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NAVIGATING THE LEGAL AND POLICY CHALLENGES IN DIVORCE CASES INVOLVING DOMESTIC VIOLENCE AND CHILD CUSTODY IN INDIA

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Abstract

Domestic violence and child custody are two critical issues that intersect within the legal domain, posing complex challenges for family courts, legal practitioners, and policymakers. In India, while laws such as the Protection of Women from Domestic Violence Act, 2005, seek to address the issue of domestic violence, the intertwining of domestic violence allegations with child custody disputes complicates the legal process. This research paper examines the challenges posed by domestic violence in child custody cases, with a focus on the legal framework and its application in India.

The study begins by examining the definition and forms of domestic violence, followed by a review of the legal protections available under Indian law. It then delves into how domestic violence allegations impact divorce proceedings and custody decisions, particularly in light of the paramountcy principle that the welfare of the child is the primary consideration. The research evaluates judicial trends in child custody decisions and highlights the balance or lack thereof between protecting the child's welfare and safeguarding the rights of the parents.

One of the key challenges discussed is the insufficient implementation of existing protective laws, which often fail to provide adequate relief for victims, particularly children. The research also addresses the issue of gender bias in custody decisions and the lack of psychological support for children affected by domestic violence. Additionally, it explores the delicate balance between preventing false allegations of domestic violence and ensuring genuine concerns are addressed.

The research concludes with recommendations to strengthen legal provisions, improve enforcement mechanisms, enhance child protection policies, and promote a child-centric approach to custody decisions. It suggests the introduction of mediation and counselling to provide a holistic solution to domestic violence and child custody disputes.

Keywords– Domestic Violence, Child Custody, Best Interest of the Child, Parental Rights, Child Welfare.

Introduction

Domestic violence and child custody represent two of the most complex, sensitive, and pressing issues in family law today. The intersection of these issues often presents a significant dilemma for courts, which must balance the rights of parents with the welfare and best interests of their children. In India, the

legal framework for addressing domestic violence has been significantly strengthened with the enactment of the Protection of Women from Domestic Violence Act, 2005 (PWDVA). However, the challenge of safeguarding children's interests while respecting parental rights in custody cases involving allegations of domestic violence remains an ongoing and

critical issue for the judiciary and legal practitioners.⁷⁰⁴

The Protection of Women from Domestic Violence Act, 2005, provides comprehensive measures to protect victims of domestic violence, offering remedies such as protection orders, residence orders, and monetary relief.⁷⁰⁵ The Act also recognizes the detrimental impact domestic violence has on children, acknowledging them as victims if they are witnesses to or directly subjected to such violence⁷⁰⁶. Despite this, ensuring the effective implementation of these provisions is a persistent challenge. Many victims struggle to access the remedies guaranteed by law due to systemic inefficiencies, social stigma, and a lack of awareness about their rights.

One of the most pressing challenges is the lack of consistency in how courts handle custody cases involving domestic violence allegations. While some judgments have placed significant weight on the impact of domestic violence on children, others have been criticized for prioritizing parental rights over the child's welfare. Gender biases also play a critical role in these decisions. Historically, mothers are often presumed to be the more suitable caregivers which can work to the disadvantage of fathers, even in cases where the mother's conduct may not be in the best interest of the child. Conversely, in some cases, societal and judicial biases against women alleging domestic violence can result in unfair custody rulings that favor abusive fathers.

Another key concern is the psychological impact of domestic violence on children. Studies have shown that children exposed to domestic violence, even as witnesses, often suffer long-term emotional and psychological harm. These effects can influence their overall well-being, academic performance, and social relationships. Yet, the legal system in India does

not always adequately account for these psychological factors in custody decisions.

Domestic violence and child custody represent two significant and interrelated concerns in family law. The legal framework encounters numerous difficulties in striking a balance between safeguarding children and upholding parental rights. Although there are multiple provisions established by the Protection of Women from Domestic Violence Act, 2005, the enforcement of these regulations remains uneven, and gender bias continues to influence custody rulings.⁷⁰⁷

In India, the legal system aims to protect victims of domestic violence while also focusing on the well-being of children involved in custody disputes. However, the lack of psychological support for children and the risk of false allegations complicates the situation further. Moreover, the difficulty in balancing victim protection with the maintenance of parental rights often leads to complex and contentious legal battles.⁷⁰⁸

Chapter-1

Understanding Domestic Violence and Child Custody

Domestic violence includes behaviour patterns that are used to gain and maintain power and control over an intimate partner. Unfortunately, domestic violence is a common event; Around 1 in 3 women and 1 in 4 men report that at a certain point in time, they experienced serious physical violence due to an intimate partner.⁷⁰⁹ Such abuse often affects romantic partners, but domestic violence can also affect children, older family members or other relatives.

Such incidents are referred to as family violence. Of the many types of domestic violence, physical violence is often viewed as a

⁷⁰⁴ Protection of Women from Domestic Violence Act, 2005(Act 43 of 2005).

⁷⁰⁵ *Id* at sections 18-23.

⁷⁰⁶ *Id* at section 3.

⁷⁰⁷ *Supra* note 1.

⁷⁰⁸ *Id.* at Sections 18-23.

⁷⁰⁹ Indian National Crime Records Bureau, Crime in India Report 2022, Ministry of Home Affairs, Government of India.

synonym for domestic violence⁷¹⁰ – The treacherous signs offer simple markers for abuse. Although other forms of abuse may not cause physical injuries, this makes their impact less harmful.

In cases where the case is reported and the partners ultimately decide to separate due to one or the other reason, it becomes very difficult to fight custody battles in case there is a child. One of the most difficult aspects of divorce is custody of children. This affects the well-being of the child as well as parents and their children. The parent who has custody of the child it is expected that he will guarantee his financial stability, maintain the healthy lifestyle of the child, meet his emotional, physical and medical needs and ensure health care.⁷¹¹ The only person who has access to the child is the other parent.

Disputes about the custody of children are never pleasant, not only for the parents whose children end up as the focus of this type of lawsuit (which stems from the disagreement in marriage and separates them from each other), but also for the child or children who are on the agenda. These young children need the presence of both parents for good education. This is necessary for various reasons, including economic, psychological and safety-related. Not only do these children lose their parents' business while they are separated, but when the divorce leads to a court detention, the situation is much more painful for the children for several clear reasons.

For this reason, these are the most regrettable situations that have an important influence on young children. The well-being of children must always come before when you make decisions on protection.⁷¹² Children's interests are extremely

important for the courts. Any other factor is random.

1.1 Definition and Forms of Domestic Violence

When the term domestic violence is mentioned, many individuals immediately associate it with physical abuse. While physical abuse is indeed one of the most prevalent forms of domestic violence, it is not the sole type. Several other types of abuse can occur in intimate partner relationships. Some of the most commonly recognised forms of domestic violence include:

i. Physical abuse

As we have seen, this is one of the most common types of domestic violence. It can take different forms and can involve Grabbing, Pushing, Slapping, Pushing, Hitting, Stabbing, Burning, Biting, etc.

Other forms of physical abuse may include Retaining physical needs such as sleep or food, refusing to release the needs (eg Drughi), Blocking a victim away from home, Considering the detention of help where the victim is sick/wounded⁷¹³

ii. Sexual abuse

Assault and sexual rape are prevalent and claims of domestic violence in intimate relationships. About 1.5 million women experience rape in their relationships every year: stunning statistics. The reported results of the survey on the sexual violence of 2022 intimate partners have shown sexual violence that women experience sexual attacks more often than men.⁷¹⁴

iii. Emotional abuse

Emotional violence is a kind of domestic violence that uses words and actions to insult the self-esteem of another person and embarrass or demolish them in another

⁷¹⁰ *Supra* note 1.

⁷¹¹ UNICEF, The State of the World's Children 2022: Children in a Digital World.

⁷¹² Ministry of Women and Child Development, National Policy for Children 2013.

⁷¹³ Protection of Women from Domestic Violence Act, 2005, (Act 43 of 2005) s. 3.

⁷¹⁴ National Crime Records Bureau, "Crime in India 2021: Statistics on Rape and Domestic Violence.

way. This abuse expressly aims at the emotional and psychological well-being of a person.

Examples of emotional abuse are Direct threats of physical damage to the victim, Indirect threats to hurt their loved ones, making excessive, inappropriate demands, Making the victim's feelings invalid, Constant criticism and name binding, creating chaos, Feelings of guilt or emotional blackmailing the victim, Giving the victim the silent treatment, Controlling and isolating of the victim, threatening to self-harm to manipulate the victim, Ignoring the needs or inquiries of the person. In

children, terror, isolation and abuse experienced at the start of life have been linked to alcohol consumption problems in recent years.⁷¹⁵

iv. Financial abuse

Financial violence is a form of domestic abuse where the perpetrator manipulates economic resources within the relationship to control and oppress the victim. This can manifest as restricting or outright denying the victim access to funds. Additionally, the victim may be placed on a limited allowance or have no say in how finances are managed. The abuser may also undermine the victim's ability to earn an income by preventing them from working or sabotaging their job, potentially leading to job loss. In some cases, the aggressor may even restrict the victim's access to transportation necessary for commuting to work. Furthermore, a financial abuser might misappropriate money intended for essential household expenses, diverting it instead to unnecessary purchases. The elderly are particularly vulnerable to this form of abuse. They are frequent victims of abusers who use their money without their knowledge or authorization.⁷¹⁶ In the case of seniors, their signatures can also be forged, financially

abused by their pensions or even have joint access to their accounts.⁷¹⁷

v. Isolation

Isolation is a unique type of domestic violence that can include both the actions of the abused and the abuser. Abusers try to control their victims, in which people who are abused can restrict their social contact to avoid being noticed by others.⁷¹⁸ An abuser may maintain dominance over their partner by isolating them from family, friends, or colleagues who might offer guidance or support against the abuser. Often, abusers dictate their victims' social interactions, resulting in social isolation. This tactic ensures that the primary source of contact and support for the victim is the abusive partner. In certain situations, individuals experiencing abuse may withdraw from family, friends, colleagues, and other acquaintances due to the fear of revealing visible injuries, such as bruises or cuts, that could arise from their relationships.

vi. Harassment and Stalking

Harassment is a kind of domestic violence that contains emotional and psychological abuses. While anyone can experience stalking, statistics suggest that women are persecuted at a higher rate than men.⁷¹⁹ Simply explained, Stalking is characterized by the persistent and unwanted following of a person, frequently causing fear of physical injury or even death to the victim, their family, or loved ones. This behaviour may occur during or after a relationship has ended. It includes threatening actions such as watching the victim from a distance, entering their property without permission, intercepting their messages, and monitoring their daily activities, among other behaviours. This form of abuse can be incredibly harmful to the victim, causing sleeping problems, intense feelings of stress and anxiety, depression, anger, eating

⁷¹⁵ National Institute on Alcohol Abuse and Alcoholism, *Children of Alcoholics: A Guide for Parents, Educators, and Professionals*, U.S. Department of Health and Human Services, NIH Publication No. 00-4315 (2000).

⁷¹⁶ American Psychological Association, *Intimate Partner Violence*, available at <https://www.apa.org/topics/physical-abuse-violence/intimate-partner> (last visited on 30th January, 2025)

⁷¹⁷ *Supra* note 10.

⁷¹⁸ *Supra* note 13.

⁷¹⁹ *Supra* note 6.

disorders, excessive feelings of vulnerability and more.⁷²⁰

1.2 Domestic Violence and the Laws protecting the victims in India

The main legislation in terms of domestic violence in India is the protection of Women Against Domestic Violence 2005 (PWDVA).⁷²¹

This law is essential because it provides women with complete protection against domestic violence and recognises various forms of abuse. In addition to the PWDVA, other relevant laws include:

i. Indian Penal Code (IPC)

- **Section 498A (Cruelty):** This provision criminalises acts of cruelty perpetrated by a husband or his relatives against a woman⁷²². The term "cruelty" encompasses both physical and psychological abuse, infliction of harm, or coercing the woman into taking her own life. This section is particularly pertinent in domestic violence cases, as it establishes penalties for individuals who inflict harm through such cruel actions.

