



Parental Alienation - The unacknowledged Type of Parental Alienation and need for Special Provisions in laws on Parental Alienation in India

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On a careful study of child custody judgements, we find that custody of the minor is handed over, to the preferred parent due to the assumption of an emotional bonding towards the parent. That, in many cases, would have been a good decision provided it was free of the influence of parental alienation. Parental alienation happens due to parental alienation syndrome which happens due to the indoctrination by one parent to create rejection of the other parent. Parental alienation has no legal recognition in India but due to its serious impacts on the child's overall well being it's important for the courts to consider it in child custody cases. Moreover, India has not signed the Hague Convention on the Civil Aspects of International Child Abduction, so in the present scenario when there is an international child abduction case associated with parental alienation there will arise difficulties. This article analyses Parental Alienation Syndrome(PAS) and recognition of parental alienation(PA), identifying parental alienation as different from family estrangement, the behaviour of the alienating parent and the child due to PAS, the impact of parental alienation on the child's overall welfare, the present status of PA based on relevant judgements to understand why it needs to be recognized in India. This article attempts to illuminate the necessity to take measures against Parental Alienation, to punish those who create parental alienation syndrome in young minds, and reiterate the need for special provisions, if not provisions in the existing Acts or the creation of a new Parental Alienation Prevention Act as part of the Family law, to assist the Advocates to deal with this concept in a court setting and for Judges in the Courts to arrive at a more understanding conclusion while deciding such cases.

Keywords: *parental alienation, family court, child custody, family law, cruelty, offence, divorce.*

INTRODUCTION

Children are the future of every nation, and the State must look after its children and their overall well-being. It was with this intention in mind that on 26th September 1924, the League of Nations (LON) adopted the Geneva Declaration. It was a historic moment when the document recognized the existence of children's rights and the responsibility of adults towards them. It stated that humanity "owes to the child the best that it has to give"¹. It is, therefore, necessary to ensure that the children are not exploited nor used as a toy or a weapon by anyone in the family like the parents, grandparents, etc to settle a score or gain something for their interests. Children have a right to be protected from being scarred for life and from being transformed into personalities that may carry a chain reaction of the impact of any abuse or trauma they face in their childhood or adolescence.

In India, laws like the Hindu Minority and Guardianship Act, 1956,² the Muslim Personal Law (Shariat) Application Act, 1937 (except in the State of Goa), the Parsi Marriage and Divorce Act, 1936, or the secular laws like Guardians & Wards Act, 1890,³ Special Marriage Act, 1954,⁴ Indian Divorce Act, 1869⁵ deal with child custody. The term 'custody' is not defined under both personal and secular laws and though they are often interchangeably used, legally, they are both different though interrelated. In simple words, we can say that guardianship is a wider concept, relating to legal rights and control over the person and property of a minor for the longer term, whereas custody is a much narrower concept and refers to physical possession of the child for a shorter period and is only related to upbringing and day to day care of the child⁶. In earlier times, fathers had the right over their children with exceptions to this right. Later through a

¹ Geneva Declaration of the Rights of the Child 1924

² Hindu Minority and Guardianship Act 1956, s 6-13

³ Guardians and Wards Act 1890, s 17

⁴ Special Marriage Act 1954, s 38

⁵ Indian Divorce Act 1869, s 41-44

⁶ 'Guardianship of Child under Different Personal Laws' (*Lexpeeps*, 4 December 2021)

<<https://lexpeeps.in/guardianship-of-child-under-different-personal-law>> accessed 11 December 2022

series of judicial decisions and amendments, this was diluted, and the mother took over the custody of the minor child. Years later, the concept of 'the welfare of the child and the best interests of the child became the paramount consideration. Parental alienation syndrome (PAS) is a mental health condition that hampers the mental well-being of the child, and this affects the best interests and overall welfare that is why an analysis of PAS and PA is important.

