

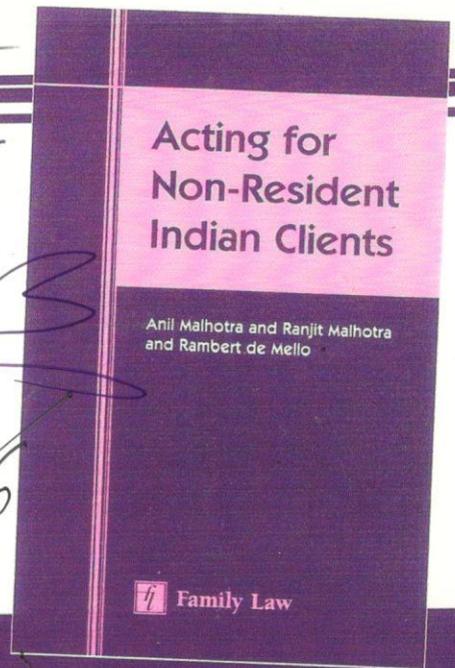
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Sohi Swaraj

# Acting for Non-Resident Indian Clients

8/1/05

A.P.A.B.

20/1/05



**Anil Malhotra** LL.M (London), Advocate  
**Ranjit Malhotra** LL.M (London), Advocate, both at Malhotra & Malhotra Associates  
and **Rambert de Mello**, Barrister, 6 King's Bench Walk, London

Indian communities have settled and thrived in the United Kingdom and many other Commonwealth countries. The retention of ties with families remaining in India has meant that where family law issues arise they frequently have a cross-border dimension, for example, as to the validity of an Indian marriage. Domestic practitioners can be ill-equipped to deal effectively with such problems.

This unique handbook has been written specifically to assist the family lawyer acting for Indian clients. It sets out relevant Indian law and religious custom, ranging from marriage to divorce, covering adoption and abduction as well as property and succession issues. In addition, it explains the English law applicable to such matters, for instance in relation to the recognition of Indian orders or the immigration status of the individual concerned.

The book cites a wealth of Indian case law that is otherwise not readily available to the non-Indian lawyer.

This book symbolises  
your achievements  
13.8.05 Matthew Choppe

## AUTHOR INFORMATION

**Anil Malhotra** and **Ranjit Malhotra** are Indian nationals and advocates practising in partnerships at the Punjab and Haryana High Court, Chandigarh and at the Supreme Court of India. They specialise in family and immigration law and frequently act for British Asians and as expert witnesses on Indian law issues in proceedings overseas.

**Rambert de Mello** is a barrister at 6 King's Bench Walk, London. He specialises in cases involving a human rights dimension. He is the general editor of **Human Rights Act 1998: A Practitioner's Guide** (Jordans).

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- The Special Marriage Act 1954
- Divorce under the Hindu Marriage Act 1955
- Maintenance, Disposal of Property and Custody of Children under Hindu Law
- The Divorce Act 1869
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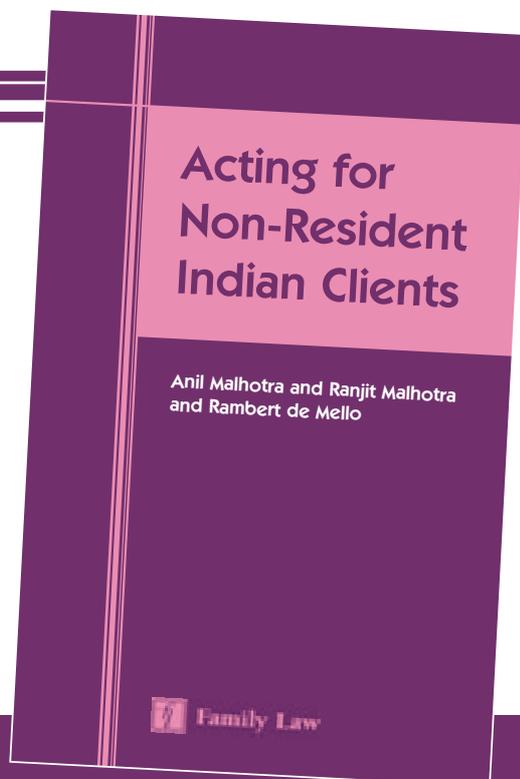
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## **Acting for Non-Resident Indian Clients**

Anil and Ranjit Malhotra, and Rambert de Mello

Bristol : Jordan Publishing Ltd 2004

ISBN 0 85308 6621

xl + 282 pp

(pb)

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Beaten only by China in terms of population and economic growth, India also maintains links with a wide diaspora of its people who have gone to live abroad. In recognition of the need to maintain links between the 'mother country' and the large number of *émigrés*, an amendment has recently been passed to the Indian Citizenship Act, 1955 so as to allow dual nationality. And it is because of the large number of people of Indian nationality or descent living outside India, principally in Commonwealth countries and the United States, that the need has arisen for a handy and relatively simple reference work which lawyers in those countries can look up with confidence when consulted by Indian clients.

In their Introduction, the authors give some examples of the kinds of question which have arisen in the past. "A firm of solicitors in somewhere like Bradford wants an opinion on the validity of a will executed in India ; a London firm of solicitors seeks an immediate opinion about provisions for mirror orders in the Indian legal system in a child abduction case ; a Scottish criminal lawyer wants a village visit/ local commissioner report to be commissioned to interview the aged parents of a Punjab girl eight months' pregnant who has been murdered in horrific circumstances, with the possibility of arranging the recording of evidence through a satellite link while the trial progresses in the Glasgow High Court ; a set of lawyers in Birmingham acting on behalf of an Indian businessman want to know about the mechanics of adoption law in India."

The bulk of work in this area will pertain to family law. Indeed, this book is part of Jordan's Family Law series. Of particular importance are the validity of marriages and the recognition of foreign divorce decrees under the Hindu Marriage Act, 1955, but there are also chapters on maintenance, custody of children, guardianship, adoption and child abduction, as well as wills and succession. All this is in Part I of the book, lucidly and succinctly explaining Indian law to non-Indian lawyers.

But the value of the book to lawyers in this country is doubled by Part II : 'Guides to English Family Law in an Immigration Context'. This focuses on the Immigration Rules relating to spouses and *fiancé(e)s*, children, and other dependent relatives, with particular attention to problematic areas like overseas adoptions, and examining the effect of the Human Rights Act.

Part I is co-authored by the brothers Anil and Ranjit Malhotra, who both studied law at London University before going into practice in Chandigarh and Delhi, and are now probably the best known Indian lawyers working in the field of immigration. Part II is written by Rambert de Mello, a name familiar to

most readers, who practises at the English bar and, apart from several publications, is a consulting editor of Jordan's *Immigration and Nationality Law Reports* (the 'Blue Books').

As its authors insist, the book is "a modest attempt to focus on certain key issues relating to Indian family laws and non-resident Indians", and is not intended to be "an exhaustive source of information on all subjects related to the issues discussed." In this attempt, the book succeeds admirably. The reviewer can do no better than quote the words of Lord Slynn of Hadley in his Foreword. "This is meant to be a practical *vade mecum* and as such should be part of the library of lawyers who are likely to be consulted by non-resident Indians. The style is admirably simple and direct. At the same time it gives a background picture of the social problems which may face non-resident Indians."

*Richard McKee*

<http://www.tribuneindia.com/2005/20050418/world.htm#4>

**Monday, April 18, 2005, Chandigarh, India**

## Book to assist lawyers for NRIs

H. S. Rao

London, April 17

A unique handbook, written specifically to assist family lawyers acting for NRI clients to deal with cases back in India, has been launched at the House of Lords here.

The book titled 'Acting for Non-Resident Indian Clients' was released by Lord Slynn of Hadley, who described it as "remarkable", in the presence of Indian High Commissioner Kamlesh Sharma and Lord Rana, MBE, Honorary Consul of India, northern Ireland as well as a distinguished gathering.

"It is a modest attempt to focus on certain key issues relating to Indian family laws and non-resident Indians," Lord Slynn said releasing the book at the House's Atlee Room.

Referring to the joint authors, Anil Malhotra and Ranjit Malhotra, Chandigarh-based advocates, he said: "They give a great deal of information about customs and practices in India in relation to marriage."

Appreciating the clarity, conciseness and practical importance of the book, he said: "The book throws light on many aspects of family life and family law, a key to the differences which exist between life in India and life in the United Kingdom — questions as to the protection of women from discrimination, the rights of children there, the rights to inherit with differences in the claims of the son and the daughter to the father's estate and the pressures of custom on the life of the newly widowed woman."

In his foreword, Justice Y. K. Sabharwal, Judge of the Supreme Court of India said: "Many Indians living abroad face various problems relating to family matters which have been attempted to be answered in the book."

The book dealt with divorce issues, including mutual consent and validity of Indian marriages as also recognition of foreign divorce degrees and enforcement of foreign courts or problems with immigration authorities in different foreign jurisdictions worldwide. — PTI

## UK NRIs get a helping handbook

PTI[ SUNDAY, APRIL 17, 2005 11:15:08 PM ]

<http://timesofindia.indiatimes.com/articleshow/msid-1080537>

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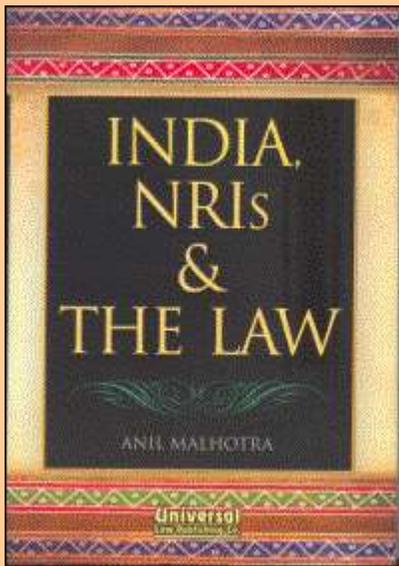
High commissioner Kamlesh Sharma said it was appropriate that the book was released in the Atlee room. "Lord (Clement) Atlee has a special place in the Indian history. "Atlee was the British PM at the time of India's Independence.

India cannot be separated from its 22 million strong diaspora, Sharma said and told the authors: "You have done a great national service to the NRIs and the book has come at the right time. You have rendered a yeoman service not only to NRIs, but a global service."

In his foreword, Supreme Court Justice Judge YK Sabharwal said: "The book provides a brief summary containing very useful information relating to number of issues of frequent occurrences."

NEW ARRIVAL FROM UNIVERSAL

# INDIA, NRIs & THE LAW



<b>Author</b>	<b>Anil Malhotra</b>
<b>Edition</b>	<b>New Edition</b>
<b>Year</b>	<b>2009</b>
<b>ISBN No.</b>	<b>978-81-7534-796-0</b>
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Among the 1.2 billion resident citizens of India none is better qualified to write for the 30 million Non Resident Indians than Anil Malhotra. Indeed he and his brother Ranjit are almost non-residential themselves given the extent of their tireless and enthusiastic travels to every gathering of the community of international family law practitioners and judges, well reflected in this collection of articles and papers. Without their efforts India would be unheard in the debates that surround the evolution of International Family Justice.

The Rt. Hon. Lord Justice Thorpe, *Deputy Head of the Family Division, Senior Court of Appeal Judge and Head of International Family Justice for England and Wales.*

Anil Malhotra's book *India NRIs and the Law* is an extremely valuable and timely book. I believe this book will give a contribution of knowledge of existing norms and of future legal policy which will be invaluable for the Indian legal system. People are too often addressing migrations as a problem, but if we want to transform problems into assets, as it would be both right and rational, we need lawyers/scholars like Anil Malhotra.

Roberto Toscano *Ambassador of Italy to India*

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Anil Malhotra's book contains fascinating insights into an area of the Law which, in view of the extent of the Indian diaspora, will be of value in many countries.

Professor William Duncan *Deputy Secretary General, Hague Conference on Private International Law, Permanent Bureau, The Hague, The Netherlands*

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*India, NRIs and the Law* is a much needed piece of work in today's context for the Indian diaspora. It skillfully offers crucial information using a practical and user friendly approach, with essential inputs for daily use. I believe that the book fills in a void for NRIs and congratulate Anil Malhotra on this important contribution to international understanding.

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Senior Immigration Judge McKee *Asylum and Immigration Tribunal, London*

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As Indian business becomes increasingly international and the role of NRIs grows incrementally, this book is the sort of work which will help ensure the success of India's global integration.

Sir Richard Stagg KCMAJ  
British High Commissioner to India

India, NRIs and the Law is a compendium of Indian family law running into the realm of private international law. It embraces published short articles, papers, and presentations made at numerous national and international conferences, seminars and symposia by Anil Malhotra. The beauty is that each one of the pieces are complete in itself. Sheer continuity of creation at periodic intervals makes the whole exercise congenitally coherent and inherently thematic. This indeed is the hallmark of Anil Malhotra's distinct contribution to the legal literature.

Dr. Vivendra Kumar  
UGC Emeritus Fellow in Law,  
Former Professor & Chairman, Department  
of Laws, Punjab University, Chandigarh

India NRIs and the Law has filled in a long gap and a dire need of an authentic work on NRI issues. The present book is a very precise and a clear presentation of very complex issues. The comprehensive coverage of the themes and sub-themes makes this book a very handy reference work which can be of immense help to the policy framers, law makers, practising lawyers and NRIs who have to grapple with a number of complicated legal problems. The author has made a very complex area of Law simple and understandable.

Prof. (Dr.) Veer Singh, Vice-Chancellor,  
NALSAR University of Law, Hyderabad

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This unique reader friendly concise and crisp presentation in short individual articles and some detailed expositions pose the problems and attempts to provide the answers. The author with his 25 years expertise has attempted to protect these human problems as he has experienced them professionally and resolved them to the best of his abilities. References to case law wherever necessary have been provided for the professional reader who wants an accurate and expeditious run down on Indian law on the subject of marriage, divorce, domestic violence issues, adoption, child abduction, surrogacy, immigration, property, probate and wills, nationality and citizenship issues. Additionally, some anecdotes dot the legal skyline of the book and a few reminiscences of international law conferences indicate exchange of thoughts.

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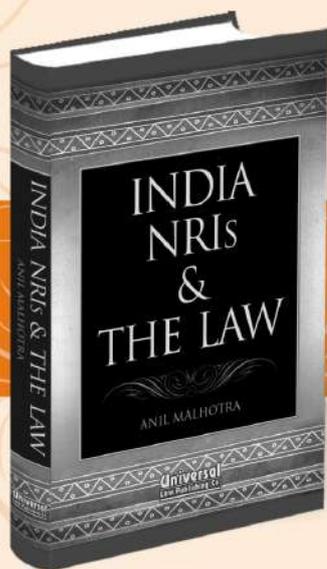
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RELEASING SOON

# INDIA NRIs & THE LAW



ANIL MALHOTRA



2009 EDITION

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**Anil Malhotra** is a practising Advocate in India since September 1983 with countrywide court appearances. He attained Bachelor of Science and Bachelor of Laws (Professional) degrees from the Panjab University, Chandigarh, India and a Master of Laws degree from the University of London in November 1985 where he studied Comparative Family Law at London School of Economics and Law and Society at School of Oriental and African Studies. He taught civil procedural laws and matrimonial remedies for six years as a part-time lecturer at the Faculty of Laws, Panjab University, Chandigarh, India. For over 25 years, he continues to conduct matters in Indian Courts pertaining to interpretation and application of foreign Court Orders regarding divorce decrees, child abduction, custody, maintenance, adoption and family related issues of Non-resident Indians. He has co-authored book titled "Acting for Non-resident Indian Clients" (London 2005) and has significant papers with regular international conference participations to his credit. On 29 January 2007, he has been elected to the International Academy of Matrimonial Lawyers. He has to his credit Amicus and joint expert appointments by Courts in India and abroad. He has authored a handbook (2008) "An Overview of Legal Issues" for the Punjab Government.

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# Impressively comprehensive NRI law book

BY RICHARD MCKEE

Published by the Universal Law Publishing Company, in an attractive hardback cover and at the very reasonable price of £23, this lucid and extremely readable compendium of articles by one of India's top family lawyers has already gained recognition from a variety of eminent sources, ranging from the House of Lords and the Court of Appeal in England to the British High Commission and the Italian Embassy in India.

This international recognition is well deserved, because Anil Malhotra is uniquely placed to write authoritatively on all aspects of the private and family law matters which impinge upon residents of India in their dealings with the outside world, and upon the 30 million people of Indian origin who form the 'Non-Resident Indians' of the book's title. In an age of globalisation, Anil Malhotra is himself an indefatigable globe-trotter, who in his travels has built up an enviable knowledge of the legal problems which beset many NRIs, and of the means of tackling them through the legal systems of those countries which are host to the largest number of NRIs.

From the perspective of this reviewer, a British judge with much experience of immigration appeals, Mr Malhotra's book impresses with the comprehensiveness of its coverage. All the topics with which this reviewer deals in court on a regular basis can be found between its covers. It may be useful to cite a few examples of such topics.

Let us start with marriage. It is still common for Asians resident in the UK to seek spouses from the Subcontinent. The 'primary purpose' rule, which used to be a great impediment to the setting up of a matrimonial home in the UK, was abolished in 1997, but there are still quite a few hoops to go through, and there is still the suspicion in the minds of Entry Clearance Officers that some of these marriages are contracted for immigration purposes.

Once the Indian spouse has come to the UK, it may turn out that the marriage is not a happy one. A curious feature of British immigration law is that, if the couple find they are not compatible and agree to go their separate ways without a great deal of acrimony, the Indian spouse has no right to remain in the UK. If, on the other hand, the Indian spouse alleges that the marriage broke down because of domestic violence, she (it is usually she, although sometimes it is the husband who complains that he is not just hen-pecked, but beaten by his wife) will get to stay permanently in the UK if the allegation is proved. There are genuine cases where the husband, a drunkard and a womaniser, neglects and abuses his wife, who is treated as a servant by her mother-in-law and the rest of the family. Then there are dubious cases where there has been no physical violence, but the wife complains of 'psychological' violence, i.e. her husband shouting at her. The reader will find plenty on marital problems in Mr Malhotra's book.

Children too can be problematic. Take the widespread custom on the Subcontinent of inter-family adoption. There may be a childless couple resident in the UK, and the husband or wife may have a sibling in India who has too many children. Why not let the youngest child be adopted, and live with its adoptive parents (one of whom will also be its uncle or aunt) in the UK? British immigration law, unfortunately, makes this extremely difficult, because Indian adoptions, even when sanctioned by a court, are not recognised in the UK. There is plenty on children too in

Mr Malhotra's book.

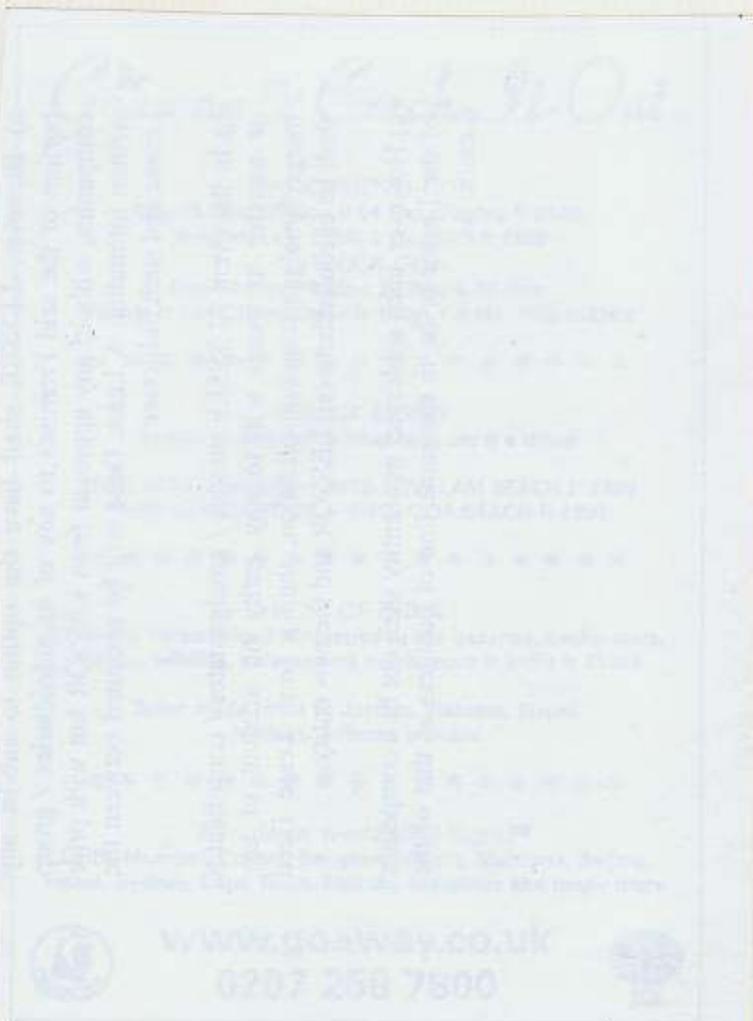
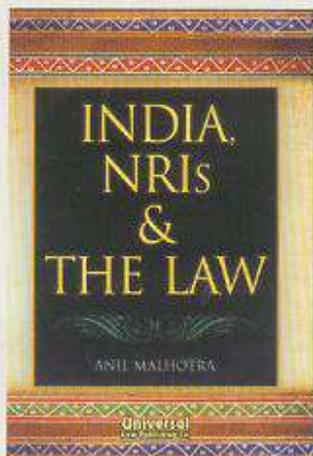
Many other topics are covered, and not just the typical problems of private international law, such as the recognition of overseas marriages and divorces. Economic migration finds a place, and the new 'Points Based System', which has superseded work permits in the UK, is described. NRIs who are thinking of 'returning' to India, or who maintain property or business interests in India, are particularly well catered for.

This book is for dipping into, rather than reading from cover to cover, since it consists of literally dozens of articles published in a variety of newspapers and journals between 2003 and 2009.

But the reader can easily find what he is looking for from a quick perusal of the titles of those articles. Mr Malhotra has kept himself up to date and well in tune with recent developments. For example, he welcomes the raising of the 'spouse visa' age in the UK from 18 to 21, a move criticised by some as an assault upon human rights. But a legal challenge to the new age limit has only just been thrown out by the High Court in London, proving that Mr Malhotra was right.

*(Richard McKee is a Senior Immigration Judge at Ministry of Justice, UK)*

## Book Review





**Sunday, November 1, 2009, Chandigarh, India**

# Spectrum

The Tribune

**Sunday, November 1, 2009**

**NRI issues  
Review by V. Eshwar Anand**

**India, NRIs and the Law  
By Anil Malhotra. Universal Publishing Law Co.  
Pages 381, Rs 595**

When an NRI family visits India, it is celebration time for the relatives and friends. With awe and admiration, they hear their tales of the American dream, the high life of London, the German experience or the Australian escapades.

Significantly, these visits are no longer about holidaying but about firming up business deals and academic tie-ups. India's growth process does create enormous opportunities for cross-border flow of trade, capital and technology and the NRIs are not failing in their duty in this regard.

One is always reminded of the NRIs' remittances. According to the Reserve Bank of India, the net inflows through various NRI deposits has surged from \$179 million in 2008 to \$3,999 million in 2009. This is an indication of the Indian Diaspora's immense faith in the Indian economy.

But then, this is only one side of the story. Even as the NRI population has been increasing, its family and legal problems are multiplying day by day — fake marriages, abandoned brides in distress due to runaway foreign country resident Indian spouses, non-resident spouse seeking enforcement of foreign divorce decree in India, parents' desperate bid for child support and maintenance, deceased NRI's children seeking transfer of properties in India and their repatriation to foreign shores and so on.

Surprisingly, though there are over 30 million NRIs living in 110 countries, there is no suitable family law for them. Family law disputes and situations in foreign jurisdictions are handicapped for want of proper professional information and advice on Indian laws.

Jurisdictional problems occur frequently regarding dissolution of marriage, inter-parental child abduction, inter-country child adoption and succession of property of NRIs. There are also problems in matters like succession, transfer of property, banking affairs, taxation, execution and implementation of wills.

The writer, an expert on family law, has made significant contribution to the subject in the book. It is basically a compilation of his articles published in various newspapers, including *The Tribune*, over the years. It provides a wealth of information, including case studies, on the problems and issues pertaining to the NRIs.

In *Foreword*, Law Commission of India Chairman Justice A.R. Lakshmanan has hailed the book as a "focused study on every conceivable issue with which an NRI is connected." In *Preface*, Mr Ram Niwas Mirdha, President, Indian Society of International Law, has described it as a "unique compendium".

Considering the fact that no intensive study has been undertaken on the subject so far, the book is expected to fill the gap in this critical area. It can be treated as a good reference volume for policymakers, judges, advocates and public libraries. The writer's efforts in bringing out the volume are commendable. At the same time, there is an imperative need to restructure the contents for making the book more reader-friendly and enhancing its reach to wider sections.

The Law Commission of India, in its 219th Report (March 2009), has examined some of the issues covered in the book and made a number of useful recommendations. The Centre would do well to implement them with a sense of urgency.



