THE RELATIONSHIP BETWEEN CHILD SEXUAL ABUSE, DOMESTIC VIOLENCE AND SEPARATING FAMILIES

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This paper examines the relationship between child sexual abuse and domestic violence and highlights the research that indicates the coexistence of these two forms of violence in families. Much of the research into both domestic violence and child sexual abuse has historically been conducted in different spheres and they have largely been treated as unrelated phenomenon. This article will analyse how and why both forms of violence exist in families.

This paper will examine how the mutual existence of these two forms of abuse impacts on families who are separating. Australian research will be cited which highlight those cases involving all forms of family violence are an integral part of the work of the Family Court. It will be argued that the legal system needs to take into account that both domestic violence and child abuse are significant problems in the separating family and that issues of gender both in the context of child sexual abuse, domestic violence and separating couples are integral to our understanding and the way we deal with these concerns.

In this analysis a broader feminist, ecosystemic perspective is taken, placing family violence in a broad societal context and examining the gendered nature of such violence.

Research Into the Relationship Between Domestic Violence and Child Sexual Abuse

There are a number of studies, which have found that both child sexual abuse and domestic violence exist concurrently in families.

In an Australian study by Goddard and Hiller (1993) of 206 cases of child abuse, they found domestic violence was found to exist in just under one half (40%) of the instances of sexual abuse and in just over one-half (55%) of the physical abuse cases.

Truesdell (et al 1986) found that 73% of 30 women attending a mother’s group of an incest treatment programme at a child welfare department had experienced some form of physical and psychological abuse from their partner and that 23% had suffered ‘life threatening’ violence. Other US studies such as Browning and Boatman (1977) and Deitz and Craft (1980) also found that domestic violence is high in families where fathers or stepfathers are sexually abusing children.

A British study of 20 women whose children had been sexually abused by their partner found domestic violence existed in all cases, only three of which did not involve physical violence (Forman, n.d. as cited in Morley and Mullender, 1994).

The central theme in the dynamics of both forms of family violence is that of power and control, based on the abuse of power both from a generational and gender perspective. Feminist analyses of family violence take into account the dynamics of power relationships within the family and argue that patriarchal dominance in the family is an essential component of the abusive family (Kaplan 1988).

“*If we begin to think from a recognition that domestic violence and child abuse are not necessarily separate co-existing forms of violence it becomes possible to notice that they can occur concurrently*” (Kelly, 1994, p.46).

The Dynamics of Child Sexual Abuse and Domestic Violence

We know that domestic violence is not just about physical violence and that it takes many forms – physical, sexual, verbal, financial and emotional. These forms of abusive and manipulative behaviours are about maintaining power and control of women by male abusers. (Mullender and Morley 1994).
"The abusive behaviours characteristic of men in violent relationships are best described as control tactics, ways of instilling fear and coercing compliance (Mullender and Morley 1994 p.7).

Child sexual abuse is also about power and control (Kaplan, 1983, Finkelhor, 1984). Finkelhor (1984) developed a four-factor model to describe child sexual abuse. One of the preconditions he establishes for child sexual abusers is their need for power gratification and that sexual abuse is a means of meeting the abuser’s need to dominate and control.

Domestic violence and child sexual abuse are also gendered crimes. Women and children are overwhelming the victims and men are primarily the perpetrators. As Goddard (et al, 1993) state:

“We have taken the presence of domestic violence in victims’ (of child abuse) homes as the most overt expression of domination or the unequal distribution of power; it is also indicative of an atmosphere of coercion within which abuse of children has taken place” (Goddard et al, 1993).

Kelly (1994) describes particular aspects of abusive men’s behavior where there is both domestic violence and child sexual abuse as:

“double levels of intentionality” (p.47) where “an act towards one individual is at the same time intended to affect another or others” (Kelly, 1994 p.47).

Child sexual abuse can be used as a form of domestic violence where children are used as vehicles to abuse mothers (Kelly, 1994). McCloskey (et al, 1995) cite the work of Williams-Meyer & Finklehor (1992) in their interviews of 100 incestuous fathers which found that 9% of the men reported that their sole motivation for molesting their daughters was to retaliate against their mothers.

Domestic violence may also be used a means of gaining access to and abusing children. Kelly (1994) quotes Fordman’s (n.d.) study, which found evidence that:

“…men abuse mothers to hide their sexual abuse –by isolating and/or otherwise incapacitating the mother so that she is not available to the child as a source of help” (Kelly, 1994 p.30).

Finkelhor (1984) concludes that there is...

“…growing evidence that when mothers are incapacitated in some way, children are more vulnerable to abuse” (p.59).

