

11 RMLNLUJ (2019) 65

Parental Child Abduction and Mediation in the Era of Globalization

PARENTAL CHILD ABDUCTION AND MEDIATION IN THE ERA OF GLOBALIZATION

by

Prem Kumar Gautam*

ABSTRACT

This is well said that a child is to be accorded protection just because he is a child. There is a societal responsibility to see that every child reaches adulthood as a normal human being without any drawback or inhibition. According to Justice, Mrs. Manju Goel —‘the ideal place for a child to be is a happy family with both mother and father. When a marriage fails and the mother and father fall apart, the child who is not a party to the matrimonial dispute is the poor victim. Often, the two parents fight over the custody of the child, each party trying to wean away the child while fighting litigation in courts’. Though the courts over time have evolved principles to determine which parent will get the custody of the child, the decisions of the courts do not have any similarity in this regard and judicial separation or dissolution of the marriage of the parents is a disastrous situation for a child. The woes of the child get aggravated when the parents residing in two different countries contend independently before the courts of the two said countries of the custody of the child and obtain conflicting judicial orders. The Hague Convention, though, constitutes a benchmark. However its implementation has not produced social justice for children. Parents who decided to live separately have more options for parenting matters without going to the court. Mediation is one of them. This is a new trend in family dispute resolution. If parents require aid to reach agreement, this method of family



Page: 66

dispute resolution known as mediation process may help them. The Hague convention on the child abduction provides legal framework for the alternate dispute resolution/mediation. This is the high time when the role of central government in framing the law and policy for children and the role of courts in child abduction must be discussed by the legal fraternity. There is a need to create a global network for international family mediation. In this article, the researcher will be discussing the issues of parental child abduction and the mediation process, keeping in mind the Hague conventions, role of courts, domestic laws, family structure, enforcement and cooperation of the countries/forums. The methodology would be doctrinal and analytical.

Keywords: Hague Convention, Child Abduction, Mediation, ADR, Law and Policy.

I. INTRODUCTION

A child is to be accorded protection just because he is a child. His birth within or without a lawful wedlock is hardly a factor to be taken into consideration. There is a social responsibility to see that every child reaches adulthood as a normal human being without any drawbacks or inhibitions.

The term “child” means a person who is below a certain age and not a major. The term ‘child’ is defined in different legal systems differently. In India, there are several

Acts and special laws stipulating age criteria for the term child. There is no uniform law on child in India. Children related laws are scattered in different act on the basis of subject matter. Further, '*Parental Responsibility*' is defined as "all the rights, duties, powers, responsibilities and authorities which by law a parent of a child has in relation to the child and his property."¹

According to Justice Mrs. Manju Goel²—'the ideal place for a child to be is a happy family with both mother and father. When a marriage fails and the mother and father fall apart, the child who is not a party to the matrimonial



Page: 67

dispute is the poor victim. Often, the two parents fight over the custody of the child, each party trying to wean away the child while fighting litigation in courts'.

Though the courts over time have evolved principles to determine which of the two parents is to be given the custody of the child, judicial separation or dissolution of the marriage of the parents is a disastrous situation for a child. A child needs care and attention. Bringing up of a child requires money. But the courts have held that money though important, is not the determinant factor. In fact, custody may be granted to the poor parent with a direction to the rich parent to provide maintenance to the child.

Judicial separation or dissolution of marriage of the parent is a disastrous situation for a child. The misery of the child gets aggravated when the parents residing in two different countries contend independently before the courts of the two said countries of the custody of the child and obtain conflicting judicial orders.³ On the other hand the *Hague convention* though constitutes a benchmark, its implementation has not produced social justice for children.

Prolonged and continuous delay in the courts remains a huge problem in the Indian judicial system. Cases taking several years to get resolved have resulted in parties losing faith in the system. Parents who are separating have more options for reaching agreement on parenting matters without going to court. If parents need help to reach agreement, the family dispute resolution 'mediation' may help. The mediator's role is to help parents make decisions that are in the best interests of their children.

