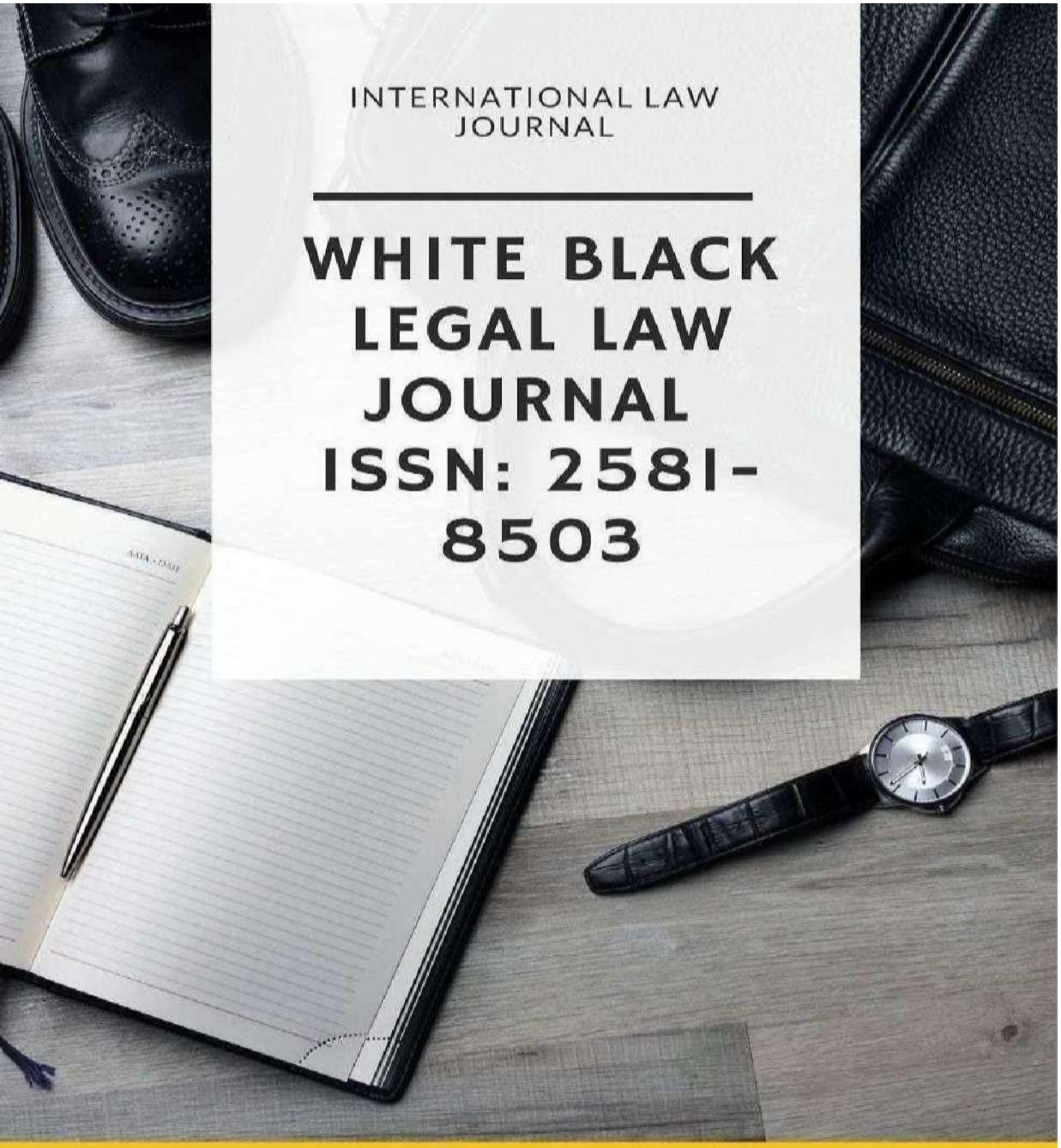

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JURISDICTIONAL PLURALISM AND THE TRANSNATIONAL CONSTRUCTION OF FAMILY: A STUDY OF CHOICE OF LAW CONCERNS IN INTER-COUNTRY ADOPTIONS

