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CHILD CUSTODY DECISIONS IN THE SHADOW OF DOMESTIC VIOLENCE IN INDIA

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Abstract

This paper explores the complex dynamics of child custody decisions in India, particularly concerning domestic violence. It highlights the significant effects that domestic abuse—whether witnessed or experienced by children—can have on their emotional and psychological development, often resulting in long-lasting consequences. The Indian legal framework, through laws such as the Guardians and Wards Act, the Hindu Minority and Guardianship Act, the Protection of Women from Domestic Violence Act etc. which seeks to prioritize the "best interests of the child." However, obstacles such as systemic flaws, patriarchal influences, outdated legislation, and inconsistent judicial practices often hinder its effective implementation. The article further examines the nuanced effects of domestic violence on children, the evolution of custody laws, and the commitment to prioritizing the child's best interests, advocating for reforms that are trauma-informed and child-centered. It concludes with recommendations for strengthening legal protections and ensuring comprehensive safety for children involved in custody disputes arising from domestic violence.

Keywords

Child custody, domestic violence, best interests of the child, Guardians and Wards Act, Protection of Women from Domestic Violence Act, child welfare, custody laws in India, psychological impact on children.

Introduction

In India, child custody frequently becomes a contentious topic during marital disputes, particularly when allegations of domestic violence arise. The challenge lies in balancing the child's welfare with the protection of the victim, usually the mother, placing the judiciary in a sensitive position. While custody laws are designed to prioritize the "best interests of the child," this principle becomes increasingly complicated when domestic violence is a factor. The Indian legal system, guided by laws

such as the Guardian and Wards Act of 1890¹⁶⁰ and the Protection of Women from Domestic Violence Act of 2005¹⁶¹, strives to align parental rights with the child's welfare; however, practical implementation reveals significant systemic obstacles.

In situations where domestic violence is alleged or confirmed, courts must look beyond simply identifying and considering the effects of trauma, safety, and psychological health. Although the law acknowledges the importance of factoring in abuse when making decisions, judicial interpretations can be inconsistent, undermining the protective intentions of the legislation.¹⁶² Additionally, fathers frequently face disadvantages in custody cases, as Indian

¹⁶⁰ The Guardians and Wards Act, 1890, (Act no. 8 of 1890).

¹⁶¹ Protection of Women from Domestic Violence Act, 2005, (Act no 43 of 2005).

¹⁶² Kusum, Family Law Lectures: Family Law I, 4th edn (LexisNexis Butterworths, 2019) 242.

law and judicial interpretations typically assume that mothers are the primary caregivers, particularly for young children, which often leads to a bias in favor of mothers.¹⁶³

1.1 Domestic Violence and Its Hidden Impact on Children

Numerous children who are exposed to domestic violence also suffer from physical abuse.¹⁶⁴ Those who either witness domestic violence or are direct victims face significant risks for enduring physical and mental health issues.¹⁶⁵ Additionally, children who observe violent interactions between their parents may be more likely to exhibit violent behaviour in their own future relationships.¹⁶⁶ For parents enduring abuse, finding ways to safeguard their children can be particularly challenging.¹⁶⁷

Victims of domestic violence endure physical assaults, emotional abuse, and various forms of maltreatment, all of which can severely impact their overall well-being.¹⁶⁸ While the effects of such abuse are evident in the primary victims, children who witness these events also experience profound consequences.¹⁶⁹

The impact of witnessing domestic violence on children can manifest both immediately and over time. This underscores the critical importance of shielding children from such environments and educating them about healthy relationships and personal boundaries.¹⁷⁰ If you or someone you know is facing domestic violence, it is vital to seek

assistance and consider safe options for leaving the harmful situation.¹⁷¹

Short-Term Effects of Witnessing Domestic Violence in Childhood

Domestic violence is a distressingly common reality in many households.¹⁷² The repercussions of domestic abuse on children can become evident quickly, while other effects may emerge later. Below are some immediate consequences that children may face after witnessing domestic violence:

I. Anxiety

Children living in an environment where one parent abuses the other are likely to feel perpetually anxious.¹⁷³ They exist under the constant fear of when the next physical or verbal attack might occur, leading to a state of ongoing anxiety.¹⁷⁴

For preschool-aged children who observe domestic violence, it is not unusual for them to revert to behaviours typical of younger kids. This may include thumb sucking, bedwetting, and an increase in crying and whining as a response to the trauma they witness.