It has been shown domestic violence and child sexual abuse are used as vehicles to maintain control over both women and children within the family. One form of abuse may be used as a way of masking and hiding another form of abuse. How then does this affect the separating family?

**Child Sexual Abuse, Domestic Violence and the Separating Family**

As child sexual abuse and domestic violence have been researched from different perspectives, so too has research into the effects of divorce and separation on children been studied separately.

“The growing body of research on child abuse has not enlightened the growing body of research on children in families where partnerships have failed (Rogers & Pryor, 1999 as cited by Brown et al, 2001, p.4).
Separation from an abusive partner is often the most dangerous time for women and children (Pence 1989, Browne and Williams 1989 as cited in Mullender et al, 1994).

“Research clearly indicates that separation represents a significant risk period for escalating violence and the batterer becoming even more desperate in his attempt to control partner (McMahon & Pence 1993; Zorza 1992A as cited in Jaffe, n.d. p.11).

UK figures indicate that between 40% and 60% of separated or divorced women experienced violence in their relationships (Mullender and Morley 1994 p.5). McInnes (2001) quotes figures showing that single women who have previously been partnered were at highest risk of assault with 42% reporting violence at some time during their relationship. Violence escalates at this time as the abuser recognizes that he is beginning to lose power and control by the separation.

Recent research by the Australian Institute of Family Studies identifies that 66% of marital breakdown involve violence, 33% of which were identified as serious violence (Australian Institute of Family Studies, 2000)

There are also findings (Russell 1986, Gordon 1989 as cited by Hooper, 1994), which suggest that children may be more vulnerable to sexual abuse in the context of separation or divorce. In a recent study (Wilson 2000), the researcher found that partnership breakdown heightens the risk of child sexual abuse.

There is sufficient evidence from studies both in Australia (Hume1996, Brown et al) and overseas (Thoennes et al 1988, Jones & Seig, 1988, Faller 1991, Faller & DeVoe 1995) to dispel the myth that child sexual abuse allegations in the context of divorce are more likely to be vindictively and falsely made.

Studies conducted in Australia of family violence within the context of disputes within the Family Court have verified connections between different forms of family violence.

In my own study (Hume 1996) an examination was made of 50 cases where allegations of child sexual abuse had been made in the context of proceedings in the Adelaide Registry of the Family Court. Of these 50 cases, 68% (n=34) included additional allegations of physical violence, that is that one parent had physically abused the other parent either during the relationship or following separation. 54% (n=27) of these allegations were made against fathers.

In 42% (n=21) of the total number of cases, child sexual abuse was confirmed by investigators. In 71.4% (n=15) of these cases there were also allegations of physical violence against a partner (see Figure 1).
The above figures show a high correlation between confirmed sexual abuse and allegations of physical violence against a party to the proceedings.

Brown (et al, 1997) study has concluded that child protection has become

“… the core business of the court and that the court had become part of the child protection service and the wider child welfare system” (Brown, 1997, p. 4).

Their study found that child abuse cases constituted 5% of all children’s matters within the Court’s total workload. However, as a proportion of cases this figure grew to 50% at the possible mid-point of proceedings. They are therefore a significant part of the Court’s workload with considerable intervention from the Court and are an integral part of the Court’s work.

Brown’s study (1998) also highlighted the serious nature of the abuse, most commonly multiple forms of abuse, a low rate of false allegations, a high incidence of other family violence and an interrelationship between other family violence and child abuse (Brown et al, 1998).

“The most common form alleged in the Family Court was multiple forms of abuse, particularly physical abuse and or sexual abuse and witnessing violence” (Brown et al, 1998).

**Dynamics of Child Sexual Abuse, Domestic Violence Within the Separating Family**

There are a number of different scenarios which can lead to a child sexual abuse allegation being raised in the context of the separating family and thus in the context of disputes over residence and contact in the arena of family law.

One possible explanation for sexual abuse allegations being made in the context of divorce and custody/access disputes is that the separation may result from a disclosure of child sexual abuse (Faller, 1991). Faller (1991) asserts that one half of the women who find that their husbands are
sexually abusing their children divorce them. In these circumstances it is likely that the sexual abuse will not be revealed to any authorities, and it is only when the offender seeks access to the child that the mother discloses the sexual abuse, thus raising suspicions about the timing of such allegations.

Once separation has taken place children are more likely and more willing to disclose abuse. There are several reasons abused children may be more likely to disclose abuse by a parent and to be believed by the other parent following separation and divorce.