**Monday, September 7, 2009, Chandigarh, India**

### **Moily releases book for NRIs**

New Delhi, September 6

Union Law Minister M Veerappa Moily last evening released a book titled "India, NRIs and The Law" aimed at helping millions of Indians settled across the globe and their relatives within the country to resolve myriad disputes ranging from immigration to marital disputes and surrogacy.



**Minister for Law and Justice Veerappa Moily releases Anil Malhotra's book 'India, NRI and the Law' at a function in New Delhi on Saturday. Tribune photo: Mukesh Aggarwal**

## **Moily releases book for NRIs**

**R Sedhuraman  
Legal Correspondent**

New Delhi, September 6

Union Law Minister M Veerappa Moily last evening released a book titled "India, NRIs and The Law" aimed at helping millions of Indians settled across the globe and their relatives within the country to resolve myriad disputes ranging from immigration to marital disputes and surrogacy.

A galaxy of legal luminaries, who attended the function at the India International Centre (IIC) here, hailed the book as a pioneering work that not only dealt with the problems at length but also offered effective solutions to the litigants.

The author, Anil Malhotra, who has been dealing with NRI issues for decades, had also suggested options for the government for formulating laws to deal with the increasing number of cases pertaining to adoption and renting of the womb by Indian women to individuals and couples overseas, the experts opined.

Among others who spoke on the occasion were Law Commission chairman and former Supreme Court Judge AR Lakshmanan, former Attorney General Soli Sorabjee and Indian Society of International Law president Ram Niwas Mirdha. Supreme Court Judge P Sathasivam was also present.

Moily said hardworking Indians who migrated to various countries were increasingly being exposed to a number of problems that were not contemplated earlier. "The author has touched the NRI chord by looking at what ails them and providing practical solutions" to all their problems, leaving nothing untouched.

Pointing out that India or any other country for that matter could not be happy if its people settled overseas had unresolved matrimonial and other disputes, Moily said the book had been brought out at the right juncture and it would be of help to the litigants. Also, it would go a long way in making the job of the legal fraternity dealing with such cases easier.

Sorabjee said though India was not a party to the 1980 Hague Convention on civil aspects of international child abduction, the book had useful suggestions for evolving necessary laws within the country.

Justice Lakshmanan regretted that on the one hand the problems and grievances of NRIs, persons of Indian origin and overseas citizens of India had proliferated, on the other there were no effective legislative remedies or administrative solutions.

# WITNESS

INDIA'S FIRST MAGAZINE ON LEGAL AND CORPORATE AFFAIRS

## INDIA, NRIS AND THE LAW

By Anil Malhotra

Published by Universal Law Publishing Co

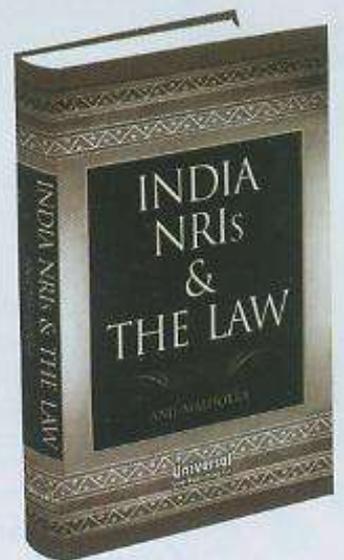
Anil Malhotra's book, 'India, NRIs and the Law', is a reader-friendly, concise and crisp presentation in form of short individual articles and some detailed expositions. The book describes the problems concerning important issues in relation to NRIs and attempts to provide the answers. The link and retention of ties of NRIs with their extended families in India has found expression in issues relating to immigration, nationality, marriage, divorce, inter-parental child removal, spousal maintenance and last but not the least, surrogacy arrangements.

The book covers every matter comprehensively along with references to Indian case law on marriage, divorce, domestic violence

issues, adoption, child abduction, surrogacy, immigration, property, probate and wills, nationality and citizenship issues.

Till date, no reported commentary of private international law in the exclusive Indian context provides comprehensive answers to these human problems of the Indian diaspora and the global Indian. The proposed publication is sought to be a universal answer for the aggrieved spouse, foreign litigant, overseas practitioner, or even for a lay person. The foreword to this book was written by Hon'ble Dr. Justice AR Lakshmanan, former judge Supreme Court of India and Chairman, Law Commission of India.

- Neera Bharihoke



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## European Human Rights and Family Law

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**Shazia Choudhry and Jonathan Herring**  
**Hart Publishing, 2010**  
**£55, paperback, 442pp**

This is a welcome addition to the library and a useful reference book for both practitioner and academic. Containing eleven chapters and commencing with a review of the structure of the European Convention articles, their principles and implementation, it is a lovely book for those dealing with family law and the increasingly likely cases for the practitioner who is facing human rights claims and needs the overview and the specific material on aspects of family law. The material specifically on human rights is immensely helpful in the office, and it cannot be denied that human rights and family law make excellent bedfellows whether in academia or in practice. For the academic, it is, of course, a 'dream'.

What do you get for the money? The book is full of helpful references and cases, comment and discussion on human rights and family law throughout. After the introductory chapters on the European convention and its principles and implementation, and on more theoretical aspects of human rights, there are chapters on marriage, parenthood, children's rights, private law, child protection, domestic violence and then financial disputes. The final chapter is precise and thought-provoking and helpfully summarises the issues. My personal favourite is the one on 'Parenthood and parental rights – intention, family life and the parent', but that is only a reflection of personal academic interest and not any sense of a chapter that is 'better' than any other.

The central chapters on marriage, parenthood, etc are perhaps the areas one would have expected to be covered in a book of this nature, so no surprises, just well considered material set out in a reasoned manner with lots of references. It is really satisfying to have the tracing of the current legal positions on human rights issues in family law established in well-supported text which retains readability at the forefront. The introductory chapters would possibly be regarded by practitioners in human rights to be superfluous, but not, one suspects, by all since many would admit to needing background material and the necessary information of recent study. A book easy to

recommend and useful to a wide range of people connected with family law – why? Well, it does rather do what it says on the tin.

*PENNY BOOTH*  
*Former Professor of Child and Family Law,*  
*Staffordshire University*  
*Freelance law tutor and commentator, Honorary*  
*Research Fellow at Liverpool University's Centre for*  
*the Study of the Child, the Family and the Law*

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## India, NRIs and the Law

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**Anil Malhotra**  
**University Law Publishing Co,**  
**2009**  
**£27, hardback, 407pp**

About 30 million non-resident Indians (NRIs) have settled and thrived in almost 130 countries across the globe. The link and retention of their ties with their extended families in India has found expressions in many aspects of family law and related topics such as recognition of marriages and divorces, child abduction, nationality, financial outcomes, inter-country adoptions. Many family lawyers across the world have had occasion to enquire into personal laws of India because of the impact on cases in their own home countries. Lest it be thought that this related only to legal aid, social benefits end of the market, it must be remembered that Indian entrepreneurs are very well represented amongst the world's leading billionaires and millionaires in many countries. Throughout many countries, Indians are known as very successful and hard-working in their business communities.

Accordingly, this book *India, NRIs and the Law* by Anil Malhotra, published by Universal Law Publishing Co ([www.unilawbooks.com](http://www.unilawbooks.com)), is an important addition to the international family lawyer's library. Anil and his brother, Ranjit, are probably India's most well-known family lawyers, running a very successful practice in leading cities across India and faithfully representing the interests of Indian family law through attendance at many conferences abroad. The book consists in fact of a series of articles and presentations given by Anil in India and abroad: some of these read more like a blog than a comprehensive exposition. The chapters relating to child abduction are of particular worth for those countries with a significant Indian population. Although not to be compared with the difficulties experienced with Pakistan, there is still much work to be done with India. Those working with families in India are as aware of the issues as those dealing with these cases from other jurisdictions.

India is one of the countries in the world where the relevant law is determined in part by personal religion

and ethnicity. While following the partition of India in 1947 it is primarily a Hindu country, there are amongst its population of over 1 billion many of other faiths. The legislation specifically provides for the application of the personal laws for Muslims, Christians and Parsis. These explanations by Anil are very valuable. Because of its structure consisting of many relatively short self-contained chapters, it allows for more case studies and anecdotes than might be so with a conventional expository textbook. Whilst therefore not necessarily suitable for a national lawyer, it is in fact beneficial for the international lawyer to gain colour and insight into how family law matters operate within India. Moreover it can easily be understood by lay parties.

The family law world axis will change over the next 15 years. Trends and legislation from Brussels will be in the ascendancy over the next 5 years. But the centre of wealth and internationally mobile population is moving eastwards. China and India will become significant players in the international family law environment. Anil Malhotra's book introduces many of us to what will become important themes over the next couple of decades. By virtue of population alone, in India and elsewhere, these matters must be well understood.

DAVID HODSON  
*Solicitor and Mediator*

December 12, 2010

Magazine for Legal Professionals & Students  
**Lawyers**  
**U P D A T E**

## BOOK REVIEWS

### India, NRIs and The Law

By **Anil Malhotra**

**Rs. 595**

**Published by: Universal Law Publishing Co. Pvt. Ltd., New Delhi - India**

When an NRI family visits India, it is celebration time for the relatives and friends. With awe and admiration, they hear their tales of the American dream, the high life of London, the German experience or the Australian escapades.

Significantly, these visits are no longer about holidaying but about firming up business deals and academic tie-ups. India's growth process does create enormous opportunities for cross-border flow of trade, capital and technology and the NRIs are not failing in their duty in this regard.

One is always reminded of the NRIs' remittances. According to the Reserve Bank of India, the net flows through various NRI deposits has surged from \$179 million in 2008 to \$3,999 million in 2009. This is an indication of the Indian Diaspora's immense faith in the Indian economy.

But then, this is only one side of the story. Even as the NRI population has been increasing, its family and legal problems are multiplying day by day— fake marriages, abandoned brides in distress due to runaway foreign country resident Indian spouses, non-resident spouse seeking enforcement of foreign divorce decree in India, parents' desperate bid for child support and maintenance, deceased NRI's children seeking transfer of properties in India and their repatriation to foreign shores and so on.

Surprisingly, though there are over 30 million NRIs living in 110 countries, there is no suitable family law for them. Family law disputes and situations in foreign jurisdictions are handicapped for want of proper professional information and advice on Indian laws.

Jurisdictional problems occur frequently regarding dissolution of marriage, inter-parental child abduction, inter-country child adoption and succession of property of NRIs. There are also problems in matters like succession, transfer of property, banking affairs, taxation, execution and implementation of Wills.

The writer, an expert of family law, has made significant contribution to the subject in the book. It is basically a compilation of his articles published in various newspapers, including *The Tribune*, over the years. It provides a wealth of information, including case studies, on the problems and issues pertaining to the NRIs.

In *foreword*, Law Commission of India Chairman Justice AR. Lakshmanan has hailed the book as a “focused study on every conceivable issue with which an NRI is connected.” In *Preface*, Mr. Ram Niwas Mirdha, President, Indian Society of International Law, has described it as a “unique compendium”.

Considering the fact that no intensive study has been undertaken on the subject so far, the book is expected to fill the gap in this critical area. It can be treated as a good reference volume for policymakers, judges, advocates and public libraries. The writer's efforts in bringing out the volume are commendable. At the same time, there is an imperative need to restructure the contents for making the book more reader-friendly and enhancing its reach to wider sections.

The Law Commission of India, in its 219<sup>th</sup> Report (March 2009), has examined some of the issues covered in the book and made a number of useful recommendations. The Centre would do well to implement them with a sense of urgency.

**Date:07/09/2009 URL:**

**<http://www.thehindu.com/2009/09/07/stories/2009090753690400.htm>**

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[New Delhi](#)

## **“India, NRIs and the Law”**

Special Correspondent



***New arrival:* A book ‘India, NRIs and The Law’ being released by Union Minister for Law and Justice M. Veerappa Moily flanked by president of Indian Society of International Law Ram Niwas Mirdha (left), Chairman Law Commission of India Justice A. R. Lakshmanan (right) at India International Centre in New Delhi over the weekend. Author Anil Malhotra along with his son Ankit Malhotra, who was presented the first copy of the book, look on.**

NEW DELHI: “India, NRIs and the Law” is a compilation of articles written by Anil Malhotra, a Chandigarh-based advocate on problems and issues which pertain to non-resident Indians and all those persons who may be closely or remotely related to them.

The problems include subjects like marriage, divorce, domestic violence, spousal maintenance, adoption, succession, inheritance, probate and surrogacy.

The book was released by Union Law and Justice Minister M. Veerappa Moily at a function here over the weekend. Also present were Indian Society of International Law president Ram Niwas Mirdha, Law Commission of India chairman Dr. Justice A.R. Lakshmanan and former Attorney General of India Mr. Soli Sorabjee.

According to Mr. Malhotra, the lure of settling in foreign jurisdictions attracts a

sizeable Indian population but the problems created by such migration largely remain unresolved.

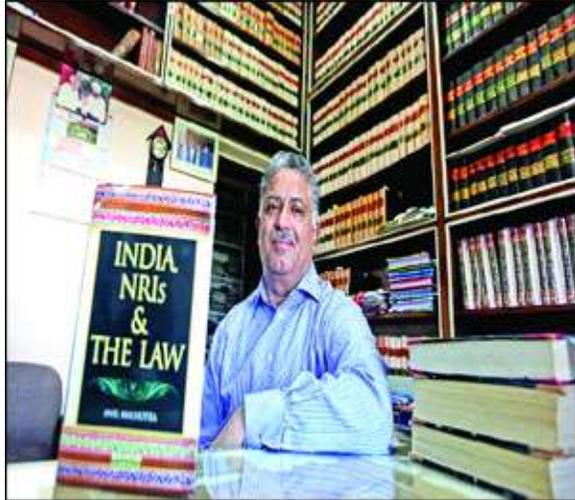
For example, an NRI abandoning the bride in a foreign country or the girl coming back to India with the child is a common problem.

No special Indian legislation exists to combat such remedies, he said, adding that a codified law on the subject is an absolute necessity. "Till then registration of marriages must be made compulsory. This will in turn ensure compliance of conditions of a valid marriage, provide proof of marriage and act as a deterrent for bigamous practices," he said.

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Story

## The outsiders



Sep 14, 2009 at 0431 hrs IST

*India NRIs & the Law is a ready reckoner for NRIs looking for simple answers to their intricate legal questions*

If you have a question, he has the answer. For years, practising advocate Anil Malhotra has been bombarded with questions from NRIs relating to immigration, nationality, marriage, divorce, inter-parental child removal, spousal maintenance, division of matrimonial property, inter-country adoptions, succession and inheritance, tenancy of Indian property, surrogacy...Professionally handling cases of NRIs, foreigners related to NRIs, giving expert advice to foreign courts, interpreting the existing laws to assist courts for fast-track resolutions...Anil says about 30 million non-resident Indians (NRIs) have settled and thrived in almost 130 countries, "and to date no commentary of private international law in the exclusive Indian context provides comprehensive answers to these human problems of the Indian diaspora and the global Indian," Anil shares the philosophy of India NRIs & The Law which he has authored and was released in Delhi this week by Dr. M.Veerappa Moily, Minister of Law and Justice.

Contrary to expectation, the book is not loaded with legal jargon, but is reader-friendly, with short and concise article presenting answers to many questions and some detailed presentations with case laws as references, "for the last five years, I was documenting what I was doing and this book is a labour of love, and will prove to be a handy guide for everyone looking for guidance," Anil is happy that the common man nowadays is not intimidated by the law, but know his/her rights and is updated with what's happening, thanks to the Internet. There are many grey areas like illegal immigration, human trafficking, child abduction, rights of an Overseas Citizen of India that Malhotra has dealt with in the book, "the effort has been to provide universal answers for the aggrieved spouse, foreign litigant, overseas practitioner, or any lay person who simply wants to know where he stands. The reader will get an accurate run-down on Indian law on several issues." Interspersed with anecdotes, personal experiences, references from legal conferences, Anil says he's happy with the outcome and reviews his effort has received.

# "India, NRIs and the Law"

"India, NRIs and the Law" is a compilation of articles written by Anil Malhotra, a Chandigarh-based advocate on problems and issues which pertain to non-resident Indians and all those persons who may be closely or remotely related to them.

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The book was released by Union Law and Justice Minister M. Veerappa Moily. Also present were Indian Society of International Law

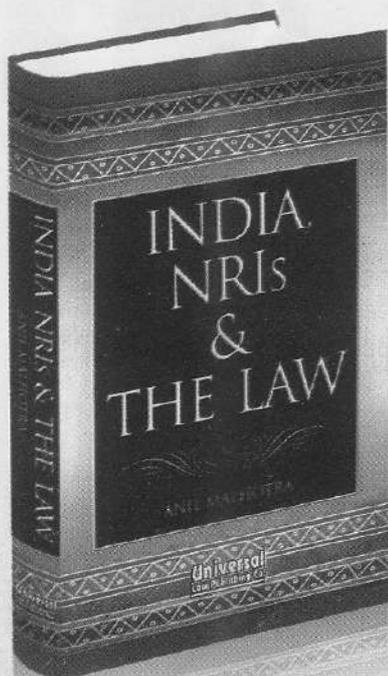
President Ram Niwas Mirdha, Law Commission of India Chairman Dr. Justice AR. Lakshmanan and former

country or the girl coming back to India with the child is a common problem.

No special Indian legislation



Soli J. Sorabjee, Ram Niwas Mirdha, Sanjeev Arora, M. Veerappa Moily Minister for Law & Justice, Anil Malhotra, Ankit Malhotra and Justice AR. Lakshmanan at the release of the book 'India, NRIs and the Law.'



Attorney General for India Mr. Soli Sorabjee.

According to Mr. Malhotra, the lure of settling in foreign jurisdictions attracts a sizeable Indian population but the problems created by such migration largely remain unresolved.

For example, an NRI abandoning the bride in a foreign

exists to combat such remedies, he said, adding that a codified law on the subject is an absolute necessity. "Till then registration of marriages must be made compulsory. This will in turn ensure compliance of conditions of a valid marriage, provide proof of marriage and act as a deterrent for bigamous practices," he said.

**Publishers: Universal Law Publishing Co. Pvt. Ltd.**

**Price: Rs. 595 (Hardbound)**

"This book is wide-ranging, covering a plethora of fascinating topics and dealing with them with insight and sensitivity. The authors are to be congratulated on an excellent contribution to the jurisprudence in this sphere."

**Justice B J van Heerden**  
Supreme Court of Appeal, South Africa

"This is the third compilation produced by the Brothers Malhotra. Like the first two, it will become an invaluable reference tool for individuals, legal practitioners and officials who deal with the myriad of NRI issues that arise in India."

**Scott Slesser**  
Consul General of Canada, Consulate General of Canada, Chandigarh (India)

"The Malhotras know their material very well - and make sure that it is very accessible."

**Paul Webber**  
Director, School of Oriental and African Studies, University of London

"International family law has become of particular significance to non-resident Indians with the large and growing Indian diaspora. Those who encounter difficulties in this area would find this book indispensable."

**Dato Dr. Cyrus Das**  
Life President Commonwealth Lawyers Association

As India's footprint expands across the globe, it is ever more important to understand the impact of this change in terms of the law and judicial systems. The Malhotras' book is, therefore, particularly well timed to meet a growing need.

**Sir Richard Stigg KCMG**  
British High Commissioner to India

"An articulate book, perspicaciously opening up new vistas on the intricacies of Indian Law."

**Thomas Matusk**  
Ambassador of the Federal Republic of Germany to India

"In this work the authors clearly articulate the need for law reform, particularly to provide remedies for adults and children who, directly or indirectly, are entangled in breakdown of relationships that are not bounded by one village, one city or one nation. I commend this publication and trust that it will contribute to the enlargement of the law of India to cover areas that globalisation has challenged."

**The Rt. Hon. Matthew Thorpe**  
Head of International Family Justice for England & Wales

"This publication is an interesting and informative collection of essays providing an Indian perspective on some very topical areas of international family law."

**Hans van Loen**  
Secretary General, Hague Conference on Private International Law Permanent Bureau, The Hague, The Netherlands

"I congratulate Anil and Ranjit Malhotra for this comprehensive and insightful publication on aspects of family law and issues that it gives rise to in India, as well as the international arena. Family law is increasingly an international discipline and this text will educate and inform not only within India but beyond."

**Peter Bosker**  
Chief Family Court Judge, New Zealand

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INDIANS, NRIs & THE LAW  
ANIL MALHOTRA • RANJIT MALHOTRA

# INDIANS, NRIs & THE LAW

PROBLEMS AND POSSIBLE SOLUTIONS ON

- Marriage • Divorce • ADR in Family Law
  - Cross Border Child Removal and Custody
  - Inter-Country Adoptions • Wills
  - Surrogacy • Visas • Indian Corporate Immigration
  - International Family Migration • Property
  - Right to Family Life under Article 8 of the ECHR
- and much more...

ANIL MALHOTRA  
RANJIT MALHOTRA

**Universal**  
Law Publishing Co.  
NEW DELHI - INDIA

About 30 million non-resident Indians (NRIs) have settled and thrived in almost 180 countries on the globe. The link and retention of their ties with their extended families in India has found expression in issues relating to immigration, nationality, marriage, divorce, forced marriages, inter-parental child removal, spousal maintenance, division of matrimonial property, inter-country adoptions, succession and inheritance, tenancy of Indian property and last but not the least surrogacy arrangements. Foreign law practitioners are at sea attempting to resolve these problems for lack of any authentic source of information on these subjects. Applicability of foreign laws, validity of judgments pronounced overseas and verdicts of Indian Courts which need expounding are consequential issues requiring interpretation and expert opinion. Elsewhere no reported commentary of private international law in the exclusive Indian context provides comprehensive answers to these human problems of the Indian diaspora and the global Indian. The proposed publication is thus sought to be a universal answer for the aggrieved spouse, foreign litigant, overseas practitioner, or any lay person who simply wants to know where he stands.

The range of reading is widespread. Marriage, divorce, child custody, inter-parental child removal, adoptions, surrogacy, forced marriages, pre-nuptial agreements, Mediation, Conciliation and ADR in family law, besides the need for reorganising family law for non-resident Indians, form the family law scenarios in the book. Human smuggling, illegal immigration, business immigration, nationality and citizenship issues are also looked into with some other writings on human rights, criminal justice system and the law of trust with special reference to issues of concern to the NRI community. Arbitration, issues and commercial arbitration provisions have also been added. Independent short pieces or crisp thoughts provide general reading.

This unique reader friendly crisp text and crisp presentation in 35 short (individual articles and 9 detailed expositions) pose the problems and attempt to provide the answers. The authors with their years of expertise have attempted to project these human problems as they have experienced them, professionally and resolved them to the best of their abilities. References to case law wherever necessary have been provided for the professional reader who wants an accurate and expeditious run down on Indian law on the subject of marriage, divorce, domestic violence issues, domestic and inter-country adoptions, child abduction, surrogacy, abandoned and outbound immigrants, business and corporate immigration issues pertaining to India, property, probate-wills and succession, nationality and citizenship issues.



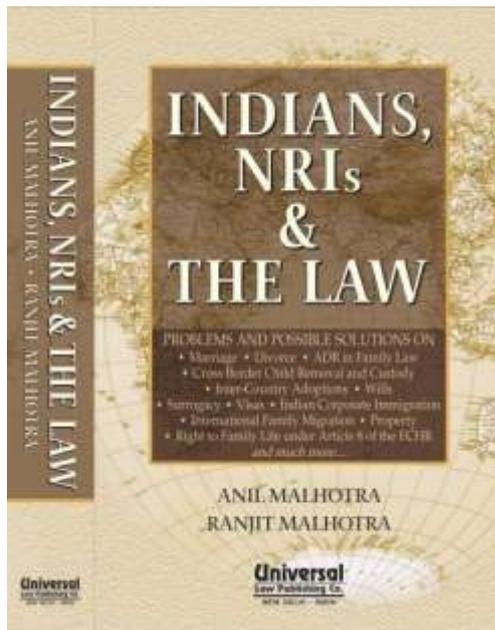
**Friday 11 November, 2011**

## **Indians, NRIs and the law**

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The third volley of NRI Law Collection penned by legal luminaries Anil and Ranjit Malhotra has been launched by Soli Sorabjee. Starting with a touching salute to the late patriarch Ram Niwas Mirdha, the legal baggage in the book titled 'Indians, NRIs & the Law' has 35 short crisp pieces and nine detailed expositions. Admirably crafted, the 450 page compilation is a store house of NRI law profusely complimented with jacket comments internationally.

It is a culmination of the authors' professional experiences of handling NRI disputes in courts worldwide and their participation in conferences scattered over London, Munich, Netherlands, Vancouver, Cape Town, Perth, Rio de Janeiro and Hyderabad.