School-aged children may develop anti-social behaviours and experience feelings of guilt related to the abuse they have seen.¹⁷⁵ Often, these children internalize the blame for the abuse their parent endures, which can significantly damage their self-esteem.¹⁷⁶

II. Post-Traumatic Stress Disorder

One of the most severe consequences of domestic violence is the potential development of post-traumatic stress disorder in children exposed to such environments.

¹⁶³ The Guardians and Wards Act, 1890, Section 17(2)

¹⁶⁴ Modi, M.N., Palmer, S., Armstrong, A. (2014). *The Role of Violence Against Women Act in Addressing Intimate Partner Violence: A Public Health Issue*. Journal of Women's Health; 23(3): 253-259.

¹⁶⁵ Gilbert, L.K., Breiding, M.J., Merrick, M.T., Parks, S.E., Thompson, W.W., Dhingra, S.S., Ford, D.C. (2015). *Childhood Adversity and Adult Chronic Disease: An update from ten states and the District of Columbia, 2010*. American Journal of Preventive Medicine; 48(3): 345-349.

¹⁶⁶ UNICEF, Behind Closed Doors: The Impact of Domestic Violence on Children, (2006), available at <https://www.unicef.org/media/files/BehindClosedDoors.pdf>.

¹⁶⁷ Protection of Women from Domestic Violence Act, 2005, Section 21 (Act no. 43 of 2005).

¹⁶⁸ National Crime Records Bureau, Crime in India – 2022: Statistics on Domestic Violence, Ministry of Home Affairs, Government of India (2023).

¹⁶⁹ D. Wolfe, C. Crooks et al., The Effects of Children's Exposure to Domestic Violence: A Meta-Analysis and Critique, Clinical Child and Family Psychology Review, Vol. 6, No. 3, 2003, at 171-187.

¹⁷⁰ Ministry of Women and Child Development, Government of India, Handbook on Protection of Children from Sexual Offences Act, 2012, (2013) at 6.

¹⁷¹ National Legal Services Authority (NALSA), Scheme for Legal Services to Victims of Domestic Violence, (2015), available at <https://nalsa.gov.in>.

¹⁷² Supra Note 2.

¹⁷³ UNICEF, Behind Closed Doors: The Impact of Domestic Violence on Children, (2006) at 4.

¹⁷⁴ Office on Women's Health. *Effects of domestic violence on children's health*.

¹⁷⁵ Jaffe, P.G., Wolfe, D.A., & Wilson, S.K., Children of Battered Women, (Sage Publications, 1990), at 32.

¹⁷⁶ D. Wolfe, C. Crooks et al., The Effects of Children's Exposure to Domestic Violence: A Meta-Analysis and Critique, Clinical Child and Family Psychology Review, Vol. 6, No. 3, 2003, at 179.

Even if they are not physically harmed, the psychological impact of domestic violence can lead to significant alterations in the developing brains of children. These alterations may manifest as nightmares, disrupted sleep patterns, increased anger and irritability, difficulty focusing, and in some cases, the tendency to re-enact the traumatic events they have witnessed.¹⁷⁷

III. Physical Challenges

The mental health repercussions of witnessing a parent's abuse often extend to physical health issues. School-aged children may experience headaches and stomach-aches that stem from the stress of their home environment.

IV. Aggressive Behaviour

Teenagers who witness domestic violence often respond by acting out. They may engage in fighting, truancy, risky sexual behaviour, or substance abuse. These adolescents are also at a higher risk of encountering legal troubles.¹⁷⁸

V. Physical Abuse

In many cases, children living in abusive households may also become victims of abuse themselves.¹⁷⁹ An abusive partner can easily transition into an abusive parent or guardian, inflicting physical, verbal, and emotional harm on their children.

