



## Parental Alienation- A Spin-Off of Child Custody

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### Abstract

*When marital discord evolves into hatred, many couples are quick to see divorce as best option. Divorce may be an easy way out for the couple, but it often wreaks havoc on the children. Generally, it is for the child's biological parents to make all the decisions involving the child's residence, healthcare, education, and religious upbringing. However, when couples separate, all of these issues become debatable. In such situations custody laws and the court get into action. Child custody as such seems to be a solution for the estranged parents as they get the order of separation and the court decides the custody, having regard to all the personal and statutory laws. But the problem doesn't end here as the custody is temporary because it's the father being the natural guardian who gets the child back after the custody period is over. (though certain situations lead to his disqualification to act as such). When a child remains with only one of his parents he tends to develop a much closer bond with that parent and at the same time, he/she drifts apart from the parent who doesn't hold the custody. Thus, it results in the alienation of the noncustodial parent.*

*Parental alienation is a strategy whereby one parent intentionally displays to the child unjustified negativity aimed at the other parent. The purpose of this strategy is to damage the child's relationship with the other parent and to turn the child's emotions against him/her. Children can become alienated from their parents for a variety of reasons. Sometimes a child may become alienated from the parent who initiated the divorce, blaming that parent for breaking up the family. This paper explores the concept of parental alienation and various cognitions that identify it. It also brings out how courts respond to such matters.*

**Key Words; child custody, parental alienation, welfare of child, judicial intervention**

### I. Introduction

While deliberating upon the cases of child custody, it's amongst a host of issues; Parental Alienation demands a deep analysis. Parental Alienation is a strategy, whereby one of the parents intentionally displays to the child unjustified negativity directed towards the other parent<sup>1</sup>. The purpose of this strategy is to damage the child's relationship with the other parent to turn the child's emotions against that other parent<sup>2</sup>. Parental alienation is a particular family dynamic that can emerge during divorce in which the child becomes excessively hostile and rejects one parent. In 2017, The Supreme Court of India in *Vivek Singh vs Romani Singh* defined Parental Alienation as<sup>3</sup>:

Parental Alienation is a disorder that arises primarily in the context of child custody disputes. Its primary manifestation is the child's campaign of denigration against a parent, a campaign that has no justification. It results from the combination of a programming (brainwashing) parent's indoctrination and the child's contributions to the vilification of the target parent.

Parental alienation is frequently confused with the parental alienation syndrome (PAS). Dr. Richard Gardner, an American psychiatrist coined the phrase "parental alienation syndrome" and wrote extensively about it. He defined the syndrome as:<sup>4</sup>

*PAS is a childhood disorder that arises almost*

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<sup>1</sup> Lewis, *Child Custody Evaluations by Social Workers: Understanding the Five Stages of Custody* [Washington, DC: NASW Press, 2009], p. 44).

<sup>2</sup> Ibid

<sup>3</sup> *Vivek Singh v. Romani Singh*: Supreme Court of India Civil Appeal No. 3962 of 2016.

<sup>4</sup> Recommendations for Dealing with Parents Who Induce a Parental Alienation Syndrome in Their Children," *Journal of Divorce and Remarriage* 28, nos. 3-4 [1998]



*exclusively in the context of child custody disputes. It is a disorder in which children, programmed by the allegedly “loved” parent, embark upon a campaign of denigration of the allegedly “hated” parent. The children exhibit little if any ambivalence over their hatred, which often spreads to the extended family of the allegedly despised parent.*

Gardner used the term “syndrome” because of his medical background. A syndrome is a cluster of related symptoms. For Gardner, the syndrome describes the child’s campaign of denigration against one of their parents— a campaign that is encouraged by the other parent. It should be noted that there is no PAS when abuse or neglect is present. PAS can only be applicable when the “hated” parent has not abused or neglected the child or exhibited any behaviour that would justify the child’s animosity toward that parent. While PAS identifies a problem in the child (“a childhood disorder”), parental alienation identifies a collection of one parent’s behaviours aimed at causing the child to become alienated from the other parent. Sometimes, a child may become alienated from the parent who initiated the divorce, blaming that parent for breaking up the family.