PARENTAL ALIENATION SYNDROME (PAS) AND RECOGNITION OF PARENTAL ALIENATION (PA)

An American child Psychiatrist, Richard A Gardner, after making several observations on the child, coined the term Parental Alienation Syndrome (PAS) in 1985, defining it as a childhood disorder seen exclusively in child-custody cases. He observed that there was a combination of conscious, subconscious, and unconscious factors as well as those independent of those parental contributions which arose from within the child that led to parental alienation. In PA, the primary manifestation is visible in the child's campaign of denigration which has no justification, and to be diagnosed with PAS, such a child should have a strong bond with the alienator and previously have had a strong bond with the alienated or the targeted parent⁷. There is a lack of intensive research on the possible persons including the family members and others, who have the opportunity to engage in parental alienation and the way the parent and others in the family are affected by it, but there are some general profiles of the alienator whom we call the alienating or the preferred parent, the one who is the target of the alienator is targeted or rejected parent and then comes the child or the targeted or alienated child.

The targeted child is mostly girls or children between the age of 10 and 14 years. Parental alienation syndrome is not included in the Diagnostic and Statistical Manual of Mental Disorders (DSM), which is a highly regarded publication that classifies mental disorders, but the

⁷ Dr Richard Gardner, 'Recent Developments in Child Custody Litigation' (1985) 29(2) The Academy Forum <<http://www.fact.on.ca/Info/pas/gardnr85.htm>> accessed 11 December 2022

DSM-5 does have a code for “child affected by parental relationship distress,” which PAS would fall under⁸.

Parental alienation syndrome is not included in the Diagnostic and Statistical Manual of Mental Disorders(DSM), which is a highly regarded publication that classifies mental disorders, but the DSM-5 does have a code for “child affected by parental relationship distress,” which PAS would fall under. Parental Alienation is an internationally recognized form of parental psychological abuse and undermines the Universal Declaration related to Human Rights and the UN Convention recognizing the rights of the child. In countries like Mexico⁹ and Brazil¹⁰, it is classed as a criminal offence. In Mexico and Brazil, Parental Alienation is defined as an act of interference in the psychological formation of the child, and they have been very sensible enough to understand that it can be done to a child or adolescent and promoted or induced by one of the parents, grandparents when they are under their authority, custody or surveillance and so on. In Israel, parental alienation is recognized and known as ‘Nikor horim’¹¹. Although Ireland¹² does not have legislation on parental alienation, in 2020, for the first time in a child custody case the judge described the action of the parent as "parental alienation".

Although parental alienation syndrome is internationally recognised, and it is evident in divorce and child custody battles before the court in India too, it is not legally recognised yet. However, in 2017, the Apex court recognised the concept of parental alienation syndrome for the first time in *Vivek Singh v Romani Singh* ¹³But despite all this recognition, there is no proper mechanism, nor any guidelines for uniformity, to address this issue in the family courts, during custody battles or as an independent issue which may arise shortly. Also since there is a lack of

⁸ Dolores Elaine Battle, ‘The Diagnostic and Statistical Manual of Mental Disorders (DSM)’ (2013) 25(2) CoDAS <<https://doi.org/10.1590/s2317-17822013000200017>> accessed 11 December 2022

⁹ ‘Mexico Parental Alienation Law’ (Lynn Steinberg, 17 June) <<https://lynnsteinberg.com/resources/mexico-parent-alienation-law>> accessed 11 December 2022

¹⁰ Lynn Steinberg, ‘Brazil Parental Alienation Law’ (Lynn Steinberg, 26 August) <<https://lynnsteinberg.com/resources/brazil-parent-alienation-law>> accessed 10 December 2022

¹¹ ‘Hope for Child Psychological Abuse’ (GreatCosmicMothersUnite, 5 December 2022) <<https://greatcosmicmothersunite.com/2022/12/05/hope-for-child-psychological-abuse/>> accessed 11 December 2022

¹² Brian, ‘Parental Alienation in Ireland’ (Changes) <<https://changes.ie/parental-alienation-in-ireland>> accessed 10 December 2022

¹³ *Vivek Singh v Romani Singh* (2017) 3 SCC 231

specifications for the admissibility of scientific evidence under Indian laws, proving PAS by scientific evidence is not possible. However, under Section 45 of the Indian Evidence Act 1872¹⁴, the court can seek expert opinion. The Supreme Court had held in *Malay Kumar v Sukumar Mukherjee*¹⁵ that expert opinion is advisory only. Hence, in such cases, it is left to the court's discretion to decide whether to consider it or not.