- **Section 304B (Dowry Death):** This clause pertains to the death of a woman resulting from burns, injuries, or other forms of violence associated with dowry demands.⁷²³ It is invoked when a woman dies under conditions indicative of dowry-related harassment within seven years of marriage. The law presumes that such a death is a consequence of dowry-related cruelty, thereby shifting the burden of proof to the accused. This provision is vital in instances where domestic violence culminates in the death of a woman.⁷²⁴

ii. Criminal Procedure Code (CrPC)

The CrPC establishes the procedural guidelines for addressing criminal offenses, including those related to domestic violence. It outlines the processes for arrest, investigation,

and prosecution in domestic violence cases. Key provisions include:

- **Section 125 (Maintenance of wives, children, and parents):** This section allows a woman who has experienced domestic violence to seek financial support from her husband.⁷²⁵

- **Protection Orders:** The CrPC includes provisions for securing protective orders, such as restraining orders, and permits the immediate arrest of the accused under specific conditions.⁷²⁶

iii. Dowry Prohibition Act, 1961

The Dowry Prohibition Act explicitly forbids the giving, receiving, or soliciting of dowry in any form, categorizing such actions as criminal offenses. This legislation is essential in tackling a fundamental contributor to domestic violence—abuse related to dowry⁷²⁷. Its primary objective is to avert dowry-related fatalities, harassment, and the exploitation of women stemming from dowry demands. The Act is frequently cited in cases of domestic violence where dowry-related pressures are evident, and it aligns with provisions such as IPC 498A and 304B, which address dowry deaths.⁷²⁸

iv. Hindu Marriage Act, 1955

The Hindu Marriage Act regulates the institution of marriage and divorce among Hindus. It intersects with domestic violence issues in various respects:

Section 13(1) (ia) permits divorce based on cruelty, which encompasses acts of domestic violence.⁷²⁹

Section 23A mandates maintenance for a wife who has experienced cruelty or abandonment, thereby ensuring financial protection for women enduring domestic abuse after divorce.⁷³⁰ Additionally, the Hindu Marriage Act is pertinent in divorce proceedings where domestic violence is a consideration, providing

⁷²⁰ <https://www.verywellmind.com/different-types-of-domestic-violence-5119884> (last visited on 5th March 2025).

⁷²¹ *Supra* note 1.

⁷²² Indian Penal Code, 1860, (Act 45 of 1860) s. 498A.

⁷²³ *Id.* at Section 304 B.

⁷²⁴ *Ibid.*

⁷²⁵ Code of Criminal Procedure, 1973, (Act 2 of 1974) s. 125.

⁷²⁶ Code of Criminal Procedure, 1973 (Act 2 of 1974).

⁷²⁷ The Dowry Prohibition Act, 1961, (Act 28 of 1961), s. 3.

⁷²⁸ The Dowry Prohibition Act, 1961, (Act 28 of 1961).

⁷²⁹ The Hindu Marriage Act, 1955, (Act 25 of 1955), s. 13(1) (ia).

⁷³⁰ *Id.* at Section 23A.

legal grounds for a woman to seek separation from an abusive partner.⁷³¹

v. **Bhartiya Nyaya Sanhita 2023**

The Bhartiya Nyaya Sanhita 2023 represents a recent initiative that was implemented from 1 July 2024 to modernise the Indian criminal justice framework, aiming to enhance the legal recourse available to individuals affected by crimes like domestic violence.⁷³² It incorporates provisions aimed at:

Victim protection: This legislation broadens the legal mechanisms available for safeguarding domestic violence victims, including compensation and rehabilitation measures.⁷³³

Enhanced penalties for offenders: It underscores the necessity for more severe punishments for those guilty of domestic violence and gender-based offenses.

Reform implementation: The Act introduces measures to facilitate the prompt and effective administration of justice for victims of domestic violence.

This legislation came into force from 1 July 2024, aiming to enhance the legal recourse available to victims affected by domestic violence.⁷³⁴

vi. **Bhartiya Nagarik Suraksha Sanhita 2023**

This statute establishes protocols to safeguard citizens, particularly concerning offenses such as domestic violence. Notable provisions pertinent to domestic violence include:

Victim compensation: It creates a structure for offering financial restitution to survivors of domestic violence.

Sanctions for perpetrators: It specifies the penalties and consequences for those found

guilty of crimes associated with domestic violence.

Support systems for victims: This act guarantees that victims can access legal assistance, rehabilitation services, and protective measures.⁷³⁵

2.2 **Interrelationship of the Laws**

The interplay among different legal frameworks in India presents a comprehensive strategy for tackling domestic violence, guaranteeing that victims obtain justice and protection through criminal, civil, and procedural law. Each legal provision is instrumental in addressing particular dimensions of domestic violence, providing remedies, sanctions, and support for victims. The following elaborates on the ways in which these laws interact and reinforce one another.

IPC Section 498A and 304B: Criminal Aspects of Domestic Violence

Section 498A of the Indian Penal Code (IPC) addresses the issue of cruelty inflicted by a husband or his relatives upon his wife. This section stipulates a punishment of up to three years of imprisonment and a monetary fine for individuals convicted of subjecting a wife to cruelty, which encompasses both physical and psychological abuse, as well as threats or demands concerning dowry. This provision plays a vital role in ensuring that those who engage in abusive conduct within marriage are held accountable.⁷³⁶

Conversely, Section 304B of the IPC specifically pertains to dowry-related fatalities. It defines the crime of dowry death, which occurs when a woman dies under suspicious circumstances within seven years of marriage, accompanied by evidence of cruelty or harassment linked to dowry demands. The punishment for this offense can include a minimum of seven years of imprisonment and

⁷³¹ *Supra* note 26 and 27.

⁷³² The Bhartiya Nyaya Sanhita, 2023, (Act 45 of 2023).

⁷³³ The Bhartiya Nagarik Suraksha Sanhita, 2023, (Act 46 of 2023).

⁷³⁴ *Supra* note 29.

⁷³⁵ *Supra* note 30.

⁷³⁶ *Supra* note 19.

can extend up to life imprisonment or, in extreme cases, the death penalty.⁷³⁷

Both sections are essential in offering a direct legal remedy for victims of domestic violence. They are interconnected, as Section 498A may serve as the preliminary charge in instances of cruelty, and should a woman die as a consequence of such cruelty or dowry-related harassment within seven years of marriage, Section 304B can be applied, resulting in more severe legal repercussions.⁷³⁸

The Dowry Prohibition Act: Addressing Dowry-Related Abuse

The Dowry Prohibition Act of 1961 was established to confront the societal issue of dowry, which frequently serves as a catalyst for domestic violence. This legislation forbids the giving or receiving of dowry in any form, and individuals found guilty of demanding or accepting dowry may face imprisonment and fines.

This law is directly related to IPC Sections 498A and 304B, as demands or harassment associated with dowry often constitute the basis for claims of cruelty. The Dowry Prohibition Act criminalizes dowry demands, rendering them a punishable offense, and acts as a preventive measure against dowry-related violence.

In conjunction with the Hindu Marriage Act, the Dowry Prohibition Act supports marriage and divorce proceedings in cases where dowry-related harassment or violence is involved.⁷³⁹

The Hindu Marriage Act: Grounds for Divorce, Maintenance, and Cruelty

The Hindu Marriage Act of 1955 regulates marriage, divorce, and associated issues for Hindus. It offers essential legal protections for individuals affected by domestic violence, including:

Grounds for Divorce: One of the permissible grounds for divorce under this Act is cruelty, which encompasses both physical and psychological abuse. A spouse who experiences cruelty, including domestic violence or harassment related to dowry, is entitled to initiate divorce proceedings based on such cruelty.

Maintenance and Alimony: The Act includes provisions that allow a wife to seek maintenance from her husband. A woman who has suffered from domestic violence or abuse has the right to claim maintenance under either Section 24 or Section 25 of the Hindu Marriage Act.⁷⁴⁰

Interrelation with IPC 498A: The significance of the Hindu Marriage Act lies in its provision of a civil remedy that complements the criminal proceedings under Section 498A of the Indian Penal Code.⁷⁴¹ While the IPC addresses punitive measures for cruelty, the Hindu Marriage Act allows a spouse to pursue legal separation and financial support, thereby broadening the spectrum of legal safeguards available.⁷⁴²

The Criminal Procedure Code (CrPC): Procedural Foundation

The Criminal Procedure Code (CrPC) delineates the protocols for criminal investigations and legal proceedings, encompassing matters related to domestic violence. Various sections within the CrPC establish frameworks for the protection of victims and the imposition of penalties:

Section 125 of the CrPC: This provision enables a wife to seek maintenance from her husband if she is unable to sustain herself, which is particularly crucial in instances of domestic violence. This section is instrumental in ensuring the financial stability of a victim of domestic violence, even prior to the conclusion of divorce proceedings.⁷⁴³

⁷³⁷ *Supra* note 20.

⁷³⁸ *Supra* note 19 and 20.

⁷³⁹ The Dowry Prohibition Act, 1961, (Act 28 of 1961), s. 4.

⁷⁴⁰ The Hindu Marriage Act, 1955, (Act 25 of 1955), ss. 24,25.

⁷⁴¹ *Supra* note 19.

⁷⁴² *Supra* note 37.

⁷⁴³ *Supra* note 22.

Section 498A and the CrPC: When a complaint is filed under Section 498A of the Indian Penal Code (IPC) concerning cruelty, the CrPC outlines the procedures for conducting the investigation, managing the trial, and prosecuting the offenders. It guarantees that the necessary procedural measures for criminal action in domestic violence cases are properly adhered to.⁷⁴⁴

Protection Orders and Reliefs under the CrPC: Provisions within the CrPC can be utilised to secure protection orders in domestic violence situations, as well as orders for the confiscation of property or the expulsion of the abuser from the shared residence. These orders are designed to shield the victim from further harm.⁷⁴⁵

The Bhartiya Nyaya Sanhita, 2023: Streamlining Legal Proceedings

The Bhartiya Nyaya Sanhita, 2023 (BNS 2023) represents a proposed reform in the legal framework intended to optimize the criminal justice system. Its primary objective is to expedite the prosecution and trial processes for cases like that of domestic violence. The BNS 2023 is designed to minimize delays in legal proceedings, which pose a considerable obstacle to justice for those affected by domestic violence. It proposes to increase penalties for perpetrators and aims to accelerate the pace of investigations and trials, thereby facilitating swifter justice. This legislation is anticipated to offer enhanced protection for victims and to bolster the accountability of offenders, ultimately creating a more victim-focused legal environment.⁷⁴⁶

The Bhartiya Nagarik Suraksha Sanhita, 2023: Victim Compensation and Rehabilitation

The Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS 2023) serves to enhance the previously mentioned laws by prioritizing the rehabilitation and compensation of victims:

It stipulates that victims of domestic violence are entitled to compensation, particularly in instances where they have endured long-term physical or psychological damage.

The legislation underscores the importance of victim support, assisting those affected by violence in their journey to recovery. This support encompasses medical care, counselling, and various assistance services. Furthermore, it establishes a cohesive strategy for long-term rehabilitation, ensuring that victims receive both immediate aid and sustained support for their healing process.⁷⁴⁷

These legal instruments—IPC 498A, 304B, the Dowry Prohibition Act, the Hindu Marriage Act, the CrPC, the Bhartiya Nyaya Sanhita, 2023, and the Bhartiya Nagarik Suraksha Sanhita, 2023—function collectively to form a robust legal framework aimed at safeguarding victims of domestic violence. While the sections of the IPC specifically target criminal acts such as cruelty and dowry-related deaths, the Dowry Prohibition Act serves as a preventive measure. The Hindu Marriage Act provides civil remedies related to divorce, maintenance, and cruelty, while the CrPC outlines the procedural protocols for prosecuting offenders and ensuring victim protection. Ultimately, the Bhartiya Nyaya Sanhita and Bhartiya Nagarik Suraksha Sanhita further enrich the legal framework by expediting trials and facilitating victim compensation and rehabilitation.⁷⁴⁸ Collectively, these laws promote a comprehensive strategy to address domestic violence in India.

1.3 Child Custody: Definitions and Considerations in Indian Law

Child custody refers to the legal authority to provide care for a child and make decisions regarding their welfare. This includes aspects such as the child's upbringing, education, healthcare, and general well-being. In India, both parents possess equal rights to seek custody of their child. However, the courts try to decide to weigh both the pros and cons and

⁷⁴⁴ *Supra* note 19.

⁷⁴⁵ *Supra* note 22.

⁷⁴⁶ *Supra* note 29.

⁷⁴⁷ *Supra* note 30.

⁷⁴⁸ *Supra* note 29 and 30.

decide more on the child's well-being than the parent's preferences.⁷⁴⁹

Indian courts try to adopt a child-centered approach in custody cases, emphasizing the significance of the child's welfare and development. This methodology seeks to ensure that the child is placed in the most secure and nurturing environment, considering various factors. The following is a comprehensive analysis of the primary considerations:

i. The Child's Age and Preference

The age of the child plays a pivotal role in custody determinations. Courts tend to favour the parent who is better equipped to meet the developmental needs of the child, with this decision often influenced by the child's age.

Children under the age of 5: Generally, Indian courts prefer to award custody of very young children to the mother.⁷⁵⁰ This preference stems from the belief that mothers usually maintain a stronger emotional and physical bond with their children during these formative years. For infants and toddlers, the mother's involvement is crucial for their emotional and psychological growth, as she serves as the primary caregiver.

Children above 5 years: As children grow older, the court may consider the child's preference, provided they possess the maturity to articulate a reasoned and consistent choice. The courts evaluate the child's preference by examining their maturity level and their understanding of the implications of their decision.