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ABSTRACT

Inter-Country Adoption (ICA) is a social phenomenon wherein, the prospective adoptive parents adopt a child whose nationality is different from that of theirs, by virtue of certain legal process of the either jurisdictions. The permanent residence of the child is changed to that of the adopters. In simple terms, the parental rights get legally transferred across the borders, from the births parents to the adoptive parents. The process of inter country adoption is characterized by a web of multi-party interests which becomes more complicated particularly when the Private rights of the different actors involved are governed by different laws and forums. Almost always, there arises a conflict pertaining to the recognition of the validity, status and effects of a foreign adoption due to issues associated with 'choice of law' and 'exercise of jurisdiction'. The significant increase in such problems arising out of the conflict of laws (in the matters of adoption) in the practice of the courts, has resulted increased prominence of the Private international law of adoption in the present century. With prolonged efforts, the international community by virtue of the 'Hague system of adoption' has laid out procedures to both regulate the process of inter country adoption and to protect the private rights of the parties involved by enabling 'reciprocity' between the nations so as to limit the conflict between the laws to the most possible extent. As a result, both the international and domestic legal regimes witnessed a series of remarkable legislative, policy and judicial decisions have given rise to extensive and constructive developments in the law concerning the subject. The paper studies the concept, modalities and most importantly the general character of 'Inter Country Adoption (ICA)' which gives rise to the conflict in the laws across borders. The international legal framework and the corresponding policy changes in India and few other common law jurisdictions have been studied.

KEYWORDS: Inter Country Adoption, Choice of Law, Jurisdiction, Reciprocity

The social institution of adoption has historically been oriented around the aspect of securing the continuation of family legacy. However, it has evolved to have its focus shifted towards the provision of parental relationships for the children without natural parents. Thus the rationale behind the concept of adoption shifted from '*pateria potestas'*[1] to 'child's welfare paramountcy'.[2] Inter country adoptions ideally centre on the principle of ensuring familial protection and welfare of the children who are the wards of the state.

The history of Inter Country Adoptions dates back to the Second World War. The wartime casualties that orphaned many children, the migration of the refugees across the borders and the willful abandonment of children across the borders coupled with famines and other calamities resulted in the cross national adoptions of many unfortunate children by those belonging to the developed nations, especially the Americans.[3] Orphan trains across the borders and the subsequent special needs adoptions, were common phenomena back then. From the early 1970s, factors such as the increased awareness on biological control, legalized abortion, high costs and the uncertain success rate of the artificial fertility procedures and the dearth in the domestic adoption opportunities resulted in a steep increase of the international and trans-racial adoptions. Orphaned children from the eastern countries like Japan, Korea and Vietnam were adopted by those from the west, on a large scale. From the 1980s, children from the countries like Peru, Colombia, Mexico, the Philippines, India etc have also been subjected to the cross-border adoptions substantially. Across the decades social up heal, poverty and stigma (both in terms of gender and legitimacy) remain to be the major reasons behind the phenomenon of ICA.

The European Seminar on Inter-Country Adoptions,[4] 1960 defined 'Inter-Country Adoption' as "*an adoption in which the adopters and the child do not have the same nationality as well as in which the habitual residence of adopters and the child is in different countries".*[5] Therefore, it is a social phenomenon in which the prospective adoptive parents adopt a child whose nationality is different from that of theirs, by virtue of certain legal process. The

[1] Lipstein .K, Adoption in Private International Law: Reflections on the Scope and the Limits of a Convention, The International and Comparative Law Quarterly , Jul., 1963, Vol. 12, No. 3 (Jul., 1963), pp. 835. Accessed at: https://www.jstor.org/stable/756292
[2] *Id*. at 849
[3] The Family Nobody Wanted, *Readers' Digest* article entitled *"Our 'International Family'*, 1949, Accessed at: https://pages.uoregon.edu/adoption/topics/familynobodywanted.html
[4] European Seminar on Inter-Country Adoption, Leysin, Switzerland 22-31 May 1960
[5] Ernst; et al. Rabel. Conflict of Laws: A Comparative Study (1945)

permanent residence of the child is thence changed to that of the adopters'. Simply, the parental rights get legally transferred across the borders, from the births parents to the adoptive parents. Therefore 'inter country adoptions can be associated with twin characteristics- 'change in the nationality of the child' and 'establishing a cross cultural relationship'.

