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GASLIGHTING IN PARENTAL ALIENATION DURING DIVORCE: A FAMILY LAW PERSPECTIVE

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Abstract

Parental alienation is a confusing and controversial issue. Here one parent incites a child to hate or display unwarranted hostility towards the other parent. This paper traces the legal, psychological, and social dimensions of parental alienation. This encompasses looking at the recognition it gets as emotional abuse, along with the intricacies of its diagnosis concerning the legal realm. Proponents argue that parental alienation is disrupting the emotional health of children and hence requires judicial interpretation. Conversely, critics argue that in the absence of any credible definition, it gives leeway to parental alienation claims. Such claims further vitiate the legitimate abuse allegations that occur in the family court rulings. In conclusion, this paper goes to suggest furthermore articulate diagnostic protocols and structured guidelines for legal professionals as well as mental health practitioners.

I. Introduction:

Divorce is a rampant issue in contemporary India with significant percentage of couples ending their marriages each year. Often, such couples carry a considerable amount of animosity towards each other especially if children are involved. This acute hostility does not only ruin their interpersonal dynamics, but it also takes a toll on the emotional health of their children who bear the brunt of the situation. Unfortunately, in most of these cases, the bitterness towards the other parent comes into play which encourages the aggrieved parent to do something that they wouldn't do otherwise. In such cases a parent manipulates the child to further their cause. This is sometimes called gaslighting which ends up changing the perception of the alienated parent for the child by taking away what's real and distorting it so that a false story evolves leading to distrust, dislike, and even complete rejection of the alienated parent. This tactic not only coverts the reality from the child but also results in long term emotional and psychological impact. Gaslighting is a form of emotional manipulation whereby someone tries to get the other person to deny reality. Although parental alienation deeply affects family relationships and the

well-being of the children, it remains mostly unrecognized within Indian Law. This lack of recognition underscores the urgent need for increased awareness and legal reforms to better address this pressing issue.

II. Reasons for Parental Alienation:

The intention behind gaslighting is to convince the child that the other parent is untrustworthy or harmful. Parental alienation is often confused with Parental Alienation syndrome (PAS) a concept introduced in 1985 by Dr Richard Gardner, an American psychiatrist.¹ PAS describes a situation that usually arises during child custody disputes, where one parent manipulates the child into hating another parent². It is important to note that PAS doesn't apply when there's been abuse or neglect by the alienated parent. In cases of pas the hated parent hasn't done anything to warrant the child's animosity rather, the negative feelings are the result of other parents' manipulation. At times a child might distance themselves from the parent who initiated the divorce, blaming them for the family's breakup. Though these feelings explain the child's detachment, it doesn't necessarily fall under the definition of parental alienation. In cases of alleged parental alienation, custody evaluators look for several distinct signs involving both the targeted and alienating parents. A key indicator is the child's deep persistent hatred for the alienated parent, often using the language that echoes the alienating parents' words. The child's feelings are one sided, brimming with hostility and lacking any recognition of the targeted parent's qualities. Even though the child might seem well adjusted in other areas, any mention of the targeted parent triggers strong feelings of anger and resentment. The key question that arises is what drives a parent to engage in parental alienation? Why do they resort to such harmful tactic? In majority of the cases this tactic is a result of deep-rooted anger, resentment, and a desire for control over the other parent, particularly in the aftermath of a divorce or custody dispute. The alienating parent may feel threatened by the relationship the child has with the other parent, and hence try to undermine that bond to strengthen their own influence.³ This behavior is frequently motivated by a need for revenge, insecurities, or belief that a child's loyalty is indicative of their value as a parent. In certain cases, the alienating parent may be unaware of the emotional harm they are inflicting on the child, prioritizing their own feelings above the child's welfare. The alienating parent adopts myriad number of strategies to win the

¹ Holly Smith, 'Parental Alienation Syndrome: Fact or Fiction? The Problem with Its Use in Child Custody Cases' (2016) 11(1) UMass L Rev

² Lewis, 'Parental Alienation' (National Centre for State Courts, 2017) https://www.ncsc.org/data/assets/pdf_file/0014/42152/parental_alienation_Lewis.pdf

³ Ibid

child over. Indulging them with luxuries and meeting their every demand. However, alongside these material comforts, they in unison plant negative thoughts about the co-parent, suggesting that the other parent is incapable of fulfilling the child's needs or desires. This develops a toxic dynamic where the child feels torn between the affection for the alienating parent and doubts the co-parent abilities.