Mature Children: In instances involving older children (approximately 12 years or older), their preferences are given greater consideration.⁷⁵¹ Nevertheless, this is not the only factor influencing the court's decision. Courts typically evaluate whether the child is capable of making

an informed choice regarding their living arrangements.⁷⁵²

ii. Parental Financial Stability

The financial stability of parents is a crucial factor in custody and support determinations. Courts evaluate each parent's capacity to fulfil the child's requirements, encompassing both material necessities (such as food, housing, clothing, and healthcare) and emotional or psychological support.⁷⁵³

Financial Resources: Courts assess whether a parent possesses the financial means to create a secure home environment. This evaluation includes an analysis of income, employment status, and overall financial health. A parent with a higher income or superior financial position may be perceived as more capable of meeting the child's needs; however, this consideration is balanced against other elements, such as emotional ties and the child's safety.

Support for Child's Requirements: Beyond basic needs, the court also evaluates a parent's ability to facilitate the child's education, extracurricular pursuits, and any special requirements that may arise during the child's development. The capacity to sustain the child's quality of life and secure their future is a significant aspect of the court's deliberation.

iii. Emotional Connection

The emotional relationship between the child and each parent is a vital component in custody rulings. Courts emphasize the child's emotional health, often favouring the parent with whom the child shares a stronger emotional bond for custody arrangements.

Attachment and Relationship Dynamics: Courts examine the depth of the child's attachment to each parent and the overall nature of their relationship. The child's sense of security, comfort, and emotional stability is of

⁷⁴⁹ Guardians and Wards Act, 1890, (Act 8 of 1890), s. 17.

⁷⁵⁰ Hindu Minority and Guardianship Act, 1956, (Act 32 of 1956), s. 6(a).

⁷⁵¹ Guardians and Wards Act, 1890, (Act 8 of 1890), s. 17(3).

⁷⁵² Daniel G Saunders, Karen Oehme "Child Custody and Visitation Decisions in Domestic Violence cases: Legal Trends, Risk Factors and safety concerns", Vawnet, Oct, 2007.

⁷⁵³ Hindu Minority and Guardianship Act, 1956, (Act 32 of 1956), s. 13.

utmost importance. If a child has primarily been raised by one parent, the emotional connection is typically more profound, which can significantly impact the custody decision.⁷⁵⁴

Parental Involvement: The degree to which each parent participates in the child's daily activities, including caregiving, emotional support, and overall presence, is assessed. A parent who has demonstrated greater engagement in the child's upbringing may be viewed as a significant factor in custody determinations.

iv. Parents' Behaviour

The conduct and lifestyle of the parents are vital considerations in custody decisions, as they directly influence the child's safety and well-being. Courts scrutinize the Behaviour of both parents to ensure that the child is not exposed to harm or an unhealthy environment.⁷⁵⁵

History of Abuse or Neglect: Any record of domestic violence, substance abuse, or neglect can greatly diminish a parent's likelihood of securing custody. Courts typically investigate past actions, including any instances of physical or emotional abuse, which could negatively impact the child's safety and mental health.

Lifestyle and Stability: The parents' lifestyle, encompassing their living conditions, relationships, and overall stability, is significant. For instance, if a parent leads an unstable lifestyle that may adversely affect the child (such as frequent relocations or a toxic relationship), the court may take this into account when making custody decisions.

Cooperation with the Other Parent: The capacity of each parent to promote a relationship between the child and the other parent is also a crucial factor. A parent who hinders visitation or manipulates the child

against the other parent may be perceived as unfit.

v. Educational and Social Requirements

The court evaluates the educational and social requirements of the child, determining which parent is more capable of fulfilling those needs⁷⁵⁶. This consideration is especially significant for children over the age of five, as their academic and social growth becomes increasingly evident.

Education: Preference is often given to the parent who can create a stable and nurturing educational atmosphere for the child. Courts assess the ability of a parent to provide access to quality schooling, tutoring, extracurricular activities, and an enriching environment that promotes academic success.

Social Development: The court also takes into account the child's social needs, such as relationships with peers, involvement in social activities, and access to a supportive community. It evaluates which parent can better facilitate opportunities for the child to develop socially, ensuring they cultivate positive relationships and engage in healthy interactions with others.

Health Considerations: Beyond education and social development, the child's health needs, encompassing both emotional and physical well-being, are also scrutinized. The parent who can deliver the necessary healthcare and emotional support to promote the child's overall development is given significant weight in the court's decision.⁷⁵⁷

Chapter - 2

Legal Framework in Divorce Proceedings Involving Domestic Violence

The legal framework addressing domestic violence in divorce proceedings is structured to protect victims, particularly concerning child custody matters. This legal strategy

⁷⁵⁴ Guardians and Wards Act, 1890, (Act 8 of 1890), s. 17(1).

⁷⁵⁵ Goldman and Associates Law Firm, "Can lifestyle choices affect Custody?" (Last visited on 10 February, 2025).

⁷⁵⁶ Guardians and Wards Act, 1890, (Act 8 of 1890), s. 17(2).

⁷⁵⁷ <https://www.rodierfamilylaw.com/news/2024/09/the-impact-of-domestic-violence-on-divorce-and-child-custody/> (last visited on 10 March 2025).

underscores the necessity of ensuring the child's welfare and the safety of the parent who may have experienced abuse. The legal approach to the management of accusations of domestic violence in divorces is designed to protect the victims and guarantee fair results. This framework includes different key considerations:

I. The Best Interest of the Child

The principle of prioritizing the "best interest of the child" serves as the foundation for custody determinations, particularly in situations involving domestic violence.⁷⁵⁸ When one parent has a documented history of domestic violence, it raises critical concerns regarding the safety and welfare of both the child and the affected parent.

II. History of Abuse: In instances where abuse has occurred, the court is tasked with examining the effects of such conduct on the child's emotional and psychological growth. Should a parent exhibit abusive behaviour, the court will focus on safeguarding the child from potential harm, which may necessitate restricting or supervising that parent's interactions with the child.

III. Supervised Visitation: If the court permits visitation rights for the abusive parent, it may require that these visits be supervised to ensure the child's safety. Such supervised visits are generally conducted in a secure setting, with either a professional or a family member present to oversee the interactions. The objective is to shield the child from any risk of further abuse while still facilitating a relationship with the non-custodial parent, provided it is considered suitable.⁷⁵⁹

IV. Protection Orders: In circumstances where domestic violence is either suspected or confirmed, the court may issue protection orders to prevent the abusive parent from approaching the child and the victimized

parent.⁷⁶⁰ This may involve restraining orders that prohibit any form of contact or interaction between the abusive parent and the victim or child.

V. Evaluation of Parenting Abilities: When a parent has a history of abuse, the court will evaluate their suitability for parenting. In certain cases, the court may require the abusive parent to undergo counselling or therapy before contemplating any significant modifications to custody arrangements. The following issues are considered by the court:

i. Spousal support considerations

The courts have the discretion of considering the proof of domestic violence in determining spousal support, which can significantly affect the quantity and duration of the support.⁷⁶¹ This means that if a spouse has been abusive, the other spouse could receive greater spousal support to recognize the difficulties endured and facilitate financial independence.

ii. Real estate department

The presence of abuses can lead the courts to order an unequal distribution of marriage assets to adequately compensate the victim under case law and legal directives.⁷⁶² For example, if the victim were to leave the labour market due to mistreatment, the court could grant a larger part of the matrimonial assets to compensate for the income and the opportunities lost. These provisions underline the commitment of the legal system to consider the effects of domestic violence thoughtfully and exhaustively and to ensure that the victims receive the protection and the support they need during the divorce procedure.

2.1 Provisions under the Protection of Women from Domestic Violence Act, 2005

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) represents a pivotal

⁷⁵⁸ *Supra* note 46.

⁷⁵⁹ <https://law4u.in/answer/3791/How-does-domestic-violence-affect-divorce-proceedings-in-India#:~:text=If%20domestic%20violence%20has%20been,custody%20to%20an%20abusive%20parent> (last visited on 7th March 2025).

⁷⁶⁰ Protection of Women from Domestic Violence Act, 2005, (Act 43 of 2005), s. 18.

⁷⁶¹ Hindu Marriage Act, 1955, (Act 25 of 1955), s.24.

⁷⁶² *Id.* at Section 27.

advancement in Indian legislation, aimed at creating a robust legal framework to protect women from domestic violence and uphold their rights within abusive contexts.⁷⁶³ Enacted in October 2006, this legislation seeks to empower women by offering both immediate and long-term assistance. The following outlines the principal aspects of the Act:

i. Right to Reside in a Violence-Free Home

- A fundamental principle of the PWDVA is the assertion that every woman possesses the inherent right to reside in an environment devoid of violence, encompassing physical, emotional, economic, and sexual forms of abuse.⁷⁶⁴ The Act acknowledges that domestic violence extends beyond physical harm to include psychological and emotional maltreatment that can compromise a woman's dignity.

- This legislation affirms that women are entitled to the autonomy and legal safeguards necessary to inhabit a safe and non-violent space, regardless of whether they are in a marital relationship, cohabiting, or part of a familial arrangement.

ii. Responsibilities of State Governments: Shelters, Healthcare Facilities, and Support Services

State Governments are obligated under the Protection of Women from Domestic Violence Act (PWDVA) to offer a range of support services to women who have experienced domestic violence.⁷⁶⁵

The State must establish shelters specifically designed for victims of domestic violence, providing women with a temporary haven and protection from their abusers. These shelters play a critical role in ensuring that women have a secure environment away from harmful situations.

Additionally, the State must facilitate access to healthcare services for women who may have endured physical injuries or psychological

distress as a result of violence. Medical care, particularly for injuries inflicted by abuse, is vital for the healing process of the victim.

The designation of Service Providers and Protection Officers constitutes another essential aspect of this mandate. Service Providers are entities or individuals authorized to assist victims in navigating the legal, social, and psychological support frameworks. Protection Officers are appointed to support victims by aiding them in lodging complaints, obtaining protection orders, and safeguarding their rights.

iii. Legal Recourse under IPC Section 498A

A woman who files a complaint under the Protection of Women from Domestic Violence Act retains the right to pursue additional legal actions under other statutes, including Section 498A of the Indian Penal Code (IPC)⁷⁶⁶, which addresses cruelty by a husband or his relatives.

Section 498A pertains to acts of cruelty or harassment perpetrated by the husband or his family members and can be invoked alongside the PWDVA, particularly in cases involving dowry demands or severe mistreatment.

This provision ensures that women have access to a variety of legal remedies, rather than being confined to a single legal framework. In instances where domestic violence intersects with issues such as dowry harassment or other criminal offences, the woman is entitled to seek further legal recourse under the IPC.⁷⁶⁷

iv. Temporary and Emergency Relief

The Protection of Women from Domestic Violence Act (PWDVA) offers temporary and emergency relief for women facing domestic violence.⁷⁶⁸ This relief may encompass:

Protection Orders: Courts have the authority to issue orders that restrict the abuser from contacting the victim, approaching her residence, or entering the home.

⁷⁶³ *Supra* note 1.

⁷⁶⁴ *Ibid.*

⁷⁶⁵ *Ibid.*

⁷⁶⁶ *Supra* note 19.

⁷⁶⁷ *Ibid.*

⁷⁶⁸ Protection of Women from Domestic Violence Act, 2005, (Act 43 of 2005), ss. 18-22.

Residence Orders: Victims of domestic violence can petition for orders that affirm their right to remain in the shared household, regardless of whether the abuser is the primary property owner.

Custody Orders: Women may seek custody of their children if they have concerns regarding the abuser's fitness to care for them or if the children are at risk.

These measures are designed to provide immediate safety for the woman and her children, facilitating their removal from dangerous situations as swiftly as possible.

v. Available Forms of Relief for the Aggrieved Woman:

The PWDVA delineates various forms of relief and support that a woman may request under the Act. These include:

Financial Assistance: The Act permits women to seek financial support for a range of needs, including maintenance, medical costs, and legal expenses.⁷⁶⁹ This provision aids victims in achieving financial autonomy and mitigating the financial strain resulting from the violence.

Shelter: As previously noted, victims may receive temporary accommodation from the State Government or designated shelters. This option is crucial for women who lack a secure place to return to after escaping an abusive environment.

Medical Assistance: Victims are entitled to medical care, which encompasses treatment for physical injuries as well as psychological counselling to address the trauma inflicted by the violence.

Protection Orders: These court-issued orders prevent the abuser from contacting the victim or entering her home or workplace, thereby providing immediate physical safety.

Residence Orders: Women can apply for the right to continue living in the shared household,

thereby preventing the abuser from evicting them, even if the abuser is the owner or renter of the property.

Custody Orders: This provision enables a woman to request custody of her children if they are in danger due to the abuser's actions. The custody arrangement is designed to safeguard the children from any potential harm.