Children who are sexually abused sometimes experience a sense of responsibility for keeping the family together and feel obliged to endure their role in the family dynamics. This pressure dissipates when family splits (Fahn, 1991). There is also diminished opportunity for the abusing parent to enforce secrecy, and increased opportunity for children to disclose abuse separately to the other parent. The child may feel safe to report because the perpetrator is out of picture and no longer able to punish him/her for disclosure (Faller, 1991).

A child may disclose abuse when she/he realizes that despite the separation she/he will continue to have unsupervised contact with the abuser during access. Thus, fear of access visits alone with an abuser may lead to a disclosure of sexual abuse (MacFarlane, 1986).

The presence of an abusive marital relationship may delay disclosure of child sexual abuse until after separation or divorce (Elterman and Ehrenburg, 1991).

The situation of divorce may also lead to sexually abusive behavior occurring. Salter (1988) argues that a considerable amount of sexual abuse does occur after divorce.

Two possible scenarios have been proposed regarding sexual abuse occurring following separation and divorce. Firstly, the trauma and emotional loss resulting from separation and divorce may lead a potential offender to turn to his children for emotional support, leading to dependence on children as partners. This relationship can then become sexualized by the parent (Faller 1991).

The second scenario proposed is where separation can lead to strong feelings of anger on the part of the father. This anger can then be directed toward the child through the vehicle of sexual abuse. Upon separation, no longer able to control his partner through direct domestic violence, the abuser sexually abuses the child to punish the mother. Faller (1991) warns that this particular situation may result in physical harm to the child.

What has been highlighted is firstly that the connections between domestic violence and child sexual abuse have historically been missing in our analyses of the dynamics of these two different forms of abuse. As a result, this artificial separation of the issues of violence experienced by children and their mothers has led to a failure to take into account the context in which these abuses occur and how this may influence disclosure and assessment of abusive behaviours (Humphries, 1997).

When child sexual abuse is subsumed under the generic child abuse category the gendered dynamics of child sexual abuse and its links with the gendered nature of domestic violence are hidden (Breckenridge, 1999).

Research into separation and divorce and its impact on children has also failed to include knowledge about child sexual abuse and domestic violence, ignoring these as central concerns, which need to be addressed in the separating family.

By decontextualising the problem, current theoretical approaches minimise the importance of social and political strategies for change. This has led to a failure of legal and child protection systems.
System Responses to Allegations of Domestic Violence, Child Sexual Abuse in the Context of the Separating Family

Legal Aid Problems

Federal Government’s cuts to Legal Aid, which have occurred over the last few years have had a negative impact on women’s’ abilities to protect themselves and their children within Family Court proceedings (Rendell et al, 2000).

In Family Court matters, legal aid is mostly provided to women and children (Hunter, 1999). Parker (1999) states:

“…it is highly likely to be legally aided female clients who seek the assistance of the Family Court to protect children from experiencing violence directly or indirectly and to protect themselves from domestic violence. The less cautious approach of the Family Court since the Reform Act to matters involving allegations of violence, particularly at an interim level, combined with the restrictions to the provision of legal aid since 1996, have…created the potential for the interests of children involved in Family Court disputes to be severely compromised” (Parker, 1999).

Rendell (et al, 2000) argue that the Legal Aid Services is “permeated by the pro-contact culture” (p.69) and based on the assumption that contact with a non-residential parent, regardless of allegations of family violence, will be ordered by the Court. Therefore women who wish to prevent or restrict contact are discouraged from doing so and the possibility of legal aid funding to litigate contact arrangements is unlikely.

“Some focus group participants were told by their solicitors that it would be impossible to get a ‘no contact’ order or that LAQ (Legal Aid Queensland) would not fund such proceedings and they would have to reach an agreement for contact” (Rendell et al 2000, p.69).

‘Right to contact’ Principle

The Family Law reform Act (1995) came into being in 1996. The main changes are contained in the new Part VII. The relevant principles provide that children have “the right to know and be cared for by both their parents” and “a right of contact” with both parents (Rhoades et al, 1999).

Section 68K also states that the Court must consider any risk of family violence.

Predictions of Women’s Legal Services and other women’s groups made during the drafting and passing of the Family Law Reform Act in 1994 expressed concern about the misuse of the concepts of ‘shared parenting’ and ‘child’s right to contact with both parents’ (Rendell et al, 2000).

“Although the intention of those concepts was to enhance the possibility of both parents continuing to play an active and positive role in their children’s lives, lawyers, social workers and counsellors foresaw the likelihood of those ideas instead providing a basis of on-going harassment and litigation by violent men against their partners” (Rendell et al, 2000, p. 22).

