
LEGAL REFLECTION ON THE USE OF PARENTAL ALIENATION SYNDROME IN THE INDIAN JUDICIAL SYSTEM

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ABSTRACT

This paper aims to delve into the use of PAS by the Indian Judicial System and further appraises whether the use of such a scientifically unfounded theory specially to determine simple custody matters proves to be detrimental for effective delivery of justice in India.

Keywords: Parental Alienation Syndrome (PAS)

Introduction

Parental Alienation Syndrome ('PAS') occurs when one parent campaigns successfully to manipulate his or her children to despise the other parent despite the absence of legitimate reasons for the children to harbor such animosity.[1] Many children who are involved in divorce and custody proceedings are subjected to thought reform or mild brainwashing by their parents. This troubling fact is a result of the nature of divorce and the breakdown of the spousal relationship in our culture. Inevitably, children pick up on subtly conveyed messages that both parents are harshly critical of each other. In PAS, the alienated parents program ideas and attitudes that are directly different from the child's own previous experiences into the child's brain circuits. Additionally, PAS children add their own scenes to the smear campaign because they recognize that programmers desire their complementary contributions. Children's contributions are welcomed and reinforced by programmers, leading to more children's contributions. Therefore PAS presents itself as a disorder in which a child continuously belittles and insults one parent without justification, as a result of a combination of factors such as indoctrination by the other parent (almost exclusively as part of a child custody dispute) and the child's own attempts to denigrate the target parent. Although PAS was initially developed as an explanation for false sexual abuse allegations that a child may levy against a parent, in modern times it has quickly evolved into a tool in custody battles to portray the child as biased against one parent, this finds application especially in India in case of custody matters wherein the child refuses to live with a parent, this paper aims to reflect upon the usage of PAS in the Indian judicial system.

Application of PAS in the Indian Legal System

India lacks standards for the admissibility of scientific evidence, even though Section 45 of the Indian Evidence Act, 1872[2] deals with expert opinions there are no solid guidelines regarding the criteria of admissibility of such opinions. The apex court in *Malay Kumar Ganguly v Sukumar Mukherjee*[3] held that expert opinions are merely advisory in nature and that the final conclusion is left to the courts. Since the admission of such evidentiary statements is left solely to the discretion of the courts with no means to verify the substantiveness of such opinions, *scientifically unfounded*[4] syndromes like PAS have found legitimacy through judicial pronouncements which consequently only hampers the delivery of justice in the long run.

Parental alienation has been given a different meaning by Indian courts, the reasoning for such a statement being that the Courts have applied this phenomenon as a discerning factor in simple custody matters, rather than sexual abuse allegations for which it was originally intended. In cases where the child has shown despise and detest for one parent, PAS has often been brought in as a defence mechanism. The term has been used loosely without proper emphasis on the correct meaning and the symptoms laid down by Richard A. Gardner, the child psychiatrist who was the first to describe this theory and coined the term back in 1985. The Supreme Court initially mentioned PAS in the case of *Sheila B. Das v P. R. Sugasree*[5] wherein the daughter had expressed her desire to reside with her father merely after a brief stint of staying with him. The appellant(mother) claimed that “that the minor had been exposed by the respondent to what she termed as "Parental Alienation Syndrome".... a phenomenon that was noticeable in parents who had been separated and who are bent upon poisoning the mind of their minor children against the other party.” [6] The court while recognising PAS, rules in favour of the father on the basis of the “best interests of the child” doctrine,[7] as the court deems the father to be more suited to have custody of the child given his financial stability as compared to the child's mother. This shows how the court often values material circumstances over the long-term emotional well-being of the child.

Another significant case on the matter of PAS is that of *J. Selvan v N. Punidha*,[8] in this case, there was a custody battle where the mother wanted to completely disconnect the father from the children in the instance that the court was to grant her custody. On the other hand, the father agreed with the mother being given visitation rights in case he was granted custody. Much like the prior case discussed, the court ruled in favour of the father citing that the father had a better financial position to take care of the children. Moreover, the courts took into consideration that if one parent was denied access to the children it may lead to PAS, and according to the court the child was already showing symptoms of the same, as the children seemed “a little withdrawn” [9] unlike when they previously stayed with the father comfortably. The court goes on to state that “*There can be no doubt about the fact that the children, who are deprived of the love and affection of one of their parents, tend to suffer from what is known as “parental alienation syndrome”*.”[10] It is clear from this case how the courts have grossly misunderstood the phenomenon of PAS with potential alienation, and have imparted legitimacy to this misinterpretation on a prima facie basis. The problem with such an approach is that it sets a dangerous precedent leading to the possibility of future cases to also be decided on this false pretext.