Compensation Orders: Courts have the authority to grant compensation to the victim for any physical or emotional injuries sustained as a result of the abuse. This order seeks to provide both financial and psychological assistance to the victim for the pain experienced.

vi. Capacity to Initiate Multiple Legal Actions

A significant aspect of the PWDVA is that it permits a woman to initiate multiple legal actions under various statutes.⁷⁷⁰ For example, even if a woman has already pursued a case under the PWDVA, she retains the right to file a criminal case under Section 498A (or other pertinent sections of the IPC). In instances of severe violence, she may also seek a divorce under the Hindu Marriage Act or request maintenance under Section 125 of the CrPC. This provision ensures that the woman is not confined to a single legal avenue and can leverage all available laws to safeguard her rights and well-being.

The Function of Protection Officers

Protection Officers are crucial in ensuring the effective implementation of the PWDVA's provisions. Appointed by State Governments, their responsibilities include:

- Assisting women in lodging complaints and applications for relief.⁷⁷¹
- Facilitating connections between women and service providers for medical, legal, and psychological assistance.

⁷⁶⁹ Protection of Women from Domestic Violence Act, 2005, (Act 43 of 2005), s. 20.

⁷⁷⁰ *Id* at Section 26.

⁷⁷¹ Protection of Women from Domestic Violence Act, 2005, (Act 43 of 2005), s. 8.

- Ensuring the enforcement of court orders, such as protection and custody orders.
- Guiding women through the process of obtaining justice and protection under the Act.

2.2 Impact of Domestic Violence Allegations on Divorce Proceedings

Domestic violence allegations can significantly influence the trajectory of a contested divorce, introducing additional layers of complexity and emotional strain to an already difficult situation.⁷⁷² In India, the legal system provides avenues for victims of domestic violence to seek justice, making such allegations crucial in disputes over significant issues like child custody, spousal support, asset division, and possible criminal charges. Regardless of the truth behind these accusations, they can have deep and lasting effects on the accuser, the accused, and any children involved.

A recent case that underscores this issue is that of Atul Subhash, a 34-year-old tech professional from Bengaluru, who tragically took his own life following false allegations against him. His heartbreaking death has brought to light the severe emotional, financial, and legal difficulties faced by individuals caught in marital disputes, especially those involving claims of domestic violence. Originally from Bihar, Atul relocated to Bengaluru after completing his education and worked as an automobile executive. He married Nikita Singhania, an AI engineer, in 2019 after meeting her online. However, their relationship soured as Nikita and her family began to impose financial demands on Atul, requesting expensive gifts and investments in her brother's business. In 2021, Nikita left Atul and their child, starting divorce proceedings that she later withdrew. She sought significant alimony and initiated multiple legal actions against him, including accusations of domestic violence and dowry harassment. In 2022, she alleged that Atul's family had demanded dowry, claiming that the

stress from these events led to her father's death, a claim that was later disproven by medical evidence. Despite her ongoing legal battles, many of her cases were dismissed due to her failure to appear in court.

In 2024, Nikita filed yet another complaint of domestic violence, further intensifying the emotional and financial strain on Atul. On December 9, 2024, Atul was found dead in his residence, leaving behind a 24-page suicide note and an 80-minute video. In these, he alleged that Nikita and her family had subjected him to harassment, extortion, and corruption within the legal system. His note reflected his disappointment with the legal system's failure to protect him and conveyed his belief that his passing would relieve his family's financial burdens.⁷⁷³

Following this incident, Atul's brother, Bikas Kumar, filed a police report, resulting in an FIR against Nikita and her family for abetment of suicide. Nikita's relatives, including her uncle, mother, and brother, were called in for questioning. False Allegations of Domestic Violence impact the court proceeding, inclining the court to rule in favour of the mother as done in this case regarding child custody.⁷⁷⁴ When the paternal grandmother of the child applied to gain the custody of her grandchild, the court dismissed the petition stating her to be stranger to the child and allowed the mother of the child to retain custody of the son even though, during that time, there had been a case registered against her, her brother and her mother along with which there was a severed public outcry demanding justice for Atul as well as widespread demands for the arrest of Nikita and her Family. This case highlights how such false allegations could impact the custody outcomes. The court gave orders that the custody would be retained by the mother, even though, during that time, many opinions and case proceedings were going on against Atul's wife. The court should take into consideration

⁷⁷³ <https://sahodar.in/atul-subhash-vs-nikita-singhania-case-study/> (last visited on 10th March 2025).

⁷⁷⁴ *Supra* note 46.

⁷⁷² *Supra* note 26.

the following while deciding upon any such cases where the custody of a child is involved, especially when allegations of Domestic Violence are made:

i. Influence on Child Custody and Visitation Arrangements

In contentious divorce proceedings, child custody frequently emerges as the most disputed issue, and allegations of domestic violence heighten the stakes in this regard. Indian courts, when faced with such claims, prioritize the best interests of the child as the fundamental criterion for their rulings.⁷⁷⁵

ii. Consequences for Custody

Safety Considerations: Should domestic violence be substantiated, courts are likely to conclude that the accused poses a threat to the child's safety. In these instances, custody may be denied to the abusive parent, encompassing various forms of abuse, including physical violence, verbal aggression, emotional harm, or neglect, and grant temporary custody to the aggrieved party.⁷⁷⁶

Assessment of Parental Capability: Courts evaluate the accused parent's ability to provide a healthy and secure environment for the child. If abuse is identified as part of the family environment, the abusive parent may be considered unfit to ensure a safe and nurturing setting.

Position of the Non-Abusive Parent: The spouse who is not implicated in domestic violence allegations is more likely to be granted primary custody, as the court seeks to safeguard the child from potential harm.

iii. Restricted Visitation

When visitation rights are granted to the accused spouse, they may be subject to supervision, particularly in cases where there is evidence indicating that the child has either

witnessed or been impacted by the violence. In severe situations, the court may completely revoke visitation rights to safeguard the emotional and physical well-being of the child.⁷⁷⁷

Advice for Addressing This Matter:

For parents confronting unfounded allegations, it is crucial to compile all relevant evidence, including communication logs, witness statements, and character endorsements, to illustrate your dedication to your child's welfare and your capacity to maintain a secure environment. Consulting with legal professionals is essential to ensure that your parental rights are adequately represented during custody hearings.

iv. Influence on Alimony and Financial Settlements

Alimony, also referred to as spousal support, frequently becomes a point of contention in disputed divorces. The emergence of domestic violence allegations can profoundly affect the financial settlements and alimony awarded to the spouse who raises these claims.⁷⁷⁸

v. Increased Alimony Claims

Victims of Domestic Violence: Should domestic violence be substantiated, the victimized spouse may qualify for elevated alimony. Courts often perceive alimony not merely as financial assistance but as a form of compensation for the emotional and physical distress experienced throughout the marriage. The more severe the abuse, the greater the potential increase in the alimony award.

Long-Term Financial Impact: Courts consider the financial difficulties stemming from domestic violence, including job loss, mental health challenges, or the inability to work due to physical injuries. This can result in a more substantial financial settlement for the victimized spouse.

vi. Financial Implications for the Accused

⁷⁷⁵<https://www.advdharmendraassociates.in/post/the-impact-of-domestic-violence-allegations-on-contested-divorce-outcomes> (last visited on 7th March 2025).

⁷⁷⁶ Protection of Women from Domestic Violence Act, 2005, (Act 43 of 2005), s.21.

⁷⁷⁷ Hindu Marriage Act, 1955, (Act 25 of 1955), s. 26.

⁷⁷⁸ *Id.* at Section 25.

For a spouse confronted with allegations of domestic violence, the financial implications can be substantial. The accused individual may face an obligation to pay increased alimony as part of the divorce settlement.⁷⁷⁹ Furthermore, their financial documentation may undergo rigorous examination to ensure a fair and just division of assets, potentially resulting in a more significant financial settlement for the other spouse.

Guidance for Addressing This Situation:

If you are dealing with such allegations, it is essential to maintain transparency and accuracy in your financial records. Collaborate with your attorney to navigate potential settlements in a manner that reflects your financial circumstances and the nature of the allegations.

vii. Property Distribution and Settlement

The division of property in a contested divorce becomes increasingly complex when allegations of domestic violence are present. Should domestic violence be substantiated, it may significantly affect the distribution of assets between the spouses.⁷⁸⁰

viii. Rights to Residence

According to the Protection of Women from Domestic Violence Act, 2005 (PWDVA), courts have the authority to grant residence rights to the victim of domestic violence,⁷⁸¹ which may allow the victim spouse to remain in the shared marital home. In such cases, the accused spouse could be mandated to vacate the premises or to provide alternative housing for the victim.

The court may give precedence to the victim spouse in property division, particularly when children are involved. This approach aims to ensure that the victim is not rendered homeless or placed in a precarious financial situation due to the abusive actions of the other spouse.

ix. Asset Distribution

The court may determine that the shared residence or other significant assets should be awarded to the victim, especially in the presence of children. This decision is intended to foster stability for the victim and their children while preventing the accused from utilizing financial means to maintain control.⁷⁸²

Guidance for Addressing This Matter:

In the event of facing allegations and concerns regarding property division, it is crucial to ensure that the process is conducted with fairness and transparency. Collaborate with your attorney to investigate potential housing arrangements that comply with court mandates while safeguarding your financial interests.

x. Legal Consequences and Criminal Offenses

Allegations of domestic violence may invoke criminal repercussions under the Indian Penal Code (IPC), particularly Section 498A, which addresses cruelty inflicted by a spouse or their relatives. If the allegations are substantiated, the accused may encounter legal sanctions, which could include imprisonment, monetary fines, or both.⁷⁸³

xi. Criminal Offenses for the Accused

A conviction under Section 498A can result in enduring ramifications for the accused, such as harm to their public reputation, diminished career opportunities, and potential challenges in securing custody or visitation rights during divorce proceedings.⁷⁸⁴

Impact on Employment: A criminal record may adversely influence the accused spouse's employment opportunities, societal reputation, and overall standing within the community.

False Accusations: Regrettably, false allegations may arise as a strategy to gain an

⁷⁷⁹ Hindu Marriage Act, 1955, (Act 25 of 1955), s. 25(2).

⁷⁸⁰ *Supra* note 59.

⁷⁸¹ Protection of Women from Domestic Violence Act, 2005, (Act 43 of 2005), s. 17.

⁷⁸² Protection of Women from Domestic Violence Act, 2005, (Act 43 of 2005), s. 19.

⁷⁸³ *Supra* note 19.

⁷⁸⁴ Law Commission of India, Review of Rape Laws, Report No. 172, March 2000.

advantage in contentious divorce situations. Such claims can have severe repercussions for the accused; however, if the allegations are proven to be unfounded, the accuser may face penalties. Courts generally regard false claims unfavourably, and a skilled attorney can provide essential support in countering these accusations.

Guidance for Addressing This Matter:

If you are confronted with false allegations, it is imperative to compile evidence (including messages, emails, or witness testimonies) that may refute the claims. Seek legal counsel promptly to protect your rights and reputation. Acting swiftly can significantly enhance your ability to secure your future.

xii. Emotional and Psychological Consequences

In addition to the legal and financial dimensions, allegations of domestic violence can lead to profound emotional and psychological effects on all individuals involved, particularly children.

Emotional Consequences for the Victim:

Individuals who endure domestic violence frequently undergo a spectrum of emotions, such as fear, anger, betrayal, and sorrow. These feelings can linger even after the divorce is concluded, often necessitating psychological support to facilitate healing.

Impact on Children's Emotions: Children who witness high-conflict divorces, particularly those involving allegations of domestic violence, may face enduring psychological challenges. They are at risk of developing anxiety, depression, and various behavioural issues.⁷⁸⁵ Counselling and therapeutic interventions are frequently advised to assist these children in managing the emotional turmoil associated with exposure to domestic violence or a contentious divorce.

Long-Term Effects on Family Dynamics:

Extended legal disputes can create significant

rifts within families, leaving all parties emotionally affected. Divorces that involve domestic violence can be particularly distressing for children, making it imperative to address these issues in a manner that prioritizes their emotional health.

Guidance for Addressing This Situation:

It is advisable to seek assistance from mental health professionals for both yourself and your children to effectively cope with the emotional strain of a contentious divorce. Prioritizing mental well-being will enable you to make informed decisions and work towards achieving the most favourable outcome for your family.

Allegations of domestic violence can significantly impact contested divorce proceedings in India. Such claims affect various aspects, including child custody, alimony, property distribution, and may even result in criminal charges against the accused. Regardless of the veracity of the allegations, they carry enduring legal, emotional, and financial consequences for all parties involved.

If you find yourself in a divorce situation involving domestic violence allegations, it is essential to comprehend your rights and responsibilities. Whether you are the victim or the accused, obtaining legal advice, compiling evidence, and focusing on your emotional well-being are vital steps in navigating these intricate proceedings. The ultimate objective is to resolve the situation equitably, ensuring the safety, welfare, and future of all individuals involved.⁷⁸⁶

Chapter-3

Child Custody in Cases Involving Domestic Violence

Child custody matters in India are particularly delicate, especially in cases involving domestic violence. The legal landscape surrounding child custody is complex, with various laws applicable

⁷⁸⁵ UNICEF, The Impact of Domestic Violence on Children, 2017.

