorly coordinated. The lack of integrated mental health support reflects policy neglect of children’s long-term recovery.

### **F. Absence of Preventive and Early-Intervention Policies**

Domestic violence policy in India is largely reactive. Interventions are triggered after violence is reported, often at advanced stages. Preventive strategies such as early identification of at-

risk families, community-based support, and parenting programmes are limited.

Schools, healthcare providers, and community organisations are rarely integrated into domestic violence prevention frameworks. Teachers and healthcare workers are not systematically trained or mandated to identify and report signs of domestic violence affecting children. This absence of early-intervention mechanisms allows harm to persist unchecked.

### **G. Socio-Cultural Barriers and Policy Blind Spots**

Policy frameworks often fail to account for socio-cultural factors that inhibit reporting and intervention. Social stigma, normalisation of violence, fear of family breakdown, and economic dependency discourage disclosure of domestic violence. Children, in particular, are discouraged from speaking out due to fear, loyalty conflicts, and lack of agency.

Policies that rely solely on complaint-driven mechanisms fail to address these realities. Without proactive outreach, awareness campaigns, and child-friendly reporting systems, many children remain trapped in violent environments.

### **H. Assessment of Policy and Institutional Failure**

The cumulative effect of adult-centric policy design, institutional silos, lack of trauma-informed practice, and weak preventive strategies is systemic failure to protect children exposed to domestic violence. Legal recognition without institutional capacity results in symbolic protection rather than substantive rights enforcement. Addressing these failures requires comprehensive reform that integrates child rights into domestic violence policy at every level.

## **Reform Imperatives and Child-Centred Policy Recommendations**

The analysis above demonstrates that children exposed to domestic violence remain inadequately protected within India's existing legal and policy framework. While statutory recognition of domestic violence and child protection exists, the absence of integration, child-centric design, and trauma-informed practice has resulted in systemic under-protection. Addressing this gap requires a fundamental shift from adult-centric and reactive responses to a holistic, rights-based, and preventive framework centred on children's best interests.

### **A. Explicit Recognition of Children as Victims of Domestic Violence**

A critical reform imperative is explicit statutory recognition that children exposed to domestic

violence are victims in their own right. The Protection of Women from Domestic Violence Act, 2005 should be amended to clearly recognise exposure to domestic violence as a form of harm to children, irrespective of direct physical abuse. Such recognition would align domestic law with international child rights standards and remove ambiguity regarding children's legal status.

This reform would have important normative consequences by affirming that children are rights-holders entitled to protection, participation, and rehabilitation, rather than passive dependents of adult complainants.

### **B. Mandatory Child-Centred Risk Assessment and Safeguards**

Domestic violence adjudication involving children must incorporate mandatory child-centred risk assessments. Courts should be required to evaluate the psychological and emotional impact of domestic violence on children before granting custody, visitation, or shared parenting arrangements. Safeguards such as supervised visitation, no-contact orders, and therapeutic intervention should be mandated where exposure to violence is established.

Judicial discretion must be guided by structured protocols rather than informal assumptions about parental access or reconciliation.

### **C. Integration of Domestic Violence and Child Protection Frameworks**

Legal and institutional silos between domestic violence mechanisms and child protection authorities must be dismantled. Statutory coordination between Protection Officers under the PWDVA and Child Welfare Committees under the Juvenile Justice Act should be mandated in cases involving children. Joint case management, information sharing, and coordinated intervention would ensure that children do not fall through jurisdictional gaps.

### **D. Trauma-Informed and Child-Sensitive Adjudication**

Courts, Protection Officers, counsellors, and child protection authorities must adopt trauma-informed practices. Training in child psychology, trauma, and rights-based adjudication is essential to prevent re-traumatisation and ensure meaningful participation of children. Child-friendly procedures, safe spaces, and age-appropriate communication should be institutionalised across forums.

### **E. Participation and Voice of Children**

Legal reform must operationalise children's right to be heard in matters affecting them,

consistent with domestic constitutional principles and international norms. Courts should develop mechanisms to hear children's views directly or through trained professionals, ensuring that participation is voluntary, safe, and meaningful. Recognising children's agency strengthens both procedural fairness and substantive justice.

### **F. Preventive and Community-Based Interventions**

Policy must move beyond reactive intervention towards prevention and early identification. Schools, healthcare providers, and community organisations should be integrated into domestic violence prevention frameworks, with training to identify and report signs of harm to children. Parenting programmes, community counselling, and awareness campaigns can mitigate risk before harm becomes entrenched.

### **G. Alignment with International Child Rights Standards**

India should align domestic domestic violence and child protection law with its obligations under the United Nations Convention on the Rights of the Child. International best practices such as recognising exposure to domestic violence as child abuse and mandating protective interventions should be contextually adapted to India's constitutional and socio-cultural framework.

## **Conclusion**

Domestic violence is not only a violation of women's rights but also a profound and often invisible infringement of children's rights. This research has demonstrated that children exposed to domestic violence suffer significant psychological, emotional, and developmental harm, even in the absence of direct physical abuse. Yet, Indian law continues to treat such children as peripheral actors rather than direct victims of rights violations.

The study reveals that while India possesses multiple legal frameworks addressing domestic violence and child protection, these regimes operate in isolation and remain adult-centric in design and implementation. The Protection of Women from Domestic Violence Act, 2005 provides limited child-specific remedies, while the Juvenile Justice (Care and Protection of Children) Act, 2015 is rarely activated in domestic violence contexts. Judicial responses, though evolving, remain inconsistent and constrained by cultural biases favouring reconciliation and parental rights over child safety.

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. Internationally, India's obligations under the UNCRC further reinforce the duty to protect children from mental and emotional violence. Failure to address domestic violence as a child rights issue therefore represents 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 empowerment-oriented policy reforms are essential to ensure meaningful protection. As domestic violence continues to affect countless children within the private sphere of the family, the urgency of reform cannot be overstated. Protecting children from the impact of domestic violence is not merely a matter of social welfare it is a constitutional imperative central to justice, dignity, and the future of society.

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