Changes to the Family Law Act in Australia were influenced by the development of the Children’s Act in the UK (Rhoades et al 1999). Research into the development of the pro-contact legal culture in the UK by Smart (1996) demonstrated that violence against women and children is hidden in decisions about contact because of the pro-contact values in family law (Rendell et al, 2000).
Rendell (et al, 2000) examine evidence that contact with fathers is in children’s best interests and claim that such evidence is ‘mixed and inconclusive’ (p.44) and show that there is much stronger evidence that the:

“…effectiveness of the residential parent and the protection of children from exposure to parental conflict are clearly related to better outcomes for children” (p.44).

Rendell (et al, 2000) cite research conducted by Griffith University in Brisbane (1997-99) which found that changes to the Family Law Reform Act had led to an increase in the number of contact applications and an increase in the amount of contact sought.

Research by Rhoades (et al, 1999) into the Family Law Reform Act 1995 show that the Reform Act’s ‘right to contact’ principle has been given greater emphasis by most practitioners and judges than the family violence aspect of the reform. Their research found that the rate of orders refusing contact at an interim hearing has declined dramatically since the introduction of the reforms.

“Although the majority of interim contact applications involve allegations of potential harm to the child, usually because of domestic violence, it is now rare for contact not to be ordered at an interim hearing” (Rhoades et al, 1999, p. xviii).

Rendell’s (et al 2000) confirmed this trend concluding that contact with the non-residential parent was the “starting point” for the family law system, even when there were allegations of severe domestic violence.

“The experience of the focus group participants and the survey respondents suggest that the Family Court tends to make decisions which maintain children’s contact with their fathers”(Rendell et al, 2000 p.46).

It is apparent that it is rare for contact between a parent and their children not to be ordered at an interim hearing. This is regardless of the possibility of domestic violence or child abuse. Many of the respondents in the research conducted by Rhoades (et al, 1999) commented on the use of the shared responsibility concept by one parent to harass or continue abuse of the other.

“Many solicitors noted that their current advice to parents who do not want their former partner to have contact with the children because of domestic violence is that they are unlikely to be successful in obtaining an order suspending contact at an interim hearing. Their view is that the court is now more likely to maintain contact until the final hearing unless the allegations suggest a risk of physical harm to the child”(Rhoades et al 1999 p.25).

This is supported by research into contact issues conducted by Rendell (et al, 2000) in Queensland:

“The AFC research tends to suggest that the post separation attitude of the mother towards the father’s ongoing relationship with his children may be given more weight by decision-makers than his violence and abuse towards herself and the children both before and after separation” (Rendell et al, 2000 p.109).

Interface Between Child Protection Systems and the Family Court

The major difference between State and Commonwealth legislation is the difference in public law disputes (State) and private disputes (Commonwealth). The applicant in State Children’s Courts is the Child Protection Authority. Within the arena of the Commonwealth Family Law Act both the applicant and respondent are usually parents and family members, which makes it a private dispute (Family Law Council, 2000).
A number of concerns have been raised regarding the division of legislation in relation to children between the State and the Commonwealth. In the Family Law Council Discussion Paper No. 1(1998) they state that this raises “...the potential for such divisions to result in duplicated services, gaps, overlaps, lack of coordination and inefficiencies.” The lack of coordination between the two jurisdictions can create delays in deciding about a child’s future, the possibility of repeat interviews, and a potential increase in the risk of further abuse or damaging uncertainty for a child (Australian Law Reform Commission and Human Rights and Equal Opportunity Committee Report 1997).

Brown (et al, 1998) major study in Victoria and the ACT found that there was a tendency for cases to be referred to the Family Court by the State authorities, rather than handling the cases themselves. Thus the Family Court becomes involved in the child protection system.

Fehlberg and Kelly (2000) found a similar trend in their research. The most common outcome of the cases they studied was for the child protection authority to withdraw from Children’s Court proceedings because a ‘viable’ carer has been identified by protective workers and that carer was involved or about to be involved in Family Court action.

As Brown (et al, 1998) has pointed out:

“Victoria had a practice of bypassing the issue of substantiation in their reports if the child’s residential parent was not the perpetrator and the children protection services thought the residential parent has taken protective action for the child”(Brown et al, 2001, p. 118).

The implications are therefore that child protection matters move away from the public arena to the area of private dispute and the onus is then on the protective parent to prove/substantiate child abuse within the Family Court system. It should be pointed out that the Family Court is not an investigative body and does not have the facilities to fully and properly investigate allegations of child abuse. The ability of a protective parent taking action in the Court can also be hampered by problems with Legal Aid funding.

There appear to be systemic problems in the interface between State child protection systems and the Federal system of family law. In Brown’s (2001) study she found that the Court had difficulties in dealing with these cases largely due to the problematic nature of the intersection between family law and state child protection.