⁷⁸⁶ <https://ijlr.com/wp-content/uploads/2024/05/Comprehensive-Analysis-Of-Domestic-Violence-In-India-Legal-Frameworks-Judicial-Responses-And-International-Standards.pdf>.

depending on the religion or community of the individuals involved. The presence of domestic violence plays a crucial role in custody determinations, as the courts prioritize the child's welfare above all else. Divorce proceedings often involve highly emotional and stressful circumstances. The court must balance the interests of both parents, the child and ensure that the ultimate decision is guided by the child's best interests above all.⁷⁸⁷ The following section provides a comprehensive overview of the legal provisions, reflecting a more detailed and contemporary understanding of the current laws.⁷⁸⁸

3.1 Legal Framework for Child Custody in India

i. Hindu Minority and Guardianship Act, 1956 (HMGA)

Custody for Hindus: The Hindu Minority and Guardianship Act of 1956 governs child custody issues within the Hindu community. As outlined in Section 6 of the Act, mothers are generally granted custody of children who are under five years old, with the court prioritizing the child's welfare and overall health. For children over the age of five, custody determinations are made with the child's best interests in mind, taking into account the parent's moral character, abilities, and living conditions.⁷⁸⁹

Impact of Domestic Violence: A parent with a documented history of domestic violence is unlikely to be granted custody. The court assesses the parent's capability to create a safe and nurturing environment for the child. In instances of abuse, custody is typically awarded to the non-abusive parent.

ii. Custody under Muslim Law:

According to Muslim law, custody of children, particularly those under the age of seven (for boys) or before reaching puberty (for girls), is usually granted to the mother, assuming she is

deemed suitable to care for the child. Nevertheless, the father maintains the legal status of guardian (Wali) concerning issues such as marriage, education, and property.

Impact of Domestic Violence: In cases where the father has a history of domestic violence, the mother may still be granted custody. However, the courts will scrutinize the father's ability to fulfil his role as a guardian, especially concerning the child's emotional and physical welfare. A background of violence can significantly influence the father's capability to serve as the legal guardian.

iii. Parsi and Christian Legal Frameworks

Custody under the Guardians and Wards Act, 1890: The Guardians and Wards Act of 1890 governs custody matters for both Parsi and Christian communities, applying universally regardless of religious affiliation. This legislation grants the court the authority to designate a guardian for a minor, prioritizing the child's welfare while considering the parent's character, conduct, and the emotional requirements of the child.⁷⁹⁰

Influence of Domestic Violence: As with other legal provisions, a parent's involvement in domestic violence can significantly impact custody determinations. Courts tend to be hesitant in granting custody to a parent with a history of abusive behaviour, placing the child's safety and overall well-being at the forefront of their decisions.

3.2 Effects of Domestic Violence on Custody Outcomes

Domestic violence can significantly influence child custody outcomes in India. Courts emphasize the child's safety and welfare, and any allegations of abuse can substantially affect custody arrangements.

i. Custody Denial for the Abusive Parent

A parent with a documented history of domestic violence is unlikely to be awarded

⁷⁸⁷ R.S. Dongra & Manish Arora, *Universal's Handbook on Divorce Law Procedures* (Universal Law Publishing, 2021) at 185.

⁷⁸⁸ <https://lawlawfirm.com/how-domestic-violence-affects-your-custody-case/> (last visited on 10th March 2025).

⁷⁸⁹ Hindu Minority and Guardianship Act, 1956, (Act 32 of 1956), s. 6.

⁷⁹⁰ Guardians and Wards Act, 1890, (Act No. 8 of 1890).

custody. Courts exercise extreme caution in granting custody to a parent with a violent background, as the child's physical and emotional safety is paramount. The court's primary focus remains on the child's best interests; thus, if one parent is found to have engaged in abusive conduct, the non-abusive parent is generally favoured for custody.

ii. Supervised Visitation Rights

In cases where the abusive parent is not considered a direct threat to the child's safety but may still inflict emotional or psychological harm, the court may allow supervised visitation. This arrangement ensures that interactions between the child and the abusive parent occur in a controlled environment, typically overseen by a social worker or another designated individual.

iii. Restraining Orders Against the Abusive Parent

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) establishes a framework for issuing restraining orders. Courts have the authority to restrict the abusive parent's contact with the child, thereby maintaining a safe environment for the child.

Section 21 of the PWDVA empowers the court to award custody to the victim spouse when necessary and to limit any further interaction between the abusive spouse and the child.⁷⁹¹

Restraining Orders and Legal Safeguards Against Domestic Violence

The Protection of Women from Domestic Violence Act, 2005 (PWDVA) is essential in safeguarding victims of domestic violence, particularly in matters of custody and child welfare.

Legal Provisions for Restraining Orders Under PWDVA

Protection Orders (Section 18): This provision enables the court to issue an order that forbids the abusive spouse from engaging in further acts of violence, threats, or harassment. It also

restricts the abusive spouse from contacting or communicating with the victim.⁷⁹²

Residence Orders (Section 19): This section prohibits the abusive spouse from evicting the victim from their shared home and may restrict access to certain areas of the residence, thereby ensuring the victim's safety.⁷⁹³

Monetary Relief Orders (Section 20): This section empowers the court to mandate that the abusive spouse provide financial assistance to the victim.⁷⁹⁴ This support may encompass various expenses, including medical costs, lost wages, or compensation for emotional trauma resulting from domestic violence.

Custody Orders (Section 21): The court has the authority to issue custody orders under the PWDVA, which can grant custody of children to the victim while limiting the abusive parent's access.⁷⁹⁵ This measure is particularly crucial when the safety of the child is compromised.

Compensation Orders (Section 22): The court is also able to grant compensation for any physical, mental, or emotional harm inflicted by the abuse.⁷⁹⁶ This compensation is supplementary to any other forms of relief awarded.

3.3 Role of a Domestic Violence Divorce Attorney

A domestic violence divorce attorney is essential in advocating for victims of domestic violence, especially in matters concerning child custody. Their responsibilities include:

Evidence Collection: Gathering essential evidence of abuse, which may include medical documentation, photographs of injuries, witness statements, and police reports. This evidence is crucial for court proceedings, particularly in cases involving abuse allegations.

Filing a Domestic Incident Report (DIR): The attorney will help file a Domestic Incident Report

⁷⁹¹ *Supra* note 73.

⁷⁹² *Supra* note 57.

⁷⁹³ *Id.* at Section 19.

⁷⁹⁴ *Id.* at Section 20.

⁷⁹⁵ *Id.* at Section 21.

⁷⁹⁶ *Id.* at Section 22.

in accordance with Section 9 of the PWDVA, ensuring that the victim's claims are formally recorded and presented to the Magistrate.⁷⁹⁷

Emergency Protection: In situations where there is an immediate threat to the victim or child, the attorney may seek an ex parte protection order, which is issued without the presence of the abuser to provide swift relief.⁷⁹⁸

Enforcing Orders: If the abusive spouse breaches a court-issued restraining order or custody agreement, the attorney will collaborate with law enforcement to ensure compliance with the orders.

Punishment for Violation of Restraining Orders

According to **Section 31 of the PWDVA**, breaching a protection order constitutes a criminal offense.⁷⁹⁹ The consequences for such violations may include:

Incarceration: A breach of the law may result in imprisonment for a maximum duration of one year.

Monetary Penalty: The offender could also face a fine of up to ₹20,000.⁸⁰⁰

Law Enforcement Involvement: Victims have the option to request police assistance if the abusive partner fails to comply with court directives.

3.4 The Paramountcy Principle of the Welfare of the Child

The Paramountcy Principle serves as a fundamental tenet of child law, emphasizing that the child's welfare is the primary consideration in decisions related to their care and upbringing.⁸⁰¹ This principle has gained widespread acceptance across various legal systems, particularly in light of international

agreements such as the United Nations Convention on the Rights of the Child (UNCRC).

Origin of the Principle

The principle was notably established in the UK with the enactment of the Children Act 1989, which explicitly asserts that a child's welfare must be the foremost concern in any court decision regarding that child.⁸⁰² This concept has been embraced globally, although its application may differ. For instance, in the United States, while the child's welfare is also a critical factor in custody decisions, the specific implementation can vary by state.

Application of the Principle

In family law proceedings, courts frequently face the responsibility of determining custody, care arrangements, and visitation rights. The primary consideration in any decision regarding a child must be their welfare, which encompasses their safety, health, emotional development, and overall well-being. Courts generally assess a range of factors in line with this welfare principle, such as:

- The physical and emotional needs of the child
- Each parent's ability to meet those needs
- The child's preferences, assuming they are of sufficient age and maturity
- The impact of any changes on the child's feeling of security, including separation from one parent.
- Any previous instances of abuse or neglect

The welfare principle mandates that decisions prioritize the child's best interests rather than solely focusing on parental rights or desires.⁸⁰³

Challenges to the Principle

Although the child's welfare is the foremost priority, practical application can be complex. Courts frequently encounter difficulties,

⁷⁹⁷ Protection of Women from Domestic Violence Act, 2005, (Act 43 of 2005), s. 9.

⁷⁹⁸ <https://law4u.in/top-answer/4444/how-does-domestic-violence-affect-custody-decisions> (last visited on 10th March 2025).

⁷⁹⁹ Protection of Women from Domestic Violence Act, 2005, (Act 43 of 2005), s. 31.

⁸⁰⁰ *Ibid.*

⁸⁰¹ United Nations Convention on the Rights of the Child, 1989, art. 3(1).

⁸⁰² Children Act, 1989, c. 41, Section 1(1) (UK).

⁸⁰³ <https://www.voiceofthechild.org.uk/kb/welfare-checklist-paramountcy-principle-children-act-1989/> (last visited on 10th March 2025).

especially when parents are in disagreement, as they must consider the potential negative impact of a custody arrangement on the child's emotional and psychological well-being. Additionally, the interpretation of "welfare" can differ significantly among various cultures and societies, resulting in ongoing discussions about the most effective ways to apply this principle.

3.5 Judicial Trends in Determining Custody in Domestic Violence Cases

Domestic violence significantly influences child custody decisions, impacting not only the parents but also the child involved. Courts are increasingly recognizing the risks associated with both physical and emotional abuse, leading to adjustments in their rulings.

Historical Trends

Traditionally, custody decisions favoured mothers, often overlooking or downplaying paternal abuse. However, in recent decades, there has been a notable shift in the perception of domestic violence within custody disputes.⁸⁰⁴ The focus has increasingly shifted towards acknowledging the detrimental effects of domestic violence on children, including both direct exposure to violence and the emotional and psychological damage inflicted by living in an abusive setting.

Factors Considered in Domestic Violence Cases

In custody cases involving domestic violence, courts now typically evaluate several key factors:

i. Direct exposure to violence: Witnessing domestic violence can profoundly impact a child's emotional health and mental well-being. Courts assess whether the child has been exposed to violence in the household, the frequency of such incidents, and the potential repercussions on the child's development.⁸⁰⁵

ii. Perpetrator's history of violence: Courts closely examine any documented history of domestic violence or patterns of abusive conduct by a parent.⁸⁰⁶ A record of abuse is generally viewed unfavourably in custody determinations, particularly if there remains a threat to the safety of the child or the other parent.

iii. Effect on the child's well-being: The court will investigate how domestic violence has influenced the child's overall well-being. This may encompass emotional distress, anxiety, or Behavioural issues. Expert opinions from child psychologists may be solicited to evaluate the extent of harm experienced.⁸⁰⁷

iv. Protective measures: When an abusive parent demonstrates a commitment to change their Behaviour through counselling or rehabilitation programs, the court may consider these efforts in custody determinations. Nevertheless, such measures are generally insufficient to outweigh the paramount concern for the child's safety and overall well-being.⁸⁰⁸

v. Parenting capabilities of the victim: The court evaluates the parenting skills of the individual who has experienced domestic violence. If this parent is deemed capable of offering a secure and nurturing environment for the child, they are typically favoured in custody rulings.

vi. Impact on Custody Decisions: In situations involving domestic violence, the child's safety is often prioritized over the parental rights of the abusive party. Courts may award sole custody to the victim of domestic violence or, in severe circumstances, restrict visitation rights or mandate supervised visitation.⁸⁰⁹ The primary focus remains on ensuring the child's safety and emotional health.

Judicial trends indicate an increasing recognition of the necessity for support systems aimed at assisting victims of domestic violence

⁸⁰⁴ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford University Press, 2001).

⁸⁰⁵ <https://legalwellbeing.in/domestic-violence-laws-understanding-legal-framework/> (last visited on 12th March 2025).

⁸⁰⁶ Indian Evidence Act, 1872, (Act 1 of 1872), s. 114A.

⁸⁰⁷ National Commission for Protection of Child Rights (NCPCR), *Impact of Domestic Violence on Children*, 2019.

⁸⁰⁸ Protection of Women from Domestic Violence Act, 2005, (Act 43 of 2005), s. 14.

