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**“INDIA, INTER-COUNTRY PARENTAL CHILD
REMOVAL AND THE LAW”**
BY ANIL MALHOTRA AND RANJIT MALHOTRA

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The Context and Background of the key theme:

The book examines the legal challenges associated with international parental child abduction cases, particularly in the context of India. The authors discuss how there is an increasing number of Indians residing abroad and the resultant rise in transnational family conflicts, which often manifest as child custody disputes following separation or divorce. The authors emphasize India's need to adopt international legal frameworks like the 'Hague Convention on International Child Abduction to better address these issues.

This book makes a significant contribution to comprehending the complexities of cross-border parental child removal from an Indian viewpoint and lays the groundwork for exploring the potential in such instances. Also, it discusses how the Indian legal system is currently dealing with such cases the challenges faced by the left-behind parents, and the impact on child as well.

INTRODUCTION

The authors have eloquently presented the legal aspect of inter-country parental child removal in this book, by shedding light on the complex challenges faced by parents and children in a situation where there is no legal remedy for a child taken away from one country to another without the consent of another. In such cases of inter-country parental child removal, the legal system can be manipulated by one parent to gain an advantage over the other, leading to prolonged and emotional tussle in custody battles. The lack of consistency in international child custody decisions can result in harm to the child's well-being. Then what about the left behind parents well being? However,

while their analysis illustrates various facets of this kind of complex issue, it fails to critically engage with the implications of cultural relatives in the judicial processes spanning diverse legal systems.

This is significant as it underpins the very fabric of international child abduction jurisprudence. Furthermore, the author's approach to the international legal framework oversimplifies the intricate balance between parental rights and the welfare principle, often portraying the neglect of the nuanced realities faced by binational families. This review seeks to delve deeper into critical aspects, offering a more granular understanding than the current literature appears.

The review begins with Chapter I *Inter-Parental Child Removal- a bird's eye view* with 10 subchapters containing brief perspectives of the issue and different dimensions of the problems in the Indian legal context. Chapter II *Inter-Parental Child Removal Law in India* and Chapter III *To Return or Not to Return: Hague Convention vs. Non-Convention Countries* cover various issues relating to the implications of foreign court judgements and possible safeguards to ensure the return of children to their foreign homes. The analytical compilation included the 16 Supreme Court Judgements on the subject matter, along with a few key decisions laid down.

Chapter I Inter-Parental Child Removal- A Bird's Eye View

- A. Pulling children across different Continents provides content reflecting a concern regarding inter-parental child abduction in India. When parents separate and settle on different continents, child custody disputes can become an international issue. Now, taking India's largest population in the world, the scope of such conflict is considerable under such circumstances. The typical legal remedy involved is filing a Habeas Corpus Writ with the High Court or the Supreme Court seeking the return of the child based on a foreign court order or due to the violation of parental rights.
- B. Indian Dilemma on Inter-Parental Child Removal outlines the increasing complexity of family and legal matters stemming from the ease of international travel in today's globalized world. Children worldwide are being raised in an environment filled with both opportunities and risks, including the potential danger of getting caught up in cross-border custody disputes. Due to the lack of consistent legal resolutions across different countries, parents involved in acrimonious marital disputes may unilaterally choose to relocate their children across international borders without proper legal consent from courts or the other parties. This often leads to conflicting legal proceedings in various countries.

