

Inter-Country Parental Child Removal and Subsequent Custody Disputes in India: Need for Legislative Reforms

Authors : Pritam Kumar Ghosh

Abstract : The phenomenon of inter-country parental child removal and the protection of children against removal from lawful custody by their own parents has been a major issue over the last five decades. This occurs when parents take away their children during pending divorce and custody proceedings or in violation of pre-existing foreign or Indian custody orders through which they may have obtained visitation rights only after divorce but not permanent custody. Even though considerable efforts have been made by the Indian judiciary to resolve the issue, a lot is still left to be desired. A study of the spate of judicial decisions on the issue since 1970 reveals that judges have attempted to resolve the issue mainly through the application of the existing personal law regime and the principle of the best interest of the child. This has made the position of law extremely confusing. The existing precedential jurisprudence contains a wide variety of custody orders in the name of enforcement of the paramount consideration of the best interest and welfare of children. The problem is aggravated by the fact that India has decided not to accede to the Hague Abduction Convention of 1980, which is the main international instrument combating the issue. In this context, the paper discusses the reasons behind the rising instances of inter-country parental child removals. It then goes on to analyze the existing jurisprudence of international child custody disputes in India, which have come before courts post-removal of children from lawful custody. The paper concludes by suggesting essential reforms in the existing Indian legal framework governing the issue. In the process, the paper proposes new legislation for India governing inter-country parental child removals and subsequent custody disputes. The possible structure and content of this new law shall also be outlined as a part of the paper.

Keywords : custody, dispute, child removal, Hague convention

Conference Title : ICDFL 2023 : International Conference on Divorce and Family Law

Conference Location : Montreal, Canada

Conference Dates : May 15-16, 2023