Cases of parental alienation usually occur in case of separation of spouses or divorce cases however they may also occur in families where husband and wife are living together. In addition, alienation may be carried out by both mothers and fathers, although this practice has been more commonly associated with mothers since they are more frequently given custody of the children than fathers<sup>5</sup>. In parental alienation, in addition to the conflict between the parents, the child is also placed in the middle of the conflict, through insulting comments about the other parent and the fact that the child is forced to take a position.

## II. Indicators concerning a Targeted parent

Targeted parents often experience a loss of parental role and power. They wish to maintain a relationship with their child and to seek involvement in the child’s life. The difficulties encountered by targeted parents in fulfilling their parental role in addition to the concerns regarding their child’s current and future mental health may contribute to the experience of a loss of control and

<sup>5</sup> Ana Tavares- CICPSI, Faculty of Psychology, University of Lisbon, Lisbon, Portugal. What does it mean to be a Targeted Parent? Parents’ Experiences in the Context of Parental A, available at: <https://doi.org/10.1007/s10826-021-01914-6>

psychological maladjustment. If:

- i. The child shows a persistent loath for the targeted parent.
- ii. The child’s speech chants the speech of the alienating parent.
- iii. The child ardently rejects visiting the targeted parent.
- iv. Most of the child’s beliefs are enveloped with the alienating parent and most often irrational.
- v. The inference drawn by the child is not from direct experiences but from what he/she has been told by others.
- vi. The child is not in a position to see good but just the hatred without having any doubt of that feeling.
- vii. The child cannot feel guilty about his or her behaviour toward the targeted parent.
- viii. The child and the alienating parent are in lockstep to belittle the targeted parent.
- ix. The child is asked about the targeted parent, it at once triggers his or her hatred.

## III. Effects of Parental Alienation on the Children

Parental alienation is a form of emotional child abuse. It can have a devastating impact on a child’s future life. It can impair the ability of a child to establish and maintain future relationships and can lower his self-image. A child can feel a loss of self-respect and he can develop a sense of guilt, anxiety, and depression for destroying his/her relationship with a previously loved parent. His aggression can turn him into a delinquent child which can in turn disrupt his education.

Even if the child is in front of the judge, he will speak in a language and syntax similar if not identical to the alienating parent. By this, a targeted parent often appears anxious, depressed, or angry while the alienating parent appears relaxed, composed, and, therefore, credible.

Parental Alienation is also employed as a strategy by intentionally encouraging the child to turn against the other parent. When this strategy is used by one parent in hopes of alienating the child from the other parent, it is tantamount to teaching the child how to hate<sup>6</sup>.

<sup>6</sup> Levy-Warren, M. (2016). The Role of Hatred in Development. *Parenting: Contemporary Clinical Perspectives*, 139.



Canadian Judge John H. Gomery put it eloquently this way:<sup>7</sup>

*Hatred is not an emotion that comes naturally to a child. It has to be taught.... The defendant has deliberately poisoned the minds of his children against the mother that they formerly loved and needed.*

Parental alienation can be mild, extreme, or anything in between. In its extreme form, it can also be defined as criminal behaviour.