Long-Term Consequences of Witnessing Domestic Violence in Childhood

While distancing oneself from domestic violence can be beneficial, simply relocating does not erase the harm inflicted by witnessing such events.

Children who observe a parent enduring abuse often face repercussions that extend into their adult years. Below are some of the enduring effects these children may experience after witnessing domestic violence.

I. Depression

A child raised in a harmful, abusive setting may develop into an adult struggling with depression.¹⁸⁰ The trauma associated with consistently witnessing domestic violence significantly increases the likelihood of experiencing depression, feelings of sadness, difficulties with concentration, and other depressive symptoms in adulthood.

II. Health Issues

Conditions such as heart disease, obesity, and diabetes in adulthood may not always stem from poor diet or environmental factors.

In many instances, these health problems are directly associated with the physical, emotional, and verbal abuse that a child either witnesses or endures.¹⁸¹

III. Reproducing Abusive Behaviours

Although abusive behaviour can be repetitive, it is crucial to understand that abuse does not always follow a predictable cycle. Assuming that violence occurs in a cyclical manner can lead to victim-blaming. Abuse can be erratic, and it is never acceptable.

Experiencing the pain and suffering of witnessing violence does not guarantee that children will choose a different path. In some instances, early exposure to abuse merely paves the way for children to replicate those behaviours in adulthood.

For example, boys may resort to physically abusing their partners after observing their fathers engage in similar actions. Similarly, women who grow up in environments marked by domestic violence are at a higher risk of experiencing sexual assault by their partners later in life.¹⁸²

¹⁷⁷ Herringa RJ. [Trauma, PTSD, and the developing brain](#). Curr Psychiatry Rep. 2017;19(10):69. doi:10.1007/s11920-017-0825-3

¹⁷⁸ Supra Note 15

¹⁷⁹ Ibid

¹⁸⁰ Pang LHG, Thomas SJ. [Exposure to domestic violence during adolescence: Coping strategies and attachment styles as early moderators and their relationship to functioning during adulthood](#). J Child Adolesc Trauma. 2019;13(2):185-198. doi:10.1007/s40653-019-00279-9

¹⁸¹ Monnat SM, Chandler RF. [Long term physical health consequences of adverse childhood experiences](#). Sociol Q. 2015;56(4):723-752. doi:10.1111/tsq.12107

¹⁸² Supra Note 15

1.2 Custody Laws in India: A Child-centric or Parent-centric Approach?

Child custody regulations in India are crucial for safeguarding children's welfare amid parental conflicts. In cases of separation or divorce, determining who will care for the child becomes a significant issue. Indian courts place the child's best interests at the forefront, striving to provide a stable and supportive environment for their development. Parents need to comprehend child custody laws in India as they navigate these complex circumstances.

Legal Framework Regulating Child Custody in India

In India, the laws pertaining to child custody are determined by a range of statutes that vary according to religious backgrounds. These are mentioned below:

I. Hindu Minority and Guardianship Act, 1956 (HMGA):

The Hindu Minority and Guardianship Act of 1956 applies to Hindus, Buddhists, Jains, and Sikhs, and it outlines the criteria for guardianship of minors. According to Section 6, the father serves as the natural guardian for a minor boy or an unmarried girl, with the mother following in this role. Notably, for children under five years old, the Act stipulates that custody should "ordinarily be with the mother," acknowledging the child's developmental and emotional needs at this young age.¹⁸³ Section 13 is particularly significant, as it emphasizes that the child's welfare must be the foremost consideration in all guardianship and custody matters.¹⁸⁴ This provision serves to prevent a rigid interpretation of parental rights, promoting a child-focused perspective that prioritizes the child's best interests over any legal rights or preferences of the parents.