III. Implication in Custody Disputes:

The case *Ramneesh Singh vs Sugandhi Aggarwal*⁴ provides an insightful discussion on the concept of parental alienation, particularly regarding its implication in custody disputes. The appellant was accused of parental alienation against the mother of the minor children. Ultimately, the family court found no evidence that the children's welfare was compromised during their time with the appellant. Furthermore, after interacting with the children years later, the judge noted that they expressed no preference for either parent, suggesting that there were no indications of parental alienation. This ruling emphasized the need to assess behaviors impacting children's perceptions rather than labelling situations as parental alienation in family law. Parental alienation is considered a form of emotional abuse that can have severe, long-lasting effects on a child's well-being. Studies show that children subjected to parental alienation often face difficulty in building and sustaining healthy relationships, experience low self-esteem, and struggle with loss of self-respect. They may also feel overwhelming guilt, anxiety, and depression over their breakdown of their relationship with the alienated parent. This emotional distress can manifest into impulsive behaviors, such as aggression or delinquency, and further lead to academic disruptions. Family therapists commonly recognize parental alienation as a parent-child relation problem, as noted in the American psychiatric association's diagnostic and statistical manual and mental disorders⁵. Highlighting the need for professional intervention to help these children cope.

Complexity of Evidence: Critics contend that Parental Alienation is particularly difficult to prove due to the convoluted nature of emotional manipulation, which frequently conceals the clear evidence of alienation.⁶ This complexity thus leads to misinterpretations of the interactions between parents and children. For instance, a child's expressed dislike for a parent

⁴ Col. Ramneesh Pal Singh v Sugandhi Aggarwal [2024] 6 S.C.R. 259; 2024 INSC 397 (Civil Appeal No 6137 of 2024) (08 May 2024)

⁵ Lewis, (n 2)

⁶ Griffiths Law PC, 'What is Parental Alienation & How to Fight Back' (2024) <https://www.griffithslawpc.com/blog-articles/parental-alienation/>

may arise from genuine grievances or trauma rather than manipulation. Once the allegations of parental alienation are made, disproving them can be equally daunting. A parent accused of being an “alienator often struggles to defend themselves against claims that are subjective and emotionally charged. The stigma attached to this label can complicate legal proceedings and skew public perception, especially for mothers, who may face additional societal biases.

While critics of parental alienation raise valid concerns regarding the misuse of the concept in custody disputes. This paper argues that acknowledging parental alienation is essential for understanding the complex emotional dynamics affecting children in the situation of divorce. The behavior exhibited by the alienating parent are not mere subjective feelings but can have objectively detrimental effects on a child’s mental health.⁷ This kind of emotional abuse is often invisible to teachers, judges in court and even social workers. This abuse is particularly difficult to identify because it occurs within the child’s mind, often without outward signs. The child may not confront their parents or question the reality they’ve been presented with, making it hard to detect. On the surface, the child may appear completely normal, talking and behaving as usual, but deep down, they are deeply hurt and confused. The emotional damage remains hidden, which makes it nearly impossible for others to recognize that the child is experiencing parental alienation. This internalized pain can fester over time affecting their emotional and psychological well-being in ways that may not be immediately visible. When the children are manipulated to reject one parent, they may experience anxiety and low self-esteem. This internal conflict can lead to long term psychological consequences. Reinforcing the need to recognize Parental Alienation as a serious issue and take it into consideration during disputes.