The headings reveal it all. Some are, “Can a Broken Marriage Be Stitched Together?”, “No Bull in a China Shop of NRI Divorces & Anti-suit injunctions”, “Dispute Resolution in The Family the Law forgot”, “Pre-Nuptial Agreements: Unsited in the Indian context.”, “NRI Commissions – An adventurous agenda”, “Voting Rights for NRIs – An Optical Illusion”, “Human Smuggling- The Dark Side Of The Moon”, “Illegal Immigration – Merchants Of Death”, “Going Abroad-In Jail”, “Hindu Marriages – Made In Heaven, Celebrated In India & Dissolved In USA”, “Corbett’s Legacy”, “All Aboard For The Fertility Express”, “Socio-Legal Perspectives Of Forced Marriages – Perceptions & Solutions”, “To Return or Not To Return Abducted Children”, “Key Inbound Business Immigration and Employment Issues”, “Conflicts of Adoption Laws”, “Law of Arrest in India” and “International Arbitration Issues”. The list goes on and on endlessly.

Quoting the Supreme Court in *Baby Manji Yamada* (AIR 2009 SC84), “Commercial surrogacy” reaching “industry proportions is sometimes referred to by the emotionally charged and potentially offensive terms: Wombs for rent, Outsourced pregnancy or baby farms, ”, the authors state that surrogacy is said to be legal because it is not illegal. The authors think that forced and early marriages entrap women and young girls in relationships that deprive them of their basic human rights and that the Government has to take stringent action against the extra judicial bodies which have so far been shielded from any State intrusion due to political reasons. Human smuggling has been described by the authors as “A trade in which Indian youth have been bought and sold as literal slaves like any other commercial merchandise recently in Iraq.” In the view of the authors “Modern concepts and issues including commercial surrogacy, inter-country adoptions, inter-parental child removal, inter-continental matrimonial litigation and instances of global child abuse present new challenges. The law never anticipated or visualized these new generation legal complexities, and hence statutory law in India contains no provisions to define or rectify them”

The Foreword of Soli Sorabjee reads: “The book will be extremely useful to academicians, judges, policy makers, overseas and Indian lawyers as also to foreign readers by providing answers to unresolved problems in new emerging areas of the vast Indian Diaspora scattered around the world.” No doubt, the text does justice to 30 million NRIs scattered in 180 nations abroad. The celebrated work is a milestone in NRI history.

# THE HINDU

Friday, November 11, 2011

## New book to help NRIs take close look at law

In the absence of a specific statute governing their rights, Non-Resident Indians face a host of problems relating to marriage, divorce, child custody, adoption, surrogacy and inter-parental child removal. To overcome this lacuna, two Chandigarh-based advocates, Anil Malhotra and Ranjit Malhotra, have jointly brought out a book, "Indians, NRIs and the Law", published by Universal Law Publishing Co. It was released by the British High Commissioner to India, Sir Richard Stagg, at his residence here on Wednesday evening.

The authors have highlighted the problems faced by 30 million NRIs in almost 180 countries. Foreign law practitioners are at sea attempting to resolve these problems for lack of any authentic source of information on these subjects. This book is a universal answer for the aggrieved spouse, foreign litigant, overseas practitioner or any lay person who wants to know where he stands.

Sir Richard gave the first copy of the book to former Attorney-General and senior advocate Soli Sorabjee in the presence of diplomats, lawyers and other eminent personalities.

Speaking on the occasion, Sir Richard said, "The book has turned complex legal issues into simple and easy reading prose". The book would be of great help to Indians living abroad as it would help them understand the legal issues in a simple and easy manner, he added.

According to Mr. Sorabjee "with a large number of Indians migrating abroad and the nomenclature of NRI, Person of Indian Origin and Overseas Citizen of India coined by the Government of India to describe them, their problems and grievances have proliferated, sans any legislative remedies or administrative redress." He said the authors have covered uncharted territory with reasonable clarity making the book readable and simple. It would be of great advantage to people to get basic knowledge on immigration.

A member of the British House of Lords, Diljit Rana, described the pioneering work by the Malhotras as a milestone in the history of NRIs and said it would go a long way in resolving the problems of NRIs worldwide. As president of the Global Organisation of People of Indian Origin (GOPIO), Mr. Rana said: "I am immensely happy with this ready reference of law written in such simple words."

In his response, Mr. Anil Malhotra said: “Time and people have changed, laws have not. The result is an overburdened legal system attempting to dispense justice in a vibrant Indian jurisprudence culling out permissible relief on a case to case basis.”

“Over the years, issues and problems pertaining to NRIs have proliferated. Besides cross-border marital problems, human smuggling, trafficking, immigration problems, nationality and citizenship issues are fast growing segments of this new NRI jurisprudence. Though the solutions are embedded in bringing legislative changes for evolving NRI jurisprudence, the pace and consciousness levels with which lawmakers are moving is alarmingly slow and our objective is to cull out the best possible solution to the problems,” he added.

THURSDAY, 11 NOVEMBER 2011

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## Guide to PIO, NRI and OIC

**What do you call Indians settled abroad – persons of Indian origin (PIO), non-resident Indians (NRI) or Overseas Citizens of India (OIC)? The answer may seem complex since all three categories exist. Yet, how they are different and what set of rights are available to them could be baffling even to legal luminaries.**

Realising this void in law that fails to effectively cater to the Indian diaspora community comprising 30 million settled across 180 countries, two Indian lawyers have brought out a comprehensive guide demarcating each category of Indians settled abroad, their rights, and the jurisdiction to be exercised by foreign and Indian courts for protection of their civil and criminal rights.

The book titled *Indians, NRIs and the Law* authored by Chandigarh-based lawyers Anil Malhotra and Ranjit Malhotra has been the fruit of six years of extensive research, practice and deliberation in dealing with issues relating to illegal immigration, broken marriages, custody battle, maintenance, inter-country adoption, surrogacy and forced abduction of children from their parental homes.

Releasing the book at the British High Commission on Wednesday, India's former Attorney General and legal luminary Soli Sorabjee said, "When Government comes out with these terms NRI, PIO, OIC, frankly speaking, even I am not aware of them. These are uncharted territories which require research. And this book explains complex issues with remarkable clarity."

This book is the third of a series released by the same authors, having recent commentaries by Malhotra brothers on aspects concerning voting rights for NRIs, steps to counter human smuggling, the contentious demand for a Uniform Civil Code, and real life tales of marriage, divorce and adoption relating to NRIs as a guide for development of law.

Speaking to *The Pioneer*, Anil Malhotra said, "The need of the hour is to evolve a NRI jurisdiction. There is a sizeable chunk of Indians who send their remittances to India. Do we just take their euros, dollars and render them helpless in foreign lands." While a start has been made by providing voting rights to NRIs, Malhotra feels it is "elusive".

NRIs constitute 11 million of the Indian population abroad. The chunk of 19 million is of OICs who enjoy multi-entry life-long visa to enter India but no political or voting

rights. Again, the NRIs must visit their constituency back home to cast votes and cannot use postal ballots making the right futile, Malhotra added.

Sir Richard Stagg, the British High Commissioner to India, who received the first copy of the book complimented the Malhotra brothers for providing frequent legal assistance to the British High Commission on issues related to Indians abroad. The authors also serve on the panel of other Commonwealth countries besides Consulates throughout India.

  <b>Chandigarh Tribune</b> ONLINE EDITION	
Sunday, November 20, 2011, Chandigarh, India CHANDIGARH INDEX	 <b>CHANDIGARH STORIES</b>

**SUNDAY, NOVEMBER 20, 2011, CHANDIGARH, INDIA.**



Left to right: Lord Diljit Rana, MBE, Honorary Consul of India to Northern Ireland, Anil Malhotra and Prof Sir Peter Gregson, Vice-Chancellor and President, Queens University, Belfast, during a discussion on "Indians, NRIs and the Law" at the Institute for Development and Communication, Chandigarh, on Saturday. Tribune photo: Manoj Mahajan

## 'Contemporary issues not defined within existing legal framework'

**Tribune News Service**

Chandigarh, November 19

Globalisation of economy and politics in the 21st century has thrown new opportunities and challenges for interaction of diaspora with their own country of origin and also in the place of settlement. It has drawn issues ranging from voting rights with their own country of origin or dual citizenship or their interaction with the social capital in terms of marriage alliances and material support system. The issues emerged during a discussion based on a book, "Indians, NRIs and the Law," authored by Anil Malhotra and Ranjit Malhotra, held at the Institute for Development and Communication (IDC) here today.

The legal framework is inadequate because it does not define or identify contemporary issues within the existing legal framework. This inadequacy results into certain cases of non-remedial voids, long-drawn legal battles and social de-arrangements. The book has attempted to capture this wide spectrum of diaspora interaction with their place of origin in terms of legal framework practiced to regulate their interactions.

Dr. Pramod Kumar, Director, IDC, said social and political reintegration were significant factors while determining the kind of legal framework necessary for addressing the vast range of NRI issues and concerns. He remarked, "the work focuses largely on trade whereas enhancing human mobility and interaction with regard to the NRIs needs to be introspected."

Professor Sir Peter Gregson, Vice Chancellor and President, Queens University, Belfast, chaired and moderated the discussion and in his opening remarks shared commonalities of the university and IDC in the context of legal studies being a key discipline. He said, "Law is close to our heart at Queens University and society, at large and we work very

closely with the legal profession as we are passionate about educating students on global changes with regard to the same."

Lord Diljit Rana, Honourary Consul of India to Northern Ireland participated in the discussion by saying, "The book highlights problems faced by NRIs across the globe but we need to find solutions by setting up committees that would make recommendations for improvement in the state of affairs and be a positive step in solving problems." Vikas Pratap, Commissioner NRIs, Punjab government, informed those present about the first of its kind in India state commission, "Punjab State Commission for NRIs, the Bill has been passed by the Punjab Vidhan Sabha and is awaiting to be constituted into an Act that would evaluate the current laws and the expansive gamut of issues and concerns of Punjabi NRIs and work towards the welfare of the same. It is a step better than what has been so far."

Mr Scot Slessor, Consul-General Canada and his wife Mrs. Donica Pottie also participated in the discussion. R.I. Singh, former, Chief Secretary, Government of Punjab, said, "Law as an instrument of social engineering is extremely slow. As a consequence society is changing , mobility is very fast and laws are not keeping pace."

## BOOK REVIEW

Anil Malhotra and Ranjit Malhotra, *Indians, NRI's And The Law*, Universal Law Publishing Company, New Delhi (India), 2012 edition, Pages 452 and i-xxiv. Price Rs. 795 or \$75.

Indians have emigrated in large numbers and settled in almost every country of the world. Most Indian émigrés have assimilated into the native communities and have gelled well. Yet many emigrants in several countries have formed separate settlements and have maintained their cultural roots and native life style. As a result their identity has not been subsumed locally and remains distinct and independent. Such insistent traditional beliefs and cohesive community living have often come in conflict with administrative laws of the host country and have also irked the intolerant local populace for unwelcome intrusions into their social and cultural space. Times and people have changed over generations and so has their mutual harmony. No wonder, problems were bound to arise and this inevitability has happened. There is need to tackle these problems with measured restraint and mutual goodwill. In this scenario, this book by Malhotra's is really welcome. It attempts to analyse incumbent situations, finds pragmatic solutions and suggests viable remedies. Such a book is thus timely and topical.

The book is an anthology of legal writings spread over a period of time and covering myriad subjects related to Indian social milieu, concerns of non-resident as well as domiciled Indians in host countries and other miscellaneous topics. It contains 35 short pieces prompted by contemporary issues, topical debates and court judgments in India and abroad. Apart from this, it carries nine detailed articles on subjects of common interest and a few thought provoking issues. The detailed expositions reveal authors' erudite scholarship in the subject, vast experience in the field of immigration and deep insight into the problems analysed and cogently argued in emerging societal relationships and the germane law. The articles are dotted with profuse case law of latest vintage which makes them highly useful and relevant.

It would help understand the spectrum of coverage in this volume if some of the subjects comprised in the book are mentioned. Marriage and adoption, immigration and nationality issues are traditional problem areas now supplemented by foreign employment as well as business immigration and international arbitration. Apart from these, several current and controversial issues like commercial surrogacy, conflicts in inter-country adoption, inter-country parental child abduction, global child abuse, parent-insisted marriages and inter-continental matrimonial litigation and growing alternative dispute redressal in family law have been highlighted as contemporary challenges establishing the need to delve deeper in connected laws and evolve a stable and balanced NRI jurisprudence through constructive and adaptive interpretation as also *specialibus* legislation. This assumes importance as India has no legislated Private International Law

and it primarily operates on the basis of case law and precedence. This book thus fills a niche in finding solutions for escalating immigration problems on which information available is rather scant and sketchy for an optimal comprehension that this segment of Indian citizenry so urgently needs as legal help, for sane advice and emotional succour.

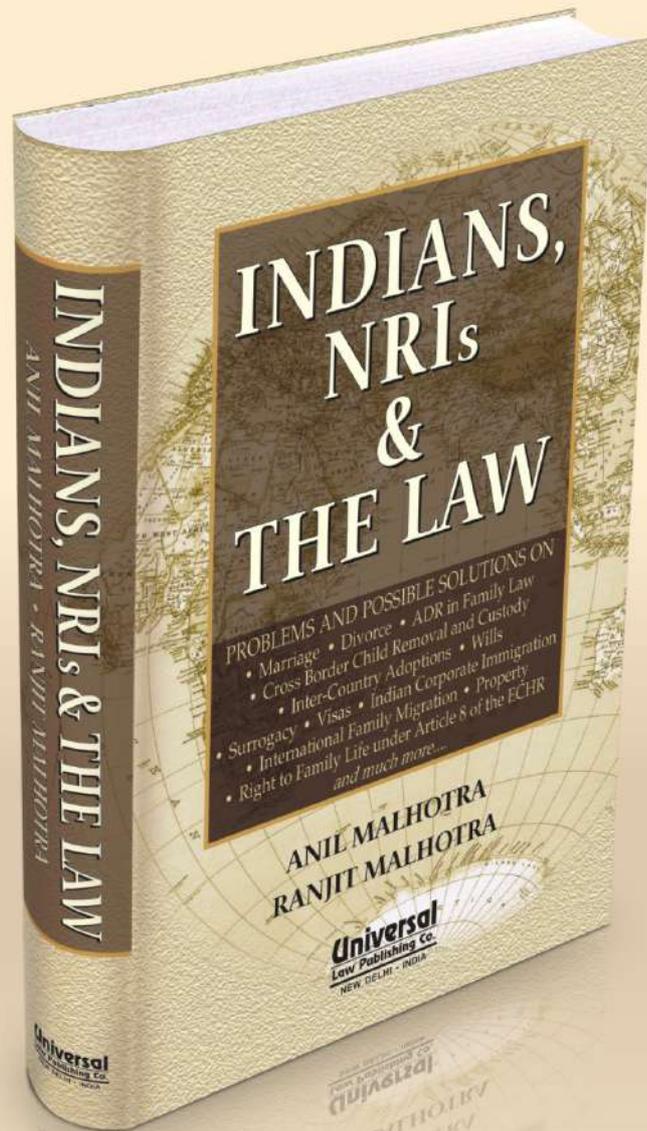
Compilations with such breadth of coverage and diversity of subjects tend to be an onerous task to edit and sectionise. Nonetheless, articles could have been classified under sub-headings like marriage and adoption, immigration and trafficking, business challenges and arbitration, controversial issues and miscellaneous concerns. This would have facilitated subject-wise reading for better understanding and referencing. Further, it would have added to the utility and scope of this book if problems of extradition and inter-country arrests with attendant consequences of prosecution had been elaborated in some detail.

In conclusion, I fully endorse the recommendation of Soli Sorabji in the Foreward and feel confident in highlighting the usefulness of this collection of articulate essays to academicians and scholars, members of the bar and the Bench, bureaucrats in government offices and diplomats in the embassies as well as foreign lawyers handling legal problems of Indian community settled in their respective countries. It is a useful tome of knowledge with exciting food for thought from Indian perspective.

Dr. G. S. Sachdeva<sup>≈</sup>

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<sup>≈</sup> Adjunct Professor at the Centre for International Legal Studies, SIS, JNU, New Delhi.



❖ *Launch by* ❖

**Sir Richard Stagg KCMG**

*British High Commissioner to India*

*in eminent presence of*

**Soli J Sorabjee**

*Former Attorney General for India*

**Rt. Hon. Lord Diljit Rana MBE**

*House of Lords, London*



**INDIANS, NRIs AND THE LAW by ANIL AND RANJIT MALHOTRA**

**UNIVERSAL LAW PUBLISHING (NEW DELHI) 2011**

**£50 HARDBACK 978-9-3503-5124-6**

The Malhotra brothers are well known to many English practitioners, many of whom dealing with clients from the Indian sub continent already have a copy of the hugely successful book "Acting for non resident Indian clients" (published by Jordans).

The third publication "Indians, NRIs and the Law," by Anil and Ranjit Malhotra has now been published by Universal Law Publishing (New Delhi). This easy to read publication is invaluable for all advising non resident Indians living and working in another jurisdiction, those currently residing in India including considering a move abroad and those individuals and families contemplating returning to India having lived abroad.

The book deals with a plethora of legal problems and provides helpful solutions on marriage, divorce, ADR in Family Law, the removal of children across national borders, child custody, inter country adoption, surrogacy, Wills, Indian Corporate Immigration, International Family Migration, Visas, rights to a family life under Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 and property issues. It contains easily accessible and well researched legal and practical information for non resident Indians and those advising them.

I can do no more justice to this publication but to quote the accolades from the former Attorney General for England, Soli J Sorabjee, from Lord Justice Thorpe Head of International Family Justice for England & Wales and from Peter Boshier the Chief Family Court Judge, New Zealand who state:

*"I, have no doubt that this book will be extremely useful to academicians, Judges, policy makers, lawyers in India, overseas lawyers and also to foreign readers. The book will provide invaluable guidance to foreign offices, Consulate Directorates besides Consular sections of the Embassies and High Commissions worldwide by producing answers to the unresolved problems on new emerging areas of the vast Indian diaspora scattered around the world." (Soli J Sorabjee)*

*"In this work the authors clearly articulate the need for family reform, particularly to provide remedies for adults and children who, directly or indirectly, are entangled in breakdown of relationship that are not bounded by one village, one city or one nation. I commend this publication and trust that it will contribute to the enlargement of the law of India to cover areas that globalisation has changed." (Thorpe L J)*

*"I congratulate Anil and Ranjit Malhotra for this comprehensive and insightful publication on aspects of family law and issues that it gives rise to in India, as well as the international arena. Family Law is increasingly an international discipline and this text will educate and inform not only within India but beyond." (Peter Boshier).*

Ann Thomas

Managing Partner, The International Family Law Group LLP, Covent Garden, London.

[www.iflg.uk.com](http://www.iflg.uk.com)

# THE HINDU

Friday, November 11, 2011

## New book to help NRIs take close look at law

In the absence of a specific statute governing their rights, Non-Resident Indians face a host of problems relating to marriage, divorce, child custody, adoption, surrogacy and inter-parental child removal. To overcome this lacuna, two Chandigarh-based advocates, Anil Malhotra and Ranjit Malhotra, have jointly brought out a book, "Indians, NRIs and the Law", published by Universal Law Publishing Co. It was released by the British High Commissioner to India, Sir Richard Stagg, at his residence here on Wednesday evening.

The authors have highlighted the problems faced by 30 million NRIs in almost 180 countries. Foreign law practitioners are at sea attempting to resolve these problems for lack of any authentic source of information on these subjects. This book is a universal answer for the aggrieved spouse, foreign litigant, overseas practitioner or any lay person who wants to know where he stands.

Sir Richard gave the first copy of the book to former Attorney-General and senior advocate Soli Sorabjee in the presence of diplomats, lawyers and other eminent personalities.

Speaking on the occasion, Sir Richard said, "The book has turned complex legal issues into simple and easy reading prose". The book would be of great help to Indians living abroad as it would help them understand the legal issues in a simple and easy manner, he added.

According to Mr. Sorabjee "with a large number of Indians migrating abroad and the nomenclature of NRI, Person of Indian Origin and Overseas Citizen of India coined by the Government of India to describe them, their problems and grievances have proliferated, sans any legislative remedies or administrative redress." He said the authors have covered uncharted territory with reasonable clarity making the book readable and simple. It would be of great advantage to people to get basic knowledge on immigration.

A member of the British House of Lords, Diljit Rana, described the pioneering work by the Malhotras as a milestone in the history of NRIs and said it would go a long way in resolving the problems of NRIs worldwide. As president of the Global Organisation of People of Indian Origin (GOPIO), Mr. Rana said: "I am immensely happy with this ready reference of law written in such simple words."

In his response, Mr. Anil Malhotra said: “Time and people have changed, laws have not. The result is an overburdened legal system attempting to dispense justice in a vibrant Indian jurisprudence culling out permissible relief on a case to case basis.”

“Over the years, issues and problems pertaining to NRIs have proliferated. Besides cross-border marital problems, human smuggling, trafficking, immigration problems, nationality and citizenship issues are fast growing segments of this new NRI jurisprudence. Though the solutions are embedded in bringing legislative changes for evolving NRI jurisprudence, the pace and consciousness levels with which lawmakers are moving is alarmingly slow and our objective is to cull out the best possible solution to the problems,” he added.

# INDIANS, NRIs & THE LAW

PROBLEMS AND POSSIBLE SOLUTIONS ON

- Marriage • Divorce • ADR in Family Law
  - Cross Border Child Removal and Custody
  - Inter-Country Adoptions • Wills
  - Surrogacy • Visas • Indian Corporate Immigration
  - International Family Migration • Property
  - Right to Family Life under Article 8 of the ECHR
- and much more....*

ANIL MALHOTRA

The third volley of NRI Law Collection penned by legal luminaries Anil and Ranjit Malhotra carries a Foreword by Mr. Soli Sorabjee. Starting with a touching salute to the late patriarch Respected Ram Niwas Mirdha, the legal baggage in the book titled 'Indians, NRIs & the Law' has 35 short crisp pieces and 9 detailed expositions. Admirably crafted, the 450 page compilation is a store house of NRI Law profusely complimented with Jacket Comments internationally. It is a culmination of the authors' professional experiences of handling NRI disputes in courts worldwide and their deliberations in Conferences scattered over London, Munich, Netherlands, Vancouver,

Cape Town, Perth, Rio de Janeiro and Hyderabad.

The topic headings reveal it all. Some are, "Can a Broken Marriage Be Sritched Together?", "No Bull in a China Shop of NRI Divorces & Anti-suit injunctions", "Dispute Resolution in The Family the Law forgot," "Pre-Nuptial Agreements: Unsited in the Indian context," "NRI Commissions-An adventurous agenda," "Voring Rights for NRIs-At Optical Illusion," "Human Smuggling-The Dark Side Of The Moon," "Illegal Immigration-Merchants Of Death," "Going Abroad-In Jail," "Hindu Marriages- Made In Heaven, Celebrated In India, & Dissolved In USA," "Corbett's

Legacy," "All Aboard For The Fertility Express," "Socio-Legal Perspectives Of Forced Marriages-Perceptions & Solutions," "To Return or Not To Return Abducted Children," "Key Inbound Business Immigration and Employment Issues," "Conflicts of Adoption Laws," "Law of Arrest in India" and "International Arbitration Issues". The list goes on and on endlessly. The intrigue drives you to delve deeper in this NRI jurisprudence.

Quoting the Supreme Court in Baby Manji Yamada (AIR 2009 SC 84), "Commercial surrogacy" reaching "industry proportions is sometimes referred to by the emotionally

BY  
ANIL MALHOTRA

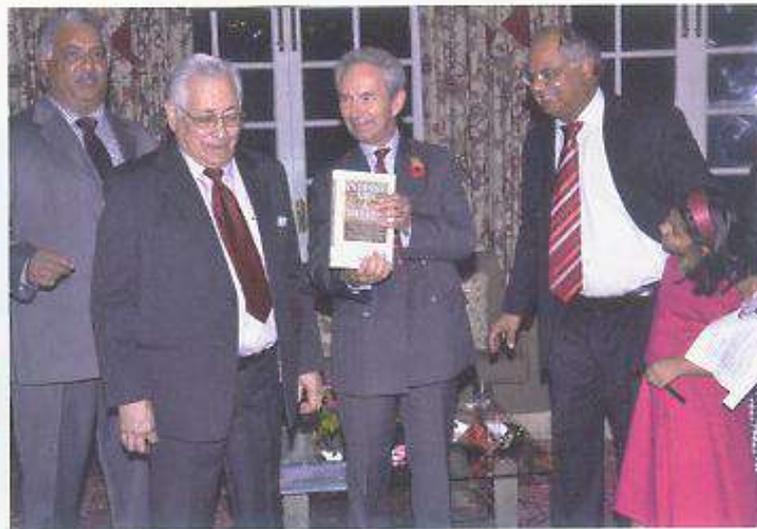


charged and potentially offensive terms: Wombs for rent, Outsourced pregnancy or baby farms," the authors state that surrogacy is said to legal because it is not illegal. The authors think that forced and early marriages entrap women and young girls in relationships that deprive them of their basic human rights and that the Government has to take stringent action against the extra judicial bodies which have so far been shielded from any State intrusion due to political reasons. Human smuggling has been described by the authors as "A trade in which Indian youth have been bought and sold as literal slaves like any other commercial merchandise recently in Iraq." In the view of the authors "Modern concepts and issues including commercial surrogacy, inter-country adoptions, inter-parental child removal, inter-continental matrimonial litigation and instances of global child abuse present new challenges. The law never anticipated or visualized these new generation legal complexities, and hence statutory law in India contains no provisions to define or rectify them." The text explores many more uncharted waters.