II. Guardians and Wards Act, 1890 (GWA):

The Guardians and Wards Act of 1890 is a secular law that applies to all Indian citizens,

irrespective of their religious affiliations, and serves as the main legal framework for guardianship and custody in situations where personal laws are either silent or at odds with the child's welfare. This Act grants the court extensive authority to appoint guardians and make custody decisions, with the guiding principle being the "welfare of the minor" as outlined in Section 17.¹⁸⁵ It considers various factors, including the minor's age, gender, religion, the guardian's character and capability, and the child's own wishes if they are mature enough to express them.¹⁸⁶ The language and application of the Act are explicitly focused on the child, ensuring that the child's safety, health, emotional growth, and education take precedence over the legal claims of either parent.¹⁸⁷

III. Protection of Women from Domestic Violence Act, 2005 (PWDVA):

While it is not a traditional custody law, the Protection of Women from Domestic Violence Act, 2005 carries significant implications for custody matters in cases of domestic violence. According to Section 21, a magistrate has the authority to award temporary custody of a child to the affected woman and can prohibit the respondent (typically the husband or father) from having contact with the child if such interaction is deemed contrary to the child's best interests.¹⁸⁸ This Act enables the court to prioritize the emotional and physical safety of the child when addressing custody disputes arising from domestic violence. Although the primary focus is on the protection of women, this provision reflects a child-centered approach aimed at shielding children from detrimental domestic situations, trauma, and potential harm.

IV. Muslim Personal Law (Shariat):

In India, Muslim Personal Law distinguishes between custody and guardianship. Custody (Hizanat) pertains to the physical care of the

¹⁸³ Hindu Minority and Guardianship Act, 1956, Section 6 (Act no. 32 of 1956).

¹⁸⁴ Id. at Section 13.

¹⁸⁵ Guardians and Wards Act, 1890, Section 17 (Act no. 8 of 1890).

¹⁸⁶ Ibid

¹⁸⁷ Supra Note 1

¹⁸⁸ Supra Note 8.

child, which is generally awarded to the mother during the early developmental years, up to 7 years for boys and until puberty for girls.¹⁸⁹ Conversely, the father is recognized as the legal guardian, responsible for matters such as property and legal decisions. While personal law favors mothers for the custody of young children, this preference is not absolute; the paramount consideration remains the child's welfare.¹⁹⁰ Indian courts have consistently held that if strict adherence to personal law contradicts the child's best interests, they may deviate from it.¹⁹¹ In practice, even within the framework of Muslim law, the judicial trend in India tends to adopt a child-focused perspective, ensuring that the child's psychological, educational, and emotional needs are prioritized over a rigid application of religious doctrines.

India's custody laws stem from a variety of legal sources, including religious personal laws and secular regulations, yet they all share a common core principle: the child's welfare is of utmost importance. The Hindu Minority and Guardianship Act, the Guardians and Wards Act, the Protection of Women from Domestic Violence Act, and Muslim Personal Law provide distinct frameworks for custody determinations. However, Indian courts consistently interpret these laws with a focus on the child's best interests. Even in instances where personal laws seem to favor parental rights, such as the natural guardianship granted to fathers or the presumption of maternal custody, the judiciary maintains the authority to set aside these norms to prioritize the child's well-being. Contemporary judicial practices increasingly advocate for a flexible, individualized approach that considers the emotional, educational, physical, and psychological needs of the child. Thus, although there are aspects of parent-centricity within the legal texts, the practical application of Indian custody law is decidedly child-centric, with the child's best interests

serving as the primary guiding principle in custody matters.

V. Hindu Marriage Act, 1955: This legislation outlines provisions for child custody in Section 26, granting the court authority to issue orders concerning the custody, maintenance, and education of minor children during ongoing matrimonial disputes, such as divorce, judicial separation, or annulment.¹⁹² The court can provide both interim and final orders, which may be altered or revoked in response to changing circumstances. The primary consideration in all custody decisions is the child's welfare, encompassing their physical, emotional, and psychological health. While the Act does not explicitly favor custody based on the child's age or gender, Indian courts frequently tend to award custody of very young children, particularly those under five, to the mother, unless she is deemed unfit.¹⁹³