Mediation is a non-mandatory process where a trained unbiased person make possible the deliberation between the disputing parties and lend a (helping) hand to them to find some satisfying solution. The mediation always provides a win-win situation. Win-win is a solution where no one is a loser and all the parties feel satisfied as they are mutually benefited. Mediation is an alternative process to resolve family dispute.

This paper will be analyzing the importance of the Hague convention on the civil aspects of international child abduction 1980, international family mediation process, its relevancy along with enforceability which will be discussed by the researcher including the role of Indian courts in the case of child abduction and the role of central government in framing laws and policy for international family dispute.



Page: 68

II. GLOBALIZATION AND ITS EFFECT ON FAMILY RELATIONS

Globalization is the main reason behind the international family dispute including

child custody and divorce. The Law Commission of India accepted the effect of globalization on nuptial relationships and child custody⁴.

Further, in its 263rd Report, the Law Commission of India mentioned that the world has become a global village. People from all cultures and backgrounds are moving from one corner of the world to another corner of the world and accepting and adopting the different cultures, traditions and legal system. Thus, people from different countries and cultural backgrounds have optimistically created family units and more than three crores of Indians live in the foreign countries, having cross border matrimonial relationships. When such a kind of diverse family units breaks down, children (sometimes infants) suffer, as they are dragged into international legal battle between their parents. Inter-spousal child removal can be termed as most unfortunate as children are abducted by their own parents to India or to other foreign jurisdiction in violation of the interim/final orders of the *competent* courts or in violation of parental rights of the aggrieved parent. In such an eventuality, the child is taken to a state with a different legal system, culture and language. The child loses contact with the other parent and is transplanted in an entirely different society having different traditions and norms of life.⁵

III. PARENTAL CHILD ABDUCTION/CUSTODY

Exploitation of a child by his parents is also a major concern in a child custody/abduction. Socio-economic condition of the family/parents is also a major issue in case of a child's welfare. India is home to the largest number of children in the world. The change in the perspective to perceive a child as the bearer of rights rather than as an object of welfare has tended to support such a development.

The doctrine of *parens patriae* has its roots in the English common law. This is a Latin term which means 'parent of the country'. During the late antediluvian period and in gothic times, there were several obligations as well as powers, collectively mentioned as the "royal prerogative," which were secured to the king. This 'royal prerogative' encompassing these obligations and powers constituted as the functions which were exercised by the king while playing the role of the father of his subjects and territory.⁶ Thus, the *parens patriae*



doctrine has had its greatest application in the treatment of children, mentally ill persons and other individuals who are legally incompetent to manage their affairs.

International parental child abduction/child removal can be understood as the removal of child by one parent from one country to another without the approval of the other parent. The removal of child in this regard comprehends an interference with the rights of a parent including the right to contact with the removed child. These acts of removal by a parent when challenged before a court of law have in the past invited considerable amount of perplexity specifically in the arena of the jurisdiction of courts and their competency. Although most of the states of the world (81) have become signatory to the Hague Convention on Civil Aspects of International Child Abduction, India is still not a signatory to this convention.

This is the high time for some international outlook in this context. The fact that India has not signed the Hague Convention in the Civil Aspects of International Child Abduction could negatively impact a case related to the custody of a child by influencing a foreign judge. In the absence of any guarantee which is offered by the Hague convention to the effect that the child will be swiftly returned to the country of origin, the foreign judge may be reluctant to give permission for the child to travel to

India. Conclusively, it is recommended that India should become a signatory to the Hague convention as this will bring the probability of facilitating the return of children to India, who have their homes in India.²

IV. INTERNATIONAL LAW AND POLICY

The different courts of the countries while solving the problem of child abduction or child custody have relied on the Hague Convention on the Civil Aspects of Child Abduction 1980³.