The Foreword of Mr. Soli Sorabjee reads "The book will be extremely useful to academicians, Judges, policy makers, overseas and Indian lawyers as also to foreign readers by providing answers to unresolved problems in new emerging areas of the vast Indian Diaspora scattered around the world." No doubt, the text does justice to 30 million NRIs scattered in 180 nations abroad. The celebrated work is a milestone in NRI history and a reading is recommended.



Sir Richard Stagg, British High Commissioner in India with Anil Malhotra and Ranjit Malhotra and their family



L to R: Anil Malhotra, Soli Sorabji, Sir Richard Stagg & Ranjit Malhotra

# THE ASIAN AGE

Delhi | Mumbai | Kolkata | London

New Delhi Friday 11, November 2011.

## UK envoy releases book on NRI's legal problems

**S.S. NEGI**

NEW DELHI, NOV. 10

British high commissioner Sir Richard Stagg released a book on various burning legal problems of NRIs pertaining to disputes arising out of the failed marriages, abduction of children by separating parents, adoption and the latest trend of surrogate births while appreciating such an effort made for the first time to make Indian living abroad aware of the complexities of

the laws on these issues.

The book penned by Chandigarh-based lawyer brothers Anil Malhotra and Ranjit Malhora, who got their LL.M degrees from a university in London and now practising mainly on civil disputes of NRIs' in Indian courts and abroad, has focused more on the problems arising due to the conflicts between Indian laws and the foreign laws.

Sir Richard released the book on Wednesday night at a simple function at his

**The book has focused more on the problems arising due to the conflicts between Indian laws and the foreign laws**

official residence here in the presence of India's top

legal brain and former attorney-general Soli J. Sorabjee, who also lauded the efforts of the Malhotra brothers to focus on the burning legal problems of NRIs.

The book titled *Indians, NRIs & the Law* has 35 short articles and nine detailed expositions detailing the problems like broken marriages, divorce, pre-nuptial agreements, NRI commissions, illegal immigration, conflict of Hindu Marriage Act with foreign marital

laws, forced marriages, deceptive marriages by already married NRI boys with Indian girls and abduction of children by separating parents.

The other intricate legal issues emerging in the new world order included in the book are India becoming one of the biggest hubs for surrogate birth and conflicts in adoption laws, creating major hurdles in legal parenthood of the surrogate children.

Some of the chapters like

"Hindu Marriages — Made in Heaven, Celebrated In India and Dissolved in USA" on failed marriages and "All Abroad for The Fertility Express" on surrogacy reveal the real serious dimensions of contemporary world order, brought to the notice of the general public in this manner for the first time as these issues till now had been confined to the complex law books. Anil Malhotra said the book is entirely based on the personal experience.

Continued from page 349

would legalise commercial surrogacy. Under the Bill's provisions, the parties would enter into an enforceable surrogacy agreement and the surrogate would receive monetary compensation as well as health care treatment expenses during pregnancy. A surrogate mother is to be aged between 21 and 35 years old and should have no more than five children, including her own. The child would be regarded (in India, at least) the legitimate child of the commissioning married couple. Once the agreed payment has been made, the surrogate would relinquish all parental rights and these would vest in the commissioning party or couple whose names(s) would appear on the child's birth certificate. The child would not be an Indian citizen and foreigners seeking fertility treatment in India would be required to demonstrate that they had registered with their own Embassy and that they would be able to take the child to their country of origin or residence. Foreigners would also be required to appoint a local guardian to take care of the surrogate during the pregnancy and of the child, should the commissioning party or couple be unable or unwilling to receive the child. Whilst the Bill has still not become a law, the Indian Council for Medical Research Guidelines, 2005 provide the only non-statutory provisions which are neither justiciable nor enforceable in a Court of law.

This book provides a welcome insight into a rapidly developing area of the Law in a country which has become one of the global focal points for international surrogacy arrangements. It will be extremely useful to all those who are seeking more information about the approach to surrogacy in India.

Hans van Loon  
Secretary General, The Hague Conference on Private International Law,  
The Hague, Netherlands

An inclusive text lucidly explaining the new visas and the intricacies of Surrogacy laws. The book is welcome and should find a place in the libraries of all concerned with this important subject.

Sud L. Sushant  
Former Attorney General for India

Anil and Ranjit Malhotra present a pioneer work based upon their original research of at least five years, which is a treasure full of stimulating ideas along with plethora of other raw material in the shape of seven Appendices. Such an admirable attempt can legitimately be termed as the starting point of the evolving law and practice on surrogacy.

Dr. Vandana Kumar  
LL.M., S.J.D. (Toronto, Canada) Former Director (Academics), Chandigarh Judicial Academy  
Dean, Faculty of Law, Punjab University & UGC Emeritus Fellow

Virtually a virgin field of surrogacy has been portrayed so well. It has covered a wide spectrum of issues. They have been treated minutely and in detail. A treasure house of relevant material. The weaving of national and international aspects of surrogacy has been done intelligently and wisely. Welcome addition to legal literature. Deserves a big applaud.

Dr. Balraj K. Gupta  
Director, National Judicial Academy, Bhopal, India

It is a great piece of work which is the need of the present times to bring to the fore the important issues of surrogacy in India. It is a subject which needs to be brought to the attention of the decision makers in India so that it is properly controlled and regulated. The Malhotras have done a great service in bringing out this book.

The Rt Hon. Lord Dipin Rana  
MBE, Member British Parliament, U.K

The book is a very well researched document, that draws its credibility from the various cases reported in the country and ignites the passion and challenges thrown in with the changes in the social fabric in the contemporary times.

Vinod Kumar Tilam  
Member, National Commission for Protection of Child Rights, New Delhi

Once again, Malhotra Brothers have pulled together a series of useful, timely information on a complex, emerging topic that is growing in concern to foreign governments.

Seri Sleser  
Consul General of Canada, Consulate General of Canada, Chandigarh

In international family law surrogacy presents the greatest present challenge. The world desperately needs a uniform international law. The Hague Conference is working assiduously to fill the void. It needs the knowledge and experience of practitioners worldwide as well as the insight of scholars and academics.

The Rt. Hon. Lord Justice Tompsett  
Head of International Family Justice for England & Wales

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Ranjit Malhotra

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Ranjit Malhotra

Surrogacy in India

# Surrogacy in India

A Law in the Making

A Law in the Making

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NEW DELHI - INDIA



Despite the legal, moral and social complexities that shroud surrogacy, there is nothing stopping people from exploring the possibility of becoming a parent. Women who may choose to 'rent' their womb for a surrogate pregnancy are slowly shaking off their inhibition and fear of social ostracism to bring joy to childless couples. However, India's Assisted Reproductive Technology (Regulation) Bill & Rules, 2010, have legal lacunae, lacks the creation of a specialist legal authority for adjudication and determination of legal rights of parties by a judicial verdict, and falls into conflict with existing laws. These pitfalls may be the graveyard of this proposed new law. New Indian Medical Visa Regulations, 2012 have restricted commissioning of surrogacy arrangements in India to foreign men and women only whose marriage should have sustained for at least two years. Single parents, gay couples or unmarried partners can no longer commission surrogacy on tourist visas in India.

Recognising the advances in assisted reproductive technology (ART) and the fact that surrogacy was already taking place in the country, draft legislation, the Assisted Reproductive Technology (Regulation) Bill & Rules 2010, is awaiting debate in the Indian Parliament. The draft Bill would provide for the regulation and supervision of ART and

Continued on back flap

## Surrogacy in India – a Law in the Making

The brothers Malhotra, Anil and Ranjit, are among the best-known Indian lawyers in the United Kingdom. Having studied at the School of Oriental and African Studies in London, they are frequent visitors to our shores, playing a full part in international conferences and seminars, and finding time amid their busy legal practice to co-author books on the law affecting Non-Resident Indians (NRIs) ~ a diaspora numbering many millions. They have now produced a fourth book, exploring how the law struggles to keep up with technology in an area involving the deepest human instincts and feelings.

Childless couples have long resorted to adoption, but adoption across national boundaries can be extremely difficult. The British immigration rules only recognise overseas adoptions which have taken place in a country on a designated list dating back to 1973, and badly in need of updating. The custom of inter-family adoption, whereby a childless couple will adopt the child of a close relative who has one to spare is particularly prevalent within the Hindu and Sikh communities, but in *Radhika Sharma v ECO, New Delhi* [2006] EWCA Civ 89 the Court of Appeal in London upheld the refusal of a visa for an Indian couple based in the UK to bring over the niece whom they had adopted in India. As outlined in the Malhotras' book, the matter was taken up at the European Court of Human Rights, and in 2006 the British government gave in, agreeing to pay all the costs incurred by the family. But that was just one case. The immigration rules themselves remain as inflexible as ever.

Inflexibility over adoption can be seen in India too. As the Malhotras explain, the Hindu Adoption and Maintenance Act 1956 prevents non-Hindus from adopting Hindu children. In recent years, however, developments in science and technology have enabled people to become biological rather than adoptive parents, despite problems with fertility and conception. Sperm from an anonymous donor can come to the rescue, although a donor who was not anonymous received a shock a few years ago when, having donated his sperm to a lesbian friend who wanted to bring up a child with her lady paramour, the Child Support Agency subsequently pursued him for child maintenance.

*In vitro* fertilisation is a more recent development, the first 'test tube baby', Louise Brown, having been born only in 1978. But what if the woman who supplies the egg cannot, after it has been fertilised, have the embryo implanted in her own womb? That is where a surrogate mother is needed, and that is the focus of this timely and lively book. It is much cheaper to find a surrogate mother in India than in countries such as the USA and the UK, so couples, whether of Indian origin or not, have been coming to India for this purpose in increasing numbers ~ so much so that the Supreme Court has taken note of the pejorative terms being bandied about, such as 'wombs for rent', 'outsourced pregnancies' and 'baby farms'.

The Malhotras give vivid examples of the problems that can arise. An embryo cultured from a couple in Japan was accepted by a surrogate mother in Ahmedabad, but when the baby was born the couple had divorced and no longer wanted it. The Japanese grandmother came along, however, wanting to take the baby away and look after it herself. This proved very difficult. The Supreme Court had to direct that an 'identity certificate' be issued for the baby in order for it to be taken out of India, and

it is unclear whether the baby has got Japanese nationality. A gay Israeli couple, the sperm from one of whom was used to initiate a surrogate pregnancy in Badra, had great difficulty bringing the baby to Israel, where gay marriage is not recognised and gay couples are not allowed to adopt children. Two children born to surrogate mothers in India had less trouble being issued with British passports in order for them to join their parents in the UK, but a High Court judge still had to grant parental orders in December 2011.

Despite such difficulties, the market for Assisted Reproductive Technology, to use the all-embracing term, is booming in India, and as the Malhotra brothers complain, it is completely unregulated. There are only non-binding guidelines laid down by the Indian Council for Medical Research. Very recently, however, new Visa Regulations have come into force which limit the issue of a Medical Visa for the purpose of making surrogacy arrangements to married couples, whose marriage has subsisted for at least two years. This will not be available to unmarried couples, gay couples or single people who want to commission surrogacy, and they will not be allowed to use a Tourist Visa for this purpose. The restrictions emanate from the Ministry of Home Affairs, and are purely an exercise of executive discretion, without any involvement by the democratically-elected legislature.

The legislature is proposing to get involved, however, with the publication in 2010 of the Assisted Reproductive Technology (Regulation) Bill. As the Malhotra brothers acknowledge, the aim is laudable, to regulate the private clinics which have been flourishing unchecked in a way that is wide open to abuse. But the authors subject the Bill to a withering critique, showing up its many weaknesses and lacunae. One hopes that these criticisms will be taken into account when the Bill makes its way through the Indian Parliament. Its passage has not yet started, so the opportunity is there to make changes.

Meanwhile, Anil and Ranjit Malhotra continue to be active in all areas concerning the cross-border welfare of children. As recently as May this year they were the instigators of an international symposium in New Delhi, at which eminent jurists and experts from the United Kingdom, Australia, the United States and elsewhere called upon the Indian government to sign up to the Hague Convention on International Child Abduction. One suspects that the unflagging energy of the Malhotra brothers will in due course produce another book on children and the law, a hot topic in many countries, including our own, where the Home Office now has a duty to “*safeguard and promote the welfare of children*”, even if they are here unlawfully. But for now, the reader may turn to *Surrogacy in India* for a fascinating overview and analysis of the situation in the only country in the world which is proposing to legalise commercial surrogacy.

**London**  
**Dated: 16 June 2013**

**Richard McKee**  
**Judge of the Upper Tribunal**  
**United Kingdom**

Tuesday, 14 May 2013

## **Jurists want India to sign Hague Convention on International Child Abduction**

**Increasing number of cases of father or mother abducting child, fleeing country**

Jurists and eminent academicians on Monday called upon India to not only sign the 1980 Hague Convention on International Child Abduction but also legislate on it. For, the number of cases of either the father or the mother abducting the child and fleeing the country of stay was increasing.

The multilateral treaty provides for an expeditious method to return a child taken from one member-nation to another. The Convention currently has 89 member-nations worldwide, but India is not a signatory so far. It seeks to protect children internationally from the harmful effects of their removal or retention and to establish procedures to ensure their prompt return to the state of their habitual residence as well as to secure protection for the rights of access.

At a symposium organised here by the British High Commission, the participants, including British Deputy High Commissioner to India Julian Evans; Head of International Family Justice for England and Wales Lord Justice Mathew Thorpe; Chief Justice of the Family Court of Australia Diana Bryant and the former Attorney-General of India, Soli Sorabjee, urged India to sign the Convention. The discussion was moderated by advocate Anil Malhotra. Experts from the office of children's issues, U.S. State department; Hague Permanent Bureau; the National Commission for Protection of Child Rights; and the National Judicial Academy also attended the symposium.

The participants said "given the increased international mobility, there has been a steady rise in cross-border parental child removal cases. Last year, India was second only to Pakistan as a destination for children removed from the United Kingdom alone by one parent against the wishes of the other."

At the end of the symposium, Justice Mathew Thorpe, along with Supreme Court judge Justice Vikramajit Sen and Mr. Sorabjee released the first legal textbook on surrogacy, *Surrogacy in India*, authored by advocates Anil Malhotra and Ranjit Malhotra in the presence of Mr. Julian Evans.

According to Mr. Anil Malhotra, "when an NRI marriage breaks, child custody fight occurs across the seas. We have no laws relating to cases of such conflict over child custody." The book offers an insight into the draft Assisted Reproductive Technology (Regulation) Bill, 2010 and points out various lacunas.

Keywords: [International Child Abduction](#), [Hague Convention](#), [Child Rights](#), [surrogacy](#)

Continued from last page  
persons including single persons and foreign couples. The draft ART Bill 2013, an exhaustive document containing 100 sections addressing various issues relating to ART was stated to be "Top Secret" being a part of the Cabinet note as per the requirement and procedure of the handbook of the Cabinet Secretariat on Cabinet Notes. The exercise of drafting the 2008, 2010 and 2013 Bills was entrusted to a 12 Member Specialist drafting Committee besides constituting a National Advisory Committee on ART under the Chairmanship of the Director General, ICMR. The draft Bills and Rules of 2008 and 2010 were extensively circulated for public opinion besides being sent to State Governments, institutions, statutory bodies, NGOs and other stake holders besides medical professionals. The 2013 Draft Bill was however not circulated or put in the public domain for discussion, comment or opinion. Whilst the Bill never became a law, the Indian Council for Medical Research Guidelines, 2005 provide the only non-statutory provisions which are neither justiciable nor enforceable in a Court of law. The medical visa guidelines further qualify the ICMR guidelines with restrictions.

On September 30, 2015, a draft Bill titled "The Assisted Reproductive Technology (Regulation) Bill, 2014" has been circulated in public domain for general public/stakeholders inviting suggestions/ comments within 45 days. This 2014 Bill, circulated by the Ministry of Health and Family Welfare, Government of India is enclosed as Appendix XI with this book. It contemplates that surrogacy shall be available to all married infertile couples thereby, debarring single persons from surrogacy. It proposes to disallow surrogacy for foreigners but makes it permissible for Overseas Citizens of India (OCIs), People of Indian Origin (PIOs), Non-Resident Indian (NRIs) and foreigners married to Indian citizens with two years of marriage who will have to obtain a Medical Visa for surrogacy in India. The Bill further proposes foreign nationality for such surrogate children of above foreign commissioning parents with limited entitlement of Overseas Citizen of India (OCI) status under the Citizenship Act, 1955. The Bill disentitles Indian Citizenship to such surrogate children. The future of surrogacy thus remains uncertain with vast different policy changes on the subject.

An incisive text lucidly explaining the new vistas and the intricacies of surrogacy laws. The book is welcome and should find a place in the libraries of all concerned with this important subject.

Sukh J. Srinivas  
Senior Advocate, Former Attorney General of India

It is a great piece of work which to the need of the present times to bring to the fore the important issues of surrogacy in India. It is a subject which needs to be brought to the attention of the decision makers in India so that the properly formulated and regulated. The Malhotras have done a great service in bringing out this book.

The Hon. Lord Dipu Kumar  
MBE, Member British Parliament, U.K.

Virtually a virgin field of surrogacy has been portrayed as well. It has covered a wide spectrum of issues. They have been limited minutely and in detail. A store house of relevant material. The weaving of national and international aspects of surrogacy has been done intelligently and wisely. Welcome addition to legal literature. Deserves a big applaud.

Dr. Rajaram K. Gupta  
Senior Advocate, Former Director, National Judicial Academy, Bhopal, India

In international family law surrogacy presents the greatest present challenge. The world desperately needs a uniform international law. The Hague Conference is working vigorously to fill this void. It needs the knowledge and experience of practitioners worldwide as well as the insight of scholars and academics.

The Hon. Lord Justice Thorpe  
Former Head of International Family Justice for England & Wales

This book provides a welcome insight into a rapidly developing area of the law in a country which has become one of the global focal points for international surrogacy arrangements. It will be extremely useful to all those who are seeking more information about the approach to surrogacy in India.

Hans van Loon,  
Former Secretary General, The Hague Conference on Private International Law,  
The Hague, Netherlands

Anil and Ranjit Malhotra present a pioneer work based upon their original research of at least five years, which is a treasure full of stimulating ideas along with plethora of other raw material in the shape of seven Appendices. Such an admirable attempt can legitimately be termed as the starting point of the evolving law and practice on surrogacy.

Dr. Vinod Kumar  
LL.M., LL.D. (Toronto, Canada)  
Former Director (Academic), Chandigarh Judicial Academy, Chandigarh,  
Faculty of Law, Punjab University, Chandigarh, India

The book is a very well researched document, that draws its credibility from the various cases reported in the country and updates the position and challenges thereof in with the changes in the social fabric in the contemporary times.

Vinod Kumar Talwar  
Former Member, National Commission for Protection of Child Rights, New Delhi

Once again, Malhotra Brothers have pulled together a series of useful, timely information on a complex, emerging topic that is growing in interest to foreign governments.

Sue Bishop  
Former Consul General of Canada, Consulate General of Canada, Chandigarh

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Surrogacy in India

Anil Malhotra  
Ranjit Malhotra

Universal  
Law Publishing

# Surrogacy in India

A Law in The Making - Revisited

Anil Malhotra  
Ranjit Malhotra



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Despite the legal, moral and social complexities that attend surrogacy, there is nothing stopping people from exploring the possibility of becoming a parent. Women who may choose to 'rent' their womb for a surrogate pregnancy are slowly shaking off their inhibition and fear of social ostracism to bring joy to childless couples. However, India's Assisted Reproductive Technology (Regulation) Bill, 2014, have legal lacunae, lacks the creation of a special legal authority for adjudication and determination of legal rights of parties by a judicial writ, and falls into conflict with existing laws. These pitfalls may be the graveyard of this proposed new law. New Indian commissioning of surrogacy arrangements in India to foreign men and women only where marriage should have sustained for at least two years; single parents, gay couples or unmarried partners can no longer commission surrogacy on tourist visas to India and the ART Bill, 2014 restricts surrogacy to infertile married couples only.

The Indian Council of Medical Research (ICMR) working under the auspices of the Ministry of Health and Family Welfare finalised the National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India in 2005 after extensive public debate all over the country from all stake holders. Under these 2005 guidelines, there was no legal bar to the use of Artificial Reproductive Technology (ART) by a single or an unmarried woman and the child born would have legal rights on the woman or man concerned. Thereafter, the draft Assisted Reproductive Technology (Regulation) Bill, 2008 (ART Bill 2008), the draft Assisted Reproductive Technology (Regulation) Bill, 2010 (ART Bill 2010) and the draft ART Bill 2013, stated to be revised based on the recommendations of the Ministry of Law and Justice, have consistently proposed that ART in India would be available to all

Continued on back flap

## Surrogacy in India-A Law in The Making: Revisited

No Indian lawyers are better known abroad than the brothers Anil and Ranjit Malhotra. One reason for their celebrity is the quantity and quality of their published work, of which this book is the latest. Subtitled 'A Law in The Making – Revisited', it does indeed revisit the original 'Surrogacy in India', published in 2013. That is not long ago, but events have moved on so quickly in this controversial field that a new edition was called for.

What is termed in medical jargon "Assisted Reproductive Technology" (ART) is by no means readily available in developed countries to couples with fertility problems. Surrogacy arrangements are unlawful in France, Germany and Italy, while in Canada and New Zealand 'commercial' surrogacy is illegal, although 'altruistic' surrogacy is allowed. In some States of Australia it is a criminal offence to arrange commercial surrogacy, while in most States of the USA compensated surrogacy arrangements are either illegal or unenforceable. In the United Kingdom, no contract with a surrogate mother is legally binding. So it is not surprising that Indians of the Diaspora, as well as people of all nations and races, have been flocking to the Subcontinent, where a "reproductive tourism" industry has been flourishing, serviced by some 200,000 clinics.

Labelled by its detractors as 'Rent-A-Womb', how – if at all – is this industry being regulated? In 2005 the Indian Council of Medical Research produced National Guidelines for Accreditation, Supervision and Regulation of ART Clinics in India. These are not legally binding, and they were followed by a series of draft Bills in Parliament : the Assisted Reproductive Technology (Regulation) Bills of 2008, 2010 and 2013. Yet another draft Bill, that of 2014, is currently in circulation. It proposes to make surrogacy available only to married couples who are citizens of India, thus debarring unmarried couples (gay or 'straight') and single people, as well as foreigners, save those married to Indian citizens. A 'Medical Visa' for surrogacy will be available to members of the Diaspora who are Overseas Citizens of India, People of Indian Origin or Non-Resident Indians, as well as foreigners married to Indian citizens. If the Bill becomes law, it will certainly put a brake on the current free-for-all, in which there is no statutory regulation whatever.

All this is carefully analysed by the Brothers Malhotra, who point out that India, with its separate personal laws governing the family lives of the different religiously communities co-existing there, appears to be the only country proposing to legalise commercial surrogacy. The pitfalls of this are amply illustrated in a book that comes with commendation at the highest level, having an Introduction by one judge of the Supreme Court of India and a Foreword by another. The book is divided into only four chapters, but each chapter is helpfully broken down into much smaller sections and subsections, so that

the reader need only glance over the Contents pages to pinpoint the particular matter he is looking for. There are twelve appendices, setting out, for example, the text of the draft Regulation Bills of 2010 and 2014, which display considerable differences.

With surrogate parenthood being increasingly resorted to around the world, India is at the forefront of this trend, and the Malhotras are in the vanguard when it comes to bringing all the issues surrounding it to the attention of the reading public, be they lawyers or lay. This timely book will be a particularly valuable tool for those engaged in what is now a significant aspect of Family Law.

Richard Mckee

Former Judge of The Upper Tribunal, United Kingdom.