In situations where the Hindu Marriage Act does not provide adequate guidance, the Guardians and Wards Act, 1890 applies, serving as a universal law for all communities. This Act emphasizes a child-focused approach, allowing courts to evaluate factors such as the child's preferences (if they are mature enough), the parents' financial and emotional capabilities, and the living conditions each parent can offer. Indian courts have increasingly adopted progressive interpretations, sometimes promoting joint custody or shared parenting arrangements that benefit the child.¹⁹⁴ Notably, the law distinguishes custody matters from issues of marital fault, meaning that a parent's involvement in the marriage's dissolution does not automatically disqualify them from custody. Ultimately, custody decisions under Hindu personal law prioritize the child's well-being over parental rights.

¹⁸⁹ Tahir Mahmood, *Muslim Law in India and Abroad*, 2nd ed. (LexisNexis Butterworths, 2016), at 141.

¹⁹⁰ *Id.* at 143.

¹⁹¹ *Githa Hariharan v. Reserve Bank of India*, (1999) 2 SCC 228.

¹⁹² Hindu Marriage Act, 1955, Section 26 (Act no. 25 of 1955).

¹⁹³ *Ibid.*

¹⁹⁴ *Vivek Singh v. Romani Singh*, (2017) 3 SCC 231.

Categories of Child Custody in India

In India, child custody is divided into three categories: physical, joint, and legal custody. These classifications are designed to prioritize the child's welfare and offer adaptable solutions that cater to the specific needs of each family. The Indian legal framework emphasizes the child's best interests and overall well-being when making custody decisions, with courts evaluating various factors, including the child's age, emotional requirements, parental abilities, and living situations.¹⁹⁵ The three custodies have been defined below:

I. Physical custody: It refers to the situation where the child primarily lives with one parent, known as the custodial parent. This parent is responsible for the child's daily care, upbringing, and overall supervision. The other parent, referred to as the non-custodial parent, usually has visitation rights, allowing them to spend designated time with the child, such as on weekends, holidays, or during school breaks.¹⁹⁶ The goal is to create a stable and nurturing home environment for the child while maintaining their relationship with both parents.¹⁹⁷

II. Joint custody: It enables both parents to share the responsibilities of raising their child. This arrangement may involve the child alternating between each parent's home (rotational custody), or one parent may take on the primary caregiving role while the other remains actively involved in important decisions regarding the child's life.¹⁹⁸ Joint custody promotes collaboration and shared parenting, helping to mitigate the emotional impact of separation on the child. However, it necessitates a high degree of coordination, communication, and maturity between the parents to ensure that the arrangement serves the child's best interests.¹⁹⁹

III. Legal custody: It refers to the authority to make significant decisions regarding a child's upbringing, including matters related to education, healthcare, and religious upbringing.²⁰⁰ This type of custody can be awarded to one parent (sole legal custody) or shared between both parents (joint legal custody). A parent may hold legal custody even if they do not have physical custody, enabling them to be involved in critical decisions about the child's future.²⁰¹ This arrangement ensures that both parents can contribute to the child's development, as long as it serves the child's best interests.

The Indian legal system offers adaptable custody options that can be customized to fit the unique needs of each family.²⁰² Custody arrangements are not permanent and can be adjusted over time in response to evolving circumstances, such as the child's age, preferences, or changes in the parents' living situations.²⁰³ This flexible approach aims to support the child's emotional, mental, and physical well-being, even amid the difficulties that may arise from parental separation or divorce.²⁰⁴

1.3 The Concept of "Best Interest of the Child" and its application in Domestic Violence cases

The principle of "the best interest of the child" serves as a cornerstone in family and child protection law, underscoring that a child's overall welfare should be the primary focus in all decisions affecting them. This principle is embedded in international legal frameworks, particularly in Article 3(1) of the United Nations Convention on the Rights of the Child (UNCRC), which states that "in all actions concerning children... the best interests of the child shall be a primary consideration."²⁰⁵ The goal of applying this principle is to safeguard children from harm while fostering their physical,

¹⁹⁵ Supra Note 26.

¹⁹⁶ Supra Note 24.

¹⁹⁷ Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42.