IDENTIFYING PARENTAL ALIENATION AS DIFFERENT FROM FAMILY ESTRANGEMENT

The courts need to differentiate PA from family estrangement¹⁶ because such cases cause a lot of misunderstanding and are one of the reasons that PA gets overlooked. Family estrangement may resemble PA but it is not so. In the case of PA, the child will reject the parent without any valid justification. There is the possibility that the parent who is rejected has in the past been responsible for the alienation in some way, but the key concept in PA is that the rejection by the child done now is much more compared to anything that this loving and caring parent had done. The child on the other hand is very callous about his or her behaviour towards the targeted parent. In the case of family estrangement, the rejection of the targeted parent is mainly because of the abusive or violent behaviour of that rejected parent like addiction to alcohol or drug, violence, etc. So, the rejection of family estrangement is for a valid reason and the person involved in family estrangement is pained at the estrangement.

There are possibilities that the alienating behaviour is shown by both parents in child custody cases in an attempt to win over the child custody in their favour, and it may not always result in alienation due to the child's refusal to be manipulated by either parent or often it may backfire against the alienator. So, the existence of PA should be seen from co-existing behaviours i.e., avoidance and preference, so while the child avoids one parent, he, or she, at the same time, strongly prefers the other.

¹⁴ Indian Evidence Act 1872, s 45

¹⁵ *Malay Kumar Ganguly v Sukumar Mukherjee* (2010) SC 1162

¹⁶ 'Family Estrangement' (*Psychology Today*) <<https://www.psychologytoday.com/us/basics/family-dynamics/family-estrangement>> accessed 11 December 2022

THE BEHAVIOUR OF THE ALIENATING PARENT/PERSON

The indoctrination by one parent to create rejection of the other parent causes parent alienation syndrome which leads to Parental Alienation. It is used by the alienating parent or person, to gain an edge in the case, settle a score against the other spouse, or win the child's custody and often for financial gain i.e., the child maintenance that comes with custody. So, who does it and why differs from case to case but the general profile of the alienator is that of a parent or grandparents, or someone who has control or authority over the child. In India, we have only looked into PA done by the parent in child custody matters only. The alienating parent is likely to have narcissistic personality traits and tendencies to become paranoid about difficult relationships with their own family.

The targeted parent may be vilified in several ways like being disparaged before others, especially in the presence of the child, or be scorned for everything. The child may be told that the targeted parent is insane, dangerous, and unworthy of being loved by the child. When talking with the child the alienating parent just like the spider weaving its web will reconstruct memories of childhood¹⁷ or past events in such a way that the child's perception of that parent gets altered negatively causing them to believe in the damaging lies things told to them. The alienating parent may tell the child about inappropriate acts done by the targeted parent or repeatedly feed defamatory stories into the child's mind to tarnish the image of the targeted parent to create hate. One of the key ways of alienating the targeted parent is to teach the child to keep secrets between the alienating person and the child. However, at some point in time, the child ends up revealing all this by using the alienating parent's language or key phrase verbatim.

In case of visitations, there will be interference by the alienating parent, with the regard to the time being spent with the other parent. Often the child will be bribed with its much-desired gifts in exchange for a promise that the child must refuse to go with the targeted parent. The alienating parent will not allow the child to call or talk to the targeted parent to express

¹⁷ Hayder Shkara, 'What Is Parental Alienation?' (*JusticeFamilyLawyers*, 5 September 2022) <<https://justicefamilylawyers.com.au/child-custody/parental-alienation/>> accessed 11 December 2022

themselves or their needs in any manner. The child may not be allowed to go out with the targeted parent by lying that child has some health issues or the child may be delivered late to the targeted parent but picked up early so that the time they spend together is reduced. Even during the time, the targeted parent and child spend together, the alienating parent will end up excessively calling the child so that they are not able to enjoy their time together. Once the child returns to the alienated parent, the child will be made to feel guilty for loving the targeted parent.