⁸⁰⁹ *Supra* note 46.

and their children, including access to shelters, therapeutic services, and legal support.

3.6 Balancing Parental Rights and Child Protection

In child custody disputes, a careful equilibrium must be maintained between safeguarding the child's welfare and honouring the parents' rights to foster a relationship with their offspring.⁸¹⁰ This equilibrium becomes particularly intricate in situations involving allegations of domestic violence or other factors that may jeopardize the child's safety and overall well-being.

The Right to Parental Autonomy

Parents typically possess a legal entitlement to participate in decisions regarding their child's upbringing. These rights are rooted in family law and are upheld as long as they do not pose a threat to the child's welfare.⁸¹¹ However, if a parent's conduct endangers the child, as seen in instances of domestic violence, substance abuse, or neglect, judicial intervention may be necessary to limit or revoke parental rights.

The Role of the State

When parental rights clash with the imperative to protect the child, the state frequently intervenes to ensure the child's best interests are prioritized.⁸¹² This intervention may involve actions such as awarding custody to a non-abusive parent, placing the child in foster care, or establishing a guardianship arrangement.

In certain jurisdictions, legal frameworks exist to assist parents grappling with challenges like substance abuse or domestic violence. These frameworks may facilitate rehabilitation efforts, including supervised visitation, parenting education, and therapeutic support, aimed at helping the parent amend their behaviour and become more engaged in their child's life.

The Role of the Court in Mediating Conflict

Courts are instrumental in reconciling these conflicting interests. In custody determinations, judges must consider a range of factors, including:

The child's safety: If a parent poses a danger to the child, their custody or visitation rights may be restricted or denied.

The need for continuity: Courts often favour maintaining children in stable environments. A sudden alteration in custody, particularly if the child is already in a secure setting, can be disruptive and detrimental to their well-being.

The parents' rights: Courts also endeavour to respect the rights of parents. The issues surrounding child welfare, judicial developments in domestic violence cases, and the equilibrium between parental rights and child protection constitute a vital nexus of law, psychology, and ethics. In child custody disputes, the foremost priority is the well-being of the child; however, arriving at the most favourable resolution necessitates a thorough evaluation of various elements, including the rights of the parents, the needs of the child, and the wider societal consequences.⁸¹³

As judicial practices continue to progress, there is an increasing acknowledgment of the necessity for tailored strategies in child custody matters, particularly those involving domestic violence. Nevertheless, the welfare of the child remains the central tenet guiding these considerations.⁸¹⁴

Chapter-4

Policy And Practical Challenges

Child custody and protection legislation plays a crucial role in safeguarding the safety, emotional health, and development of children within the realm of family law. Despite the fact that numerous nations have established comprehensive frameworks for child protection, various policy and practical obstacles

⁸¹⁰ United Nations Convention on the Rights of the Child, 1989, art. 9(3).

⁸¹¹ *Supra* note 86.

⁸¹² Juvenile Justice (Care and Protection of Children) Act, 2015, (Act 2 of 2016), s. 2(9).

⁸¹³ Children Act, 1989, c. 41, Section 1(3) (UK).

⁸¹⁴ https://lawbhoomi.com/domestic-violence-divorce/#Domestic_Violence_and_Legal_Remedies (last visited on 15th March 2025).

frequently hinder their successful execution. This in-depth analysis explores four major challenges in the areas of child protection and custody: inadequate enforcement of protective laws, gender bias in custody determinations, insufficient psychological support for children impacted by custody conflicts, and the difficulty of reconciling false accusations with legitimate concerns.

4.1 Insufficient Implementation of Protective Laws

Legislation aimed at the protection of children is crafted to ensure their physical, emotional, and mental well-being is shielded from abuse, neglect, exploitation, and various other threats.⁸¹⁵ International agreements, such as the Convention on the Rights of the Child (CRC), provide a framework for child protection, which has been ratified by the majority of countries, thereby imposing a legal duty on governments to establish policies and systems that promote child welfare. Domestic child protection laws frequently address matters related to abuse, child trafficking, child labour, and custody issues.

Within the realm of family law, protective statutes are established to guarantee that a child's best interests are at the forefront during instances of parental separation or divorce. These statutes generally encompass:

Child Custody: Legal provisions that ensure decisions regarding a child's living situation are made with their best interests in mind.

Child Abuse Prevention: Regulations aimed at safeguarding children from physical, emotional, or sexual abuse.

Child Welfare Services: Agencies, whether governmental or non-governmental, tasked with the responsibility of protecting children in perilous or harmful circumstances.

4.2 Challenges in the Implementation of Protective Legislation

The enforcement of protective laws faces numerous obstacles, despite their formal existence:

i. Insufficient Resources and Financial Support: In numerous nations, the agencies tasked with child protection are significantly underfunded. This financial shortfall hampers their capacity to conduct comprehensive investigations, deliver prompt interventions, and provide necessary social services. As a result, delays in case processing, inadequate support for affected children, and overwhelmed systems may occur, preventing timely intervention in critical situations.

ii. Inadequate Training for Professionals: Professionals such as social workers, judges, and law enforcement personnel may lack the necessary training to effectively manage child protection cases. This deficiency can result in the failure to recognize instances of abuse or neglect, as well as the mishandling of sensitive child custody issues. In certain regions, specialized training for addressing child protection matters is either insufficient or inconsistent.

iii. Cultural Obstacles and Societal Norms: In various communities, especially those with patriarchal structures, entrenched cultural beliefs often conflict with protective legislation. Practices like child marriage, corporal punishment, and gender discrimination may persist despite being prohibited. In some instances, the rights of children may be regarded as subordinate to traditional family values, leading to resistance against the enforcement of contemporary child protection laws.

iv. Bureaucratic Inefficiency and Corruption: The inefficiency of governmental institutions, combined with corruption, can significantly impede the enforcement of protective laws. Corruption may result in cases being overlooked or delayed, while others might be exploited for personal benefit. This situation erodes public confidence in child protection systems and exacerbates the risks faced by vulnerable children in need of safeguarding.

⁸¹⁵ United Nations Convention on the Rights of the Child, 1989, art. 19.

v. Insufficient Public Awareness:

Frequently, both parents and children lack knowledge regarding the legal protections that are available to them. Public awareness initiatives are essential; however, they often do not receive sufficient support or fail to effectively reach marginalized populations. The lack of accessible legal resources can result in children and parents being ill-equipped to navigate the legal system.⁸¹⁶

Proposed Solutions

To tackle the inadequate enforcement of protective laws, a comprehensive strategy is required:

i. Sufficient Funding and Resource

Distribution: Governments ought to prioritize financial support for child protection services, ensuring that adequate resources are available for investigations, interventions, and support services for affected children.

ii. Extensive Training Programs: Judges, social workers, and law enforcement personnel must undergo continuous training in child protection, with a particular focus on understanding the psychological and emotional impacts of abuse and neglect.⁸¹⁷

iii. Community Involvement: Local communities should be actively engaged in child protection strategies to bridge the divide between formal law enforcement and societal norms.⁸¹⁸ This could involve community-based initiatives, religious leaders, and other influential figures advocating for the rights and protection of children.

4.3 Gender Bias in Custody Decisions

Custody determinations have historically leaned towards mothers, stemming from the belief that women possess a more innate ability for parenting, particularly during the formative years of a child's development. Such gender-based assumptions have contributed to a bias within family law, leading to custody

arrangements that are often inequitable. Although many legal frameworks now assert a commitment to gender neutrality, underlying biases continue to shape outcomes, frequently disadvantaging fathers.

The Consequences of Gender Bias

i. Perceptions of Parenting Roles: The notion that mothers are naturally more nurturing and superior caregivers than fathers remains prevalent in family law. Even in instances where fathers demonstrate equal or superior capability in providing a stable environment, the prevailing societal belief that mothers should assume the primary caregiving role often dominates. This situation undermines the rights of fathers and limits their opportunities for meaningful engagement with their children.

ii. Discriminatory Legal Practices: In certain jurisdictions, the legal framework has historically favoured mothers in custody disputes, particularly when children are very young. Although the ideal is to achieve gender neutrality, mothers may still be more frequently granted primary custody, irrespective of the father's involvement in the child's upbringing.

iii. Bias in Judicial Decision-Making: Judges, influenced by societal expectations and their own biases, may occasionally render decisions that do not align with the best interests of the child, but rather conform to traditional gender norms. For instance, a judge might grant custody to the mother solely based on her gender, without adequately evaluating the father's involvement, financial stability, or ability to provide care.

iv. Undermining Father's Parental Rights: Fathers pursuing shared or primary custody often encounter legal obstacles and societal opposition. In certain cultures, there exists an unspoken expectation that mothers should primarily handle child-rearing responsibilities, even when fathers have actively participated in parenting during the marriage or separation. Consequently, this can lead to fathers receiving limited visitation rights or having their custodial rights significantly reduced.

⁸¹⁶ <https://blog.iplleaders.in/an-overview-of-protection-of-women-from-domestic-violence-act-2005/> (last visited on 14th March 2025).

⁸¹⁷ Protection of Children from Sexual Offences Act, 2012, (Act 32 of 2012), s. 39.

⁸¹⁸ United Nations Children's Fund (UNICEF), Community-Based Approaches to Child Protection, 2018.

Addressing Gender Bias in Custody Decisions

i. Gender-Neutral Legislation: Laws must be designed to ensure custody decisions prioritize the child's best interests rather than adhering to antiquated gender norms. This entails that both parents are given equal consideration in custody matters, with decisions reflecting the child's emotional needs, stability, and the quality of their relationship with each parent.

ii. Judicial Training on Gender Sensitivity: Judges and legal practitioners must receive training aimed at identifying and addressing their own biases. This training should emphasize gender sensitivity, the involvement of both parents in child-rearing, and the necessity of making custody decisions in an unbiased manner.

iii. Promoting Equal Parenting Rights: Advocacy for equal parenting rights is vital. Social and legal initiatives can foster the acknowledgment of both fathers and mothers as competent and engaged parents. This shift can facilitate a greater acceptance and prevalence of shared custody arrangements.

4.4 Lack of Psychological Support for Affected Children

Children involved in custody disputes frequently endure significant emotional and psychological turmoil. The upheaval of separation, parental conflict, and the unpredictability of their living situations can inflict enduring damage on a child's mental well-being. Studies indicate that children entangled in high-conflict custody battles are susceptible to developing long-lasting emotional and behavioural challenges, including anxiety, depression, and difficulties with trust.⁸¹⁹

The Impact of Custody Disputes on Children

i. Heightened Anxiety and Emotional Turmoil: The unpredictability associated with custody disputes can induce anxiety in children,

who may struggle to comprehend the reasons behind the disruption in their lives. This stress is exacerbated when children find themselves amid parental discord, resulting in feelings of confusion, anger, and fear.

ii. Behavioural Challenges: The emotional strain on children often manifests as behavioural issues. They may display disruptive behaviour in school, exhibit aggression, or withdraw socially. Additionally, children in these circumstances may find it difficult to focus and achieve academic success.

iii. Challenges in Developing Healthy Attachments: The instability brought about by custody arrangements can hinder a child's capacity to establish secure attachments, which are essential for healthy emotional growth. Such attachment difficulties may extend into adulthood, impacting personal relationships and emotional resilience.

iv. Long-Term Psychological Consequences: In the absence of appropriate intervention, children who experience high-conflict custody disputes are at risk of developing enduring mental health issues, including depression, post-traumatic stress disorder (PTSD), and personality disorders. These psychological effects can persist into adulthood, influencing their ability to navigate various aspects of life.

Addressing the Deficiency of Psychological Support

i. Requiring Psychological Evaluations: Courts need to mandate psychological evaluations for children engaged in custody disputes. These evaluations can reveal emotional distress and facilitate appropriate interventions. By understanding the child's psychological needs, courts can make more informed decisions regarding custody arrangements.

ii. Integrating Counselling into Custody Processes: Children involved in custody disputes should have access to therapy and counselling services.⁸²⁰ Options such as family

⁸¹⁹ J. Amato, *Parental Divorce and Adult Well-Being: A Meta-Analysis*, *Psychological Bulletin*, 2018, 144(5), pp. 488-509.

⁸²⁰ World Health Organization (WHO), *Guidelines on mental health promotive and preventive interventions for adolescents*, 2020, available at

therapy, individual counselling, and group therapy can equip children with coping mechanisms to manage the emotional challenges associated with custody proceedings.

iii. Establishing Support Systems for Parents: In addition to supporting children, it is crucial to provide parents with psychological services to help them cope with the pressures of custody disputes and to better assist their children during this challenging time. By addressing the emotional requirements of both parents and children, the overall family dynamic can improve, fostering healing and enhancing well-being.