The objects of the Convention are —

- a. To secure the prompt return of children wrongfully removed to or retained in any contracting state, and
- b. To ensure that rights of custody and of access under the law of one contracting state are effectively respected in the other contracting state².

The Hague convention lays down that, when a court has jurisdiction over a child, the first question to determine is whether the Hague convention applies



Page: 70

to the case or not. So the conditions mentioned in the Article 4 of the convention must be satisfied before the convention applies—

'to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years'.¹⁰

There is an absence of any specific duty in The Hague Convention which directs courts of the member country in connection with the rights of access and therefore, it is apparent that the concern of access should be considered by the courts while keeping the best interests of the child as of supreme importance.¹¹

The preamble and object of The Hague Convention 1980 and the International Child Abduction Bill invoke the principle of '*best interests of the child*'. The principle of best interests of the child can also be found in the provisions of the convention on the Rights of the Child, 1989. India ratified the convention on 11th December 1992. The Juvenile Justice (Care and Protection of Children) Act, 2000, defines the term 'best interests of the child' in clause (9) of Section 2 as under 'best interest of child' means the basis for any decision taken regarding the child, to ensure fulfillment of his basic rights and needs identity, social well-being and physical emotion and intellectual development ¹². Both the conventions (1980¹³ and 1996¹⁴) recognize that the protection of children and the consideration of their best interests are of paramount importance.

A. Convention on the Civil Aspects of International Child Abduction, 1980

According to outline of the 1980 convention, the child abduction cases have grown continuously internationally because of various factors such as easy conduit to travel international lands with simultaneous rise in inter-cultural marriages and thereby, the increase in the instances of divorce. These cases have grave impact and repercussions not only for the parties solemnizing relationships but also for the children who are victimized because of such cases. The child is uprooted from his natural habituated home and restrained from making any contact with the other parent and concomitantly are brought to a completely novel and strange atmosphere with different cultures to which the child is a total stranger. The parties abducting the children cause them to be transplanted into a totally new state with different culture, legal system and most significantly, language. These distinguishing inter-state factors deprive



Page: 71

the party as well as the child to surpass the difference including the physical distance also and thus, ensure that the re-transplanting of the abducted victim becomes complicated and problematic.¹⁵

The Convention further maintains that aside from protecting rights of access, the object of the convention includes the protection of children from the ill-effects of cross-border abductions (and wrongful retentions) by providing a procedure created to seek the prompt return of children to the state of their habitual residence.¹⁶ The Convention prohibits, except under exceptional circumstances, the wrongful removal or retention of a child across international borders against his interests¹⁷, and further that if a child is returned to the State of his habitual residence, it would bolster his interests by upholding the right of a child to be in contact with both the parents¹⁸, and moreover it would support in a healthy continuity of the life of a child¹⁹, and by concomitantly assuring that any determination related to the issue of custody or access is done by the most appropriate court having regard to the likely availability of relevant evidence. The Convention also considers the principle of prompt return in the interests of children as it also serves as a deterrent to abductions and wrongful removals or retentions. The order of prompt return seeks the restoration of the status quo which prevailed prior to the removal and also to deprive the abducting or wrongful parent of any advantage which he would have gained by the wrongful removal or retention or abduction.²⁰

B. Protecting children and their rights

The Hague Convention, 1980 implements CRC articles 11²¹ and 35²² and thus, it helps to effectuate the fundamental rights of the child, such as those



Page: 72

expressed in CRC articles 9(3)²³ and 10(2)²⁴ and has been found in a multitude of court decisions of different countries of the world to be consistent with their constitutions, as well as with the regional and international human rights instruments.

Though during the last part of the 20th Century the opening up of national borders, ease of travel and the breaking down of cultural barriers have brought several advantages, there are also increased risks of child abduction cases considerably²⁵. There are children who are trapped in the turmoil of broken relationships with in transnational families, with issues related to custody and relocation along with the risks of wrongful abduction, and also the disputes concerning the maintenance of contact between the child and both parents, and the uphill struggle of securing cross-frontier child support²⁶.