The child may be forced to choose between the targeted parent or alienating the parent and if there is the risk of the child choosing the targeted parent, telling the child that he or she will be deprived of the good things that the alienating parent was providing help create the desired consequence in the child's reaction towards the targeted parent. To undermine the relationship of the targeted parent with the child, the alienating parent will drill the child for details of the visit. They want to know about everything that took place including the places visited, the food, the games, and the gifts received from the targeted parent. The child will be advised with sugar-coated words, crocodile tears, feigning illness by the alienating parent, etc to prevent the child from meeting the alienated parent. The alienating parent will ask the child to reject the offer to go to such places next time or tell the child that what they ate out was unhealthy, prepared unhygienically, etc and if the child ate more of it again the child may fall sick. The child will have to face the wrath of the alienating parent after narrating the fun activities and time spent with the targeted parent which will create fear in the child's mind and he or she will try to avoid all such situations in the future.

It's not unusual for the alienating parent to ask the child to spy on the targeted parent. The child will be encouraged to call the targeted parent by his or her first name or call the alienating person (if the alienating person is a stepparent or grandparent) as mom or dad instead. There will be instances of changing the child's name to exclude the targeted parent's name or doing so against the wishes or permission of the targeted parent.

To further undermine the role of the targeted parent in the child's life, the targeted parent may be refused information regarding the child's schooling, medical care, extracurricular activities,

awards, etc., and deliberately putting the alienating person's name as a local guardian or contact person even though the targeted parent is around. The targeted parent will not be invited to the important activities of the child such as birthday parties, parent-teacher meetings, competitions, school plays or school days, graduation, etc. So visibly there will be no pictures or videos of the childhood days that the targeted parent or child can reminisce about in the future. In cases where the alienating mother or father lives abroad, there are possibilities of child abduction because the situation becomes murkier when international law has to be brought in. There has been an increase in the number of children or adolescents being brought or retained, unilaterally, in another country. This is another way of creating a distance between the child and the other parent from whom the child has to be alienated. The ease of reaching the child is reduced and the attempt to alienate becomes completely successful.

The dirtiest and most dangerous strategy for the alienating parent would be to use bribes and support. The alienating child will be provided with excess cash or wealth or a lavish lifestyle, which would not have been affordable by the targeted parent. Buying expensive gifts or gifts that the targeted parent refused to buy for any good reason, makes the child extremely happy and the child is likely to go astray with all the newfound wealth and freedom. The shocking fact would be that the support given to the alienating child would be on a thing that the alienating parent had once upheld as immoral, unethical, or bad in the past in the presence of the targeted parent. Likewise supporting the child when the targeted parent reprimands the child in an attempt to prevent wayward behaviours or to punish the child for it and also reinforcing the support by continuous bribes to put the child on a path of self-destruction and hate for the targeted parent. The sad thing is that the child will still not see the alienating parent in a bad light and likewise the targeted parent may be completely oblivious of this plotting, planning, and hiding strategy at work or may observe but not do anything about it fearing that his or her adverse reaction will further spoil the relationship.

THE BEHAVIOUR OF THE ALIENATED CHILD

When we study child custody judgements, we find that custody of the minor is handed over to the preferred parent as it is also part of the best interests of the child. The assumption is that the

child capable of making the intelligent preference has the preferred parent due to his or her emotional bonding with that parent, moreover, the separation or happenings at home leading to divorce had created the dislike for the rejected parent. Hence the choice of a particular parent is often mistaken for favouritism of the child. Children indeed have a favourite parent who gives quality time to them, plays with them, etc but in the case of PA, there is a different kind of engagement going on. The intention is to create a bond between the child and the alienating parent in such a way that it simultaneously breaks the bond with the targeted parent. It is not part of a healthy upbringing.