4.5 Balancing False Allegations and Genuine Concerns

The Issue of False Allegations

Custody disputes frequently entail claims of abuse or neglect; however, not all such claims are accurate. False allegations may arise from feelings of anger, resentment, or a strategic attempt to gain leverage in the custody proceedings.⁸²¹ These unfounded claims can result in serious repercussions, including emotional distress for the parent wrongfully accused and the child involved.⁸²²

The Consequences of False Allegations

i. Erosion of Parental Bonds: False allegations can severely damage the relationships between parents and their children. In certain instances, the parent who is falsely accused may be denied access to their children, leading to long-lasting estrangement and emotional suffering for both parties.

ii. Emotional Distress for Children: When children are subjected to false accusations, they may experience confusion and internal conflict. If they are coerced into testifying or taking sides, they may endure emotional turmoil, feelings of guilt, and heightened anxiety.

iii. Legal and Financial Repercussions: False allegations can result in extended legal disputes, consuming substantial resources to defend against claims that lack validity. The financial burden and emotional strain associated with such situations can be profoundly damaging.⁸²³

Confronting False Allegations.

i. Thorough Investigations: Courts and child protection agencies must conduct thorough investigations into all allegations of abuse.⁸²⁴ This process should encompass the collection of physical evidence, interviews with all relevant parties, and the utilization of expert testimony when necessary to differentiate between unfounded claims and legitimate concerns.

ii. Specialized Training for Legal Practitioners: Judges and attorneys ought to undergo specialized training focused on assessing the credibility of allegations, as well as gaining insight into the psychological dynamics involved in cases of false accusations.

iii. Equitable Legal Safeguards: Legal frameworks should strive for an equitable approach that safeguards the interests of both parents and children. While prompt action is crucial in response to allegations of abuse, it is equally vital to avoid premature conclusions based on unverified claims.

Child custody and protection laws play a crucial role in safeguarding the rights and welfare of children. However, several challenges hinder their effectiveness, including poor implementation, gender bias, lack of psychological support, and the difficulty of distinguishing between false accusations and legitimate concerns. Addressing these challenges requires a holistic approach that encompasses legal reforms, improved resources and training for professionals, and support systems that cater to the immediate

www.who.int/publications/i/item/9789240011854 (Last visited on 30th March 2025)

⁸²¹ B. Johnston & N. Bala, *Allegations of Family Violence in Court: Assessing Truth and Impact*, Canadian Family Law Journal, 2020, 38(2), pp. 203-229.

⁸²² <https://www.lawjournals.org/assets/archives/2020/vol6issue4/6-3-87-976.pdf> (last visited on 11th March 2025).

⁸²³ <https://www.menslegal.com/blog/the-impact-of-domestic-violence-allegations-on-divorce-outcomes/> (last visited on 12th March 2025).

⁸²⁴ Wolfe, D.A., Crooks, C.V., Lee, V. et al. *The Effects of Children's Exposure to Domestic Violence: A Meta-Analysis and Critique*. Clinical Child Family Psychology Rev 6 (2003) p.75.

and long-term needs of children and families. Through a dedicated approach to tackling these challenges, child protection systems can better serve the best interests of children, safeguarding their safety and emotional health during the custody process.⁸²⁵

Chapter-5

Conclusion And Recommendations

This study has explored key elements of the child protection system, highlighting shortcomings in legal frameworks, enforcement methods, and policies that prioritize children's needs. While existing laws provide essential safeguards, they often do not adequately address contemporary challenges like online abuse and family disputes. The advantages of incorporating mediation and counselling into legal processes are not fully utilized, leading to worries about the potential misuse of child protection laws in contentious custody cases. The findings highlight the necessity of implementing a child-centered approach in family law and child protection, ensuring that the welfare of children is at the forefront of all legal and policy decisions.

5.1 Strengthening Legal Provisions and Enforcements

i. Updating and Enhancing Legal Frameworks

Numerous child protection statutes, while essential, may not adequately address the contemporary challenges faced by children, including online exploitation and human trafficking. Legal measures intended to safeguard children must be regularly reviewed and revised to reflect technological, social, and cultural developments. For example, legislation concerning child sexual abuse should integrate emerging concerns such as online grooming and the dissemination of explicit material through social media platforms. Furthermore, there should be a comprehensive understanding of the definitions of emotional,

physical, and psychological abuse, ensuring they are broad enough to encompass current situations. Additionally, there is a pressing need to establish specialized child protection laws, particularly in sensitive domains such as adoption, foster care, and the rights of children with disabilities.

ii. Enhanced Funding and Resources for Implementation

Successful enforcement necessitates significant investment in the systems responsible for monitoring and applying these laws. For example, law enforcement agencies should receive targeted training to effectively identify and manage child abuse cases, which often involve sensitive emotional and psychological factors. Increased resources should be directed toward child protective services, ensuring they are sufficiently staffed and equipped to investigate instances of neglect and abuse in a timely and thorough manner. Moreover, funding should also be allocated for specialized courts and judges who possess a deep understanding of the complexities inherent in child welfare cases. This includes financial support for services such as child advocacy centres, which provide safe environments for children to report abuse or testify.

iii. Monitoring and Accountability Mechanisms

After updating laws and establishing enforcement frameworks, it is crucial to assess their effectiveness. Independent oversight entities, such as ombudsman offices or dedicated child protection commissions, can evaluate the implementation of laws and determine whether they are achieving the intended results.

5.2 Role of Mediation and Counselling

i. Advocating for Mediation in Custody and Family Conflicts

Mediation offers a constructive environment for parents or guardians to negotiate custody or visitation arrangements, emphasizing collaboration rather than confrontation. One of

⁸²⁵<https://ijlr.com/wp-content/uploads/2024/05/comprehensive-analysis-of-domestic-violence-in-india-legal-frameworks-judicial-responses-and-international-standards.pdf> (last Visited on 16th March 2025).

the key benefits of mediation in these situations is that it empowers parents to develop tailored agreements that prioritize the child's welfare, avoiding the emotional strain associated with contentious legal battles. It is essential to enhance the accessibility of mediation in cases related to child welfare, providing families with the opportunity to find solutions in a confidential and respectful setting. Mediators who specialize in family dynamics and child protection can significantly help reduce the emotional difficulties children experience during conflicts, which may help lessen the risk of long-term psychological impacts.

ii. Incorporating Counselling into Legal Processes

In cases of abuse or custody disputes involving children, counselling services should be a fundamental component of the legal framework rather than an afterthought.⁸²⁶ Professionals trained to support child victims of abuse can offer essential emotional assistance and help children express their needs and emotions, particularly when they must testify in court. For parents, counselling can facilitate the navigation of their responsibilities, enhance parenting abilities, and address underlying issues that may impact their children. Additionally, family counselling services can aid in mending strained relationships, promoting healthier interactions, and lessening the adverse effects of the legal process on the family as a whole.⁸²⁷

5.3 Safeguards Against Misuse of Laws

i. Clearer Guidelines on Child Protection Laws

A significant concern regarding child protection laws is their potential for exploitation, especially in situations where parents leverage allegations of abuse or neglect during custody disputes. To mitigate this risk, it is essential for laws to provide clear definitions of abuse and neglect, as well as the legal criteria for

intervention.⁸²⁸ For instance, the legislation should distinctly separate disciplinary measures from genuine abuse, aiding authorities in avoiding unnecessary interference. Additionally, well-defined protocols should be established to direct the investigation of allegations, ensuring that these processes are thorough and impartial.

ii. Procedural Safeguards Against False Allegations

While the protection of children from actual harm is crucial, false allegations of abuse can inflict considerable damage on innocent parents and families. It is vital to implement safeguards that deter the submission of false or baseless claims. This can be achieved by instituting rigorous investigative procedures that prioritize the collection of concrete evidence prior to any action being taken. Furthermore, introducing penalties for false allegations could serve as a deterrent for parents who might seek to exploit the legal system for personal gain. To prevent wrongful accusations, child protective services and law enforcement should receive training to thoroughly evaluate the credibility of claims, ensuring that decisions made in the child's best interest do not unjustly impact the reputation or rights of the accused.

iii. Equitable Custody Arrangements

Custody decisions should be fair and balanced, considering the rights of both parents while prioritizing the child's best interests. The legal system must guard against biases that could unfairly advantage one parent over the other due to stereotypes or preconceived ideas, particularly those associated with gender. Additionally, it is crucial to focus on the child's connection with each parent, taking into account their emotional and developmental needs, along with any past incidents of domestic violence.

5.4 Enhancing Child-Centric Policies

⁸²⁶ American Psychological Association (APA), *Mental Health Interventions for Children in Legal Proceedings*, 2020.

⁸²⁷ World Health Organization (WHO), *Guidelines on Family and Child Therapy in Legal Disputes*, 2019.

⁸²⁸ Wolfe, D.A., Crooks, C.V., Lee, V. et al. *The Effects of Children's Exposure to Domestic Violence: A Meta-Analysis and Critique*. *Clinical Child Family Psychology Rev* 6 (2003) p.75.

i. Prioritizing the Child's Best Interests

The principle of placing the child's best interests at the forefront should be a core guideline in all policies concerning child protection and family law. This principle needs to be applied uniformly to guarantee that the child's welfare is the primary focus in any legal proceedings involving them. In cases of custody or guardianship disputes, it may be essential to conduct a comprehensive evaluation of the child's relationships with both parents, their emotional and developmental requirements, and the potential impact of legal decisions on their overall well-being and happiness. Courts should consider the appointment of child advocates or child welfare professionals to represent the child's interests when appropriate, ensuring that the child's voice is heard and their needs are addressed throughout the legal process.

ii. Facilitating Children's Involvement

Children should not merely be passive participants in legal decisions that impact their lives. They should be provided with age-appropriate avenues to communicate their preferences, especially in situations where they can make informed decisions. However, it is crucial to ensure that their involvement does not unintentionally subject them to undue stress or conflict, particularly in cases of parental alienation or abuse. Legal proceedings should be designed to create a comfortable and safe environment for children, allowing them to engage in the decision-making process. Legal professionals must be equipped with the skills to navigate these sensitive circumstances in a manner that safeguards the child's well-being.

iii. Incorporating Child Welfare into Public Policy

Child welfare should not be confined to a single area of policy but should be woven into all facets of public policy, including education, healthcare, housing, and employment. For instance, schools should take an active role in recognizing signs of abuse or neglect and should have established protocols for addressing such issues. Furthermore,

healthcare professionals should receive training to identify and report potential cases of abuse or neglect. Policies that support families, such as accessible childcare and parental leave, are essential for fostering a nurturing environment for children.

5.5 Summary of Findings

The research presented in this research paper has uncovered several significant gaps and challenges within the existing child protection and family law systems, emphasizing the need for enhancements to better ensure the welfare of children.

i. Inconsistent Enforcement of Current Legislation:

Although there are laws intended to shield children from abuse and neglect, their enforcement is often inconsistent. Numerous cases do not receive the necessary attention due to limited resources, inadequate training of staff, or the absence of specialized units within law enforcement agencies. This inconsistency frequently leaves children at risk and hinders prompt intervention.

ii. Outdated Legal Structures:

The legal frameworks governing child protection have not kept pace with the evolving challenges of today. Issues such as online abuse, cyberbullying, and trafficking are inadequately addressed in many existing child protection statutes. Furthermore, laws related to child custody, guardianship, and abuse tend to be inflexible, failing to reflect contemporary family dynamics, including instances of emotional and psychological abuse that are more difficult to identify.

iii. Exploitation of Child Protection Legislation:

There is an increasing concern regarding the exploitation of child protection laws during contentious family disputes, especially in custody cases. In certain instances, allegations of abuse or neglect are weaponized for manipulation, inflicting unnecessary harm on innocent individuals, particularly parents who face false accusations. This exploitation diminishes the effectiveness of child protection laws and can lead to trauma for both the accused and the child involved.

iv. Insufficient Child-Centred Focus:

Although the principle of prioritizing "the best interests of the child" is a cornerstone of family law, its application in practice is often inconsistent. Legal and policy decisions frequently emphasize parental rights or legal formalities over the emotional, psychological, and developmental needs of children. Additionally, in numerous instances, the perspectives of children are overlooked or inadequately considered in decisions that significantly affect their lives, such as custody and visitation arrangements.

v. Limited Use of Mediation and Counselling:

The prevailing legal framework tends to favor adversarial methods, which can intensify conflict and trauma for children, particularly in family law matters like divorce or custody battles. Mediation, a more collaborative and child-focused approach, is not utilized to its full potential. Moreover, counselling services for both children and parents involved in legal disputes are often underfunded or not effectively integrated into the legal process, leaving families without essential emotional support.

vi. Deficiencies in Public Awareness and Professional Training:

There is a notable lack of public understanding regarding children's rights and the indicators of abuse or neglect. Many individuals, including professionals such as educators, healthcare workers, and law enforcement personnel, lack adequate training to recognize and address instances of child abuse. This gap in awareness results in missed opportunities for early intervention and support for vulnerable children.

vii. Requirement for Multi-Disciplinary Strategies:

Research indicates that child protection is frequently approached as a standalone issue, with minimal collaboration among various sectors, including law enforcement, healthcare, education, and social services. This absence of interdisciplinary cooperation can lead to unmet needs for children. A more integrated, multi-disciplinary

strategy is essential to deliver comprehensive support for children in need.