¹⁹⁸ Supra Note 35

¹⁹⁹ R. Lakshmi Narayan v. Santhi, (2001) 4 SCC 688.

²⁰⁰ Supra Note 33.

²⁰¹ Smriti Madan Kansagra v. Perry Kansagra, (2020) 19 SCC 379.

²⁰² Supra Note 26.

²⁰³ Mausami Moitra Ganguli v. Jayant Ganguli, (2008) 7 SCC 673.

²⁰⁴ Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413.

²⁰⁵ United Nations Convention on the Rights of the Child, Article 3(1), 1989.

emotional, psychological, and developmental health.

In national legal systems, the best interest standard informs decisions related to custody, visitation, and welfare interventions. Courts typically assess various factors to determine what aligns with a child's best interests, such as their safety, emotional and psychological health, the stability of their living situation, their relationships with parents or caregivers, and, when appropriate, the child's own opinions.²⁰⁶

In situations involving domestic violence, the relevance of this principle becomes particularly significant. Domestic violence, whether inflicted upon the child or observed by them, is increasingly acknowledged as a severe risk to a child's well-being. Studies and legal cases have demonstrated that children who are exposed to domestic violence—either directly or indirectly—often experience trauma, emotional turmoil, and developmental setbacks.²⁰⁷ Consequently, in family law cases that involve domestic abuse, courts must prioritize the child's safety and protection over any assumptions regarding shared parenting or parental rights.

Legal systems are increasingly recognizing that a history of domestic violence should significantly impact custody and visitation rulings involving an abusive parent. In numerous jurisdictions, there exists a rebuttable presumption against granting custody to a parent with a record of abuse, which requires the abusive parent to prove that custody or visitation would still serve the child's best interests. Courts may completely deny custody, limit it to supervised visitation, or impose specific requirements such as mandatory counselling or participation in parenting programs. In severe situations, contact with the abusive parent may be entirely prohibited.²⁰⁸

Additionally, courts have the authority to issue protective orders designed to shield both the child and the non-abusive parent from further harm. These orders may include provisions that restrict contact, designate safe locations for visitation exchanges, or even permit emergency relocation if necessary to ensure the child's safety.²⁰⁹ The primary objective in these scenarios is to provide immediate protection while fostering a secure and nurturing environment for the child's long-term growth.

Nonetheless, challenges remain in effectively applying the best interest standard in cases involving domestic violence. Issues such as underreporting of abuse, potential biases within the judicial system, and inadequate methods for considering the child's perspective—particularly for very young children—continue to pose difficulties. Furthermore, the societal and legal focus on shared parenting can sometimes clash with the critical need to protect a child from further exposure to violence.

In cases of domestic violence, prioritizing the best interest of the child requires a perspective that emphasizes their safety and emotional health as the foremost concerns.²¹⁰ It is essential for legal and judicial systems to implement protective measures effectively, avoid downplaying abusive conduct, and create conditions that allow children to recover and flourish in a safe, violence-free setting.²¹¹ As legal standards progress, our comprehension of what genuinely benefits the child in contexts affected by domestic abuse must also advance.²¹²

1.4 Recommendations

I. Establishment of Child-Centric Guidelines in Custody Cases Involving Domestic Violence: The government should develop a thorough legislative framework

²⁰⁶ UNICEF, The Best Interests of the Child in Family Law Proceedings, 2016.

²⁰⁷ Holt, S., Buckley, H., & Whelan, S. (2008). The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature. *Child Abuse & Neglect*, 32(8), 797–810.

²⁰⁸ American Psychological Association. (2010). Violence and the Family: Report of the American Psychological Association Presidential Task Force on Violence and the Family.

²⁰⁹ The National Council of Juvenile and Family Court Judges (NCJFCJ), Custody and Visitation Decision-Making When Domestic Violence Is a Factor, 2014.

²¹⁰ Supra Note 8.