So how do we understand the existence of parental alienation? Alienation by one parent cannot be directly measured, so it is to be inferred from the child's behaviour. When there are constant intentional acts or strategies to alienate the child from the targeted parent the child's psyche (as well as that of the targeted parent) is likely to seriously damage it. It is not easy to handle the everyday pressure from the alienating parent, and children are so immature that they easily succumb and choose the side of the alienating parent. Once the child chooses the side, there is a combined obsession to find faults in the targeted parent to instill fear or hate towards him or her¹⁸. The targeted parent is often stunned by the reaction or the response from the child because the reasons for denigration may be very absurd, weak, and frivolous. For instance, the child might state, as his primary reason for hating the targeted parent, that the parent does buy him or her clothes at all or that the child was never provided anything at all by the parent and when the targeted parent reminds him of all the good acts and gifts provided the child will use the alienating parent's phrases verbatim and state that it was the duty of the targeted parent to do so, and this the child does with an immediate comparison with the alienating parent stating that he or she has given so much more! The child does not feel bad about shutting the targeted parent out and expresses no gratitude for the things that the targeted parent has done or given. On the other hand, such children suffering from PAS will attempt to manipulate the situation, and get whatever they can from the targeted parent, with the absolute belief that they are entitled to all

¹⁸ 'Parental Alienation - Definition, Examples, Cases, Processes' (*Legal Dictionary*, 8 January 2017) <<https://legaldictionary.net/parental-alienation>> accessed 11 December 2022

that because the targeted parent must provide it and because he or she is such a terrible person. PAS children are selfish, cruel, and manipulative to the core.

When the child is questioned about his callousness and hate towards the other parent, and the extreme love and loyalty towards the alienating person's actions, the child suffering from PAS will insist that whatever was expressed by him or her towards that parent was entirely his or her own opinion. For instance, the child might say that he does not want to go out with the targeted parent and say that "I don't want to go out anywhere and this has nothing to do with anyone else's instructions, It's my own decision and no one influenced me to say so." In case the targeted parent tries to convince the child will refuse to listen to anything he or she says. On a keen observation of such a child, it will be seen that, in their communications with the other parent, the PAS child will often spout phrases and ideas that come directly from the alienating person's dialogue, and some of what they say may be about anything they would have known or understood. The same hostility that the child feels toward the targeted parent is extended to anyone connected to the targeted parent. After undergoing all the hostility, the targeted parent may have difficulty managing their emotions or come across as emotionally detached. Having their relationship with their child damaged by the alienating parent generally leads to emotions of frustration, fear, loss, anger, stress, powerlessness, and helplessness.

If the targeted parent wishes to battle it out in the courts, the cost of this can be both a financial and emotional drain mainly because of the uncertainty of the court's verdict. The present situation is biased towards the mother, the father has less or no chance even if he is the targeted parent. The child who mostly lives with the targeted parent will find themselves behaving according to the targeted parents' wishes. Initially, they may have resisted the alienating behaviour but as they remain dependent on the alienating parent, they succumb to it. There are three levels of Parental alienation that have been explained by Amy Baker where depending on the behaviour the stages can be identified as mild, moderate, and severe.¹⁹

¹⁹ Susan Heitler PhD, 'Parental Alienation: What Therapists Need to Know' (*Child Rights NGO*)
<<https://childrightsngo.com/parental-alienation-what-therapists-need-to-know/>> accessed 11 December 2022

PARENTAL ALIENATION ISSUES WITHIN THE CONTEXT OF THE 1980 HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

A question may arise as to why is it necessary to discuss this 1980 Convention when we are talking about parental alienation. There is a necessity because we have to understand that if a child is abducted and taken away or brought to India from abroad with the intent of parental alienation then the situation gets very difficult for the other parent to make contact with the child. Since we have the concept of a sovereign nation, a country cannot interfere with the law enforcement or the legal system of another as every country has jurisdiction only up to its borders. So, if a parent abducts the child with the intention of parental alienation, and retains the child in another country, then the other parent having custodial rights for the child will be helpless. This is because even though he has the child custody order, it cannot be made binding on another state. Going beyond the borders will raise the issues of the breach unless the country issuing the child custody order is part of a convention like the Hague Convention.