In law 'Inter-country' could either be 'reciprocal adoptions' or 'non- reciprocal adoptions.[6] In case of 'reciprocal adoptions', an adoption which takes place in one country would be recognized in the other and vice versa, eliminating the complexity and multiplicity of proceedings. They generally result from bilateral or multilateral understandings. Hague adoptions exemplify such adoptions. Further, in case of 'non-reciprocal adoptions', the inter country adoptions are effected in a multi process wherein, the child is first adopted in the country to which he belongs to, so that he could be moved out of its jurisdiction; and then is required to be adopted all again as per the legal formalities of the receiving country. In the both cases however, special compliance have to made and special permissions have to be gained in both the countries in order to accomplish a valid adoption.

The Historic Problems Pertaining to the Conflict of Laws

Just like in any case of 'conflict of laws' the subject of 'inter-country adoption suffers from three fundamental problems. One- the 'choice of law'; two- 'exercise of jurisdiction' and three- 'the recognition of foreign adoption orders'. The same aspects present themselves as issues of concern, when the recognition of a foreign adoption is in issue. Further, the issues pertaining to the conflict as to the applicable inheritance laws often bring in a huge conflict during the adjudication of the private rights.

A. Jurisdiction to make Adoption Orders

Two types of approaches can be observed amongst the world countries. While some claim exclusive jurisdiction upon the satisfaction of the required criteria, others keep their courts open to all, with very few limitations. In the systems where exclusive jurisdiction is claimed, the criteria is decided by the express legislations in the absence of which the common law criteria such as the place of residence of adopted child[7] or the place of

[6] Erwin Spiro , Adoption and the conflict of laws, The Comparative and International Law Journal of Southern Africa , JULY 1983 , Vol. 16, No. 2 (JULY 1983), pp. 245. Accessed at: https://www.jstor.org/stable/23246582
[7] Finland, Law of December 5, 1929, Article 29

residence of the adopting parents.[8] are relied upon. Besides, other qualifications as deemed fit might be added by the countries. According to the ***English Adoption Act of 1958***, in order to exercise exclusive jurisdiction, the adopters must be domiciled in either England or Scotland and all the parties to adoption must be the residents of the nation.[9] The ***German adoption law*** exercises exclusive jurisdiction on the adopters with German nationals[10] However, it offers open courts to the others if their personal laws do not claim exclusive jurisdiction. The ***French law*** and ***Belgian law*** however exercise exclusive jurisdiction over their nationals and over the adoptions by aliens happening in their countries as well. The approach has been adopted other countries like ***New Zealand***,[11] ***Denmark***[12] and several states in ***Canada***.[13] Many common law jurisdictions and few civil law jurisdictions, law lays liberal conditions and primarily the residence of either party creates jurisdiction.

B. Issues pertaining to the Choice of Law

With respect to the aspect of making choice of law, three types of approaches can be observed amongst the countries. In most of the countries, the adopter's personal law is applied to determine validity and the effects of adoption. Such countries might however demand the consents required by the adoptee's personal law as well (as in case of ***Hungary***[14] and ***Chezhoslovakia***[15]). Several treaties between the socialist countries facilitate such approach.[16] Another approach resorted to by few countries such as ***China***[17]and ***Norway***[18] is the reliance on the jurisdictional aspects to determine the choice law. Jurisdiction would be exercised if the adoptor is domiciled there and the *lex fori* is applied then. The third approach as followed by the countries like ***Greece, Japan, Finland***[19] ***etc.*** is placing a cumulative reliance on the personal laws of both