IV. Parental Alienation in India:

In India parental alienation is not recognized nor is it considered as an offence. Since Parental Alienation is not recognized in the (Diagnostic and Statistical Manual of mental Disorders), it leads to skepticism about its validity.⁸ Critics argue that Parental Alienation lacks empirical support and may be used as a legal tool to manipulate custody outcomes. Further proving parental alienation requires extensive evidence, including expert testimony, psychological assessments, and witness statements, which would place an undue burden on an already

⁷ Sullivan, M., & Kelly, J. 'Assessing for Alienation in Child Custody and Access Evaluations' (2023) 296 Family Court Review 201

⁸ Apex Advocates, 'Why India Needs to Recognise the Existence of Parental Alienation (PA) and Classify It as an Offence' (2024) <https://apexadvocates.in/why-india-needs-to-recognise-the-existence-of-parental-alienation-pa-and-classify-it-as-an-offence/>

overburdened legal system. This would result in delay in justice. Also, the cost of involving mental health professionals and conducting thorough investigations to prove parental alienation can be very high. The families involved in such cases face significant financial strain, especially if the case drags on for years. To add on, there are also lack of judicial guidelines. Without clear guidelines, judicial discretion could lead to inconsistent rulings. Judges might struggle to interpret alienation behaviors accurately, resulting in subjective judgments that do not always align with the child's best interest. Historically, Indian courts have favored mothers in custody battles, which could lead to difficulties in recognizing parental alienation when the mother is the alienating parent. This bias prevents fathers from successfully proving alienation and regaining custody. The societal norms also have a role to play. In India family dynamics prevent parental alienation from being recognized easily. The notion of a parent intentionally alienating a child does not align with traditional views on family structure and parent child relationship, leading to resistance in parental alienation being accepted as a legal issue.

Crucial Need for Legal Recognition:

On the other hand, when parental alienation takes place, there is a lot of harm to the child's well-being. By formally recognizing parental alienation the Indian Legal system can ensure that courts prioritize the mental health and the well-being of children in custody disputes. Recognizing parental alienation as a form of psychological abuse allows the court to intervene early and mitigate the long-term damage. Legal recognition leads the court to order interventions such as therapy and counselling, that helps in preventing the detrimental effects of parental alienation on the child. As per Section 17 of the Guardians and Wards Act ⁹and Section 13 of the Hindu Minority and Guardianship Act, ¹⁰the court makes custody decisions based on the child's best interests. If the child is mature enough to express preference, the court may consider it. However, in cases of parental alienation, this can be harmful. A child influenced by an alienating parent may choose to live with them, rejecting the alienated parent. The decision, shaped by manipulation, can be detrimental to the child's emotional well-being and is not truly in their best interest. This reinforces the need to consider parental alienation as in India. Further, acknowledging parental alienation ensures that both parents can maintain a healthy relationship with the child, preventing one parent from losing access unfairly. Legal recognition of parental alienation would deter parents from using manipulative tactics to gain advantage in custody disputes. Once established as a legal issue, alienating parents could be

⁹ Guardians and Wards Act 1890, s17

¹⁰Hindu Minority and Guardianship Act 1956, s13

held accountable for their actions, potentially facing legal penalties or changes in custody if they continue the alienating behavior. While parents who have been unfairly alienated from their children would have legal recourse to address this harm.¹¹ Remedies would include restoring visitation rights, modifying custody arrangements, and initiating rehabilitation programs to rebuild the parent-child relationship. Many countries, including Brazil and Mexico, have already recognized parental alienation as a serious issue, with some even treating it as a criminal offense. Accepting parental alienation in India would align the country's legal system with international standards, enhancing the protection of children's and parent's rights.¹²

V. Conclusion:

In conclusion, acknowledging parental alienation within India's legal framework is essential and of importance to protect children from the emotional damage that is being caused to them by manipulative actions in custody battles. The legitimate fears of its misuse along with alienation are offset with the promise of keeping the child away from the psychological damage it may incur and the cause of fairness in custody disputes. That said, the key would simply lie in developing a balanced legal framework that recognizes parental alienation but provides safeguards against its possible misuse. This is done by guidelines that are appropriate for it, and then expert involvement, along with judicial training, to ensure that parental alienation is handled with the care it requires to lead to a fairer and more child focused legal system. Legal acknowledgement would protect the sanctity of battles over custody, maintaining a healthy relationship between both parents and children while marking alienating parents for their malpractices. To prevent misuse, its important to have strict consequences for false accusations and clear rules on how evidence is collected. Even though proving parental alienation can be tough, the emotional harm to children if we do nothing is much worse than the risk of people abusing system. Ultimately recognizing parental alienation will pave the way for a more just and child centric legal system that prioritize the best interests of children.

¹¹Apex Advocates, (n 8)

¹² Apex Advocates, (n 8)