The Convention on the Civil Aspects of International Child Abduction, 1980 under which many states now co-operate together to protect children from the harmful effects of their wrongful removal or retention abroad. The Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, 1993 designed to regulate inter-country adoption to protect the interests of the children concerned, is now in force in all major receiving countries and many countries of origin.

The Convention of 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of 'Parental Responsibility and Measures for the Protection

of Children', is much broader in scope than the first two, covering as it does a very wide range on civil measures of protection concerning children, from orders concerning parental responsibility and contact to public measures of protection or care, and from matters of representation to the protection of children's property. The Convention has uniform rules determining which country's authorities are competent to take the necessary measures of protection. These rules, which avoid the possibility of conflicting decisions, give the primary responsibility to the authorities of the country where the child has his or her habitual residence, but also allow any country where the child is present to take necessary emergency or provisional measures of protection.

The Hague convention is expressly intended to enhance the international recognition of rights of custody and access arising in the place of habitual residence, and to ensure that any child wrongfully removed or retained from that



Page: 73

place is promptly returned.²⁷ Each convention highlights the merits in finding amicable solutions article 7 (c) of the HC 1980 and Art. 31 (b) of the Hague Convention 1996.

V. INDIAN LAW AND POLICY

A. Jurisdiction

Nationality as a basis of jurisdiction still has some practical utility; the main objective of passing the order on the nationality is that they may not be effective in these cases where the child is outside the jurisdiction. The courts of the country where the child is residing may recognize such orders and give effect to them. The question of custody can be agitated both in the matrimonial proceedings as well as guardianship proceeding.

In the matrimonial proceeding, the court exercise jurisdiction over children, if it has jurisdiction in the petition for matrimonial relief, irrespective of the fact whether the child is within the jurisdiction or not, though the court has discretion to decide to exercise jurisdiction. In the guardianship proceedings, all matters relating to guardianship and custody can be agitated.

It seems to be clear that parental control can be exercised only in accordance with the law of the place where it is purported to be exercised. Thus, a foreign parent desiring to exercise his parental control over the child in India can do so only in accordance with the Indian law. The domestic law of India enunciates the principle that the sovereign as *parens patriae* is bound to look the welfare of all children within the jurisdiction.

For the purpose of private international law, nationality and ordinary residence are the two factors used as the basis for jurisdiction. In a large number of cases, Indian courts have exercised jurisdiction in matters of appointing guardians or committing custody of minors children on the basis of nationality of the minors, irrespective of the fact whether the child or the child's property is outside jurisdiction. There is no judgment in which Indian courts have assumed jurisdiction on the basis of domicile, but presence and residence within the jurisdiction have always been relevant factors.

The enactment of the Family Courts Act 1984 does not affect the jurisdiction of the high court in guardianship matters. It has been held that if under a separation agreement the custody of the child is entrusted to one of the parents, then the child is ordinarily residing with the parent who has been entrusted with custody of the child²⁸.



Page: 74

In *Bhola Nath v. Sharda Devi*,²⁹ it was held that if one of the parents removes the child and the other parents agrees, then the ordinary residence of the child is where the parent had removed the child. The Supreme Court of India has also reiterated the principle of welfare of child as the paramount consideration³⁰.

B. Choice of Law

In India, in cases so far the courts have applied *lex fori* for determining the issues relating to the guardian and custody of the children. The choice of law depends on the main matrimonial proceedings, but practice of countries to keep the welfare of the child as paramount consideration while awarding custody of minors, Indian courts exercise full discretion in recognizing foreign custody orders, to keeping welfare of the child as primary consideration while awarding custody of minors³¹.