[8] Nordic Convention of February 6, 1931, Para.11; Sweden Law of December 31, 1931, Para. 11 Switzerland, Law of June 25, 1891, art. 8.
[9] Adoption Act, 1958, ss. 12 (1), 53. *Cf.* Griew (1959) 8 I.C.L.Q. 569.
[10] ***Re an Infant*** (1933) 34 S.R. (N.S.W.) 349; ***Re R.M.I***. [1959] V.L.R. 475; ***Re X, an Infant*** [1960] V.L.R
[11] New Zealand Adoption Act, 1955, Sec.3(1)
[12] Denmark, Law of Adoption, 1956 (No. 140)
[13] Ontario Revision. Statutes, 1960, Sec. 63
[14] Hungary Decree No. 23/1952, Article. 18,
[15] Czechoslovakia, Law of March 11, 1948, para. 30
[16] German Democratic Republic-Poland, February 1, 1957; North Korea-U.S.S.R., December 16, 1957, art. 33; Poland-U.S .S.R, December 28, 1957 etc.
[17] Adoption Act, 1958, s. 1 (1) and (5)
[18] Adoption Act, 1950, s. 34 (8)
[19] Finland, Law of December 5, 1929, Art.icle 24;Greece, Civil Code 1940, Article. 23; Japan. Law of 1898, Article. 19; Bustamente Code, 1928, Artlicle 34.

adoptor and the adopted person for determining the validity and effects of the adoption, Sometimes only validity is determined in such a manner leaving the effect to the *lex fori* or the personal law of the adopter. In such cases, the countries decide on the question of what law will prevail in case of any conflict between l*ex fori* and personal law of adoptor.[20] In most systems *lex fori* is applied whether as personal law or not.

In the ***French law***, if the parties are from different nationalities, the adoptees personal law is applied.[21] However, if one of the parties is a French national, then French law applies exclusively. This approach is adopted by the ***Belgium courts***[22] as well.

C. <u>The Problem of Inheritance: Lex adoptionis Vs Lex successionis</u>

It is important to determine the law applicable for determining the rights of inheritance in cross-jurisdictional adoptions so as to refrain the adoptees from claiming succession rights from both adoptive family (by relying on lex successionis) and natural family by relying on (lex adoptionis).

The question is pertaining to the choice of law between the law governing the adoption and the law governing the succession in determining the succession rights of the claimant. The validity is determined by virtue of the law of the foreign land wherein adoption is made and by virtue of the broad principles of the private international law governing the subject. It is then that the question of inheritance comes in, which however, is to be governed by the domestic law strictly (*lex successonis*). The same is the common law practice in the ***U.S. courts***[23] and the ***English courts***[24] as well. All in all, laws should be applied cumulatively in order to decide the substantive rights of succession.

D. <u>Recognition of Foreign Adoptions</u>

The countries which claim exclusive jurisdiction over adoptions upon the satisfaction of grounds like the parties involved are the nationals of the country or residents of the country or domiciled in the country, do not in general recognize any foreign adoption that contravenes

[20] ***lr1unna v. Evola.*** ,C.A. Palermo, 1945; ***Re Lee Beam***, C.A. ,Brescia, 1954
[21] ***Ponnouncannemale v. Nadimoutoupoulle,*** Cass.Req., April 2, 1931
[22] Belgium: Law of March 22, 1940.
[23] ***Calhoun v. Bryant*** (1911) 28 S.D. 266, 283; ***Anderson v. F rench*** (1915) 77 N.H. 509, 510, 511; ***Hood v. McGehee*** (1915) 237 U.S. 611, 615
In Robertso v. Iv es (1913) E .L .R. 387, 15 D.L .R. 122,

such exclusive jurisdiction. However, according one approach, those foreign adoptions which were carried out in compliance with the broad principles of private international law, or were carried out in such a manner that, had they occurred in the receiving country, they would have been entitled for recognition; then countries might adopt a liberal approach in determining their validity and effects.

Recognition is also refrained incase of non-compliance with certain formalities such as registration, official permissions or the requirements mandated by the personal laws of the parties. Most of the ***European countries*** including the ***United Kingdom***[25] have treaty established policy frameworks to effect the recognition of foreign adoptions. ***Canadian***[26] and ***New Zealand legislations***[27] provide for the conditions like the equivalence of the adoption effected abroad with the domestic adoptions.

Efforts to Eliminate Conflicts - The Hague Convention on Adoption, 1993

With the steep increase in the cross–national adoption culture, the international community strived towards establishing a robust regulatory framework that would control and coordinate the cross border adoptions across the nations. Though the fundamental ethical principles about child welfare have been long established by the Child rights Convention of 1989,[28] the specific implementation pertaining to the aspects of child protection and safety in case of Inter country adoptions had been left to the latter agreed 1993 Hague convention.[29]

The Convention on Protection of Children and Co-operation in Respect of Inter country Adoption, 1993 has set twin objectives. One, to safeguard the interests and the fundamental rights of the children being subjected to inter country adoption and the other, to establish a system of coordination and cooperation between the member states and secure the compliance of the states in implementing the safeguards (as according to their obligations under the provisions of CRC), so as to check the activities like child trafficking, sale and abduction etc.