- C. Signing the Hague Convention for children's sake, the Supreme Court considers a foreign court's custody order but does not solely rely on it. Unlike any other country Indian courts face difficulties in adapting to foreign court orders due to differing legal systems and jurisdictional boundaries, it also encompasses the evolution of custody disputes due to the growing instances of children being removed across national borders by one parent without the consent of the other, This reflects a two-way issue, with children being brought to and taken from India, highlighting a significant gap in the legal system.
- D. No Voice for the Child, raise emphasizes the necessity for more effective legal frameworks that prioritise the well-being of children and aim to address the inherent complexities in cross-border custody disputes. There are concerns about children's rights within the legal system and the global need for sensitive handling of international custody matters.
- E. The Inter-parental child removal is the dark side of the moon, this phrase does lead to a myriad of legal, emotional and psychological issues for all the parties involved, especially the child. Fresh Directions in a Custody battle after 2011, has laid down principles and created a precedent which is bound to have a wide-ranging impact. But no quick or fixed solution for the same.
- F. The need for uniform law, as inter-state child abduction, is a crime in India but inter-country has been not defined in any legislation.
- G. The three specific areas in the realm of divorce law are of main concern to Non-Resident Indians (Page 25) for irretrievable breakdown of marriage under various Acts.
- H. The content also points out that the law applied in these situations is usually that of the country where the child is currently located. For the parent who is left behind seeking legal recourse involves navigating the foreign country's legal system, which can be complicated by visa issues or substantial financial costs and unfamiliarity with local legal procedures. Without any governing international legal framework or treaty. This gap in the international legal system regarding child abduction highlights the distress and obstacles faced by aggrieved parents.
- I. 'A bird's eye view' delves into legal challenges surrounding the international and inter-parental abduction of children within the context of India. The report discussed the law commission's involvement after receiving a reference from Panjab and Haryana High Court to examine various issues related to abductions in family disputes.
- J. It also promotes India's accession to the Hague Convention as a means to restore stability in cases of international country of residence. The document argues that this approach would enable courts more familiar with the child's living conditions and environment to

make informed decisions regarding their welfare. This review emphasizes the crucial need for India to establish a statutory framework aligned with international standards to protect the best interests of children involved in cross-border custody disputes.

Chapter II Inter-Parental Child Removal Law in India

- A. The introduction outlines how increased global connectivity and mobility have led to a rise in international relationships and subsequently, cross border family disputes. It emphasizes the heightened risk of international child abduction in such scenarios. Child removal is not clearly defined in Indian legislation but conventionally understood as moving a child away without the other parent's consent or legal authorization, imparting the custodial rights of that parent. Article 3 of the Convention on the civil aspects of international child abduction signed at the Hague Conference 1980 has defined removal or retention wrongful.
- B. There are global solutions and remedies as the authors bring to the notice about the Hague Convention on Civil Aspects of International Child Abduction. In which the objects of the convention are:
- i. *To secure the prompt return of children wrongfully removed to or retained in any contracting state; and*
 - ii. *to ensure that rights of custody and of access under the law of one contracting state are effectively respected in the other contracting states.*
- C. Various cases laws have been dealt under this chapter and factors on which court has granted custody order like visiting rights cannot be denied, orders relating to custody of children are interlocutory in nature, Habeas Corpus can also be issued by a person who is not a citizen of India, Welfare of the children is the paramount consideration in deciding custody matters.
- D. The authors have provided with suggested possible steps which can be adopted by foreign courts as conditions to secure the return of children visiting India on temporary movement from their foreign homes.
- i. *Notarised Agreement between parties before leaving the foreign jurisdiction.*
 - ii. *Placing of Notarised Agreement before foreign court and its Embassy in India.*
 - iii. *Documents of Indian Guarantors be furnished to the Foreign Embassy in India.*
 - iv. *Caveats be filed before Guardian Judge/High Court in India.*
 - v. *Advance Prior Intimation/Confirmation from Foreign Embassy in India.*

vi. *Advanced Interim to Indian Embassy/Consular Office in the Foreign Jurisdiction.*

E. The authors have also about the effectiveness of any such Safeguards/Safety Measures.

Chapter III To Return or Not to return: Hague Convention vs. Non-Convention Countries

Malhotra points out that international mobility has increased, leading to a rise in relationships between individuals from different cultural and national backgrounds. This, in turn, has led to a new set of risks for children caught in cross-border disputes following the breakdown of a relationship. It also highlights the issue of how child removal is defined and the nuances of what constitutes parental child abduction. Without a clear legal definition, actions may vary between being seen as abduction or as a custodial right by different legal systems. Overall, it provides a thorough analysis of the challenges faced by families and legal systems in addressing international child abduction, particularly emphasizing the plight of child and parents in non-convention countries.

CONCLUSION

In conclusion, the book "India, Inter-Country Parental Child Removal and the Law" by Anil Malhotra and Ranjit Malhotra provides a comprehensive analysis of the legal issues surrounding inter-country parental child removal in India, highlighting the need for a more balanced approach that takes into account the best interests of the child and the rights of both parents. Future research in this field could explore the impact of international treaties and conventions on inter-country parental child removal in India and the role of alternative dispute resolution mechanisms in resolving these complex legal issues. Additionally, examination of the cultural and social factors that influence inter-country parental child removal in India could provide valuable insights for policymakers and legal professionals.