However, there are grounds provided under the various Articles of the convention that can prevent the state from returning the child. The state will have to prove that the child was earlier in the custody of the parent who took the child away and that at the time of taking the child away, the parent who now has the custody order did not have custodial rights at the time of the removal out of the possession of that parent or that keeping the child in the custody of the parent who now has the order will expose the child to grave physical and mental harm. But this could benefit the targeted parent to get the child back if it is known that the child is at greater risk due to parental alienation if the child lives in a different nation with the parent who intends to alienate the child and is doing this to ensure no possible future contact.

However, there are reasons for India not signing the contract because such international child abduction cases are fewer. The number of children brought to India is more. Often some mothers want to flee the country with their children and return to India to escape bad marriages and abuse so India is not very convinced to sign the convention as it will strip the protective cover they have in their own country.

OVERALL EFFECTS OF ANY TYPE OF PARENTAL ALIENATION ON THE CHILD'S WELFARE AND WHY WE NEED TO TAKE ACTION

The child's best interests and overall well-being lies in providing for as well as protecting the child. The protection of health, maintenance, education, etc are important factors considered by the court but more important is that when talking about health, it should mean and include mental well-being not just immediate but also in terms of its long-term impacts. The overall effects of PA are severe on both the alienated child as well as the targeted parent and after the breakdown of such a relationship, the effects may be slow but sure and deteriorate the relationship as time passes. This deterioration is harmful and as held by the Supreme Court the child needs the love and care of both parents. It is also seen that family surroundings consisting of the parents have a great role to play in the creation of a juvenile delinquent. Robin Gayle's research in 2006, has shown the impact of good parenting strategies and those parenting ways that turned the child into juvenile delinquents.²⁰

Both the alienated child and the targeted parent are likely to suffer anxiety, depression, suicidal tendencies, or even substance abuse. A retrospective study of such children as grown-up adults found that they, later on, suffered from lower self-sufficiency, lower self-esteem, higher rates of major depressive disorder, and insecure attachment styles. The study of the participants who suffered from PA revealed that they suffered from (1) low self-esteem/self-hatred, (2) depression, (3) drug/alcohol abuse, (4) lack of trust, (5) alienation from own children, (6) divorce and (7) other ²¹. There are also instances where the research participants have expressed self-hatred as an apparent out-growth of the guilt they experienced from betraying the targeted parent. There are times when though the child may verbally strike at the targeted parent, they still tend to worry about the impact they had on the targeted parent by their actions and may even have suicidal tendencies to escape that pain and the guilt as a way of punishment. Surely,

²⁰ 'Juvenile Delinquents and Parental Divorce: What Is the Connection?' (*Study Corgi*, 13 November 2021) <<https://studycorgi.com/juvenile-delinquents-and-parental-divorce-what-is-the-connection>> accessed 11 December 2022

²¹ Amy J. L. Baker, 'The Long-Term Effects of Parental Alienation on Adult Children: A Qualitative Research Study' (2005) 33(4) *The American Journal of Family Therapy* <<https://doi.org/10.1080/01926180590962129>> accessed 11 December 2022

such impacts do not indicate the overall well-being of the child, nor characterize the qualities of an ideal citizen who will be a future asset of a progressive nation.

Parental alienation often leaves the child feeling very negatively towards the targeted parent for unjustified reasons because the manipulation caused by the alienating parent amounts to cruelty for both the targeted parent and the child. There are the possibilities of the child's poor performance at school or college, and the targeted parent's work productivity may decline. It is important to note that this act of PA by the alienating parent is intentional, and it affects the overall health and may cause injury to the limb or life of either the targeted parent or the alienated child. In some cases, litigations, civil or criminal, may arise out of offences due to hatred brewing within the alienated child for years. Yes, that's why that makes the offence even more serious.