C. Recognition of Foreign Custody Orders

The practice of Indian courts is to grant recognition and give effect to a foreign custody or guardianship order passed by a court of qualified jurisdiction that is, the court where minor is a national or having ordinary residence, except it is found manifestly to the disadvantage of minor.³²

The 218th Law Commission report distinguished the Wrongful Removal and Retention. Article 3 of The Hague convention which provides that the removal or the retention of a child is to be considered wrongful in cases in which —

- a. there has been breach or violation of the rights of custody ascribed to a party, either conjointly or otherwise under the legal arena of the country where the child was habitually resident forthwith before his removal or retention, and
- b. when the child was removed or retained, the afore-said rights were actually or would have been exercised, either conjointly or otherwise.

The distinction between child abduction from Inter country removal of children has been discussed in the 263rd report of the Law Commission of India. The Law Commission had recommended that the proposed draft bill demands revision by focusing in view of the aforementioned discourse, the legislative precedents and practices followed in the drafting of Bills, and to suitably harmonize its provisions with the Hague convention 1980.



The Commission (263rd report) had found that the Government of India has already prepared a draft of the Civil Aspects of International Child Abduction Bill, 2016. The draft was mostly in consonance and conformity with the Hague Convention, 1980. The aforesaid bill was uploaded on the website of the Ministry of Women and Child Development to make it available to the public at large and also that through it stakeholders may file their comments or make suggestions for improving the same.

VI. JUDGMENT OF FOREIGN COURTS

In *Cooper v. Casey*³³, it was held that the basis of determining the habitual residence of a child should be through the past experience of the child rather than the wish or choice or intention of the parents and also that a child could have only one place of habitual residence.

McGrath (Infants), In re,³⁴ Lindley LJ said: "The dominant matter for the

consideration of the court is the welfare of the child. But the welfare of a child is not to be measured by money only, or by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child along with his physical well-being must be considered. Also, the ties of affection cannot be disregarded."

In *Amanda Louise Thomson v. Paul Thomson*³⁵ the Supreme Court of Canada while dealing with the issues as to what should be magnitude of physical, moral or cultural harm explained that harm must be, "to a degree that also amounts to intolerable situations". It must be a 'weighty' risk of 'substantial' psychological harm. Something greater than that would normally be expected on taking a child away from one parent and passing him to another".

The United States Supreme Court in *Lozano v. Montoya Alvarez*³⁶, a Hague Convention 1980 case in US relating to domestic violence, recognized the impact of domestic violence on the child, observing, "the return of the child may be refused if doing so would contravene fundamental principles.....relating to the protection of human rights and fundamental freedom."



VII. JUDGMENT OF INDIAN COURTS

The Supreme Court has observed in *Sumedha Nagpal v. State of Delhi*³⁷ that "[N]o decision by any court can restore the broken home or give a child the care and protection of both dutiful parents. No court welcomes such problem or feels at ease in deciding them. But a decision there must be and it cannot be the one repugnant to normal concepts of family and marriage. The basic unit of society is the family and that marriage creates the most important relation in life, which influences morality and civilization of people, than any other institution. During infancy and impressionable age, the care and warmth of both the parents are required for the welfare of the child."

The Supreme Court in *Surinder Kaur Sandhu v. Harbax Singh Sandhu*³⁸ and *Elizabeth Dinshaw v. Arvand M. Dinshaw*³⁹ exercised summary jurisdiction in returning the minor children to the country of their parent. The courts also emphasized the importance of the principle of best interest of the child in *Lakshmi Kant Pandey v. Union of India*⁴⁰, *Gaurav Jain v. Union of India*⁴¹ and *Nil Ratan Kundu v. Abhijit Kundu*⁴².

In a later case of *Dhanwanti Joshi v. Madhav Unde*⁴³; the Supreme Court observed that the order of the foreign court will only be one of the facts which must be taken into consideration while dealing with child custody matters and India being a country which is not a signatory to the Hague Convention, the law is that the court within whose jurisdiction the child is removed will consider the question on the merits bearing the welfare of the child as of paramount importance. It was in this case the Supreme Court changed the earlier view and did not exercise summary jurisdiction in returning children to its parent and observed that the welfare and best interest of the child or children should be of paramount consideration. This observation by the Supreme Court was followed in *Sarita Sharma v. Sushil Sharma*⁴⁴. In the same case the Supreme Court referred to the Hague Convention on the Civil Aspects of International Child Abduction⁴⁵.