#### IV. Parental Alienation and the Courts

In the USA, courts in different states have responded to parental alienation in different ways. There have been four categories of these responses:

i. Criminal Response: Some states make interference with custody a criminal offense. For example, in New Jersey a crime that may lead to imprisonment for three to five years or a fine of \$7,500 or both.<sup>8</sup>

ii. Civil Remedies: All courts can impose civil sanctions by way of contempt-of-court orders. When a parent's strategy of parental alienation endangers the child's relationship with the other parent, some of the possible civil remedies may be economic sanctions against the alienating parent or short incarceration time for contempt of court<sup>9</sup>.

iii. Custody Responses: All courts that have passed the initial judgment in a custody case have the authority to modify their previous orders. Responses to parental alienation have been to deny initial custody (order a parental alienation evaluation, deny custody to the alienating parent); to modify visitation (extend visits between the child and the alienated parent, establish supervised visitations); and to modify previous custody (temporary modification of custody for specific periods, permanent modification of custody, reverse custody).<sup>10</sup>

iv. Therapeutic Responses: Family law's

innovations and reforms have become the showcase for therapeutic jurisprudence. Parental alienation cases provide an opportunity to demonstrate how the strategy of replacing the "punishment" role of the courts with the therapeutic "fix-the-problem" approach can advantage children. Evaluation and therapy are earmarks of the therapeutic response to parental alienation. The court could order an evaluation of the child to determine whether parental alienation is operative in a case and, if so, at what level is it operative. Individual therapy, Family therapy, and also parental alienation therapy by a specialist in extreme cases can be ordered by the courts<sup>11</sup>.

#### V. Child Negligence: An Evaluation

Studies of psychiatric and social risk factors for child maltreatment have been a glaring example of social reality. In the National Institute for Mental Health's Epidemiologic Catchment Area survey, 7,103 parents from a probabilistic community sample who did not self-report physical abuse or neglect of their children were shown to have disastrous consequences in Wave I were followed to determine the risk factors associated with the onset of self-reported physical abuse or neglect identified at Wave II. Social factors considered included age, socioeconomic status, social support, education, household size, and gender. In addition, several psychiatric disorders, including substance abuse disorders and depression were examined. Risk models were developed using hierarchical logistic regression<sup>12</sup>.

Physical abuse and neglect were found to have distinct sets of risk factors, with minimal overlap between the groups. Social and demographic variables were found to be limited predictors of maltreatment, while substance abuse disorders were strongly associated with the onset of both abuse and neglect (relative risks = 2.90 and 3.24 respectively). Depression was found to be a strong risk factor for physical abuse (relative risk = 3.45). Implications of the findings are discussed in terms of major causal models of maltreatment<sup>13</sup>.

<sup>7</sup> *Stuart-Mills, P. v. Cher, A.J.*, Sup. Ct. Quebec, District of Montreal [1991]

<sup>8</sup> Sec 9(2)-(4) NJ Rev.Stat also see Golinder Law, LLC, March 03, 2020

<sup>9</sup> Gibbs, T. N. (2019). Paper courts and parental rights: Balancing access, agency, and due process. *Harv. CR-CLL Rev.*, 54, 549.

<sup>10</sup> Kratky, N., & Schröder-Abé, M. (2018). How are parental functioning and single parenthood associated with court outcomes? An analysis of child protection cases. *Child Abuse & Neglect*, 84, 95-105.

<sup>11</sup> Welbourne, P. (2016). Adversarial courts, therapeutic justice, and protecting children in the family justice system. *Child & Fam. LQ*, 28, 205.

<sup>12</sup> G.D. Wolfner *et al.* A profile of violence toward children: A national study, *Child Abuse & Neglect* (1993)

<sup>13</sup> Younas, F., & Gutman, L. M. (2023). Parental Risk and Protective Factors in Child Maltreatment: A Systematic Review of the Evidence. *Trauma*,



## VI. Indian Scenario

In India, it is felt that fathers are deprived of love, affection, and quality time with their children by the custodial mothers on various flimsy pretexts. Although they are neither unfit nor have unfatherly characteristics, the mothers have succeeded in keeping the child away from the father. Courts from time to time have dealt with cases on child custody in general, as well as parental alienation in particular.

In *Vikas Agarwal v. Geeti Mathur the Delhi High Court held*<sup>14</sup>:

It considered Article 39(e) and (f) in a bitter custodial battle between the parents on divorce. The father had remarried and the mother had taken away the custody of the child after the remarriage. Within six months of custody with the mother, the child became hostile towards the father.