This is not the only reason why PA must be recognized, prevented, and punished. The effect of parental alienation creates such hatred and violence that as the years go by the alienated child may lose out on the targeted parent's love and affection, good memories, personality development, inheritances, etc. In the long run, the alienated child may never care about the targeted parent when they get older, sick, and needy and that would again make them liable under the Maintenance and Welfare of Parents and Senior Citizen Act 2007, popularly known as the Senior Citizen Act²².

All this happens because the intentional alienation of the child by the alienating parent was ignored and not punished. After all, it was not recognized nor was there any law that prevented or punished it. Coming to recognize parental alienation as an adult can be a long and difficult journey especially if the targeted parent is not around. The healing will be very slow and painful when the child develops a new realistic understanding of the targeted parent later in life and at the same time will struggle with the fall out of a strained and weak relationship with the alienating parent.

²² The Maintenance and Welfare of Parents and Senior Citizens Act, 2007, s 4

RELEVANT JUDGEMENTS

The parental alienation syndrome has taken on a slightly different meaning in Indian courts. Cases linked to the syndrome have not been linked to allegations of sexual abuse and mentioned only where the child has shown disdain towards a parent. In *Sheila B. Das v P.R. Sugasree*,²³ while acknowledging PAS, the court did not discuss it and instead decided solely based on the "best interests of the child" doctrine. Section 17 of the Guardians and Wards Act 1890, underlines the parameters that the court ought to consider while deciding the guardianship of a child. Its provisions state that if a minor can make an intelligent choice, the court may consider it. This provision, therefore, directs the court to ascertain what the child wants.

The Supreme Court in *Rajeswari Chandrasekar Ganesh v State of Tamil Nadu & Ors*²⁴. stated that a child's best interests and welfare are of paramount importance and that the courts must choose a course to ensure the healthy growth, development, and education of the child so that the young children are equipped to face the problems of life as a mature adults. The Apex Court in *Himanshu Chordia v Arushi Jain*²⁵ echoed in its comments the Latin phrase, *parens patriae*, which means that the State can assume the role of the parent of a child in need of protection which is very apt.

Likewise in This Court in the case of *Gaurav Nagpal v Sumedha Nagpal* ²⁶stated in detail, the law relating to custody in England and America and pointed out that even in those jurisdictions, the welfare of the minor child is the first and paramount consideration and to determining child custody, the jurisdiction exercised by the Court rests on its inherent equality powers where the Court acts as '*Parens Patria*'.

In *Vivek Singh v Romani Singh*²⁷, the Supreme Court held that the word 'welfare' used in Section 13 of the Guardians and Wards Act, 1980 has to be construed literally and must be taken in its widest sense. The moral and ethical welfare of the child must also weigh by the court as well as

²³ *Sheila B. Das v P.R. Sugasree* (2006) 3 SCC 62

²⁴ *Rajeswari Chandrasekar Ganesh v State of Tamil Nadu & Ors* Writ Petition (Criminal) No. 402/2021

²⁵ *Himanshu Chordia v Arushi Jain* (2020) 2 SCC 521

²⁶ *Gaurav Nagpal v Sumedha Nagpal* (2009) 1 SCC 42

²⁷ *Vivek Singh v Romani Singh* Civil Appeal No. 3962/2016

its physical well-being. It was clarified by the court that in such cases, though the court takes into consideration the provisions of the special statutes which govern the rights of the parents or guardians, nothing will prevent it from exercising its *parens patriae* jurisdiction.

PAS has also been discussed in the case of *J.Selvan v N. Punidha*²⁸ in conjunction with the doctrine of the 'best interests of the child'. On April 29, 2020, a landmark judgement (*Re S Parental Alienation: Cult*) delivered by Lord Justice McCombe, Lady Justice King, and Lord Justice Peter Jackson, in the UK Court of Appeal underlined that parental alienation was a child protection issue. It's a non-accidental injury to the mind of the alienated child hence it should be in line with the non-accidental injury interventions which will protect the child as early as possible. This judgement is important to determine the reality of the existing problem of parental alienation and how it should be managed by the court. It is also an answer to the worldwide backlash from those who reject the intentional manipulation of a child's mind by parental alienation.