The most recent application of PAS was in the case of *Vivek Singh v Romani Singh*[11] in which the daughter was in the custody of the father from 21 months to 8 years. In the subsequent custody battle that ensued the child gave a statement saying that she wished to be with her father, however, the court ruled in favour of the mother citing reasons such as “*best interest of the child*”, [12] the mother was more equipped to take care of the child's education and that the mother's love was more important for a female child's wellbeing. On all these counts the court opined that the child's welfare lay in the company of the mother. The court relied on the doctrine of “best interests of the child” but disregarded the child's wish to be with the father. The final verdict was aided by the court's assumption of PAS being present in the matter. Such a reference to an unreliable theory without any symptoms or evidence can be problematic.

Analysis

An analysis of the aforementioned cases and arguments highlight the fundamental problems with the use of PAS by Indian courts which still lack clarity in understanding the syndrome and its implications. The loose usage of the term has inadvertently increased its ambit thereby further legitimising a syndrome which to this day remains scientifically unproven as Richard Gardner failed to provide any substantiation for the assertions he made while theorising PAS, which undermines its authority. Moreover, it can potentially disregard the “the best interest of the child” doctrine and lead to a slippery slope where such unscientific concepts can be misused in the future. To sum it up, children's reluctance or refusal to visit noncustodial parents can probably be better explained without resorting to Gardner's theory. Studies that followed families over several years for example report that visits may cease or be resisted when a variety of reasons cause custodial parents and children to be angry or uncomfortable with the other parent. Often the noncustodial parent's behavior and the child's developmental stage play decisive roles. Alignments or alliances that are somewhat reminiscent of Gardner's construct are much less frequent than he suggests and even in extreme cases, these scholars agree that PAS theory calls for inappropriate and harmful responses that intensify the problem [13]

Conclusion

Increased usage and expansive scope of PAS blindfolds the judicial system in cases where there may be genuine reasons for detestation towards a parent. In a country like India where domestic violence whether emotional or physical, is widespread and it is quite possible that the alienation

a child feels is the aftermath of such violence. With the courts using PAS in an imprecise manner, even a legitimate feeling of alienation arising from domestic violence would be misconceived as a syndrome. The use of such theories, which do not have adequate scientific backing, by the courts, is troublesome especially for the Indian Legal System due to the lack of standards for admissibility of scientific evidence under Section 45 of the Indian Evidence Act of 1872[14]. Thousands of children and parents are affected by the PAS phenomenon and the devastation it causes. PAS has a high financial and emotional cost for the target parent. The government must play an important role in assisting those innocent children who have been imprisoned. They should see the appalling conditions in family courts, where there are a scarcity of judges and trained counsellors.

[1] Turkat, I., 2002. Parental Alienation Syndrome: A Review of Critical Issues. [online] Cdn.ymaws.com. Available at: <https://cdn.ymaws.com/aaml.org/resource/collection/35664435-7DFC-48A0-B8A0-DC4FB0009474/parental_alienation_syndrome-18-1.pdf> [Accessed 16 March 2021].

[2] The Evidence Act, 1872, s. 45.

[3] Malay Kumar Ganguly v Sukumar Mukherjee, AIR 2010 SC 1162.

[4] Carol S Bruch, Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases, *Family Law Quarterly*, Volume 35, Number 3, Fall (527-552) (2001) <<
https://law.ucdavis.edu/faculty/bruch/files/fam353_06_bruce_527_552.pdf>>

[5] Sheila B. Das v P.R. Sugaree (2006) 3 SCC 62.

[6] Id.

[7] Id.

[8] J. Selvan v N. Punidha (2007) 4 CTC 566.

[9] Id.

[10] Id.

[11] Vivek Singh v Romani Singh, 2017 3 SCC 231.

[12] Id.

[13] BRUCH, CAROL S. "Parental Alienation Syndrome and Parental Alienation: Getting It Wrong in Child Custody Cases." *Family Law Quarterly* 35, no. 3 (2001): 527-52. Accessed July 24, 2021.
<http://www.jstor.org/stable/25740351>.

[14] *Supra* note.2