The High Court transferred the matter to the Family Court to seek the help of a trained person who was a child counselor. The High Court said that the Family Court was to decide the matter only after receiving the report of the counselor and revealing the truth about whether the mother poisoned the mind of the daughter. The High Court observed that parental responsibility should be shared equally and that there was a presumption that this would be in the best interests of the child<sup>15</sup>.

In doing so the primary considerations would be: ...ensuring benefit to the child of having to spend significant time with both parents to develop a meaningful relationship; and when there are grandparents, uncles, aunts, cousins, etc., overnight access so that the child gets love and affection from the extended family... ensuring the need to protect the child from psychological harm...<sup>16</sup>

According to the court, Articles 39 (e) and (f) of the Constitution of India ensured that the child has a right "to get the love and affection of both parents; right to quality of life; to care and the right to develop a sense of belonging"<sup>17</sup>.

In *Bindu Philips (represented by her Power of*

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*Violence, & Abuse*, 24(5), 3697- 3714.  
<https://doi.org/10.1177/15248380221134634>,

<sup>14</sup> *Vikas Agarwal v. Geeti Mathur*: 1 (2017) DMC 783 (DB) (Del.).

<sup>15</sup> Per Pradeep Nandrajog and Justice Yogesh Khanna JJ.

<sup>16</sup> *Ibid*

<sup>17</sup> Bajpai, A. (2018). *Child rights in India: Law, policy, and practice*. Oxford University Press.

*Attorney P.T Philipose) v. Sunil Jacob*<sup>18</sup> where the mother who was residing abroad sought custody of the two children agreed for access and by consent, the husband also agreed to give access.

The Apex Court has made certain interesting observations and asked the parents:

*...to maintain cordial relations in front of the children and avoid happening of any kind of untoward incident or/and avoid exhibiting any kind of unpleasant behaviour in their verbal exchanges. Both must realize that such incidents, if occur and are witnessed by the children, would create more harm to children and affect their innocent minds. They may even lose respect for their parents...*

The Court observed:

*...The object of the meeting is to allow the children to meet their mother in a most dignified, congenial, and happy atmosphere. The husband should ensure that such meetings bring some kind of happiness to the children and their mothers. He, for his selfish interest, should not try to tutor the children something adverse about the mother, instead, he should take positive initiative in telling the children about their mother especially coming to India to meet them, and that the children should welcome her and spend some good time with her...in our opinion both should equally realize that the children were deprived of the company of the mother without their fault but only due to parents infighting, who failed to realize the adverse effects of their fighting on the children upbringing. The infighting has equally deprived the members of the family, individually and collectively, of enjoying happiness, peace, and harmony. In our considered view, both must further realize that the children need the love and affection of mother and father constantly and not individually because it is the parents who are responsible for bringing their children into this world. Both must realize that the mother cannot perform the role of a father and so is the father who cannot perform the role of the mother. So far as the mother's role towards her child is concerned, it is more pivotal because she gives birth to her child. She is, therefore, capable of giving more love, affection, and good training to her child", the Court concluded.*

To illustrate more accurately what parental alienation is, let's take an example of a couple whereby the husband was working in England and his wife was living with her minor son at her in-

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<sup>18</sup> *Bindu Philips (represented by her Power of Attorney P.T. Philipose) v. Sunil Jacob*: , AIR 2017 SC 1522.





law's place. With time the wife realized that something was fishy as her husband started avoiding her on the telephone, and had not come home for a few years. Moreover, her sister-in-law used to control her son. Finally, it was revealed that her husband is already married in England with two kids. After all the hue and cry by her relatives, she left the house but her son didn't accompany her as he was brainwashed by her aunt that his mother was a cruel lady, who would kill him if he accompanied her. Days passed and the wife was living with her sister coz she had lost both of her parents in her childhood. She used to go to meet her son in school but he used to beat her, spit in her face, and abuse her. Every day she used to come back crying. Then finally she divorced her husband.