London

28 November,2015.

# SURROGACY IN INDIA

## -A Law in The Making: Revisited

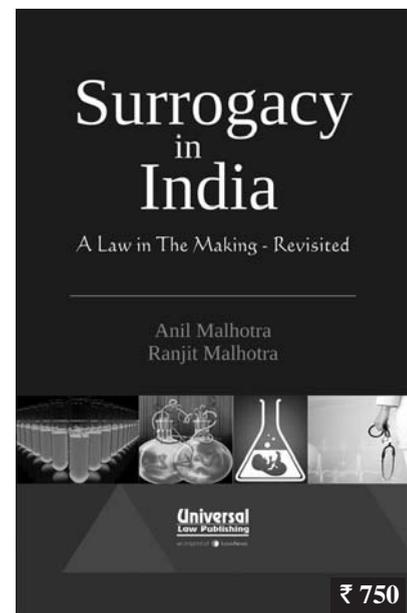
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**Richard Mckee**  
Former Judge of The Upper  
Tribunal, United Kingdom

# Surrogacy in India - A Law in The Making: Revisited



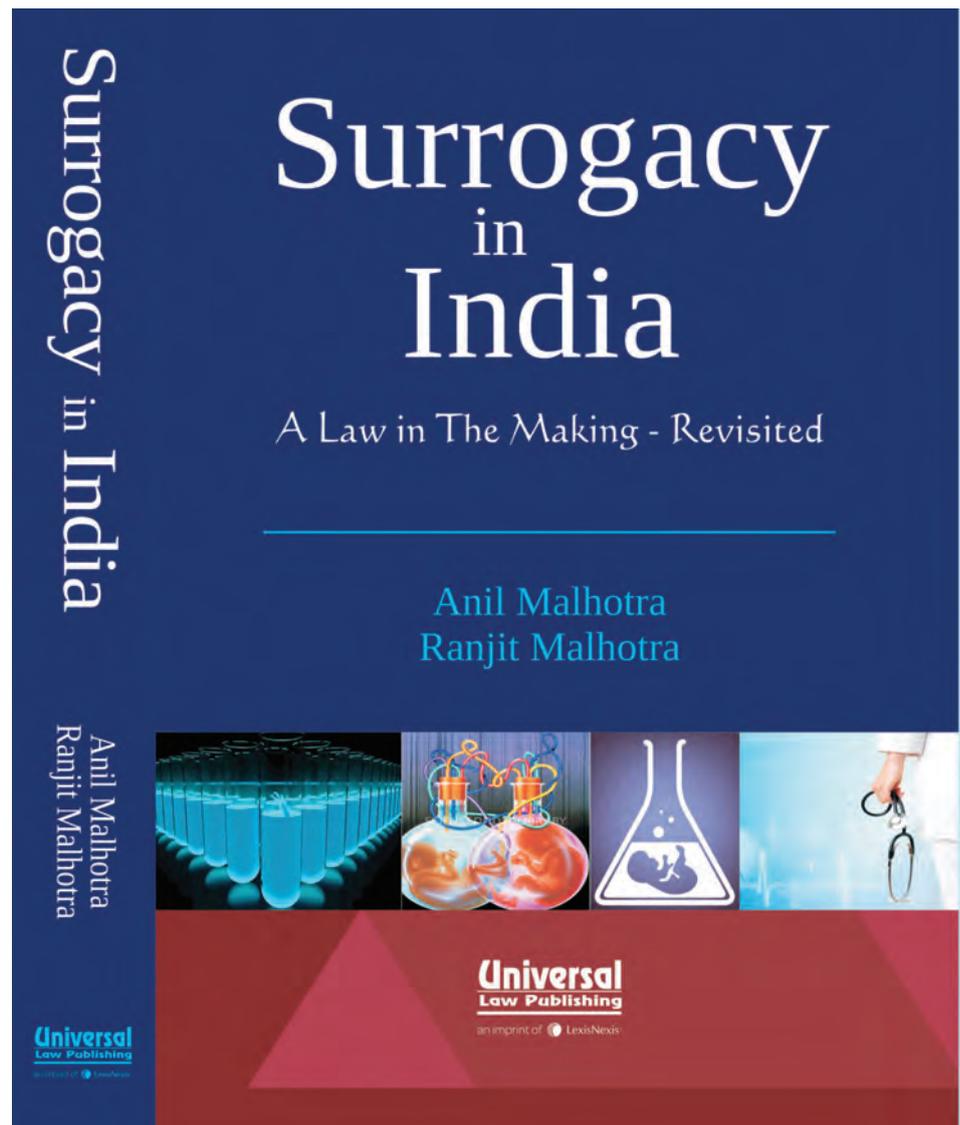
*Book review by Richard Mckee, Former Judge of The Upper Tribunal, United Kingdom.*

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General/Free Preview

for averting return of removed children or also making return of children... The International Child Removal and Return Bill, 2017...

The above process is a step towards the much needed practice... The International Child Removal and Return Bill, 2017...

The Principles of Country of Origin and Nation must be respected... The Principle of 'best interests', i.e., whichever court is most of the substance...

The Role of Courts of Origin should not be performed except for compelling special reasons to be recorded in writing by a domestic court...

Intentional orders of foreign courts of competent jurisdiction regarding child custody must be respected domestic courts...

To elaborate on summary custody by host courts where there is no pre-existing order of competent foreign court must be based on reasons and not ordered as a matter when a host court is seized of a child custody litigation...

The nature and effect of a foreign court order, reasons for repatriation, mental, physical, social, cultural or psychological harm to the child, harm to the parent in the foreign country and identity in having a custody order foreign court must be considered before ordering return of child to foreign court...

The above decision has to be made, set at rest in the absence of any real law on the subject, a few desirable suggestions are laid down by courts in India from time to time to evolve a consistent approach in multi-jurisdictional child custody disputes...

India's accession to the Hague Convention would resolve the issue of inter-country parental child removal, in the country of the habitual residence of the child...

The book covering various aspects of the problem has 4 chapters. The first chapter is a brief overview with five small sub-chapters containing short pieces giving a brief perspective of the issue and different dimensions of the problem. The remaining three chapters contain detailed discussions with case law cited. Various issues relating to implementation of foreign court judgments and possible safeguards to remove return of children to their biological homes are eloquently highlighted in these detailed chapters. The book has, in appendix, including relevant Indian statutes, the Hague Convention, extradition treaty between India and UK and important judgments, which are important reference documents relating to the issue of international parental child abduction. The book also includes Supreme Court of India judgments which are the relevant case law on the subject. Important judgments laying down essential principles governing the principle of the welfare of the child being the paramount consideration are also part of this study work...

The book is a first of its kind analytical compilation on this subject. It is a handy ready reference, which puts together all the material on the subject without any further reference to other sources, for all stakeholders both in India and abroad. Hence, decision of the Hon'ble Supreme Court of India on the subject, thereby, give the benefit of a light-house in the absence of proper legislation in the interim.

This publication is extremely timely as India is working towards the implementation of the Hague Convention of 23 October 1980 on the Civil Aspects of International Child Abduction. It will provide essential information from an Indian perspective to parents, lawyers and judges involved in child abduction cases...

Philippe Loret, First Secretary, Hague Conference on Private International Law, The Hague, The Netherlands. He is a meeting day for all issues concerning parental child abduction in and from India, this book will provide extremely valuable information and guidance to all those interested in or affected by the international wrongful removal and retention of children. Written by Anil and Ranjit Malhotra, Indian pioneers in resolving inter-national child abduction in India, it provides a full picture of the current legal situation in this country with its implications.

Han van Loon, Member of the Institute of Final International, Former Secretary-General of the Hague Conference on Private International Law (2006-2017). As Head of International Family Justice for England, I worked with other international experts to promote India's accession to the 1980 Hague Convention. Within India, chief among experts are the Malhotra brothers. Wishful that the 2017 Bill would see the light of day, they are supremely qualified to guide others in the national field of child abduction and education and this title will become the leading authority in the area of Indian and international family justice.

The Rt. Hon. Lord Justice Thorpe, Former Head of International Family Justice for England & Wales. In addition to India law cases of inter-country child removal frequently and in increasing numbers. The timely publication of this new book by Anil and Ranjit Malhotra, two senior internationally acclaimed experts, will find wide readership.

Georg Zehetner, Chief of Office at the Austrian Embassy New Delhi. This is another great reference book that Malhotra Brothers have produced dealing with NRI parental child custody issues. This unique effort by the authors has to be recognized and complimented. The authors have done extremely well in preparing this compilation which is very useful and handy for all information required to deal with the subject. Malhotra Brothers are legal practitioners and academicians of repute in the field of private international law.

The Rt. Hon. Lord Diplock, MR, Member British Parliament, UK. The authors have used their wealth of knowledge and expertise in international and domestic law to produce this essential and for judges, academics and practitioners. It will become the leading authority in this complex and difficult area of law.

Anne-Marie Hutchinson, OBE, QC (Ret), London. Lawful solutions to inter-parental child removal issues is an ever-evolving jurisprudence. In this realm of private international law, the authors present the complex situation with succinct clarity in depth study and subtle resolution. A volume addition to legal literature. The book fills a void and is a must by a study handbook which appears.

Prof (Dr) Ebrahim Moosa, Pro-Chancellor, McGill University of Law, Montreal. The scholarly brothers Anil and Ranjit Malhotra with an established reputation for specialization in the problems of family law and property disputes of NRI spouses have now come out with another volume addition to the existing literature titled, "India, Inter-Country Parental Child Removal and the Law". This is a scientific study of a poignant problem of removal of custody children from India and being custody.

P P Rao, Senior Advocate, Supreme Court of India. The book very vividly details the different dimensions of the issues related to the international child wrongful removal, case laws, relevant Indian statutes and the practical issues faced in implementing the overseas court judgments without ignoring the safeguards in removing the children as wrongfully removed.

V S Thota, Former Member, National Commission for Protection of Child Rights.

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INDIA, INTER-COUNTRY PARENTAL CHILD REMOVAL AND THE LAW

INDIA, INTER-COUNTRY PARENTAL CHILD REMOVAL AND THE LAW

Anil Malhotra Ranjit Malhotra



Universal Law Publishing



INDIA, INTER-COUNTRY PARENTAL CHILD REMOVAL AND THE LAW

Of 12 billion Indians, about one million live in 180 countries abroad. This migration harbours cross-border international relationships whose offspring live in foreign shores but connect with India or through their parents. Their broken multi-jurisdictional international relationships lead to removal of children to India or foreign jurisdictions in relation of court custody orders or abrogation of the parental rights of the aggrieved parent. Sadly, India does not define or recognize inter-parental child removal as an offence under any statutory law in India. Legal remedies are hard to secure.

As of now, multi-jurisdictional child disputes often end up in a stalemate. An aggrieved parent hails an Indian and around with a foreign court order to file a petition, commence, initiate and expensive course of successive multiple appeal litigation to achieve an enforcement of a foreign court order. Time, money and patience run out. A deadlock ensues. The child is split and locked by one parent. Consequently, most foreign courts now do not allow children to visit India, apprehending that they may not return.

The Hague Convention on the Civil Aspects of International Child Abduction, 1980, enables nations to become signatories and become part of a global pact to create systems of wrongful removal or retained children by returning respective through the influence machinery of Central Authority established by every nation for such purpose. As of now, no countries are contracting State to this Convention. Sadly, India is not amongst them. The Convention aims to secure the prompt return of children wrongfully removed or retained in any contracting State and ensure that the rights of custody and access of the child of a party nation specifically respected in other contracting nation. The Convention considers removal of children wrongful if it is breach of custody or access rights of a parent, acting by operation of law or by a judicial or administrative decision or agreement having legal effect by the law of that State. It creates an international law implemented through a business machinery.

As of now, India does not have any mechanism, neither an enforcement law to deal with issues arising out of inter-parental cross-border child removal. Indian Courts adjudicate matters with the welfare of the child as the paramount consideration when there is an inter-jurisdictional conflict. The removed child, caught in cross-fire, suffers in silence.

Happy is a constitutional Ave 2016, the Ministry of Women and Child Development has published on its website, a proposal to enact a draft of The Civil Aspects of International Child Abduction Bill, 2016, before accession to the Hague Convention. The draft Bill provides to designate a Central Authority and lays down a procedure. Created on Aug 16



**TAKE OFF:**Former Attorney-General Soli Sorabjee (sitting, 2nd from right) releasing the book titled 'India Inter-Country Parental Child Removal and the Law'. Photo: Shiv Kumar Pushpakar

## Ex Attorney-General releases book at IIC

Nirnimesh Kumar

**NEW DELHI:**Former Attorney-General of India Soli Sorabjee on Friday released a book titled 'India, Inter-Country Parental Child Removal and the Law' that has been jointly authored by Anil Malhotra and Ranjit Malhotra.

### Dignitaries present

Mr. Sorabjee released the book, for which he has written the preface, at the India International Centre here in the presence of Supreme Court Judges Justice Madan B. Lokur and Justice A.K. Sikri, the US Ambassador to India Richard Verma, and Special Advisor for Children's Issues, Ambassador Susan Jacobs.

In his brief address, Mr. Sorabjee said that it was amazing that the book was being released in the presence of representatives from about 90 countries, who had come to participate in the Conference of the International Academy of Family Lawyers.

Justice Sikri, meanwhile, appreciated the authors for writing a book every year.

In the preface, Mr. Sorabjee says that about 30 million of Indians live in 180 countries, having cross-border matrimonial relationships. Their broken multi-jurisdictional matrimonial relationships lead to removal of children to India or foreign jurisdiction in violation of court custody orders, or the infringement of parental rights of the aggrieved parent, Mr. Sorabjee added.

He also expresses anguish over the fact that India does not recognise inter-parental child removal as an offence.

# INDIA INTER COUNTRY PARENTAL CHILD REMOVAL AND THE LAW (UNIVERSAL – AN IMPRINT OF LEXISNEXIS 2016

## BOOK REVIEW BY ANN THOMAS

It was my pleasure to be asked by Anil and Ranjit Malhotra to review their latest publication 'India, inter country parental child removal and the law'. This is the latest in a long line of publications by these talented brothers who, as well as running a busy practice in India, find the time to write extensively on family law.

In this publication, the authors set out the many issues faced by lawyers and the judiciary in cases concerning the removal of children. Applications to the court to seek permission to relocate abroad to another part of a country or requests to the court to involve itself to resolve cases when a child has been removed from a country without the appropriate consent are increasing. This is not limited to India (where this publication is aimed) but worldwide as persons move more freely from one country to another for work or family reasons.

The authors carefully take the reader through the dilemmas faced by the court and families in respect of this very difficult issue. In particular the deal with The Hague Convention 1980 on Civil Aspect of International Child Abduction which is in itself relevant given that India, in due course, is looking to becoming a signatory to this very important Convention. The authors argue that the Convention should now be signed by India, to quote them "for the children's sake".

In one particular chapter of this publication, the authors explain how a Hague Convention case is dealt with by the courts in India at the present time in that a judge will consider the merits of each case with the welfare of the child being the most paramount factor. They also explain that orders made by foreign courts concerning children living or being cared for in

India, although not automatically recognised, will be taken into account as one of the relevant factors.

The publication argues many relevant issues in respect of the movement of children both within India and internationally. The writers have also compiled a plethora of relevant cases for the practitioner to consider in dealing with these cases. In particular, they include chapters specifically setting out judgements of the Indian Supreme Court dealing with the welfare of the child.

This publication is an important publication and one which will be hugely useful for academics, practitioners and the judiciary. It is published by Universal Law Publishing.

**Ann Thomas**  
Managing Partner

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## Book Launch

# India Inter Country Parental Child Removal and the Law



## INDIA, INTER-COUNTRY PARENTAL CHILD REMOVAL AND THE LAW

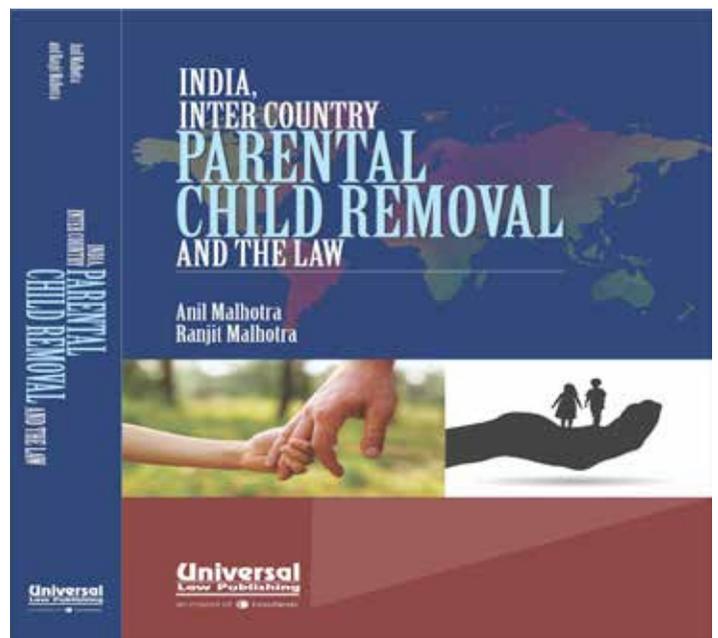
Of 1.2 billion Indians, about 30 million live in 180 countries abroad. This migration harbours cross-border matrimonial relationships whose offspring live in foreign abodes but connect with Indian soil through their parent(s). Their broken multi-jurisdictional matrimonial relationships lead to removal of children to India or foreign jurisdictions in violation of court custody orders or infringement of the parental rights of the aggrieved parent. Sadly, India does not define or recognise inter-parental child removal as an offence under any statutory law in India. Legal remedies are hard to secure.

As of now, multi-jurisdictional child disputes often end up in a stalemate. An aggrieved parent lands on Indian soil armed with a foreign court order to face a protracted, cumbersome, tedious and expensive course of successive multiple appeal litigation to achieve an enforcement of a foreign court order. Time, money and patience run out. A deadlock ensues. The child is split and isolated by one parent. Consequentially, most foreign courts now do not allow children to visit India, apprehending that they may not return.

The Hague Convention on the Civil Aspects of International Child Abduction, 1980, enables nations to become signatories and become part of a global hub to enable return of wrongfully removed or retained children by entertaining requests through the office machinery of a Central Authority established by every nation for such purpose. As of 2016, 94 countries are contracting States to this Convention. Sadly, India is not amongst them. The Convention aims to secure the prompt return of children wrongfully removed or retained in any contracting State and ensures that the rights of custody and access under the law of a party nation are effectively respected in other contracting nations. The Convention considers removal of children wrongful if it is in breach of actually exercised rights of custody of a parent, arising by operation of law or by a judicial or administrative decision or an agreement, having legal effect by the law of that State. It creates an international law implemented through a domestic machinery.

As of date, India does not have any exhaustive, uniform and consistent law to deal with issues arising out of inter-parental cross-border child removal. Indian Courts adjudicate matters with the welfare of the child as the paramount consideration when there is an inter-jurisdictional conflict. The removed child, caught in cross-fire, suffers in silence.

Happily, by a communication of June 22, 2016, the Ministry of Women and Child Development has uploaded on its website, a proposal to enact a draft of The Civil Aspects of International Child Abduction Bill, 2016, before accession to the Hague Convention. The draft Bill provides to designate a Central Authority and lays down a procedure



## Inter Parental Child Removal and the Law by Anil Malhotra and Ranjit Malhotra



**Sitting Row left to Right:**  
Susan Jacobs, Richard Varma,  
Justice A.K. Sikri, Soli Sorabjee and  
Justice Madan Lokur

**Standing Row left to Right.**  
Philippe Lortie, Denis, Ranjit  
Malhotra, Aastha Malhotra,  
Ankit Malhotra, Anil Malhotra  
and William Longrigg.

Co-authored by Chandigarh based lawyers, Anil and Ranjit Malhotra, their seventh book titled, "India, Inter-Country Parental Child Removal and the Law," was released at a reception on 16th September hosted for the 150 international delegates attending the annual conference of the International Academy of Family Lawyers, (IAFL) New Delhi from 13 to 17 September. A large number of family law practitioners from all abroad were present along with local dignitaries who attended the book launch.

Former Attorney-General for India Soli Sorabjee released the book, for which he has written the preface, at the India International Centre in the presence of Supreme Court Judges, Justice Madan B. Lokur and Justice A.K. Sikri, the US Ambassador to India Richard Varma, Special Advisor for Children's Issues, Ambassador Susan Jacobs and Philippe Lortie, First Secretary at the Hague, Netherlands.

In his brief address, Mr. Sorabjee said that it was amazing that the book was being released in the presence of 150 representatives from about 90 countries, who had come to participate in the Conference of the International Academy of Family Lawyers.

Justice Sikri, meanwhile, appreciated the authors for writing a book every year and lauded their work which had contributed significantly to suggest solutions for resolving problems of huge Indian diaspora.

In the preface, Mr. Sorabjee says that about 30 million of Indians live in 180 countries, having cross-border matrimonial relationships. Their broken multi-jurisdictional matrimonial relationships lead to removal of children to India or foreign jurisdiction in violation of country custody orders, or the infringement of parental rights of the aggrieved parents. Mr Sorabjee also expresses anguish over the fact that India does not recognise inter-parental child removal as an offence.

Mr Richard Varma, US Ambassador and Susan Jacobs, Child abduction Ambassador appreciated the initiative of the authors in bringing inter country parental child removal problems in a consolidated publication and strongly supported the Indian initiative to sign the Hague Convention on child abduction to which 94 nations were parties.

The book covering various aspects of the problem has three chapters. The first chapter is a bird's eye view with ten small sub-chapters containing short pieces giving a brief perspective of the issue and different dimensions of the problem. The remaining two detailed chapters contain lengthy descriptions supported by relevant case law and detailed references to judgments relating to the subject. Various issues relating to implementation of foreign court judgments and possible safeguards to ensure return of children to their foreign homes find elaborate mention in these detailed chapters. The book has sixteen appendices which are important reference documents relating to the issue of international parental child abduction. Relevant Indian statutes, the Hague Convention on civil aspects of international child abduction, extradition treaty between India and the UK and important judgments are part of the sixteen appendices. The book also contains prints of sixteen Supreme Court of India judgments which are the relevant case law governing principles of issues arising out of intra and inter country, parental child removal problems. Four judgments laying down essential principles governing the principle of the welfare of the child being the paramount consideration are also part of the book.

This book is priced at ₹750 and is available at Universal Book Traders, C-27 Connaught Place, New Delhi-110001. sales @ubtlawbooks.com

CHANDIGARH  
SUNDAY  
18 Sept 2016  
Volume I issue 259

## Book on child removal law released

DW BUREAU / CHANDIGARH

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## International Indians and the Law

The brothers Anil and Ranjit Malhotra are internationally renowned Indian lawyers. Anil practices as an Advocate both at the High Court in Chandigarh, the state capital of Punjab & Haryana, and at the High Court in New Delhi. Ranjit fulfils a role more like that of a solicitor in England, advising clients and preparing applications and appeals. He is more of a globe-trotter than his brother, but both are familiar figures on the international conference circuit, appearing regularly at such venues as the International Bar Association. For many years they have devoted particular attention to the concerns of Non-Resident Indians ('NRIs') – the many millions of Indian citizens who are living, and in many cases flourishing, in countries such as the United Kingdom, the United States and Canada.

So it is fitting that their latest book should be entitled *International Indians and the Law*. This large tome, well over 600 pages long, is a compendium of long and short articles which the brothers have written in recent years, covering a wide range of issues which affect both Indians of the diaspora and the many residents of India who have links abroad. The emphasis is on family and domestic, rather than business, matters – marriage, divorce and children feature prominently. On the latter, there are particularly useful insights into such vexed questions as adoption, surrogacy, parental removal and human trafficking.

Just to give some examples, the Brothers Malhotra have often had to advise on the problems faced by childless couples of Indian origin living abroad who wish to adopt the child of a relative living in India. Until recently, the United Kingdom did not recognise adoption orders made by the courts in India, which meant that the child would often be refused entry clearance to join his adoptive parents in the UK. If there was a way round this, the Malhotras would be the ones to find it. So the authors bring to this book a wealth of practical experience, as well academic acumen, in highlighting and explaining the cross-border problems confronting the wide-spread Indian communities of today.

Even more topical than inter-country adoption (the Hague Convention on which has now been ratified by India), the book homes in on the growing problem of parental removal. Where one spouse is settled abroad and the other spouse hails from India itself, there is a risk that, if the marriage breaks down, one spouse will take the children to a country where the other spouse will be unable to share in their upbringing. This is a problem acknowledged by the President of the Family Division of the High Court in England, where special procedures have been put in place to tackle it.

Topical too is human trafficking, whose victims end up as prostitutes, domestic servants or sweated labour. In the United Kingdom, this phenomenon has led to the Modern Slavery Bill currently going through Parliament. The Malhotras demonstrate how the problem is afflicting India, and urge stronger measures to tackle it. Nor are the practical and ethical problems thrown up by surrogate motherhood ducked by the Malhotras, whose sensitive and sensible approach is to be commended. A recent example of what can go wrong was provided by an Australian couple who paid an impecunious Thai woman to have their baby, but abandoned the baby to her when he turned out to have Down's Syndrome.

There is no doubt that the comprehensive coverage which this compendious collection of articles gives to cross-border issues affecting huge numbers of NRIs and resident Indians means that it should be on the bookshelf of anyone, lawyer or other professional, working in this area, while the lay reader too can glean much practical information as well as intelligent discussion about issues which affect a growing number of people in this globalised world. *International Indians and the Law* will confirm the status of the Brothers Malhotra as India's leading practitioners and guides through this complex area.

Dated: 05 November 2014

Judge Richard McKee

Senior Immigration Judge (Retired), Asylum and Immigration Tribunal, London

Published: October 19, 2014 00:00 IST | Updated: October 19, 2014 05:36 IST

## Legal experts seek uniformity of laws governing children

Mohammed Iqbal



The release of a book “International Indians and the Law”, which coincided with a panel discussion on laws governing children in New Delhi recently. —Photo: Special Arrangement

Legal experts representing different institutions have laid emphasis on bringing uniformity to the laws governing inter-country shifting of children while giving paramount importance to the interest of kids in cases of dispute between their parents settled abroad.