The Supreme Court, in *Saihba Ali v. State of Maharashtra*⁴⁶, denied to grant the custody of minor children to their mother, however, issued directions and bestowed

the right to visit the children for their welfare.



Page: 77

But in *Kumar V. Jahgirdar v. Chethana Ramatheertha*⁴⁷, the Supreme Court concluded that a female child of growing age needs the company of her mother more than that of the father and remarriage of the mother cannot be held as a disqualification while safeguarding interests of the child.

In another case of *Paul Mohinder Gahun v. State of NCT of Delhi*⁴⁸, the Delhi High Court refused to grant custody of the child to the father and observed that the question of conflict of laws and jurisdiction should take a back seat in preference to what is in the interest of the minor.

In its 263rd Report, the Law Commission of India referred to many cases on child custody & removal during the examination of the issues.

The Supreme Court in many cases⁴⁹ directed to return the children to the country of their habitual residence to comply the principle of 'comity of courts' and keeping in mind the best interests and welfare of the child.

In *Roxann Sharma v. Arun Sharma*⁵⁰, the Apex Court deprecated the practice of 'forum shopping' requiring the entitlement of custody rights of the other spouse to be judicially determined. The court observed that "[T]he child is not a chattel or a ball that is bounced to and fro the parents. It is only the child's welfare which is the focal point for consideration." Indian courts in cases relating to children exercise the jurisdiction of *Parens Patriae* to decide the welfare and best interest of the child⁵¹. In *Surya Vadanam v. State of T.N.*⁵², the Supreme Court held that:

- 1 The ultimate aim of the process is to focus in the best interest of the child and to endeavor to secure agreement accordingly. Thus, this is the cardinal value. The welfare of the child is not to be considered as a preliminary task only, rather it should be the ultimate goal of the process.
2. The principle of comity of courts referred to as "contrasting principle of law". However, these contrasts do not stand as antipodal rather as distinguished principles needed to be applied to different cases differently depending upon the facts of the case.
3. Interim or interlocutory order of the competent foreign courts should be respected by the domestic courts.
4. It is significant as well as apt to conduct a detailed enquiry to consider the repatriation of a child to any foreign jurisdiction.



Page: 78

The Supreme Court, in *B.S. Krishna Murthy v. B.S. Nagara*⁵³, held that mediation should be prescribed in a case of dispute between family and business relations. The Court further said that legal counsels should guide their clients to seek mediation, significantly in disputes which involve family matters, etc., as the litigation process continue for long exhaustive years dragging and concomitantly ruining both the disputing parties without any appreciable result. There are some studies which show that a functionally adequate family encourages growth, confidence, frankness and

ability to face reality and functionally inadequate homes are responsible for delinquent's behaviors of children.

The Law Commission of India's 263rd Report under Chapter 5 titled *Domestic Violence Impacting Children* has shown the need of mediation in family matters especially in a case of child removal and retention. The Report discussing the impact of domestic violence on children mentioned that it is very traumatizing and victimizing for the children of those women who are victims of domestic violence and thereby, elope or with their child from their natural habitual home, although violence is not committed against the children, they suffer gravely. Therefore, in those cases, it is imperative for the courts to consider the serious impact and repercussions which would arise in case the child is repatriated and the harm that may be caused to the child as well as his mother who is in India and also the violation of basic fundamental rights or fundamental human rights as provided in the Hague Convention 1980 itself. The Report further said that unfortunately, women, who are engrossed in cross-border cases in connection with divorce, custody of the child, etc., have to deal with auxiliary challenges and concerns in relation to jurisdictional issues and hence, this clearly shows bias against the interests of women. The mediation process which includes the disputing parties to endeavor to reach consensus could preferably be adopted even for business cases also as it provides both time and cost- effective means as compared to the other mechanisms such as litigation.