When the child was asked to choose with whom he wanted to stay, he chose his father. Mother accepted the decision and after many years she re-married. It was later found that her son was abandoned by her ex-husband and he didn't take him along to England. Her ex-sister-in-law and father-in-law who used to brainwash her son had died and the child now a grown-up was kept with a neighbour who took care of him. In all this mess around, the child had taken up drugs, left studies, and had been in rehabilitation centres, hospitals, and even police stations a lot of times. The irony here is that his father had barred him from inheriting any of his property.

The mother on the other hand couldn't keep him with her because her 2<sup>nd</sup> marriage was at stake, maybe her husband would accept the child but her in-laws didn't approve of it. Thus, she too refrained from keeping the child with her. At present the child is living in a rehabilitation home all alone with none of his parents and this is all because of the intentional alienation that was conducted against the mother, thus ruining his future as well as his whole life.

## VII. Matrix of the Problem

Parental Alienation as discussed above describes the process, usually intentional, by which a parent conveys through words, actions, or behaviours to the child that the other parent (the targeted parent) is dangerous, unsafe, abusive, or "bad," which results in the child becoming fearful or avoidant of the targeted parent. It can have catastrophic effects on the child, especially his future briefly delineated as under:

i. We have to see whether the behaviour of the targeting parent is just simple gatekeeping i.e. a parent is preventing or limiting contact between the

child and the other parent or it is parental alienation wherein the other parent acts in such a way to cause the child to dislike or become fearful of the other parent, even though the other parent has not done anything to cause the reaction in the child<sup>19</sup>.

ii. When a couple is married and has children they have to protect the rights of the child and perform their responsibilities and duties towards the child. This duty and responsibility has to continue even when the marriage is dissolved as neither can substitute the role of the other<sup>20</sup>.

iii. To ensure that a child receives the love and affection of both parents and that the interest of the child remains a paramount consideration, whenever a case of such nature comes before the court of law, the court must order joint custody in all cases wherever practicable. While at first, this arrangement may be difficult, especially if parents dislike each other, it is highly advantageous to all parties and the child in the long run<sup>21</sup>.

iv. When both parties have had the opportunity to discuss a major decision relating to the children, they start to get used to communicating with the other party. After a while, regularly occurring issues are more easily resolved because the parties learn the benefits of cooperation in practice. There will be fewer conflicts related to money, time, and stress<sup>22</sup>.

v. The custodial parents in sole custody situations (wherein the sole decision-making power rests with that parent) may feel burdened or trapped by their parental responsibilities which leave them emotionally and physically exhausted. Non-custodial parents (who get little to no input in

<sup>19</sup> Schoppe-Sullivan, S. J., Altenburger, L. E., Lee, M. A., Bower, D. J., & Kamp Dush, C. M. (2015). Who are the gatekeepers? Predictors of maternal gatekeeping. *Parenting, 15*(3), 166-186.

<sup>20</sup> Cannon, E. A., SCHOPPE- SULLIVAN, S. J., Mangelsdorf, S. C., Brown, G. L., & Szewczyk Sokolowski, M. A. R. G. A. R. E. T. (2008). Parent characteristics as antecedents of maternal gatekeeping and fathering behavior. *Family Process, 47*(4), 501-519.

<sup>21</sup> Austin, W. G., Pruett, M. K., Kirkpatrick, H. D., Flens, J. R., & Gould, J. W. (2013). Parental gatekeeping and child custody/child access evaluation: Part I: Conceptual framework, research, and application. *Family Court Review, 51*(3), 485-501.

<sup>22</sup> Adamsons, K. (2010). Using identity theory to develop a midrange model of parental gatekeeping and parenting behavior. *Journal of Family Theory & Review, 2*(2), 137-148.