A panel discussion devoted to the subject here on Thursday threw up some crucial issues relating to children’s welfare and well-being.

Two Supreme Court Judges, a Delhi High Court Judge, eminent lawyers and academicians examined different aspects of child laws and global adoptions in an international jurisdiction, which are fast emerging as a specialised jurisprudence in the Indian law, at the discussion on “Inter-country parental child removal issues”.

The discussion coincided with the release of a book, “International Indians and the Law”, authored by Chandigarh-based lawyers Anil Malhotra and Ranjit Malhotra. The book deals with the varied legal hassles touching the lives of about 30 million NRIs settled in almost 200 countries around the world.

Justice T. S. Thakur and Justice A. K. Sikri of the Supreme Court, Justice Hima Kohli of the Delhi High Court, Deputy British High Commissioner to India Julian Evans, National Judicial Academy Director Balram Gupta and Molshree Sharma, attorney at law in Chicago, U.S., were among those who spoke on the occasion.

A reference was made to the Hague Convention on Civil Aspects of International Child Abduction, which came into force in 1983 and has since affected the child protection policies significantly in much of the world. Since India is not a signatory to the convention, the courts here determine the child’s best interest on a case-by-case basis and deal with the child removal cases like any custody dispute.

Mr. Anil Malhotra said the conflicts on child custody could be resolved effectively through the medium of courts in India and other countries interacting with each other, if India becomes a signatory to the Hague Convention. A reference was made in this connection to the ethos of the country, which was often misinterpreted as “national prejudices”.

The speakers also called for enactment of “authentic and universal” child custody legislation in the country by adhering to the principles laid down in the Hague Convention. Justice Hima Kohli said the courts in India, grappling with the complex issues of inter-country child custody, were deciding each such case on merits in the absence of a law.

Though the draft of the Indian Civil Aspects of International Child Abduction Bill was prepared in 2007, no progress has since been reported on its serious consideration or debate in the Parliament. The participants felt that the child abduction was not an issue of priority for the legislators, even though the cruel abductions of NRI children, including for their forced marriages, were coming to light regularly.

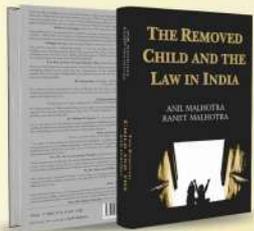
The salient features of the book, carrying the foreword by former Attorney-General Soli J. Sorabjee, were also discussed on the occasion. It was pointed out that the authors had broken the myth that the Constitution of India had no role to play in the private family laws.

The 640-page book provides succinct information and realistic legal options on wide-ranging topics, such as marriages, forced marriages, divorce, spousal maintenance, domestic and inter-country adoptions, surrogacy, succession and inheritance, tenancy of Indian property, probate and wills, human smuggling, dual nationality and illegal immigration.

The panel discussion was dedicated to noted diplomat and diaspora scholar, the late Ambassador J.C. Sharma.

Printable version | Oct 19, 2014 10:56:30 AM | <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/legal-experts-seek-uniformity-of-laws-governing-children/article6515880.ece>

front



# THE REMOVED CHILD AND THE LAW IN INDIA

## About The Book



ANIL MALHOTRA  
RANJIT MALHOTRA

Of 1.2 billion Indians, about 30 million live in 180 countries abroad. This migration harbours cross-border matrimonial relationships whose offspring live in foreign abodes but connect with Indian soil through their parent(s). Their beset matrimonial relationships lead to removal of children to India or foreign jurisdictions in violation of court custody orders or infringement of the parental rights of the aggrieved parent. Sadly, India does not define or recognise inter-parental child removal as an offence under any statutory law in India, even though this malaise is a frequent phenomenon in daily lives of migrant Indians. As a corollary, remedies in law for effective relief are difficult to secure or achieve.

As of now, multi-jurisdictional child disputes often end up in a stalemate. An aggrieved parent lands on Indian soil armed with a foreign court order to face a protracted, cumbersome, tedious and expensive course of successive multiple appeal litigation to achieve an enforcement of a foreign court order. Time, money and patience run out. A deadlock ensues. The child is split and isolated by one parent. Consequently, most foreign courts do not allow children to visit India, fearing that they may not return.

The Hague Convention on the Civil Aspects of International Child Abduction, 1980, enables nations to become signatories and become part of a global hub to enable return of wrongfully removed or retained children by entraining requests through the office machinery of a Central Authority established by every nation for such purpose. As of 2018, ninety eight countries are contracting States to this Convention. Sadly, India is not amongst them. The Hague Convention aims to secure the prompt return of children wrongfully removed or retained in any contracting State and ensures that the rights of custody and access under the law of a party nation are effectively respected in other contracting nations. The Convention considers removal of children wrongful if it is in breach of actually exercised rights of custody of a parent, arising by operation of law or by a judicial or administrative decision or an agreement, having legal effect by the law of that State. It creates an international law implemented through a domestic machinery. As of date, India does not have any exhaustive, uniform and consistent laws to deal with issues arising out of inter-parental cross-border child removal. Indian Courts adjudicate matters with the welfare of the child as the paramount consideration when there is an inter-jurisdictional conflict. The removed child, caught in cross-fire, suffers in silence.

The book covering various aspects of the problem has four chapters. The first chapter is a bird's eye view with fifteen small sub-chapters containing short pieces giving a brief perspective of the issue and different dimensions of the problem. The remaining three detailed chapters contain lengthy descriptions supported by relevant case law and detailed references to judgments relating to the subject. Various issues relating to implementation of foreign court judgments and possible safeguards to ensure return of children to their foreign homes finds elaborate mention in these detailed chapters. The book has twenty four appendices which are important reference documents relating to the issue of international parental child abduction. Relevant Indian statutes, the Hague Convention on civil aspects of international child abduction and inter-country adoptions, reports of the Law Commission of India and important judgments are part of the twenty four appendices. The book contains synopsis of important Supreme Court and High Court judgments besides complete prints of salient Supreme Court of India judgments which are the relevant case law governing principles of issues arising out of intra and inter country, parental child removal problems. Important judgments laying down essential principles governing the principle of the welfare of the child being the paramount consideration are also part of the book.

Since there is no compilation or publication on the subject containing all the material referred to above, the book proposes to be a one stop shop for all issues arising in India out of inter country, inter-parental child removal issues. It is meant to be a handy reference book for Indian and foreign Courts, overseas practitioners, academics, Indian lawyers, lay readers and aggrieved parents looking for a solution. The book attempts to be a wholesome and self contained compilation which puts together all the material on the subject without any further reference to other sources. This jurisprudence in the realm of private international law is yet evolving and all supporting material rests in precedents of the Indian Courts which have rendered a yeoman service in evolving sound principles to serve as practice directions until a statutory codified law is in the saddle. Till then, the book will serve as a ready hand book and repository which proposes to be a one point guide and single source of information for all the material on this mesmerizing subject which baffles one and all.

The evolving mirror order jurisprudence in child custody matters, wherein the foreign courts may pass mirror order directions to comply with the judgments of High Courts, can be a possible way forward to establish a precedent for return of children to their homes of foreign jurisdictions. This mirror order formula evolved by judicial mechanism through the far sighted wisdom of the Courts to ensure the best interest and welfare of the children, as also to provide them a family life with love, care and affection of both parents, can be cited as a possible method for return of children to foreign jurisdictions, till a law on the subject is enacted and some adjudicatory legal resolution process is evolved by any prospective law. Hopefully, if such a evolving mirror order jurisprudence finds judicial approval, children removed to India can benefit by being possibly reunited with both parents in their foreign abode. If such a practice is endorsed, it may also urge foreign Courts to permit children residing abroad to visit extended families in India, if an assurance is found for their return by a mirror order jurisprudence. This may perhaps be the best stop gap arrangement which can be evolved through the mechanisms of the Courts till a legislative resolution is found to inter-parental child removal.

Despite 30 million non-resident Indians in 180 countries, of a total population of 1.2 billion, Indians constitute the largest diaspora in the world with immense potential of cross border family disputes. If India is not to be a signatory to the 2000 edition of the Civil Aspects of the International Child Abduction, ratified by 95 countries, it ought to at least follow principles of UNCRC, endorsed and approved by 117. A fair and equitable interpretation of child rights based on laws of the countries of their family home with emphasis on right to family life ought to be the decisive factor. Preference of parents choosing Courts in countries of their convenience for child custody battle grounds ought to be ignored. A balanced judicial precedent by the Supreme Court in this regard is now extremely necessary for consolidating the much needed settled law and providing a clear path for other subordinate Indian Courts to follow. A harmonious blend of all relevant factors is necessary to be consolidated in a wholesome conclusive decision. The focus on the best interest of the child as per law of the country where the child is habitually resident must find preference over choice of parents for such litigation.

back

'Anil and Ranjit Malhotra have provided another timely and thoroughly researched reference book on a subject which the Malhotra brothers have made their own. There is nobody better qualified to cover all the complexities which accompany this area of the law. This publication provides a very welcome analytical approach which gathers together information relevant to all of us in a way which is thorough, engaging and scholarly.'

**William Longrigg**, *Recent Past LAFL, President and Partner, Charles Russell Speechly LLP, London.*

This publication is extremely timely as India is working towards the implementation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. It will provide essential information from an Indian perspective to parents, lawyers and judges involved in child abduction cases.

**Philippe Lortie**, *First Secretary, Hague Conference on Private International Law, The Hague, The Netherlands.*

The authors provide a refreshing analysis of the law in India on the removal of children and the relocation of families across international borders. They provide the crucial source materials necessary to allow the reader to critically review the law in this rapidly developing area. This book should be on the shelf of every family lawyer accepting retainers in cases with international issues.

**The Hon. Justice Victoria Bennett AO**, *International Hague Network Judge, Family Court of Australia.*

There are few things more traumatic in family life than a bitter custody battle over children in a failed marriage. Anil and Ranjit Malhotra have dealt with the jurisprudence of this complex, yet delicate, subject in an admirable way making this book quite indispensable for practitioners in this area of law and for those who may unfortunately encounter this problem.

**Dr. Cyrus Das**, *Chairman, LAWASIA Constitutional & Rule of Law Committee; Honorary Life President Commonwealth Lawyers Association.*

The authors of this valuable book are well known for the major contribution to the field of international child abduction which they have both made. The revised version of their book continues their work on this topic, and is an important and timely event.

**Professor Marilyn Freeman, PhD**, *Principal Research Fellow, Westminster Law School, London, and Co-Director, The International Centre for Family Law, Policy and Practice.*

The Partnership of Malhotra Brothers has brought out a comprehensive revised addition. Based upon the cases argued. New human jurisprudence. The role of Indian Judiciary. A unique work. A recipe for Child Removal problems in India and beyond.

**Dr. Balram K. Gupta, Sr. Advocate, Formerly, Director, National Judicial Academy, India.**

As "a one-stop shop" for all issues concerning parental child abduction to and from India, this book written by Anil and Ranjit Malhotra, tireless pioneers in combating international child abduction to India, it provides a full picture of the current legal situation in this country with its huge diaspora.

**Hans van Loon**, *Member of the Institut de Droit International, Former Secretary General of the Hague Conference on Private International Law (1996-2013)*

\* As Head of International Family Justice for England, I worked with international experts. Within India, chief among experts are, the Malhotra brothers. They are supremely qualified to guide others in the related fields of child abduction and relocation and this title will become the leading authority in a complex area of Indian and International family justice.

**The Rt. Hon. Lord Justice Thorpe**, *Former Head of International Family Justice for England & Wales.*

This is another great reference book that Malhotra Brothers have produced dealing with NRI parental child custody issues. This unique effort by the authors has to be recognized and complimented. Malhotra Brothers are legal practitioners and academicians of repute in the field of private international law.

**The Rt. Hon. Lord Djiit Rana, MBE, Member British Parliament, U.K.**

The authors have used their wealth of knowledge and expertise in international and domestic law to produce this essential tool for judges, academics and practitioners. It will become the leading authority in this complex and difficult area of law.

**Anne-Marie Hutchinson, OBE, QC(Hon), London.**

Inter-parental child removal issues is an evolving jurisprudence. In this realm of private international law, the authors expound the conflict situation with succinct clarity, in-depth study and viable remedies. A welcome addition to legal literature. The book fills a void and a vacuum by a ready handbook which says it all.

**Prof.(Dr) Faizan Mustafa, Vice-Chancellor, NALSAR University Of Law, Hyderabad.**

Price : ₹ 1000 £ 70 \$ 100 € 80

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## BOOK LAUNCH

**“THE REMOVED CHILD AND THE LAW IN INDIA”**  
**FOLLOWED BY A PANEL DISCUSSION ON INTERPARENTAL CHILD REMOVAL, DOMESTIC**  
**VIOLENCE AND THE VOICE OF THE CHILD AT**  
**INDIA INTERNATIONAL CENTRE (IIC), NEW DELHI**  
**ON 7 NOVEMBER 2018**

The book titled “The Removed Child and the Law in India,” authored by Mr. Anil Malhotra & Mr. Ranjit Malhotra, Advocates, Malhotra & Malhotra Associates was released at the India International Centre in

the gracious presence of His Excellency Ambassador of Spain Mr. José R Barañano, Judge, Supreme Court, Mr. Soli J. Sorabjee, Senior Advocate, Supreme Court of India, Ms. MaryKay L. Carlson, Deputy Chief of the



*Mr. Ranjit Malhotra in suggestions and remedies for a way forward talked of a middle path for India in keeping intact safeguards whilst signing the Hague convention.*



*Mr. Soli Sorabjee advocated that India should sign the convention with necessary safeguards.*



*Ms. MaryKay L. Carlson, Deputy Chief of the Mission, from the American Embassy at New Delhi, explained the resources for victims of domestic violence in the US and dwelt upon how India will benefit from joining the Hague Convention on child abduction as also progress seen in recent months on child custody issues in India.*



*Professor Marilyn Freeman PhD, Principal Research Fellow, Westminster Law School, London, described how domestic violence issues are treated as an exception to return of removed children. She emphasized on the development of a child centric thought and increasing trend to give weight to the views of the child.*



*Mr. Philippe Ducornet, Head of Consular and Visa Section, Embassy of France, New Delhi, talked of consequences of a cross-border child removal and ways to resolve these conflicts through mediation.*



*Ms. Molsbree Sharma, Attorney from Chicago, stressed on experiences of successfully arguing domestic violence exception as a ground to decline the return of a child. Grave risk of harm and opinion expressed by a child was emphasised.*

Mission, from the American Embassy at New Delhi, Dr. Mrs. Kavita Sharma, President, South-Asian University, Professor Marilyn Freeman, Principal Research Fellow, Westminster Law School, London, Mr. Philippe Ducornet, Head of Consular & Visa Section, Embassy of France, New Delhi & Ms. Molshree Sharma, Attorney at Law.

The book launch was followed by an interactive panel discussion seminar on “**Interparental Child Removal, Domestic**

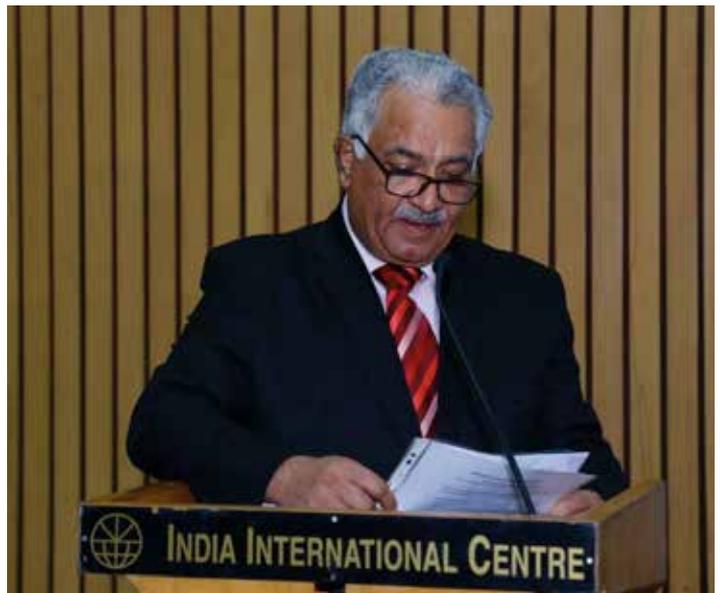
**Violence and the Voice of the Child**” where career diplomats and legal luminaries examined the issues arising out of domestic violence which were a major cause in concerns for India not signing the Hague convention on child removal and its impact on the voice of the removed child. Mrs. Kavita Sharma gave a welcome address and remembrance of Ambassador J.C. Sharma in whose warm memory the event was commemorated every year.

The panel discussion was chaired by His

Excellency Ambassador of Spain- Mr. José R Barañano presided over by Mr. Soli Sorabjee. The discussion moderated by Anil Malhotra at the well-attended gathering saw four panellists react and respond to questions pertaining to domestic violence as being covered under the umbrella of grave risk or harm, which was suggested as an exception to return of children to foreign jurisdictions once they were brought to India. The voice of the child found a meaningful expression for discussion.



*His Excellency, Ambassador of Spain- Mr. José R Barañano in his observations felt that the welfare of the removed child, his voice and his views was a paramount consideration and should be kept in mind in any legislative enactment or decision making process.*



*The discussion moderated by Anil Malhotra*

# Book reviews

## Global Indians and the Law

**Anil and Ranjit Malhotra, Oakbridge, Delhi**

Towards a Renovation of Indian Legality?

*Global Indians and the Law* by Anil and Ranjit Malhotra (published by Oakbridge, Delhi), is a third edition – the last one was published in 2014 – but in fact a new work in many ways. It is time-tested but not future weary.

This book exemplifies the mysteries and miracles of delegated legislation. If the devil, or angel, of law lies in detail, that detail often lies in notifications, directions, and rules of delegated legislation. The work under review may be read as a massive exercise in information-retrieval. This comprehensive legal treatise deals broadly with the legal situations and problems actually and potentially confronted by ‘overseas Indians’, whom the learned authors also name ‘global Indians’. Its 24 Chapters mainly cover public and family law matters, divided into 7 parts – nationality, and citizenship, marriage and divorce, maintenance in matrimonial matters, custody guardianship, and adoption, surrogacy, and succession. The academic distinctions between theory and practice of what is called ‘family law’, ‘conflicts of law’, ‘public’ law (constitutional law and administrative law as well as statutory interpretation and judicial process), are pedagogically necessary in law schools. However, these are always merged and mixed in problem situations in real life, as justices and lawyers well know. Nevertheless, a cardinal point to be noted is that this treatise interweaves the learned authors ‘legal interventions’, both as counsellors and public intellectuals who have contributed to the making of the law.

A great merit of this work is that it engages the intersection between various bodies of

normative/doctrinal law and (what may only be called) the ‘living law’ for overseas Indians. The invention of a new term like ‘global Indians’ lies in designating, and pioneering, a new field of study and research for Indian people living abroad and subject to multiple jurisdictions and laws.

One hopes that a future companion book will deal with overseas Indians in conflict with Indian criminal law justice administration, a kind of handbook of transnational criminal law. Further, it would surely not be asking too much of such veterans to include many more aspects that emerge in comparative law and jurisprudence and which dwell upon the regulation of multiculturalism and the human right to manage the conflict of multiple practices of identification. These additional perspectives will entail a more liberal use of appendices where texts of legislation, including the rules made by administrative authorities, which could thus be housed better. This will also allow scope for more multidisciplinary perspectives and analytical materials.

At the threshold, is a big conceptual question: how to describe persons of Indian origin settled in other parts of the world? The ambitious aspect of this work lies in the coinage of the expression ‘global Indians’, that is overseas Indians who are deeply rooted in Indian culture and civilisation. We are also treated to a common categorisation of ‘overseas Indians’ deployed by the modern Indian laws. ‘International Indians’ as well is used interchangeably in this book. This certainly is a better expression rather than a term like ‘foreigner’, which though specifically used for non-Indians is also used for ‘people of Indian origin’ (a term now abandoned in favour of ‘overseas citizens of India’).

The authors are of the view, that if ‘parentage is the purpose to be achieved, either by adoption or surrogacy, then restricting parentage through surrogacy on

the grounds of marital status is arbitrary and discriminatory' and 'violative Articles 14 and 21 of the Constitution' (21.33).

To take yet another example, the authors maintain that the 'returns formula' is now evident in a new thought process akin to the 'mirror orders' formula. This is adopted by the Supreme Court of India in *Jasmeet Kaur's case* 2019 SCC OnLine SC 1599 (where usually the orders of child custody passed by an Indian Court are treated as if passed by a foreign court (15.14 and 15.24)). If such an evolving mirror order based, child centric jurisprudence finds total judicial approval in India, the authors suggest, children removed to India are more likely to be reunited with the left-behind parent. However, according to the Malhotra brothers, this is at best a stop gap arrangement evolved by the judiciary. They also suggest that India should be a party to the Hague Convention on Civil Aspects of International Child Abduction (18.3). Concern with the rights of the children animates this analysis.

We see this at work in chapter 20 dealing with 'Guardianships and Adoptions: Different Perspectives', which notes that an inter-country adoption by prospective parents of Hindu religion under Hindu Adoption and Maintenance Act, 1956, is exempt from the rigors of the procedures of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoption Regulations, 2017. Further, they advocate that such inter-country adoptions can be facilitated with the issuance of conformity certificates by Central Adoption Resource Authority under the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoptions, 1993. Simplified rehabilitation for welfare of the child adopted within the family propels this argument (20.50), as India is a signatory to the UN Convention on the rights of the child. The approach is commendable.

Usually, legal treatises tend to be expository and do not offer views on matters left to parliament or legislatures. This work marks a refreshing trend, making room for informed pleas on how to remove

constitutional difficulties and assuage basic jurisprudential anxieties while making or amending the law.

The penultimate chapter (chapter 23) deals with 'diplomats, conflict of jurisdictions, and anti-suit injunctions'. Anti-suit injunctions are devices restraining action on suits, by overseas Indians, passed by Indian courts, when both parties are within jurisdictions of the foreign and the Indian courts. This presents a paradigm conflict of laws situation. By definition, considerations of territoriality, sovereignty, and resultant international comity, limit the reach of jurisdiction of domestic courts. Even when anti-suit orders may have no binding effect on the foreign courts, the parties within the jurisdiction of the Indian courts may remain subject further to contempt jurisdiction and proceedings. The authors offer a detailed narration of *Devyani Khobragade's case* in Delhi High court and study similar situations in matrimonial and succession contexts. They suggest vividly why it is high time that our courts develop a framework for 'stopping repression' by way of anti-suit injunctions in India to safeguard the rights of Indians. Surely, it is no judicial parochialism to stop injustice and oppression at the doorstep: 'The yeoman verdicts are a big crutch' but a 'preventive remedy is stronger than a powerful cure at the end' (23.18).

The work ends with a corpus of constraints as well as opportunities for delivering a 'Real Justice in a Virtual World' (chapter 24). The learned authors recognise and emphasise the pre-Covid attainments in access to justice though digital means. Yet, they feel, even at the height of the second phase of the pandemic, the need for substantive changes in adjudicative structure and process. These will include a heightened access to the exponentially growing unmet needs of an Indian diaspora, and allocation of judicial time for 30m plus strong formation of 'global Indians'. This need for allocation of judicial time is pressing for a variety of situations – for the settlement of 'emergent child custody, matrimonial domestic violence, spousal maintenance, inter-country adoptions, surrogacy,

succession, inheritance issues, besides resolving nationality, and citizenship issues.’ The diaspora will need and demand, ‘solutions’ in more equitable and efficient dispensation of digital justice. In many senses, this will also assist the much needed renovation of Indian legality.

**Upendra Baxi**

*Emeritus Professor of Law, University of  
Warwick and Delhi*

## **BOOK RELEASE OF "THE REMOVED CHILD AND THE LAW IN INDIA" FOLLOWED BY A PANEL DISCUSSION ON INTERPARENTAL CHILD REMOVAL, DOMESTIC VIOLENCE AND THE VOICE OF THE CHILD**

**AT INDIA INTERNATIONAL CENTRE (IIC), NEW DELHI ON 7 NOVEMBER 2018 AT 5:30 P.M. ONWARDS**



*(L-R; Dr. Kavita Sharma, Professor Marilyn Freeman, Ms. MaryKay L. Carlson, Mr. Anil Malhotra, His Excellency, Ambassador of Spain- Mr. José R Barañano, Mr. Soli Sorabjee, Mr. Ranjit Malhotra, Mr. Philippe Ducornet, Ms. Molshree Sharma)*

The book titled **"The Removed Child and the Law in India,"** authored by Mr. Anil Malhotra & Mr. Ranjit Malhotra, Advocates, Malhotra & Malhotra Associates was released at the India International Centre in the gracious presence of His Excellency Ambassador of Spain Mr. José R Barañano, Judge, Supreme Court, Mr. Soli J. Sorabjee, Senior Advocate, Supreme Court of India, Ms. MaryKay L. Carlson, Deputy Chief of the Mission, from the American Embassy at New Delhi, Dr. Mrs. Kavita Sharma, President, South-Asian University, Professor Marilyn Freeman, Principal Research Fellow, Westminster Law School, London, Mr. Philippe Ducornet, Head of Consular & Visa Section, Embassy of France, New Delhi & Ms. Molshree Sharma, Attorney at Law.