The Hague system requires the member states to establish a central authority whose function

[25] The English Adoption Act,1958
[26] The Ontario Revision Statutes,1960 S.53
[27] The New Zealand Adoption Act, 1955, S.17
[28] Article 21 of the UN Convention on the Rights of the Child, 1989
[29] Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Concluded 29 May 1993)

is to regulate the inter-country adoptions in the country by coordinating with its counter parts in the other member nations. The domestic adoption agencies or the child care agencies should get duly registered with the authority which further facilitates any communication to and from the prospective adoptive parents. On the other end, its counterpart in the receiving country would both monitor and assist the prospective parents throughout the process and ensures their compliance with the required formalities. Therefore at both the ends a water tight and fully regulated nodal points effect smooth and safe adoption of the child.

The Hague convention profoundly advocates the "Subsidiary principle"[30] according to which a child could be considered for an ICA only after exhausting all the efforts to place him in a family belonging to the home country first. Further, as per the "Best Interests principle" no adoption could be made unless and until it is in the best interest of the child and the child's informed consent (if he is of sufficient age) is given unequivocally. Any kind of financial inducements are absolutely barred. Other note worthy provisions are; the invalidation of the private adoptions, barring any contractual relationship between the natural parents/guardian/care takers and the adoptive parents and the validation and mutual recognition of all the Hague country adoptions, by default.

Implementation of the procedural framework under the Hague Convention is monitored by the 'monitoring commission' the recommendations made by which are advisory in nature. Currently there are 101 signatories to the convention. However, what is unfortunate is that, though most the receiving countries are parties to it, very few origin states are its signatories, making the implementation of the 'Reciprocal provisions' very difficult.[31] More problematically, most of the states of origin from which children are being adopted have either not accepted the Hague principles or are at a very early stage of implementation.

Adoptions in/ from the non-Hague countries do not enjoy the benefit of 'reciprocity'. They are followed by subsequent procedures in the receiving country according the domestic laws there.[32] Therefore, such adoptions are effected in a multi process wherein, the child is first

[30] Asif Efrat, David Leblang, Steven Liao, Sonal S. Pandya, Babies across Borders: The Political Economy of International Child Adoption, International Studies Quarterly, The International Studies Association, Vol. 59, No. 3 (September 2015), pp. 615-628. Accesed at: https://www.jstor.org/stable/43868298
[31] Ernst; et al. Rabel. Conflict of Laws: A Comparative Study (1945)
[32] David M. Smolin, Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children (ExpressO Preprint Series, Working Paper No. 749, 2005).

adopted in the country to which he belongs to, so that he could be moved out of its jurisdiction; and then is required to be adopted all again as per the legal formalities of the receiving country.

The Non Hague adoptions are scarcely regulated private adoptions across the countries which are not the signatories to the Hague Convention. With high risk factors and scarce regulation, they pose deadly threats to the children in the form of illegal sale, trafficking, slavery, prostitution etc. Unfortunately, it is these countries which are playing active role by attracting the prospective adoptors from across the world, with their simple, quick and cost cutting procedures for effecting adoptions.[33] Unless universal membership is achieved, it is hard to safeguard the rights of the children across the globe from being abused and compromised.

Indian Law and Inter Country Adoptions

In India, it is the Hindu Adoption and Maintenance Act of 1956 that regulates the adoptions amongst Hindus, Jains, Sikhs, or Buddhists. Since the personal laws of Muslims, Christians, Parsis and Jews does not provide for adoption, the non-Hindus could only take the recourse of the Guardianship and Wards Act of 1890 which however confers a mere guardian-ward relationship which persists till the child attains an age of 21 years. Further, the provisions of the Juvenile Justice Act, 2000 provides for the adoptions of delinquent and abandoned children.