²¹¹ UNICEF, Behind Closed Doors: The Impact of Domestic Violence on Children, (2006), at 6, available at <https://www.unicef.org/media/files/BehindClosedDoors.pdf>

²¹² Supra Note 42

that explicitly details how courts should assess claims and evidence of domestic violence when making custody determinations. It is essential to acknowledge domestic violence as a critical factor in deciding both legal and physical custody.²¹³ A framework modelled on international best practices, such as the UN Convention on the Rights of the Child, which India has ratified, can enhance this child-centric approach.

II. Revision of the Guardians and Wards Act, 1890: This antiquated legislation from the colonial period requires revision or replacement with a modern law that aligns with contemporary understandings of family dynamics, gender issues, and child psychology. The new law should clearly define various forms of abuse (including physical, emotional, and financial) and mandate their consideration in custody evaluations.²¹⁴

III. Mandatory Trauma-Informed Training for Judicial Personnel: Judges, family court staff, and child welfare officials should participate in ongoing training to grasp the impact of domestic violence on children. This training should include recognizing trauma, understanding non-physical forms of abuse, and applying child development principles in custody decisions.

IV. Involvement of Child Welfare Experts and Mandatory Custody Assessments: Courts should be required to consult with qualified child psychologists and welfare professionals during custody disputes that involve allegations of abuse. An unbiased, expert-led evaluation of the child's mental and emotional health should be incorporated into the judicial decision-making process.

V. Supervised Visitation and Enforcement of Protective Orders: In cases where some parental contact is necessary, courts should mandate supervised visitation in safe

environments. Furthermore, protective orders should include enforceable visitation restrictions to mitigate any potential risks.

VI. Centralized Record Management and Data Gathering: Creating a centralized database dedicated to custody decisions in domestic violence cases is crucial for several reasons. It allows for the systematic monitoring of trends over time, which can reveal patterns in judicial decision-making. This consistency in outcomes is vital for ensuring fairness and equity in the legal process, as it holds judges accountable for their rulings.²¹⁵ Furthermore, the data collected can serve as a valuable resource for informing future legal reforms, ensuring that policies are based on empirical evidence. Additionally, this information can support academic research, providing insights into the intersection of domestic violence and custody issues, ultimately leading to more informed practices and policies.

VII. Public Legal Education and Awareness Initiatives: To enhance legal literacy, it is important to implement targeted educational initiatives aimed at parents, legal professionals, and the broader community. These programs should emphasize the profound impact of domestic violence on children and the various legal protections that exist to safeguard their well-being. By raising awareness and understanding of these issues, such initiatives can play a significant role in reducing the societal stigma that survivors face when seeking custody. This, in turn, encourages more individuals to come forward and seek the help they need, fostering a more supportive environment for those affected by domestic violence.

1.5 Conclusion

Child custody decisions in India, especially in cases involving domestic violence, reveal a profound conflict between the principles of

²¹³ United Nations Convention on the Rights of the Child, 1989, art. 3.

²¹⁴ Law Commission of India, 257th Report on "Reforms in Guardianship and Custody Laws in India" (2015), pp. 10–11.

²¹⁵ National Commission for Protection of Child Rights (NCPCR), "Annual Report 2022–23", p. 56.

gender justice, parental rights, and the welfare of children. While the judiciary tries to maintain that the welfare of the child is paramount²¹⁶, the existing legal framework inadequately addresses the complex and often long-lasting effects of domestic violence on children. The Protection of Women from Domestic Violence Act, 2005 (PWDVA) allows for temporary custody orders under Section 21²¹⁷; however, it lacks comprehensive guidelines for evaluating the child's best interests in abusive situations. Furthermore, the Guardians and Wards Act of 1890, which continues to govern custody issues, is outdated and ill-equipped to tackle modern challenges, particularly those involving emotional abuse and coercive control.²¹⁸

The scenario in some cases is further complicated by a patriarchal bias that can sway judicial outcomes, where the rights of the abusive parent may be weighed equally against the child's safety and mental well-being. Although there is a growing body of legal precedent acknowledging the emotional and psychological harm caused by such situations,²¹⁹ the implementation of these principles varies widely across different courts. The lack of trauma-informed training for judges and the minimal involvement of child welfare experts in legal proceedings further obstruct the quest for justice in these sensitive cases. Therefore, a thorough systemic reform is crucial—not only to protect children from immediate harm but also to alleviate the indirect consequences of witnessing or experiencing abuse.