CONCLUSION

Parental alienation syndrome has the potential to become an important debate in India from many angles. One of them is whether it would be right to sign the Hague Convention since there is a need to have a central authority to have a uniform pattern to address similar situations like the other signatory countries. The 218th law commission report did mention that it would be good to sign the convention and especially to handle issues related to children of Indian origin. So we need to seriously discuss and work on making this better for us as well as parents and children faced with such parental alienation arising out of international child abduction issues.

Next, we have to discuss the question of why parental alienation cannot be called a crime or an offence related to life and limb. Why can't it be included under the meaning of cruelty or child abuse? Parental alienation has till now been handled through civil proceedings of child custody matters and not as a criminal or independent matter. It is not an arrestable offence as it's not included under any law of the country. There is cruelty, emotional child abuse, intention, family

²⁸ *N.Punidha v J. Selvan* (2007) SCC OnLine Mad 636

violence, harm to the life and liberty of the lives of the child and the targeted parent, and loss both financial and other. It is responsible for setting off a chain of events in the long run that may include neglect of elderly targeted parents or other offences of domestic violence in the relationships, yet the alienator will go scot-free as no law on the land will punish the alienator.

If there is no punishment, then parental alienation will go unchecked, and many more people will be encouraged to use it as a weapon and to treat children as chattel to achieve their selfish ends. The effect of alienation will affect the child's psychology and aggravate other health issues or psychiatric problems. So, despite having the ingredients to constitute parental alienation into an offence our judicial system has not done much about it. There is indeed worldwide backlash from those who deny it stating difficulties to prove parental alienation unless there is a lot of evidence or that PAS is not a diagnosable syndrome. But though PAS is not a diagnosable syndrome, the clinical understanding is evolving, and it does fall into the parent-child relational problem in DSM-5. Moreover, in the courts, we are dealing with the best interest of the child and the overall welfare, and not about whether we can diagnose it as a syndrome. There is also a need to understand that to date the laws have always been titling their balance only by focusing on one individual and it is more likely that when discussing parental alienation, the focus will be only on the minor child. It must not be forgotten that there is more than one victim here. i.e., the child and the targeted parent. The child and the targeted parent both will face the effects in the long run or parental alienation may be possible on the adult child too as a result of undue influence etc so there has to be an umbrella of provisions that encompass everything in such a way that justice prevails.

Many protocols have been developed by Dr. Gardner to reverse the effects of parental alienation. However, a successful treatment for parental alienation syndrome requires the court's intervention to limit the child's access by the alienating parent and treat the child with the aid of a child psychologist. But treatment has to be made possible for the parent who has been targeted as well because if and when the child bonds back with the parent, the healing must be complete, and the parent and child have to heal and bond together. It has been understood that Reunification therapy is one outpatient approach to parental alienation and as per severity more

intensive intervention may be made available. On recognition of PA, the alienating parent must be punished as deterrence and whenever there is an allegation of PA there is a need to have sessions of counselling with family therapists experienced in PA so that the child custody is then decided appropriately and also the PAS is treated keeping in mind the best interests and overall welfare of the child in the long run.

There is also a necessity to demarcate the difference of this hostility when true parental abuse and/or neglect is present, because then the child's animosity may be justified, and PAS would not be applicable. There is a need to understand the existence of more profiles in this parental alienation. There is a need to include special provisions under the family laws to deal with PA or create a special Act called Parental Alienation Protection Act because it should be made possible to file PA as an independent case apart from child custody cases too as the law should be able to protect the minor child and also the adult who had been affected by parental alienation. A separate Act that contains a step-by-step procedure on the evidence that needs to be collected, how to deal with expert opinion, or to include scientific evidence not allowed under the Indian Penal Code, and addresses other loopholes would be a saviour. Provisions in the law or set guidelines will speedily help deal with PA cases and the child gets removed from the alienated parent. We can study the various existing laws on parental alienation for better understanding and create a law that the world takes up as an example. Last but not the least, the laws have to become more upto date giving scope for new situations that may have to be covered shortly and lack of provisions will then be no excuse to not deny justice to anyone.