

# India's Supreme Court Petitioned to End State-Sponsored Parental Alienation and "Santa Parenting"

## NGO urges declaration of PA as child abuse

*By Ashish S. Joshi, Managing Partner, Joshi, Attorneys + Counselors, Ann Arbor, MI*

IN 2017, THE SUPREME COURT OF INDIA in its judgment *Vivek Singh v. Romani Singh* defined parental alienation as the following: "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 indoctrinations and the child's own contributions to the vilification of the target parent."<sup>1</sup>

On the heels of this historic decision, the Child Rights Foundation (CRF) has now filed a Writ Petition<sup>2</sup> before the Court urging it, amongst other things, to declare parental alienation as child abuse and in violation of Article 21<sup>3</sup> of the Constitution of India. The Petition also seeks to have the Court issue guidelines to the Family Courts (trial courts) across the country to change custody to targeted parents upon a finding of parental alienation.

CRF, a "gender-neutral" NGO<sup>4</sup>, has filed this Petition under India's public interest litigation laws that allow citizens and groups to approach the country's apex court to secure and enforce action to protect the public good. CRF has urged the Court to adopt the "Child Access and Custody Guidelines and Parenting Plan" that the organization has formulated – and which have been approved by various Family Courts and High Courts in India - in response to rapidly growing divorce rates in India and the country's antiquated family code.

India's Family Court Act, 1984 only allows for primary custody with one parent and very limited access or visitation rights to the non-custodial parent. The law essentially incentivizes parental alienation by pitting divorcing spouses against each other and the system picking "winners" and "losers." As a result, hundreds of thousands of non-custodial parents have been cut off their children without justification. Children are subjected to hostile judicial interviews to determine the custodial parent and, not surprisingly, divorcing spouses attempt to control what the child says in the interviews in order to have the best chance of winning custody. As the Petition reveals, a Bombay High Court Judge recently lamented that, in her experience, more than 80% of the children are tutored before their custody interview.

### **"Santa Parent" status**

CRF argues that given the increase in the divorce litigation in India coupled with rampant parental alienation, approximately 82,000 children are added to the alienated pool each year. And parental alienation is only strengthened by the non-custodial parents being relegated to "Santa Parent" status, meaning they are "mere visitors" in their child's life. These Santa Parents do not have access to their child's school or medical records, are excluded from day-to-day parenting joys such as attending their child's sports events or recitals, parent-teacher conferences, and other parental privileges.

A system that relegates a non-custodial parent to a Santa Parent status harms both the children and the non-custodial parents. CRF cites studies that have unequivocally found that children in

shared parenting, irrespective of the level of conflict, difference in religion or culture, perform much better than in single-parent households with minimal contact with the non-custodial parent. CRF also argues for early court intervention which greatly reduces or eliminates the symptoms of parental alienation, especially when targeted parents are granted increased contact with the children. Citing well-established research from international experts such as William Bernet, Amy Baker and Richard Warshak, CRF advocates for awarding primary custody to the targeted parent and providing specialized mental-health intervention for the victims of parental alienation. In support of its Petition, CRF has also provided the Supreme Court with a survey of international court cases involving parental alienation from the courts in the United States of American, Canada, and Australian and the European Court of Human Rights.

CRF puts forward a framework for preventing parental alienation which includes early court intervention, effective enforcement of parenting plan and decisive steps to counter parental alienation including sanctions and change of custody. The organization deserves credit for taking a bold step forward and petitioning India's Supreme Court to acknowledge and address the country's antiquated and broken-down family law system and to end state-sponsored parental alienation. India's children, similar to children around the world, are entitled to enjoy the love and affection of both parents. ■

### **References**

<sup>1</sup> *Vivek Singh v. Romani Singh*, Supreme Court of India Civil Appeal No. 3962 of 2016.

<sup>2</sup> *In the Matter of Child Rights Foundation (CRF) v. Union of India*, Writ Petition (Civil) No. 1031 of 2018.

<sup>3</sup> Article 21 reads as: "No person shall be deprived of his life or personal liberty except according to a procedure established by law." Indian courts have ruled that the protection of family is an integral part of right to "life."

<sup>4</sup> <http://childrightsfoundation.com/>