References

- I. The Guardians and Wards Act, 1890, Act No. 8 of 1890.
- II. The Protection of Women from Domestic Violence Act, 2005, Act No. 43 of 2005.
- III. Hindu Minority and Guardianship Act, 1956, Act No. 32 of 1956.

IV. Hindu Marriage Act, 1955, Act No. 25 of 1955.

V. Kusum, Family Law Lectures: Family Law I, 4th edn (LexisNexis Butterworths, 2019).

VI. Tahir Mahmood, Muslim Law in India and Abroad, 2nd edn (LexisNexis Butterworths, 2016).

VII. Herringa, R.J. (2017). "Trauma, PTSD, and the Developing Brain." *Current Psychiatry Reports*, 19(10), 69.
<https://doi.org/10.1007/s11920-017-0825-3>

VIII. Jaffe, P.G., Wolfe, D.A., & Wilson, S.K. (1990). *Children of Battered Women*. Sage Publications.

IX. Holt, S., Buckley, H., & Whelan, S. (2008). "The Impact of Exposure to Domestic Violence on Children and Young People: A Review of the Literature." *Child Abuse & Neglect*, 32(8).

X. Monnat, S.M. & Chandler, R.F. (2015). "Long Term Physical Health Consequences of Adverse Childhood Experiences." *Sociological Quarterly*, 56(4), 723–752.
<https://doi.org/10.1111/tsq.12107>

XI. Pang, L.H.G. & Thomas, S.J. (2019). "Exposure to Domestic Violence During Adolescence: Coping Strategies and Attachment Styles as Early Moderators and Their Relationship to Functioning During Adulthood." *Journal of Child & Adolescent Trauma*, 13(2), 185–198.
<https://doi.org/10.1007/s40653-019-00279-9>

XII. Wolfe, D.A., Crooks, C.V., et al. (2003). "The Effects of Children's Exposure to Domestic Violence: A Meta-Analysis and Critique." *Clinical Child and Family Psychology Review*, 6(3).

XIII. UNICEF. (2006). *Behind Closed Doors: The Impact of Domestic Violence on Children*. Available at:
<https://www.unicef.org/media/files/BehindClosedDoors.pdf>

XIV. United Nations Convention on the Rights of the Child, 1989, Article 3(1). Available at:
<https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

²¹⁶Supra Note 38

²¹⁷Supra Note 8.

²¹⁸Supra Note 1.

²¹⁹ ABC v. State (NCT of Delhi), (2015) 10 SCC 1

- XV. National Crime Records Bureau. (2023). Crime in India – 2022: Statistics on Domestic Violence. Ministry of Home Affairs, Government of India.
- XVI. Ministry of Women and Child Development, Government of India. (2013). Handbook on Protection of Children from Sexual Offences Act, 2012.
- XVII. Law Commission of India, 257th Report on “Reforms in Guardianship and Custody Laws in India”, 2015.
- XVIII. National Commission for Protection of Child Rights (NCPCR). (2023). Annual Report 2022–23.

Case Law References

- I. Githa Hariharan v. Reserve Bank of India, (1999) 2 SCC 228.
- II. Vivek Singh v. Romani Singh, (2017) 3 SCC 231.
- III. Gaurav Nagpal v. Sumedha Nagpal, (2009) 1 SCC 42.
- IV. Smriti Madan Kansagra v. Perry Kansagra, (2020) 19 SCC 379.
- V. Nil Ratan Kundu v. Abhijit Kundu, (2008) 9 SCC 413.
- VI. R. Lakshmi Narayan v. Santhi, (2001) 4 SCC 688.
- VII. ABC v. State (NCT of Delhi), (2015) 10 SCC 1.
- VIII. Mausami Moitra Ganguli v. Jayant Ganguli, (2008) 7 SCC 673.

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