The book launch was followed by an interactive panel discussion seminar on **"Interparental Child Removal, Domestic Violence and the Voice of the Child"** where career diplomats and legal luminaries examined the issues arising out of domestic violence which were a major cause in concerns for India not signing the Hague convention on child removal and its impact on the voice of the removed child. Mrs. Kavita Sharma gave a welcome address and remembrance of Ambassador J.C. Sharma in whose warm memory the event was commemorated every year.

The panel discussion was chaired by His Excellency Ambassador of Spain- Mr. José R Barañano presided over by Mr. Soli Sorabjee. The discussion moderated by Anil Malhotra at the well-attended gathering saw four panellists react and respond to questions pertaining to domestic violence as being covered under the umbrella of grave risk or harm, which was suggested as an exception to return of children to foreign jurisdictions once they were brought to India. The voice of the child found a meaningful expression for discussion.

**Ms. MaryKay L. Carlson**, Deputy Chief of the Mission, from the American Embassy at New Delhi, explained the resources for victims of domestic violence in the US and dwelt upon how India will benefit from joining the Hague Convention on child abduction as also progress seen in recent months on child custody issues in India.

**Professor Marilyn Freeman PhD**, Principal Research Fellow, Westminster Law School, London, described how domestic violence issues are treated as an exception to return of removed children. She emphasized on the development of a child centric thought and increasing trend to give weight to the views of the child.

**Mr. Philippe Ducornet**, Head of Consular and Visa Section, Embassy of France, New Delhi, talked of consequences of a cross-border child removal and ways to resolve these conflicts through mediation.

**Ms. Molshree Sharma**, Attorney from Chicago, stressed on experiences of successfully arguing domestic violence exception as a ground to decline the return of a child. Grave risk of harm and opinion expressed by a child was emphasised.

**Mr. Ranjit Malhotra** in suggestions and remedies for a way forward talked of a middle path for India in keeping intact safeguards whilst signing the Hague convention.

**His Excellency, Ambassador of Spain- Mr. José R Barañano** in his observations felt that the welfare of the removed child, his voice and his views was a paramount consideration and should be kept in mind in any legislative enactment or decision making process. **Mr. Soli Sorabjee** advocated that India should sign the convention with necessary safeguards.

## **THE REMOVED CHILD AND THE LAW IN INDIA**

Anil and Ranjit Malhotra

Malhotra & Malhotra Associates

ISBN 978-93-5321-776-1

xl + 783 pp

The Removed Child and the Law in India, written by Anil and Ranjit Malhotra, Malhotra & Malhotra Associates, has been written when matters pertaining to inter-parental child abduction in the huge Indian diaspora have become a matter of International concern. Multicultural marriages and domestic violence have precipitated this dilemma in India leading to cross-border custody battles in which the worst victims are the children of the marriage. This book follows the earlier two books of the authors “International Indians & The Law (2015)” and “India, Inter Country Parental Child Removal and the Law (2016)”. In fact the three books together can be said to be sequels expounding the law on this ticklish proposition emerging in India as a transnational jurisprudence. I have had the occasion to observe the work of the authors and have interacted with them during seminars and conferences in which they have been projecting the Indian view point.

It has been almost a decade since the Law Commission of India recommended that India accede to the Hague Convention on Civil Aspects of International Child Abduction, 1980, but it seems that this may not be possible in the near future. In the integrum, there have been different judgements by the Supreme Court of India with divergent viewpoints in changing circumstances portrayed in cases from time to time.

The human predicament of international inter-parental child removal has increased multifold. Globalisation and international migration has escalated travel, movement and setting up of international homes. This has shrivelled the world making transnational marriages much popular and common than ever before. Such unions open up all the complexities of modern-day relationships. Private International law which dealt with these subjects is now adorning the mantle of International Family Law for effective resolution modes. Children are caught in this vortex. India is not a signatory to the Hague Convention on Marriages and Divorces. Thus, domestic violence issues and parallel divorce proceedings in cross-border marriages, remain largely unresolved in the Indian legal system. Consequently, child removal issues take a back seat and have no effective resolution.

The Indian cultural ethos has a unique perspective. In the Indian jurisdiction, where marriage is still largely a sacrament with a religious connotation, divorce processes of foreign jurisdictions where marriage is a contractual relationship, is the starting point of child removal issues. This leads to unresolved issues of support, maintenance, domestic violence and child custody. The problem gets precipitated with a spouse fleeing to India with the children of the marriage. The matters get further complicated when various legal proceedings relating to child custody, matrimonial wrongs and domestic violence are then initiated in India. Foreign Court orders are only one consideration in child custody matters.

Inter-parental child removal has been going on for over four decades in India and the phenomenon does not find a legal definition in Indian codified law. Tardy legal procedures in India cause delay and, meanwhile, at least one parent is deprived of rights to have access or custody of the child. The consequence is that the child grows up being deprived a secure emotional life that comes from the love and support of both parents. Despite India acceding to the UN Convention on the Rights of the Child and making enabling legislation to implement child rights, the issues still remain unresolved. A child centric jurisprudence evolving through beneficial judgements of Indian Courts is the only way forward.

The current situation seems to be that if parent of Indian origin relocates with the child to India, advantage can be taken of a complex legal system with inbuilt appeals which keep the child detained in India. This amounts to denial of the rights of the other parent to visit and look after the child while also refusing the right to the child to have the secure company of both parents. Those objecting to India becoming a signatory to the Hague convention on child abduction may feel satisfied as long as the child or the children are being taken by one parent and being brought to India, but what would happen if a child is abducted from India and taken to another country. The Authority of that country may not agree with the findings and orders of the Indian authority; then what recourse would the latter have as it would be outside the contractual obligations of a multilateral treaty like the Hague Convention. Or would India have to enter into bilateral agreements with other countries to deal with this issue. No easy answers exist and the cause of human suffering and misery of removed children continues to accelerate.

The authors have focussed in their current work on an evolving mirror order jurisprudence recently followed in a case conducted by them at the High Court of Delhi. The voice of the child is another area of their emphasis. The authors have been motivating an International audience to delve in this complex proposition to get India on a global platform for an amicable resolution which works for a free movement of children. The authors deserve my best compliments and appreciation for being motivated to move forward.

Judge Richard McKee

Senior Immigration Judge (Retired), Asylum and Immigration Tribunal, London

**A comment on the publication by**

Anil and Ranjit Malhotra, Malhotra & Malhotra Associates

***THE REMOVED CHILD AND THE LAW IN INDIA (2018)***

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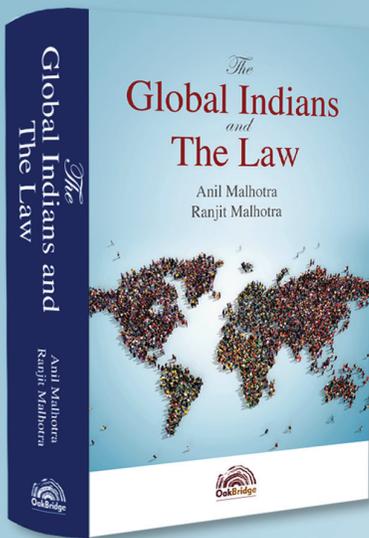
xl + 783 pp

*The Removed Child and the Law in India*, by Anil and Ranjit Malhotra, has been written when the issues relating to inter-parental child abduction in the extensive Indian diaspora have become recognised by the international community. When parental relationships of people from different countries and cultural backgrounds break down, this may lead to tensions regarding the future lives of their children, including where and how they will live. Where domestic violence has been part of the background to the breakdown of the parental relationship, this can complicate matters still further. Children are often caught in the middle of these dramatic and disturbing events, and the cross-border custody battles which take place, and which sometimes lead to an abduction of the child by one of her parents.

This trilogic work of the authors (their earlier two books were: “International Indians & The Law (2015)” and “India, Inter Country Parental Child Removal and the Law (2016)”), form a most valuable resource in the information available to those who are, or may be, involved in these issues and who are connected with India. It is regrettable that India has not yet become a Signatory to the Hague Convention on Civil Aspects of International Child Abduction of 1980, although it is hoped that this may be possible in the near future in order that children may be best protected against the often seriously negative effects of international child abduction

In the meantime, the authors continue their quest to highlight the position of all those embroiled in these international family battles. They have usefully focussed their practical efforts on the legal procedures which can be most effectively utilised within India to address the problems which may arise in these cases, and these will undoubtedly be of significant assistance to those working in this field. In addition, they are to be heartily congratulated for their tireless motivation and mobilisation of the international community, and for the prominence they have created to the complexities of this situation from an Indian perspective.

Professor Marilyn Freeman, PhD. Principal Research Fellow, Westminster Law School, The University of Westminster, London.



# *The* GLOBAL INDIANS AND THE LAW

## About the Book

As per Government of India statistics, an estimate of over 3.4 Million non-resident Indians have registered as Overseas Citizens of India (OCIs) to acquire lifelong visa-free entry to India. Their actual numbers may be more than 30 million. These global Indians have inhabited, settled and thrived in almost 200 countries across the globe. Undoubtedly, these international Indians are a unique nationality by themselves. They propel a dire need for a global law to govern their conflicts. The link and retention of their ties with their extended families in India and abroad has found expression in issues relating to nationality, citizenship, marriage, divorce, spousal maintenance, alimony, inter-parental child removal, custody and guardianship of children. Besides this, it is in the division of matrimonial property, inter-country adoptions, succession and inheritance of Indian property and last but not the least in surrogacy arrangements, the link prevails. Domestic violence in abusive marriages of international couples has created a new jurisprudence. Foreign Courts and overseas law practitioners are at sea attempting to resolve these problems for lack of any updated or amended Indian laws or reasoned interpretation of law on these subjects. Conflict of laws galore. Parallel and simultaneous adjudications in different jurisdictions create anomalous situations which compound legal dilemmas relating to human relationships.

Applicability of foreign laws, validity of judgments pronounced overseas and verdicts of Indian Courts which need exposition are consequential issues requiring interpretation and expert opinion. Indian Courts perform a herculean task in carving individual solutions in complex litigations under outdated Indian legislations.

This commentary on private international law in the exclusive Indian context attempts to provide comprehensive answers to the problems of the Indian diaspora and the global transnational Indian which may not find a solution in conventional statutory laws. The publication aims to be a comprehensive commentary for Courts abroad, an aggrieved spouse, a foreign litigant, an overseas practitioner, or any lay person who simply wants to know where they stand. A compilation of case law, enunciated by the vibrant Indian judiciary rendering a yeoman service, has been quoted for reliance. Unique case references fill in the statutory void in this ocean of ails.

The spectrum of reading is widespread. It ranges from nationality & citizenship issues to family and marital settlements, surrogacy agreements, child custody conflicts, secular adoptions, limping marriages, succession issues, conflict of jurisdictions besides the need for revamping family law for non-resident Indians. Law of spousal maintenance in India from a global perspective has been delved into. Child laws and global adoptions in the international jurisdiction as fast emerging jurisprudence in Indian law, has been examined at length from different perspectives. Issues relating to dual nationality, passports and citizenship are also looked into. Emerging predicaments and practices arising out of surrogacy with the law in flux have been focused on in the book in detail. A dedicated chapter looks at NRI property problems, wills, succession and their possible solutions.

This unique reader-friendly, concise and crisp presentation in 7 individual Parts as expositions pose the problems and attempt to provide their answers. The authors with their years of expertise have aimed to project these problems as they have experienced them professionally. References to case law wherever necessary have been provided for the professional reader who wants an accurate and expeditious run-down on Indian law on the subject of custom, marriage, divorce, spousal maintenance, domestic and inter-country adoptions, child abduction, surrogacy, child rights, matrimonial settlements, succession and inheritance, besides issues of nationality and citizenship.



Anil Malhotra  
Ranjit Malhotra

“...This unique pioneer effort is to be lauded. It is a contribution of academic authors of repute, who have blended equally well as legal practitioners, who have rich experience of cross border issues...”

**Justice A.K. Sikri, Former Judge, Supreme Court of India and International Arbitrator**

“Knotty legal issues and problems confront global Indians and all others who may be associated with them. The commentary, *Global Indians and the Law*, is an excellent compilation of every possible question and answer floating in the ocean of problems of International Indians...”

**Soli J. Sorabjee, Senior Advocate and Former Attorney General for India**

“The Malhotra brothers are internationally renowned ... in the field of International Family Justice... a publication of their expertise at the outset of this decade is warmly welcomed.”

**The Rt. Hon. Lord Justice Thorpe,**  
*Former Head of International Family Justice for England & Wales*

“There is no-one more qualified than Anil and Ranjit Malhotra to provide expert guidance on the problems affecting “Global Indians”. Their decades of experience will undoubtedly be reflected in the depth of scholarship and knowledge conveyed in this publication...”

**Lord Justice Andrew Moylan,**  
*Head of International Family Justice and Hague Network Judge for England and Wales*

“...A comprehensive knowledge of Indian law as well as of the adopted host country are essential. In this perspective, the commentary “*Global Indian and the Law*” is the much-needed guide.”

**The Rt. Hon. Lord Diljit Rana,**  
*MBE, Baron of Malone, Member British Parliament, U.K.*

“...essential resource in the field of private international law and the application of personal laws...The breath of the law that it covers is extraordinary...”

**Anne-Marie Hutchinson OBE, QC (Hon), Partner at Dawson Cornwell, London**

“...This is a comprehensive guide for overseas Indian individuals, courts and lawyers alike and will be very welcome indeed in this era of international living...”

**William Longrigg,**  
*Former IAFL President and Partner, Charles Russell Speechlys LLP, London*

“This book by Anil and Ranjit Malhotra continues their long-time work,...in addressing the important issues of family law which relate to ‘global Indians’.”

**Professor Marilyn Freeman, PhD.,**  
*Co-Director, The International Centre for Family Law Policy and Practice,  
Principal Research Fellow, Westminster Law School, University of Westminster, London*

“...a must read for every law student, law professor, practicing lawyer and a judge as the issues that the book discusses in a threadbare manner are not only confined to private international law, but more widely relating to the importance of law and justice in international dispute resolution in the private space.”

**Professor (Dr.) C. Raj Kumar, Founding Vice Chancellor,  
O.P. Jindal Global University & Founding Dean, Jindal Global Law School**



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Anil Malhotra | Ranjit Malhotra

Anil Malhotra  
Ranjit Malhotra

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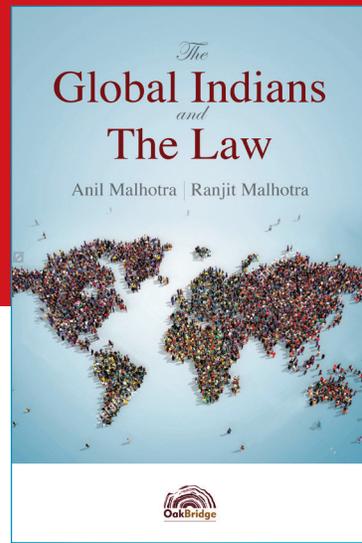
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# *The* GLOBAL INDIANS AND THE LAW



Anil Malhotra  
Ranjit Malhotra

As per Government of India statistics, an estimate of over 34 lacs non-resident Indians have registered as Overseas Citizen of India (OCIs) to acquire lifelong visa free entry to India. Their actual numbers may be more than 30 million. These global Indians have inhabited, settled and thrived in almost 200 countries on the globe. Undoubtedly, these international Indians are a unique nationality by themselves. They propel a dire need for a global law to govern their conflicts. The link and retention of their ties with their extended families in India and abroad has found expression in issues relating to nationality, citizenship, marriage, divorce, spousal maintenance, alimony, inter-parental child removal, custody and guardianship of children, division of matrimonial property, inter-country adoptions, succession and inheritance of Indian property and last but not the least in surrogacy arrangements. Domestic violence in abusive marriages of international couples has created a new jurisprudence. Foreign Courts and overseas law practitioners are at sea attempting to resolve these problems for lack of any updated or amended Indian laws or reasoned interpretation of law on these subjects. Conflict of laws are galore. Parallel simultaneous adjudications in different jurisdictions create anomalous situations which compound legal dilemmas relating to human relationships.

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**Anil Malhotra** is a practising Advocate based at Chandigarh, India since September 1983 and can be reached at [anilmalhotra1960@gmail.com](mailto:anilmalhotra1960@gmail.com) He attained Bachelor of Science (1980) and Bachelor of Laws (Professional) (1983) degrees from Panjab University, Chandigarh & an LLM degree from the University of London, London in 1985. He studied Comparative Family Law at London School of Economics besides Law & Society at School of Oriental & African Studies.

Practising Advocate in India (1983). BSc and Bachelor of Law (Professional), India; LLM, University of London, 1985 (Studied Comparative Family Law at LSE & Law & Society at SOAS). For 36 years, conducts matters pertaining to interpretation and application of foreign Court Orders regarding divorce decrees, child abduction, custody, maintenance, adoption, surrogacy and family related issues of Non-resident Indians. Conducted litigations on inter country parental child removal matters Persistently proposed debate for India to sign the Hague Convention on Child Abduction, 1980.

For over 36 years, he continues to act as an Indian expert to render reports in foreign courts on appointment by the Bench in overseas jurisdictions. Conducts matters in Indian Courts pertaining to interpretation and application of foreign Court Orders regarding divorce decrees, child abduction, custody, maintenance, adoption, surrogacy and family related issues of Non-resident Indians (NRIs).

He has co-authored book titled Acting for Non-resident Indian Clients (Jordans 2005), India, NRIs and the Law (Universal 2009), Indians, NRIs and the Law (Universal 2011), Surrogacy in India: A law in the Making (Universal 2013), International Indians and the Law, (Universal 2014), Surrogacy in India – A law in the Making : Revisited (LexisNexis 2015), India, Inter Country Parental Child Removal, The Law (LexisNexis 2016), The Removed Child and The Law in India (2018) and Global Indians and the Law (Oakbridge 2020). He has significant published work and has both international and domestic conference participations. Has over 500 newspaper columns to his credit besides significant published work in journals.

Has conducted number of litigations on inter country parental child removal matters and has persistently proposed, debated and discussed need for India to sign the Hague Convention on Inter parental child abduction, 1980. As amicus curiae, his report on inter country parental child removal, forms part a Punjab and Haryana High Court judgment making a reference to the Law Commission of India, to recommend that India needs to consider signing the Convention. Handled litigation & campaigns for India to enact a law on surrogacy arrangements in India. Intends to persuasively pursue enactment of Indian legislation on these subjects.

On 25 April 2017, Co-opted by the Punjab and Haryana High Court, Chandigarh as a Member of the Committee, constituted by the Ministry of Women and Child Development, Government of India to examine in detail the legal issues involved and give recommendations on resolving problems of parents and children involved in issues relating to inter parental / inter country child removal while examining the draft Protection of Children (Inter-Country Removal and Retention) Bill, 2016, whose report was submitted to Government of India on 21 April 2018.



**Ranjit Malhotra**, attained his Bachelor of Arts (B.A.) and Bachelor of Laws (Professional) (L.L.B Degree) from Panjab University, Chandigarh. He qualified as a lawyer in India in the year 1990 and was the first Indian lawyer to be awarded the prestigious Felix Scholarship to read for the LL.M. Degree at the School of Oriental and African Studies, University of London. He attained his Masters of Law Degree with Merit in 1993, from the University of London.

He specialises in private international law, commissions expert reports on Indian family law issues litigated in foreign jurisdictions, renders expert analysis and testimony for family law, surrogacy and immigration cases and advises foreign lawyers. Besides, being consistently instructed by a large number of Embassies at New Delhi.

He is also a nominated life member of the Indian Society of International Law, American Immigration Lawyers Association at Washington, Reunite Child Abduction organisation in the U.K., Indian Council of Arbitration at New Delhi, Fellow of the International Academy of Matrimonial Lawyers, Commonwealth Lawyers Association at London and International Law Association at London. He is also enrolled with The International Association of Youth And Family Judges And Magistrates.

He has also been nominated to the Board of Governors of the International Academy of Family Lawyers at their annual meeting held in Reykjavik, Iceland since September 2017.

He frequently travels abroad to present papers at international legal conferences. Mr. Ranjit Malhotra has travelled extensively in the UK, USA, Canada, Europe, Australia, South Africa, Kenya and the far east including Japan, Philippines, Malaysia, Hong Kong, Singapore and Vietnam in connection with professional assignments as also to make presentations at international legal conferences. For the last twenty five years he has made substantial presentations at international legal conferences worldwide.

Since 2005, he has also been actively and regularly involved in organising seminars on family law issues in the international perspective, at the India International Centre, New Delhi under the aegis of Mr. Soli Sorabjee, distinguished former Attorney General of India.

He has also been lecturing regularly on International family law issues primarily on international child removal/surrogacy at premier National Law Schools/Universities in India. He also lectured at the Harvard Law School on Child Abduction Law on 15 April 2014 and also has substantial published work to his credit.

He was also appointed as Distinguished Visiting Expert for Family Law, Private International Law, Transnational Law and Comparative Law by Symbiosis Law School, Pune, Symbiosis International University since 1 February 2018. And has been regularly lecturing at this campus.

He is also an active member of the International Bar Association and is the Newsletter Editor of the Family Law Committee since 2011. He is also the International Correspondent for the international Family Law Journal published by Lexis-Nexis, previously Jordan Publishing Limited, U.K. since 2005.

He was also one of the three special invitees from India invited at the Hague Experts' Meeting on Issues of Domestic/Family Violence and the 1980 Hague Child Abduction Convention held at The University of Westminster, London on 12 June 2017. The author has also been consistently engaged as a knowledge partner in areas of private international law and cross border migration and managed migration with foreign offices of several major jurisdictions since the last two decades. He was also nominated by the British High Commission, New Delhi to attend two separate Wilton Park Conferences on Managed Migration in Spain and U.K. held in 2007 and 2008 respectively.

Most recently, he was invited to give subject expert testimony before the Rajya Sabha [Parliamentary] Committee on the draft 2019 Surrogacy Bill on 21 January 2020.

His firm, Malhotra & Malhotra Associates, is on the panel of lawyers for twelve foreign missions/embassies in New Delhi, including the American Embassy, Australian High Commission, British High Commission, Canadian High Commission and New Zealand High Commission, Embassy of the Federal Republic of Germany, Embassy of Spain, Embassy of France, Italian Embassy, Austrian Embassy, Embassy of Sweden, Embassy of Luxembourg and Embassy of Norway at New Delhi.

## Acknowledgements

“...This unique pioneer effort is to be lauded. It is a contribution of academic authors of repute, who have blended equally well as legal practitioners, who have rich experience of cross border issues...”

*A.K. Sikri, Former Judge, Supreme Court of India and International Arbitrator*

“Knotty legal issues and problems confront global Indians and all others who may be associated with them. The commentary, Global Indians and the Law, is an excellent compilation of every possible question and answer floating in the ocean of problems of International Indians...”

*Soli J. Sorabjee, Senior Advocate and Former Attorney General for India*

“The Malhotra brothers are internationally renowned ... in the field of International Family Justice... a publication of their expertise at the outset of this decade is warmly welcomed.”

*The Rt. Hon. Lord Justice Thorpe, Former Head of International Family Justice for England & Wales*

“There is no-one more qualified than Anil and Ranjit Malhotra to provide expert guidance on the problems affecting “Global Indians”. Their decades of experience will undoubtedly be reflected in the depth of scholarship and knowledge conveyed in this publication...”

*Lord Justice Andrew Moylan, Head of International Family Justice and Hague Network Judge for England and Wales*

“...A comprehensive knowledge of Indian law as well as of the adopted host country are essential. In this perspective, the commentary “Global Indian and the Law” is the much-needed guide.”

*The Rt. Hon. Lord Diljit Rana, MBE, Baron of Malone, Member British Parliament, U.K.*

“...essential resource in the field of private international law and the application of personal laws...The breath of the law that it covers is extraordinary...”

*Anne-Marie Hutchinson OBE, QC (Hon), Partner at Dawson Cornwell, London*

“...This is a comprehensive guide for overseas Indian individuals, courts and lawyers alike and will be very welcome indeed in this era of international living...”

*William Longrigg, Former IAFL President and Partner, Charles Russell Speechlys LLP, London*

“This book by Anil and Ranjit Malhotra continues their long-time work,...in addressing the important issues of family law which relate to ‘global Indians’...”

*Professor Marilyn Freeman, PhD., Co-Director, The International Centre for Family Law Policy and Practice, Principal Research Fellow, Westminster Law School, University of Westminster, London*

“...a must read for every law student, law professor, practicing lawyer and a judge as the issues that the book discussed in a threadbare manner are not only confined to private international law, but more widely relating to the importance of law and justice in international dispute resolution in the private space.”

