

The Silent Victim: Children under the Domestic Violence Act 2018

Domestic violence regulation in Ireland has developed slowly. The first remedy available to victims of domestic violence was only introduced in 1976 and applied only to those who were married. Since then, Ireland has slowly introduced a range of remedies for domestic violence victims, increasing protection, and additionally, extending availability to different types of relationships, not just marriage. Finally, in 2018, Ireland made its most positive step so far: the introduction of the Domestic Violence Act 2018. This Act was a culmination of repeated calls for reform, highlighting the need to move towards a more victim-centred approach. The Act was necessary following Ireland's ratification of the Istanbul Convention, the landmark Council of Europe human rights treaty which sought to establish comprehensive legal standards to ensure women's right to be free from violence.

Under the 2018 Act, those in need can apply to the court for a number of protections, with the court determining the most appropriate in the circumstances. These protections include barring orders, safety orders and protection orders, offering both long- and short-term protection for those who need it. Domestic and intimate partner violence can have a devastating effect on those who experience it, impacting both emotional and physical wellbeing. Thus, while the 2018 Act was a step in the right direction, it does not do enough for children who are witness to and/or subject to domestic abuse.

A person under 18 cannot apply for an order under the 2018 Act in their own right. An application must be made by the Child and Family Agency on their behalf. When an order is sought on a child's behalf, the court can take into consideration the wishes of the child, but this is not mandatory. Despite the robust levels of protection offered by the Act, children as victims of domestic violence in their own right seem to have been overlooked. From an examination of the research, children who experience domestic violence suffer the impacts long after the abuse ends. It can affect their learning, communication, self-esteem and their relationships. However, this may not be easy to see at first glance. Often, children are suffering in silence, unable to ask for the help that they need.

Any experience of domestic violence leaves a child vulnerable. If a child is unable to tell someone what is happening at home, it begs the question: how can they ask for help? How can they ask the Child and Family Agency? How can a child know where to look? The Act disregards children as active participants in their own lives, placing them in a precarious position under the law. The lack of awareness about children as both direct and indirect victims of domestic violence has added to their helplessness. In 2021, Women's Aid reported 5,735 disclosures of abuse against children. Disclosures included children being hurt by the abuser as they attacked their mother, being forced to go on access visits with their abuser, and physical, sexual and emotional abuse. The State's recent recognition of children as victims of domestic violence in their own right in the Third National Strategy on Domestic, Sexual and Gender-Based Violence 2022-2026, is a positive step, and shows a willingness on the part of the State to acknowledge and support children in their time of need.

At present, the court process for parents seeking relief under the Act is hurting children involved also. In practice, children are being failed by the system. Delays in proceedings, lack of specialised training for judges and practitioners, lack of awareness surrounding domestic violence and inappropriate facilities are just some of the issues facing the Irish court system. It should be welcomed that the State has committed to a reform of the family court system, to ensure that children's voices are heard within the court process. But this has yet to come into force. Children are continuing to be victimised, unable to protect themselves.

It is imperative that the State provides children with the right to apply for orders in their own right, with the necessary legal and emotional support, in line with the recognition of children as victims in their own right in the Third National Strategy. Alongside this, the court system needs to be reformed urgently, to ensure that children are not re-traumatised by the system itself. The 2018 Act is a welcome development, but there remains unfinished business for some of the most vulnerable victims in Ireland.