India has not formally acknowledged the concept of 'Inter Country Adoption' for a really long time. Earlier, all cross-border adoptions from India had been taking place in accordance with the provisions of the GWA as in the case of domestic adoptions by non-Hindus.[34] This position of law was however changed by the Supreme Court's judgment in the infamous ***L.K.Pandey's case[35].*** The Court has pointed out the glaring inadequacies in the law relating to inter country adoptions in India. It has emphasized that in the absence of an efficient regulatory framework, gross abuse of the rights of the Indian children is taking place across the borders. Subsequent to its consultations with the major child welfare agencies in the country, the Court has laid down a set of regulatory principles and procedures for safeguarding the interests of the children

[33] Lipstein .K, Adoption in Private International Law: Reflections on the Scope and the Limits of a Convention, The International and Comparative Law Quarterly , Jul., 1963, Vol. 12, No. 3 (Jul., 1963), pp. 835-849. Accessed at: https://www.jstor.org/stable/756292
[34] Vibha Sharma ,Inter-Country Adoptions In India - An Appraisal Source, Journal of the Indian Law Institute , July-December 2003, Vol. 45, No. 3/4, Family Law Special Issue (July-December 2003), pp. 543-554 accessed at: https://www.jstor.org/stable/43951880
[35] L.K. Pandey v. Union of India, AIR 1986 SC 272

against abuse, mistreatment or exploitation.[36] The order of preference laid down by the Supreme Court in the above case particularly reflects on one of the corner stones of the Hague conference- 'The subsidiary principle'.[37] In the light of the directional safeguards set by the Courts in several such judgments, the Indian Government issued the Guidelines for Adoption of Indian Children in the year 1995. The guidelines for the first time ever brought in a comprehensive framework to regulate the inter-country adoptions.[38]

India has become a signatory to the Hague conference on adoption in the year 1993 and has ratified it in the year 2003. Since then there have been some consequential and supplemental developments in law. The Juvenile Justice (Care and Protection of Children) Rules, 2007, provide for certain provisions pertaining to the regulation of inter country adoptions of the abandoned and surrendered children. However, it is the 2015 amendment of the JJ Act that has formally and comprehensively acknowledged and allowed the adoption of the Indian children by the parents belonging to the other nationalities. The 2015 Act has elevated the Central Adoption Resource Authority (CARA) as a statutory body and designated it as the nodal agency for the regulation of both in-country and inter country adoptions

Previously an autonomous society, CARA which was originally established in the year 1990, was until the enactment of the 2015 Act, a domestic society under the Ministry of welfare and social justice which regulated the domestic adoptions in India. Having designated by the 2015 Act as a statutory body working under the Ministry of Women & Child Development, and a nodal adoption regulation authority as per the provisions of the Hague conference, it now functions to regulate the inter-country adoptions (along with the in country adoptions) by coordinating with its counter parts in the other Hague nations.[39] CARA, with the help of the Child welfare agencies which are registered with it, has streamlined the profiles of the children who are legally available for adoption into an information database to both facilitate and record the activities pertaining to cross border adoptions. It aims at facilitating water tight and fully

[36] Adoption, NDTV, May 4, 2012, available at :http://www.ndtv.com/article/india/supreme-court-issues-notice-to-centre-onbanning-inter-country-adoption-206511
[37] [37] Erwin Spiro , Adoption and the conflict of laws, The Comparative and International Law Journal of Southern Africa , JULY 1983 , Vol. 16, No. 2 (JULY 1983), pp. 242-255. Accessed at: https://www.jstor.org/stable/23246582
[38] Vibha Sharma ,Inter-Country Adoptions In India - An Appraisal Source, Journal of the Indian Law Institute , July-December 2003, Vol. 45, No. 3/4, Family Law Special Issue (July-December 2003), pp. 543-554 accessed at: https://www.jstor.org/stable/43951880
[39] ***Mr. Craig Allen Coates v. State through Indian Council for Child Welfare and Welfare Home for Children***, 162(2009) DLT 605

regulated mechanisms to effect smooth and safe adoption of the child According to the Guidelines Governing Adoption of Children, 2017, the Indian children legally available for inter country adoption are- the orphans[40], the abandoned children[41] and the surrendered children.[42]