Child Protection systems have been shown to fail to investigate child abuse allegations if the matter is before the Family Court (Brown et al 2001, Hume 1996, Rendell et al, 2000), on the basis that there is no need for their involvement given that there is one protective parent, and leaving it to the Family Court to investigate the allegations.

**Myth of Vindictive Mothers**

There has been considerable debate in the arena of family law and child protection regarding the concept that child abuse allegations (particularly child sexual abuse allegations) that are raised in the context of separation and divorce are more likely to be false. However, research has not substantiated this position. In a research conducted in the Adelaide Registry (Hume 1996), results of the investigations into the child sexual abuse allegations show that child sexual abuse was confirmed at a higher rate to such allegations made to the South Australian statutory child protection agency.

Brown (et al, 2001) study found that most allegations were not false. Only 9% of the allegations were found to be false. These studies are reflective of similar overseas studies (Thoennes et al, 1988).
In both Australian studies (Hume, 1996 and Brown (et al 2001) there were a large number of cases where no child protection investigation was conducted. In the Hume study this was 34% of all cases in the study. In Brown (et al, 2001) study the state child protection service acknowledged fully investigating only 50% of the family court notifications.

The implications of such a myth being widely held both within the community and within the family law profession and the child protection field has serious consequences for children who have been subjected to abuse.

“Thinking that these disputes were probably based on false allegations arising out of separation, many legal and child protection professionals imagined that the disputes would resolve of their own accord, as many post-separation disputes are thought to do over time. Thus they say no immediate intervention as the preferred option.”(Brown et al, 2001).

As Brown (et al, 2001) summarise:

“The study shows that when professionals are involved in child abuse allegations in residence and contact disputes, they need to begin from the knowledge base this study provides. This is: child abuse allegations are no more likely to be false than in other circumstances; the abuse is serious abuse and often of several types; one of any number of possible family members is likely to be the perpetrator; it often takes place against a background of family violence; and authoritative intervention undertaken as soon as possible is the most useful intervention”.

Despite the research system responses to allegations of domestic violence and child sexual abuse appear to continue to be influenced by myths of ‘malicious’ mothers raising these issues as either a way to punish their ex-partner or to gain an advantage in family court proceedings.

Rendell’s (et al, 2000) research found that investigative agencies labelled mothers as malicious because they report their suspicions of sexual abuse.

“This may lead to her being disbelieved and may create a reluctance to carry out proper investigation” (Rendell et al, 2000 p.109).

This research also found that Legal Aid Services in Queensland tend to label women as being ‘unreasonable’ if they seek to limit their children’s contact with their father. As such this can negatively impact her chances of receiving legal aid. Women also suffer these labels being used in the Family Court.

“In the Family Court she may be described or perceived as ‘hysterical’, ‘paranoid’ and ‘prone to exaggeration’, depending upon the attitude formed by the child representative and the conclusion drawn by the experts” (Rendell et al, 2000 p.109).

Conclusion

There has been a long history of minimization and denial of both domestic violence and child sexual abuse, particularly as it occurs within the family. Rendell (et al, 2000) describe this minimisation as “invisibility” of family violence within both legal and welfare systems.

As a result the legal and welfare systems have failed to prioritise safety for children.

Current assumptions are that children’s interests are best met by maintaining on-going relationships with both parents following separation. This principle therefore continues to reinforce denial of child sexual abuse and domestic violence, despite research that both forms of abuse coexist in the separating family and are a core component in families in the Family Court system.
It is a principle that ignores past histories of family relationships.

For a woman in a violent relationship, where her children are at risk she is caught in an impossible impasse. Society places high expectations on “keeping the family together” in the interests of children. However if she stays in the abusive relationship, she may risk being labelled an unprotective mother. If she leaves the relationship, she is exposing herself and her children to escalating violence and abusive behaviour.

Both the legal system and the child protection system continue the minimization and denial of her assertions of domestic violence and child sexual abuse, and she risks being labelled as uncooperative and vindictive. She is compelled to continue to send her children on unsupervised contact visits where they are exposed to sexual abuse, and which places both her and the children at risk of violent behaviour at contact handover time.

By failing to take into account the connections between child sexual abuse and domestic violence, and by failing to recognise that there are legitimate and well-founded concerns about these forms of abuse occurring within the separating family, both the child protection system and family law have failed to provide protection for women and children.
Bibliography


Smart, C. (1996) *Losing the Struggle for Another Voice: The Case of Family Law*. *School of Sociology and Social Policy, University of Leeds, UK*