Mediation is a voluntary as well as an effective process. It involves a mediator who is a trained neutral person as a facilitator who provides a felicitous forum for both the parties to negotiate and reach an agreeable midway solution which could be acceptable by both the parties. Even at a natal stage of the dispute, the disputing parties could report their problem and schedule the mediation meetings. Comparatively, the results in the mediation process are quicker than the other processes including litigation and arbitration.

Also, in the terms of monetary expenditure, the total cost engrossed in mediation is notably less when juxtaposed with the expenditure required in litigation and arbitration. According to International Social Service (ISM), mediation is a cordial plus neutral dispute resolution method. It both facilitates



and facilitates the judicial process to allow for tailor made agreements, having capacity to bridge the engulfing legal divisions as well as to be made legally binding. While dealing with the cultural differences revolving around different factors such as social, legal or psychological etc., this process seeks to consider the interest of everyone involved in the dispute, significantly children. For an effective and advancing mediation the following are the requisites:—

1. It is essential that the neutral trainee i.e. mediator and the authorities of the state co-operate with each other to endeavor towards mediation.
2. The internationally recognized principles which form the sine qua non of the mediation process must be considered by each state.
3. Mediators are the essence of the mediation process. Thus, it is important to involve dependable and proficient mediators from recognized networks in this method.
4. The disputing parties in the mediation process must have ingress to independent legal counsel.
5. The mediation process must be lucid and effective and in terms with the legal

paradigm, including protection measures, identified in the international arena.

In 2015, ISS (International Social Service) established a collective procedure among the mediation professionals dealing with family matters across the globe to discourse and partake generic and combined extrapolations of cross—border methods involved in the mediation process in the family matters and towards conjoint and collaborative work in relation to the progress of IFM practice. A multilingual website <http://www.IFM-MFI.ORG> has been created to help the countries and the parties in the matters of child custody/abduction/removal. A global network program will also be launched in 2018⁵⁴. According to *Charter for International Family Mediation Process*⁵⁵ mediation is globally recognized as an effective method of conflict management and resolution.

VIII. CONCLUSION

In the era of globalization, when individuals are moving from one country to another for jobs, study and business, their personal and family relations are also taking new shapes. There is a call for a good regulation of family law. Inter-country abduction is a serious issue as it involves children. The Court proceedings also have psychological effect on the mind of children. It is also a time consuming process. So there is an urgent need to adopt less time taking process and a hassle free process so that family especially children are not



Page: 80

affected by the prolonged process and also, confidentiality is also maintained. International family mediation is the need of the hour. India should adopt The Hague Convention on the Civil Aspects of International Child Abduction, 1980 and try to resolve the issue relating to child removal and retention through mediation. It is hoped that the government would soon consider the seriousness of the issue and thereby, enact a law on the protection of children (inter-country removal and retention bill, 2016). Mediation in matters relating to the child custody/removal is the alarming need of the hour.

* PhD (Law), Assistant Professor, Dr. Ram Manohar Lohiya National Law University, Lucknow. <gautamprem30@gmail.com>.

¹ S. 3(1), The Children Act 1989, England.

² Course Material-Winter Course On Private International Law by Justice (Retired) Mrs. Manju Goel, EC, Member ISIL, New Delhi.

³ V.C. Govindraj, C. Joyaraj, Non-resident Indians and Private International Law, Hope India Publications, ISIL, New Delhi.

⁴ Law Commission of India, 218th Report.

⁵ Law Commission Of India, 263rd Report on the Protection of Children (Intercountry Removal and Retention) Bill, 2016.

⁶ <https://legal-dictionary.thefreedictionary.com/parens+patriae> accessed on 23/5/2018.

⁷ *Supra* note 4

⁸ Art. 1, The Hague Convention on Civil Aspects of International Child Abduction, 1980.