Law in the other Common Law Jurisdictions- The U.S And U.K

In the U.S, the modalities and procedures pertaining to Inter country Adoption are regulated by the Inter Country Adoption Act of 2000. The Act implements the regulatory framework devised by the Hague Convention and accepts the status of Adoptions which have been made in other Hague nations according to the broad principles of International law. U.S has also effected certain domestic policies that designate the adopted child's legal status pertaining to the residence and citizenship. In case of the adoptions from the non-Hague countries, a number of issues arise pertaining to the aspects of choice of law, jurisdiction, recognition and validation, Effects and status etc. [43] due to lack of benefit of reciprocity. etc. However, accounting its federal structure, the situation is a tad more complicated as the status of the adoption has to be determined corresponding to the state and the federation as well.[44]

The law of the United Kingdom is pretty much the same, albeit a bit less complicated. Inter Country adoptions in the U.K. are governed by the provisions of the Children and Adoption Act of 2006. Under the Act, the Inter Country adoptions are classified into types; the Hague adoptions, the Designated list adoptions and the other adoptions.

The Hague adoptions are governed by the regulations established and the principles recognized by the Hague convention. They are validated by default and there is no need to re-adopt the chill as per the and there is no need to readopt the child in the UK. Also the child would be granted the citizen ship if both the adopters are the residents of the country with one of them

[40] Rule 6, Guidelines Governing Adoption of Children, 2017, CARA, Ministry of Women and Child Development, Government of India, available at http://adoptionindia.nic.in/index.html
[41] Rule 7, Guidelines Governing Adoption of Children, 2017, CARA, Ministry of Women and Child Development, Government of India, available at http://adoptionindia.nic.in/index.html
[42] Rule 8, Guidelines Governing Adoption of Children, 2017, CARA, Ministry of Women and Child Development, Government of India, available at http://adoptionindia.nic.in/index.html
[43] Erwin Spiro , Adoption and the conflict of laws, The Comparative and International Law Journal of Southern Africa , JULY 1983 , Vol. 16, No. 2 (JULY 1983), pp. 242-255. Accessed at: https://www.jstor.org/stable/23246582
[44] David M. Smolin, Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children (ExpressO Preprint Series, Working Paper No. 749, 2005).

being a British citizen. Further, the Adoptions with respect to the countries listed in the Adoption (Designation of Overseas Adoptions) Order 1973 (the designated list) are also bound to reciprocity and are hence validated automatically without the need of re-adoption just like the Hague adoptions. However separate procedures have to be followed for securing the British citizenship. The other adoptions includes those from the countries which neither ratified the Hague convention, nor fall under the designate list. The child has to be readopted all again in accordance with the domestic law and should register under the provisions of the British Nationality Act 1981, for acquiring the British citizenship.

Challenges and the way ahead

The international community has made laudable efforts in effecting a robust procedural framework to enable a well coordinated global regulatory system that safeguards the interests of the children subjected to the inter-country adoption. Further, by effecting the 'arrangements of reciprocity' between the member states, certain issues pertaining to the aspects of conflict of laws, which were refraining the countries from 'recognizing or validating foreign adoptions' have been resolved to a great extent.

Also, as inferred in the above sections, the principles and the standards provided by the Hague system have been successfully incorporated into the Indian legal regime, with the collective efforts of the judiciary and the Union government. However, did the reforms turn out to be successful? If we look into the Indian scenario specifically, the answer may not be a desirable one. After almost three decades of having become the signatories to the Hague conference, two decades of having ratified it and more than a decade of incorporating a robust domestic policy, the ground reality is the fact that the incidence of the abuse of the rights of child is still very much persistent in the deadly forms like the cross-border purchase of babies and girls under the guise of adoption.[45] Further, malpractices like the underhand charging of extra money, child abduction due to inadequate monitoring procedures, falsification of the records for manipulating the authorities etc.[46] have been unfortunately prevalent in our country. On the flip side, the negligence of the authorities and the child welfare agencies in effortlessly issuing

[45] David M. Smolin, Child Laundering: How the Intercountry Adoption System Legitimizes and Incentivizes the Practices of Buying, Trafficking, Kidnapping, and Stealing Children (ExpressO Preprint Series, Working Paper No. 749, 2005).
[46] Lipstein .K, Adoption in Private International Law: Reflections on the Scope and the Limits of a Convention, The International and Comparative Law Quarterly , Jul., 1963, Vol. 12, No. 3 (Jul., 1963), pp. 835-849. Accessed at: https://www.jstor.org/stable/756292

the "free for adoption" certificates with respect to the adoption of the abandoned children without even trying to reach their natural parents is costing the entire lives of the involved children.[47] All these malpractices relate to aspects of surrendering of children, abandoned children's availability for adoption.