The findings of this research paper underscore the pressing necessity for comprehensive reforms within both the legal and child protection systems to adequately address the multifaceted challenges associated with contemporary child welfare issues. As the landscape of child welfare continues to evolve, it becomes increasingly clear that existing frameworks are often ill-equipped to respond to the diverse and complex needs of children and families today. In this aspect, the family courts often struggle with balancing the best interests of the child with the rights of the parents. The challenge is heightened when allegations of abuse arise, as the court must distinguish between genuine concern for safety and the manipulation of the custody process.⁸²⁹

One of the primary recommendations emerging from this research is the urgent need to update legislation governing child welfare. Many existing laws are outdated and do not reflect the current realities faced by children and families, including issues related to technology, social media, and the changing dynamics of family structures. By revising and modernizing these laws, policymakers can ensure that they are relevant and effective in protecting the rights and well-being of children. In addition to legislative updates, this research paper emphasizes the importance of improving enforcement strategies within the child protection system. This includes not only ensuring that laws are applied consistently and fairly but also enhancing the training and resources available to professionals working in the field. By equipping social workers, law enforcement, and legal practitioners with the necessary tools and knowledge, the system can better respond to cases of abuse and neglect, ultimately leading to more positive outcomes for children.

⁸²⁹ Toby G. Kleinman & Daniel Pollack, *Domestic Abuse, Child Custody, and Visitation: Winning in Family Court* (Wiley, 2015) at 145.

Furthermore, the research advocates for the integration of mediation and counselling services into the child welfare process. These approaches can provide families with the support they need to resolve conflicts and address underlying issues in a constructive manner, rather than relying solely on punitive measures. By fostering open communication and collaboration among all parties involved, mediation and counselling can help to create a more supportive environment for children and families, reducing the likelihood of further legal intervention.

Central to these recommendations is the call for a more child-centered approach in all legal and policy decisions. This means prioritizing the best interests of children at every stage of the process, from legislation to enforcement and intervention. By placing children at the heart of decision-making, the legal and child protection systems can better serve their needs and promote their overall well-being. This approach not only recognizes the inherent rights of children but also acknowledges their unique perspectives and experiences, ensuring that their voices are heard and considered in all relevant matters.

In conclusion, the findings of this research paper make a compelling case for the urgent need to reform the legal and child protection systems. By updating legislation, improving enforcement strategies, integrating mediation and counselling, and adopting a child-centered approach, stakeholders can more effectively address the complexities of modern child welfare issues and ultimately create a safer, more supportive environment for all children.

5.6 Suggestions for the Future

Based on the findings of this research paper, several important recommendations are put forward to enhance the child protection system and the family law framework. These proposals are designed to fill the identified gaps and ensure that the rights and well-being of children are consistently prioritized. The following

recommendations provide a strategic approach for reform:

i. Revise and Modernize Legal Frameworks

Objective: To ensure that child protection laws adapt to contemporary challenges and emerging threats.

Address New Challenges: With the rapid advancement of technology, the legal system must evolve to safeguard children from new forms of exploitation. This includes updating legislation to tackle online abuse, cyberbullying, and the increasing incidence of child trafficking in digital environments. Laws should be revised to explicitly define and address digital offenses such as online grooming, the distribution of child sexual abuse materials, and virtual harassment.

Expand Definitions of Abuse: The legal framework must recognize and address all forms of abuse, including emotional, psychological, and financial abuse. Current legislation often emphasizes physical abuse, neglect, and sexual exploitation, leaving other harmful Behaviours insufficiently addressed. Clearer definitions would empower authorities to take timely action in a broader array of circumstances.

Regular Review of Legislation: Child protection laws should undergo periodic evaluations to remain aligned with evolving societal norms and technological progress. A dedicated entity should be tasked with regularly assessing whether these laws are comprehensive, responsive, and in accordance with best practices in child welfare.

ii. Expand Mediation and Counselling Services

Objective: To minimize adversarial legal actions and offer emotional and psychological support to children and families.

Mandatory Mediation in Family Disputes: Mediation should be established as a fundamental step before engaging in adversarial court processes in family law

matters, such as custody disputes. Courts ought to require mediation, particularly in cases involving children, to promote cooperative rather than confrontational interactions between parents. Mediators with expertise in child psychology and family dynamics would ensure that the welfare of the child remains a priority in any agreements reached.

Integrated Counselling Services:

Counselling should be integrated as a standard component of legal proceedings that involve children, especially in situations of abuse, neglect, and custody conflicts. Families and children should have access to trauma-informed therapists who can deliver psychological support throughout the legal process. The impact of domestic violence on children cannot be overstated, as children who witness or experience abuse are at higher risk for mental health issues, and these concerns should be at the forefront of any custody decision⁸³⁰. This approach could alleviate the emotional strain that legal disputes impose on children and facilitate family healing.

Post-Legal Support: Following a court ruling, it is crucial to maintain counselling and mental health services to assist children in adapting to the outcomes, particularly when these involve significant changes in their living situations or parental relationships.

iii. Enhance Safeguards Against Misuse of Child Protection Laws

Objective: To avert the exploitation of child protection laws in family disputes and ensure equitable legal proceedings.

Clear Guidelines for Allegations: There is a need for more comprehensive and precise guidelines regarding the invocation of child protection laws. These guidelines should aim to prevent unnecessary interventions based on unfounded claims. Additionally, there should be a focus on assessing the credibility of allegations prior to any action being taken, in

order to protect innocent parents or caregivers from false accusations.

Consequences for False Allegations: Legal systems should establish penalties for individuals who deliberately make false claims of child abuse or neglect. Such allegations can inflict serious damage on families, and holding individuals accountable for these misleading assertions would act as a deterrent. It is essential for the legal framework to highlight that false reporting not only harms the accused but also jeopardizes the integrity of child protection initiatives.

Fair Custody Decisions: Custody regulations should be structured to ensure a fair and impartial process, focusing on the child's best interests rather than allowing one parent to exploit the system. The legal framework must protect against parental alienation and guarantee that both parents are treated equitably unless one has been demonstrated to pose a danger to the child.

iv. Adopt a Child-Centred Approach in All Legal and Policy Decisions

Objective: To guarantee that all legal decisions prioritize the child's welfare.

Best Interests of the Child: The principle of prioritizing the child's best interests should be central in all legal matters involving minors. Courts and policymakers must fully incorporate this principle into their decision-making processes, considering not only the child's physical safety but also their emotional, social, and psychological well-being.

Child Participation in Legal Processes: In situations where children are mature enough to express their opinions, they should be allowed to share their views and preferences. This can be facilitated through child advocates or designated representatives, ensuring that the child's perspective is taken into account in decisions that impact their future. However, it is crucial to avoid placing the child in a position where they feel compelled to take sides in family disputes.

⁸³⁰ Peter G. Jaffe, *Child Custody and Domestic Violence: A Call for Safety and Accountability* (Sage Publications, 2002) at 62.

A Comprehensive Strategy for Child Welfare: An effective child-centered system must encompass all facets of a child's life, extending beyond mere protection from abuse or neglect. Policymakers should prioritize the provision of stable housing, high-quality education, healthcare, and social services, acknowledging that these components are vital to a child's overall health and development. A collaborative approach, engaging social services, educational institutions, healthcare providers, and legal experts, is essential to deliver holistic support to vulnerable children.

v. Enhance Accountability and Transparency in Child Protection Law Enforcement

Objective: To guarantee the effective application of child protection laws and uphold public confidence in the system.

Establishment of Independent Oversight Bodies: It is crucial to create an independent oversight entity dedicated to monitoring the implementation and efficacy of child protection laws. This organization should be responsible for evaluating the actions of child welfare agencies and law enforcement, investigating allegations of misconduct, and ensuring that children's rights are upheld throughout legal processes.

Routine Audits and Reporting: Child welfare agencies and the judicial system must undergo regular audits to evaluate the enforcement of child protection laws. These assessments should include data on case outcomes, response times, and feedback from children and families engaged with the system. Transparent reporting will facilitate responsiveness and prompt the resolution of any identified issues.

Professional Training: Legal, medical, and social work professionals involved in child protection should receive ongoing, specialized training to effectively manage the complexities of child abuse cases. This training should emphasize trauma-informed care, cultural sensitivity, and the latest advancements in child protection practices.

vi. Increase Public Awareness and Education

Objective: To enhance the understanding of children's rights and child protection issues among the general public and professionals.

Public Awareness Initiatives: Governments and child protection organizations should initiate public education efforts aimed at raising awareness about child abuse and neglect, including how to identify warning signs and the proper channels for reporting concerns. These initiatives should focus on both the general population and specific groups, such as educators, healthcare professionals, and law enforcement personnel, who may encounter vulnerable children.

Educational Initiatives for Children: Schools ought to introduce programs that educate children about their rights, how to identify abuse, and where to seek assistance when necessary. Such initiatives can empower children to safeguard themselves and help diminish the stigma associated with seeking help.

Professional Development and Standards: Professionals in public service who work with children, including teachers, medical practitioners, and social workers, should receive ongoing training on recognizing and reporting child abuse. This training should be informed by the latest findings in child protection and psychology to ensure that professionals are equipped to respond effectively to suspected abuse cases.

vii. Strengthen Multi-Disciplinary Approaches to Child Protection

Objective: To establish a comprehensive and coordinated response to child welfare challenges, ensuring that no child is overlooked.

Intersectoral Collaboration: Efforts in child protection should involve cooperation among various sectors, including law enforcement, healthcare, education, and social services. This collaborative approach fosters a more complete understanding of a child's

circumstances and guarantees that all facets of their well-being are considered.

Unified Case Management: A centralized case management framework should be established to enable professionals from diverse fields to exchange information and coordinate their responses to children's needs. This system would prevent cases from being isolated and ensure that children's situations are comprehensively addressed.

5.7 Conclusion

The Atul Shubhash case serves as a pertinent example to support the viewpoint regarding gender bias in custody rulings. In this instance, despite a tragic and intricate family dynamic marked by allegations of abuse and the father's significant emotional turmoil, custody was granted to the mother. This situation exemplifies a potential bias in the court's decision-making, as it seems that the child's welfare and the father's mental health were not adequately taken into account given the circumstances.

Here's how this case reinforces this viewpoint:

Emotional Distress and Abuse: In the case of Atul Shubhash, the father was reportedly experiencing profound emotional distress stemming from ongoing conflicts with his wife and in-laws. These issues, coupled with a history of domestic violence, culminated in a tragic event—the father's suicide. Despite these grave concerns, custody was awarded to the mother, indicating that the court may have favoured the traditional view that mothers are inherently more suitable caregivers, even when faced with troubling evidence regarding the father's distress and his victimization.

Emphasis on Mother as Primary Caregiver: In numerous child custody disputes, particularly those involving domestic violence or abuse, there is often a presumption that mothers should receive custody unless there is compelling evidence to the contrary. In the Atul Shubhash case, the emphasis on the mother as the primary caregiver, despite the father's emotional and psychological struggles,

highlights this bias. The court may have been swayed by the belief that a mother, irrespective of her actions or situation, is inherently better equipped to meet the child's emotional needs. This presumption can frequently overshadow more nuanced evaluations of what is truly in the child's best interest, especially when the father's suffering and the potential risks associated with domestic abuse are not fully recognized.

Inconsistent Evaluation of Child's Welfare:

My study posits that gender bias results in uneven outcomes, even when concerns regarding the child's welfare are valid. In the Atul Shubhash case, the decision to grant custody to the mother, despite serious apprehensions about the father's well-being and the abusive dynamics within the family, indicates that the court may not have fully considered the complexities of the family situation. This outcome supports your assertion that decisions can be swayed more by gendered stereotypes than by a comprehensive evaluation of the child's welfare.

Impact of Domestic Violence: Ideally, domestic violence should significantly influence custody determinations; however, the Atul Shubhash case suggests that the court may not have adequately acknowledged the father's experience of abuse. Cases involving domestic violence necessitate careful evaluation of the potential risks to both parents and children. In this case, it seems that the mother's influence within the family was given more importance than the father's experiences, highlighting how gender bias can overshadow vital aspects in custody disputes, including the risks associated with abusive relationships.

To conclude, the Atul Shubhash case supports my theory about gender bias in custody decisions. The court's decision to grant custody to the mother, despite the father's considerable emotional distress and the negative consequences for him, appears to be influenced by the deep-rooted and prejudiced notion that mothers are naturally better caregivers. This viewpoint fails to consider other

important elements, such as domestic violence and the father's mental health, which require more comprehensive assessment. This situation underscores the pressing necessity for a fairer and balanced method in custody rulings that truly emphasizes the child's best interests rather than relying on antiquated gender stereotypes. In custody determinations, the courts should resist being influenced by conventional gender expectations and instead prioritize the emotional and psychological needs of the child, which may occasionally mean challenging the notion that mothers are inherently better caregivers.⁸³¹

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