⁹ *Ibid.*

¹⁰ Art. 4, The Hague Convention on Civil Aspects of International Child Abduction, 1980.

¹¹ *Supra* note 4.

¹² *Supra* note 5.

¹³ The Hague Convention on Civil Aspects of International Child Abduction, 1980.

¹⁴ The Hague Convention on Protection of Children.

¹⁵ <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24> (accessed on 22/5/2018).

¹⁶ *Ibid.*

¹⁷ The Preamble and Art. 11 of the United Nations Convention on the Rights of the Child (UNCRC), CRC Art. 11: "1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad. 2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements."

¹⁸ UNCRC Art. 9.3: "States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests."

¹⁹ UNCRC, Art. 8.

²⁰ <https://assets.hcch.net/docs/e6a6a977-40c5-47b2-a380-b4ec3a0041a8.pdf> accessed on 22/5/2018.

²¹ CRC Art. 11: "1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad. 2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements."

²² CRC Art. 35: "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction, the sale of or traffic in children for any purpose or in any form." <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

²³ *Supra* note 18.

²⁴ CRC Art. 10(2) - "A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. [. . .]"

²⁵ <https://assets.hcch.net/docs/be4083a2-ed90-4dc2-bb97-13be22e6a5d8.pdf>.

²⁶ *Ibid.*

²⁷ Art. 1, The Hague Convention, 1980.

²⁸ *Nazir Begum v. Ghulam Qadir Khan*, 1937 SCC OnLine Lah 15 : AIR 1937 Lah 797.

²⁹ 1953 SCC OnLine Pat 150 : AIR 1954 Pat 489.

³⁰ *Elizabeth Dinshaw v. Arvind M. Dinshaw*, (1987) 1 SCC 42 : AIR 1987 SC 3.

³¹ *Kuldeep Sidhu v. Chanan Singh*, 1988 SCC OnLine P&H 98 : AIR 1989 P&H 103.

³² *Supra* note 30.

³³ (1995) 18 Fam LR 433.

³⁴ [1893] 1 Ch. 143.

³⁵ 1994 SCC OnLine Can SC 90 : (1994) 3 SCR 551.

³⁶ 2014 SCC OnLine US SC 62 : 34 S Ct 1224 (2014) : 572 US __ (2014)

³⁷ (2000) 9 SCC 745

³⁸ (1984) 3 SCC 698 : AIR 1984 SC 1224.

³⁹ (1987) 1 SCC 42 : AIR 1987 SC 3.

⁴⁰ (1984) 2 SCC 244 : AIR 1984 SC 469.

⁴¹ (1997) 8 SCC 114 : AIR 1997 SC 3021.

⁴² (2008) 9 SCC 413.

⁴³ (1998) 1 SCC 112.

⁴⁴ (2000) 3 SCC 14.

⁴⁵ *Supra* note 4.

⁴⁶ (2003) 7 SCC 250 : (2004) 1 HLR 212.

⁴⁷ (2004) 2 SCC 688 : (2004) 1 HLR 468.

⁴⁸ 2004 SCC OnLine Del 699 : (2004) 113 DLT 823.

⁴⁹ *V. Ravi Chandran (2) v. Union of India*, (2010) 1 SCC 174.

⁵⁰ (2015) 8 SCC 318 : AIR 2015 SC 2232.

⁵¹ *Supra* note 5

⁵² (2015) 5 SCC 450 : AIR 2015 SC 2243.

⁵³ (2011) 15 SCC 464 : AIR 2011 SC 794.

⁵⁴ <https://assets.hcch.net/docs/c29a293c-af0a-4f3d-b658-f801c34239f4.pdf> accessed on 25/05/2019.

⁵⁵ http://www.ifm-mfi.org/sites/default/files/CHARTER/ENGLISH/IFM%20Charter_ENG.pdf accessed on 21/5/2018.

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.