While pointing out the above realities, one cannot however question the credibility of the entire system. After the introduction of the 'Hague system', the regulation of Inter-country adoption is being implemented at in an air tight manner in almost all domestic regimes of the Hague countries. However, generally speaking we are yet to travel a long way to accomplish what we have desired to.[48] It is therefore necessary to work on the grey areas to develop the undeniably robust regulatory mechanisms. The following suggestions are made by the researcher in this regard.

-Strengthening of post adoption monitoring and coordination processes: One of the areas where there should be a significant improvement is the 'post adoption monitory procedures'. Though the framework specifically provides for elaborate post adoption procedures. In practice, the countries are facing significant problems mainly due to the issues in coordination. There has well coordinated monitoring system so as to double check the child's welfare. The immigration of the child should be closely monitored to prevent abductions or trafficking.

-Excessive regulations might be detrimental and should hence be limited: Though regulation is a requisite mechanism, excessive regulation might be counterproductive. It may deny both the child and the prospective adopters a chance to have something for which they have genuinely anticipated. Also excessive regulations might result in the increased incidence of malpractices.

-Sanctions to be imposed in case of violations and malpractices: The Hague system (and the Indian legal regime which implemented the Hague system) has undeniably provided for a set of holistic regulation procedures, however, stricter sanctions in case of violations are equally important to effectively restrict the private adoptions. In order to curb the mal practices, all that is needed is a system which secures strict compliance and penalizes the violations.[49]

[47] Ernst; et al. Rabel. Conflict of Laws: A Comparative Study (1945)
[48] John Triseliotis, Intercountry Adoption: In Whose Best Interest? in INTERCOUNTRY ADOPTION: PRACTICAL EXPERIENCES 123 (Michael Humphrey & Heather Humphrey eds., New York: Routledge 1993)
[49] Achina K., Ayushi K., An Overview of Intercountry Adoption with special focus on India, Bharati Law Review, Oct.–Dec., 2013, pg. 42

-Measures against Post adoption identity crisis: There are cases where the natural parents of adopted children bequeath their property to them in their wills. However, once a child goes overseas after adoption, it gets difficult to locate or identify him after a certain period of time. Also, the law is not clear if the adoptee to the property, in such cases or not. laws should be clarifying the ambiguities in such grey areas.

-Non-Hague countries should be encouraged to ratify the Hague Convention: The Non Hague adoptions are scarcely regulated private adoptions with high risk factors and scarce regulation, they pose deadly threats to the children in the form of illegal sale, trafficking, slavery, prostitution etc. there are also problems pertaining to the recognition and validation of the adoptions that took place in such countries.[50] The only way to resolve the issue is by encouraging more and more nations to enter the treaty.

Concluding Remarks

The process of inter country adoption is characterized by a web of multi-party interests which becomes more complicated particularly when the Private rights of the different actors involved are governed by different laws and forums. The significant increase in such problems arising out of the conflict of laws (in the matters of adoption) in the practice of the courts, has resulted increased prominence of the Private international law of adoption in the present century. With the prolonged efforts of the international community systems and procedures have been established to both regulate the process of inter country adoption and to protect the private rights of the parties involved by limiting the conflict between the laws to a most possible extent.

As a result, both the international and domestic legal regimes witnessed a series of remarkable legislative, policy and judicial decisions have given rise to extensive and constructive developments in the law concerning the subject. However there is much to be done. With positive coordination and cooperation, the countries across the world can evolve more holistic and integrated approaches for the best possible regulation of the 'Inter Country Adoptions'. At the end, it all sums up to the protection of the rights and interests of the children who behold within them the future of the human race.

[50] Elizabeth Bartholet, International Adoption: Thoughts on Human Rights Issues, BHRLR, available at http://www.law.harvard.edu/faculty/bartholet/PUB_BUF_IA_2007.pdf