*Professor (Dr.) C. Raj Kumar, Founding Vice Chancellor, O.P. Jindal Global University & Founding Dean, Jindal Global Law School*

# Dailyworld

CONNECTING WITH THE WORLD

SUNDAY 30 AUGUST 2020

CHANDIGARH

## 'THE GLOBAL INDIANS AND THE LAW' RELEASED



CHANDIGARH Soli Sorabjee, former Attorney General for India, released book 'The Global Indians and the Law' online, in the august presence of Justice Indu Malhotra and Justice AK Sikri, at a largely attended webinar hosted by the Bar Council of Punjab and Haryana. The book is co-authored by Anil and Ranjit Malhotra. Suvir Sidhu, youngest Member of Bar Council, moderated the event aired live on social media.

Sorabjee shared his two decade professional association with the authors and their 9 books, besides sharing his thoughts on the subject. He expressed that knotty legal issues and problems confront global Indians and all others associated with them. Justice Sikri in his eloquent address said that the canvas of this brilliant book is very wide as the title suggests. International family law jurisprudence with a heavy focus and a jeweller's focus on the Indian perspectives. Looking at the legal

baggage of the NRI community. Justice Indu Malhotra dwelt at length on the analytical view points on the law touching global Indians in view of the emerging conflict areas in an International Family Law jurisprudence. The authors Anil and Ranjit Malhotra addressed a number of questions posed by the enlightened audience. It seemed that the issues unknown to law were vast, seeing to the vast variety of questions which kept on coming. As per the Government of India statistics, an estimate of over 3.4 million non-resident Indians have registered as Overseas Citizens of India (OCIs) to acquire lifelong visa free entry to India. Their actual numbers may be more than 30 million. These global Indians have inhabited, settled and thrived in almost 200 countries across the globe. Undoubtedly, these international Indians are a unique nationality by themselves. They propel a dire need for a global law to govern their conflicts. /DW/



The  
Sunday

CHANDIGARH, LATE CITY  
AUGUST 30, 2020  
20 PAGES, ₹5.00

# EXPRESS

DAILY FROM: AHMEDABAD, CHANDIGARH, DELHI, JAIPUR, KOLKATA, LUCKNOW, MUMBAI, NAGPUR, PUNE, VADODARA

WWW.INDIANEXPRESS.COM

## Former Attorney General releases book on legal issues faced by Indians abroad

**EXPRESS NEWS SERVICE**  
CHANDIGARH, AUGUST 29

FORMER ATTORNEY General of India Soli Sorabjee released a book, 'The Global Indians and the Law', authored by Anil and Ranjit Malhotra, in the presence of Justice Indu Malhotra and Justice A K Sikri, at a webinar hosted by the Bar Council of Punjab and Haryana on Saturday. The book deals with legal issues faced by global Indians.

Suvir Sidhu, the youngest member of the Bar Council, moderated the event aired live on social media. Sorabjee shared his two-decade professional association with the authors and their nine books, besides sharing his thoughts on the subject. He expressed that knotty legal issues and problems confront global Indians and all others associated with them. He said the book is an excellent compilation of every possible question and

answer floating in the ocean of problems of international Indians.

Justice Sikri, in his address, said that the canvas of this book is wide as the title suggests. It provides information on the international family law jurisprudence with a sharp focus on the legal baggage of the NRI community. Sikri said, "Since the last decade I have had the occasion to observe that their published works are not pure academic jargon but have eloquently structured legal position and analysis with clear answers which are of tremendous assistance, both to the Bar and the Bench in India and abroad."

Justice Indu Malhotra said the adjudication of family cases is challenging as they dealt with fragile human relationships and bonding of families. She complemented the authors on their pioneering work and commitment to put across handbooks which are of use to practitioners

and courts world over.

During the webinar, authors Anil and Ranjit Malhotra addressed questions posed by the audience. The Malhotra brothers said that as per the government of India statistics, over 3.4 million non-resident Indians have registered as Overseas Citizens of India (OCIs) to acquire lifelong visafree entry to India, however, their actual numbers may be more than 30 million. These global Indians have inhabited, settled and thrived in almost 200 countries across the globe. The authors emphasised on the need for a global law to govern their conflicts. Domestic violence in abusive marriages of international couples has also created a new jurisprudence, they said, adding that the foreign Courts and overseas law practitioners were at sea, attempting to resolve the issues, for the lack of any updated or amended Indian laws or reasoned interpretation of law on these subjects.

AUGUST 30, 2020

## Former Attorney General of India Soli Sorabjee releases book

**HT Correspondent**

■ chandigarh@hindustantimes.com

**CHANDIGARH:** Former Attorney General of India, Soli Sorabjee released the book, 'The Global Indians and the Law', in the presence of Justice Indu Malhotra of the Supreme Court (SC) and Justice AK Sikri, a former SC judge, during a webinar hosted by the Bar Council of Punjab and Haryana.

The book is co-authored by Anil Malhotra and Ranjit Malhotra, lawyer brothers from the city. Suvir Sidhu, the youngest member of the Bar Council of Punjab and Haryana, moderated the event, which was aired live on social media. Sorabjee spoke of his two-decade long professional association with the authors, their nine books, and shared his thoughts on the subject.

bright

# Sunday Punjab Express

CHANDIGARH, SUNDAY, AUGUST 30, 2020,

## Sorabjee releases book on 'The Global Indians and the Law'

PUNJAB EXPRESS BUREAU  
Chandigarh, August 29

Soli Sorabjee, former Attorney General for India released "The Global Indians and the Law" online, in the presence of Justice Indu Malhotra and Justice A.K. Sikri, at a largely attended webinar hosted by Bar Council of Punjab and Haryana. The book is co-authored by Anil and Ranjit Malhotra. Suvir Sidhu youngest Member of Bar Council, moderated the event aired live on social media. Sorabjee shared



his two-decade professional association with the authors and their nine books, be-

sides sharing his thoughts on the subject. He expressed that knotty legal issues and

problems confront global Indians and all others associated with them. In his view, a commentary is an excellent compilation of every possible question and answer floating in the ocean of problems of international Indians.

Justice Sikri in his eloquent address said that the canvas of this brilliant book is very wide as the title suggests. International family law jurisprudence with a heavy focus and a jeweller's focus on Indian perspectives.

Monday,  
August 31, 2020

# YUGMARG

## Soli Sorabji releases book 'Global Indians'

RANVIR PARASHAR  
CHANDIGARH, AUG 30

Soli Sorabjee, former Attorney General for India released the book 'The Global Indians and the Law Online, in the presence of Justice Indu Malhotra and Justice A.K. Sikri, at a largely attended webinar hosted by Bar Council of Punjab and Haryana. The book is co-authored by Anil and Ranjit Malhotra. Suvir Sidhu, youngest Member of Bar Council, moderated the event aired live on social media. Sorabjee shared his two decade professional association with the authors and their 9 books, besides sharing his thoughts on the subject. He expressed that knotty legal issues and problems confront global Indians and all others associated with them. In his view a commentary is an excellent compilation of every possible question and answer floating in the ocean of problems of international Indians.

Justice Sikri in his eloquent address said that the canvas of this brilliant book is very wide as the title suggests. Not only is the book a deep analytical compendium of



international family law issues, but the book is like a one stop shop also providing meaningful solutions to very intricate legal issues. He further added that the fabric and the edifice of the works of the authors in an area of law where there is not ready material available off the shelf stands out tall for a variety of reasons.

Justice Indu Malhotra dwelt at length on the analytical view points on the law touching global Indians in view of the emerging conflict areas in an International Family Law jurisprudence. She painstakingly analysed the case law evolved in this

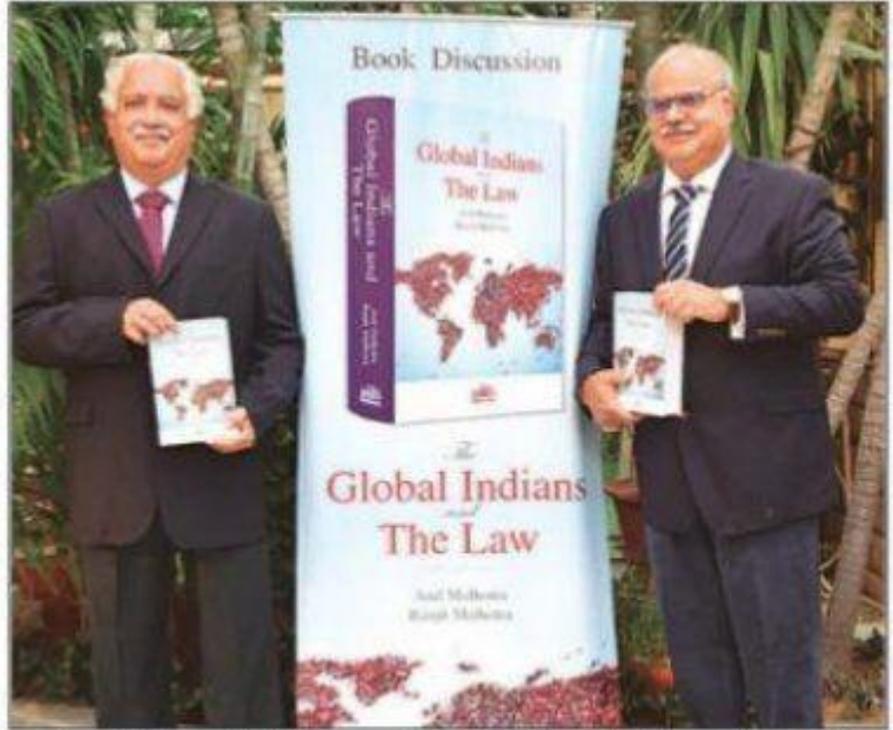
realm of law in which unique problems posed by changing human relationships came at the doorsteps of the Courts for effective resolution.

The authors Anil and Ranjit Malhotra addressed a number of questions posed by the enlightened audience. It seemed that the issues unknown to law were vast, seeing to the vast variety of questions which kept on coming. Mr. Shreesh Chandra of Oakbridge publishing expressed his gratitude to the esteemed panelists and a formal vote of thanks to the Bar Council was delivered by Ranjit Malhotra.

# ग्लोबल इंडियंस एंड लॉ पुस्तक का पूर्व अटॉर्नी जनरल सोली सोराबजी ने किया विमोचन

● एडवोकेट अनिल मल्होत्रा, रंजीत मल्होत्रा और सुवीर सिद्धू ने मिल कर लिखी है पुस्तक

चंडीगढ़, 29 अगस्त (प्रीत): बार काउंसिल ऑफ पंजाब एंड हरियाणा में शनिवार को वैबिनार के जरिए पूर्व अटॉर्नी जनरल ऑफ इंडिया सोली सोराबजी ने एडवोकेट अनिल मल्होत्रा, रंजीत मल्होत्रा और सुवीर सिद्धू द्वारा लिखित पुस्तक ग्लोबल इंडियंस एंड लॉ का विमोचन किया। वैबिनार के जरिए किए गए इस विमोचन में सुप्रीम कोर्ट की जस्टिस इंदु मल्होत्रा, सुप्रीम कोर्ट के पूर्व जस्टिस ए.के. सिकरी भी शामिल हुए थे। इस पुस्तक के सह-लेखक अनिल मल्होत्रा जो अब तक लॉ के विभिन्न विषयों को लेकर 9 पुस्तकें लिख चुके हैं उन्होंने बताया कि यह पुस्तक विशेष तौर पर विदेशों में रह रहे भारतीयों और उनकी समस्याओं और उनको



ग्लोबल इंडियंस एंड लॉ के लेखक एडवोकेट अनिल मल्होत्रा और रंजीत मल्होत्रा। -अनिल

पेश आने वाली कानूनी दिक्कतों को ध्यान में रखते हुए लिखी है। इस समय लाखों भारतीय दुनिया के करीब 200 देशों में रह रहे हैं, जिनके लिए यह पुस्तक काफी फायदेमंद होगी। इस पुस्तक में कई विषयों के भारतीय और

विदेशी कानून के बारे में जानकारी दी गई है। जिनमें खासतौर पर नागरिकता, वैवाहिक विवाद, मेंटेनेंस, कस्टडी, गार्जियनशिप, प्रॉपर्टी, इंटर-कंट्री एडॉप्शन, सक्सेशन, घरेलू-हिंसा और सरोगेसी जैसे कई विषय शामिल हैं।



# Book reviews

## Global Indians and the Law

**Anil and Ranjit Malhotra, Oakbridge, Delhi**

Towards a Renovation of Indian Legality?

*Global Indians and the Law* by Anil and Ranjit Malhotra (published by Oakbridge, Delhi), is a third edition – the last one was published in 2014 – but in fact a new work in many ways. It is time-tested but not future weary.

This book exemplifies the mysteries and miracles of delegated legislation. If the devil, or angel, of law lies in detail, that detail often lies in notifications, directions, and rules of delegated legislation. The work under review may be read as a massive exercise in information-retrieval. This comprehensive legal treatise deals broadly with the legal situations and problems actually and potentially confronted by ‘overseas Indians’, whom the learned authors also name ‘global Indians’. Its 24 Chapters mainly cover public and family law matters, divided into 7 parts – nationality, and citizenship, marriage and divorce, maintenance in matrimonial matters, custody guardianship, and adoption, surrogacy, and succession. The academic distinctions between theory and practice of what is called ‘family law’, ‘conflicts of law’, ‘public’ law (constitutional law and administrative law as well as statutory interpretation and judicial process), are pedagogically necessary in law schools. However, these are always merged and mixed in problem situations in real life, as justices and lawyers well know. Nevertheless, a cardinal point to be noted is that this treatise interweaves the learned authors ‘legal interventions’, both as counsellors and public intellectuals who have contributed to the making of the law.

A great merit of this work is that it engages the intersection between various bodies of

normative/doctrinal law and (what may only be called) the ‘living law’ for overseas Indians. The invention of a new term like ‘global Indians’ lies in designating, and pioneering, a new field of study and research for Indian people living abroad and subject to multiple jurisdictions and laws.

One hopes that a future companion book will deal with overseas Indians in conflict with Indian criminal law justice administration, a kind of handbook of transnational criminal law. Further, it would surely not be asking too much of such veterans to include many more aspects that emerge in comparative law and jurisprudence and which dwell upon the regulation of multiculturalism and the human right to manage the conflict of multiple practices of identification. These additional perspectives will entail a more liberal use of appendices where texts of legislation, including the rules made by administrative authorities, which could thus be housed better. This will also allow scope for more multidisciplinary perspectives and analytical materials.

At the threshold, is a big conceptual question: how to describe persons of Indian origin settled in other parts of the world? The ambitious aspect of this work lies in the coinage of the expression ‘global Indians’, that is overseas Indians who are deeply rooted in Indian culture and civilisation. We are also treated to a common categorisation of ‘overseas Indians’ deployed by the modern Indian laws. ‘International Indians’ as well is used interchangeably in this book. This certainly is a better expression rather than a term like ‘foreigner’, which though specifically used for non-Indians is also used for ‘people of Indian origin’ (a term now abandoned in favour of ‘overseas citizens of India’).

The authors are of the view, that if ‘parentage is the purpose to be achieved, either by adoption or surrogacy, then restricting parentage through surrogacy on

the grounds of marital status is arbitrary and discriminatory' and 'violative Articles 14 and 21 of the Constitution' (21.33).

To take yet another example, the authors maintain that the 'returns formula' is now evident in a new thought process akin to the 'mirror orders' formula. This is adopted by the Supreme Court of India in *Jasmeet Kaur's case* 2019 SCC OnLine SC 1599 (where usually the orders of child custody passed by an Indian Court are treated as if passed by a foreign court (15.14 and 15.24). If such an evolving mirror order based, child centric jurisprudence finds total judicial approval in India, the authors suggest, children removed to India are more likely to be reunited with the left-behind parent. However, according to the Malhotra brothers, this is at best a stop gap arrangement evolved by the judiciary. They also suggest that India should be a party to the Hague Convention on Civil Aspects of International Child Abduction (18.3). Concern with the rights of the children animates this analysis.

We see this at work in chapter 20 dealing with 'Guardianships and Adoptions: Different Perspectives', which notes that an inter-country adoption by prospective parents of Hindu religion under Hindu Adoption and Maintenance Act, 1956, is exempt from the rigors of the procedures of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoption Regulations, 2017. Further, they advocate that such inter-country adoptions can be facilitated with the issuance of conformity certificates by Central Adoption Resource Authority under the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoptions, 1993. Simplified rehabilitation for welfare of the child adopted within the family propels this argument (20.50), as India is a signatory to the UN Convention on the rights of the child. The approach is commendable.

Usually, legal treatises tend to be expository and do not offer views on matters left to parliament or legislatures. This work marks a refreshing trend, making room for informed pleas on how to remove

constitutional difficulties and assuage basic jurisprudential anxieties while making or amending the law.

The penultimate chapter (chapter 23) deals with 'diplomats, conflict of jurisdictions, and anti-suit injunctions'. Anti-suit injunctions are devices restraining action on suits, by overseas Indians, passed by Indian courts, when both parties are within jurisdictions of the foreign and the Indian courts. This presents a paradigm conflict of laws situation. By definition, considerations of territoriality, sovereignty, and resultant international comity, limit the reach of jurisdiction of domestic courts. Even when anti-suit orders may have no binding effect on the foreign courts, the parties within the jurisdiction of the Indian courts may remain subject further to contempt jurisdiction and proceedings. The authors offer a detailed narration of *Devyani Khobragade's case* in Delhi High court and study similar situations in matrimonial and succession contexts. They suggest vividly why it is high time that our courts develop a framework for 'stopping repression' by way of anti-suit injunctions in India to safeguard the rights of Indians. Surely, it is no judicial parochialism to stop injustice and oppression at the doorstep: 'The yeoman verdicts are a big crutch' but a 'preventive remedy is stronger than a powerful cure at the end' (23.18).

The work ends with a corpus of constraints as well as opportunities for delivering a 'Real Justice in a Virtual World' (chapter 24). The learned authors recognise and emphasise the pre-Covid attainments in access to justice though digital means. Yet, they feel, even at the height of the second phase of the pandemic, the need for substantive changes in adjudicative structure and process. These will include a heightened access to the exponentially growing unmet needs of an Indian diaspora, and allocation of judicial time for 30m plus strong formation of 'global Indians'. This need for allocation of judicial time is pressing for a variety of situations – for the settlement of 'emergent child custody, matrimonial domestic violence, spousal maintenance, inter-country adoptions, surrogacy,

succession, inheritance issues, besides resolving nationality, and citizenship issues.' The diaspora will need and demand, 'solutions' in more equitable and efficient dispensation of digital justice. In many senses, this will also assist the much needed renovation of Indian legality.

**Upendra Baxi**

*Emeritus Professor of Law, University of  
Warwick and Delhi*



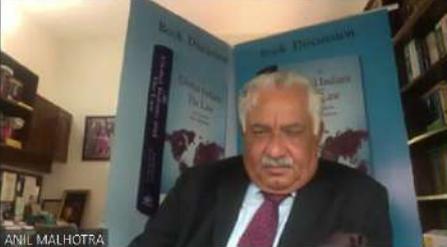
S Muralidhar



Narinder Singh



Dr. Shashikala Gurpur



ANIL MALHOTRA



Reshma Sangare



Lasya Vyakaranam



Prof. Semanti Choudhury



**HON'BLE MS.JUSTICE INDU MALHOTRA JUDGE SUPREME  
COURT OF INDIA**

**HON'BLE MR.JUSTICE A K SIKRI JUDGE SINGAPORE  
INTERNATIONAL COMMERCIAL COURT**

**MR.SOLI J SORABJEE INTERNATIONAL JURIST**

**MR.ANIL AND RANJIT MALHOTRA (AUTHORS)**

**BAR COUNCIL OF PUNJAB AND HARYANA**

# **VIRTUAL BOOK LAUNCH**

of the book 'The Global Indians and The Law' by  
Oakbridge Publishings

**AUGUST 29, 2020  
04:00 PM IST OR 11:30 AM BST  
ZOOM WEBINAR ID : 896 6280 6355**

Live streaming :- Bar Council of Punjab and Haryana Facebook Pages



*The*  
**Global Indians**  
*and*  
**The Law**

Anil Malhotra | Ranjit Malhotra





**Bar Council of Punjab & Haryana**

*in august presence of*

**Mr. Soli J Sorabjee**

**Hon'ble Mr Justice AK Sikri**

**Hon'ble Ms Justice Indu Malhotra**

*Cordially invites you to the*

**Virtual Book Launch Event**

*of*

# **THE GLOBAL INDIANS AND THE LAW**

*Authored by*

**Anil Malhotra and Ranjit Malhotra**

*Published by*

**OakBridge Publishing**

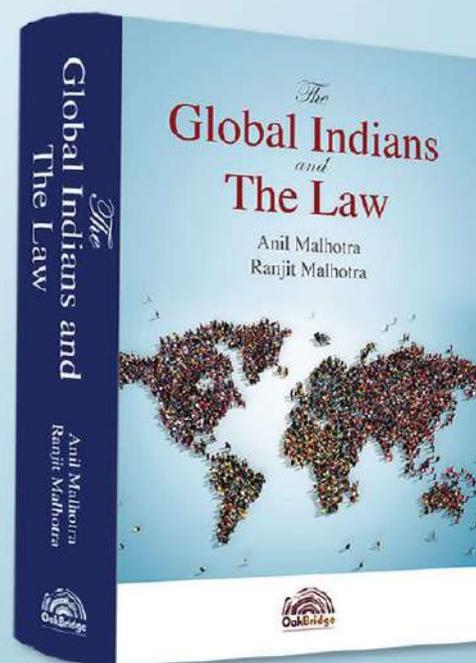
**on Saturday, August 29, 2020**

**at 4:00 PM IST**

**ZOOM webinar ID: 896 6280 6355**

**Facebook Live Streaming on:**

**<https://m.facebook.com/barcouncilofpunjabndharyana/>**



**OakBridge**  
**PUBLISHING**



Bar Council of Punjab & Haryana

*Cordially invites you to the*

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*of*

## THE GLOBAL INDIANS AND THE LAW

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### *Panelists*

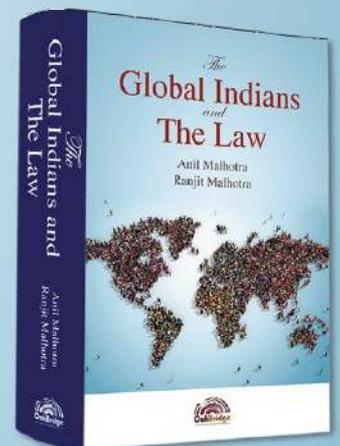
**Mr. Soli J Sorabjee**

**Hon'ble Mr Justice AK Sikri**

**Hon'ble Ms Justice Indu Malhotra**



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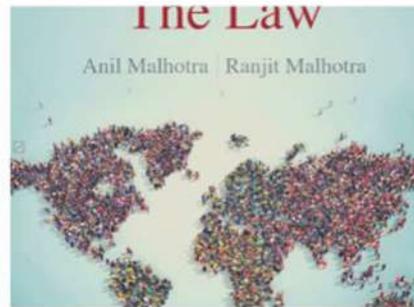
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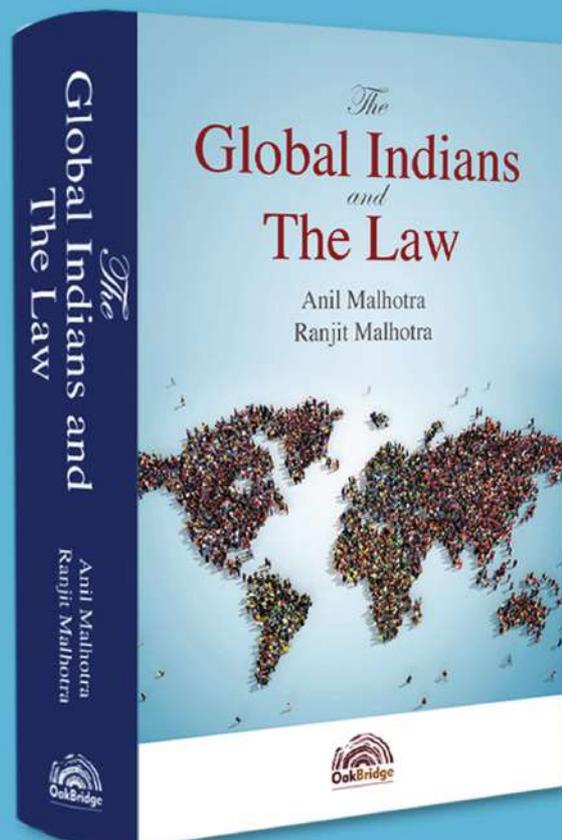
29TH AUGUST 2020 AT 04:00 PM IST

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"THE GLOBAL INDIANS AND THE LAW"



AUTHORS  
ANIL AND RANJIT MALHOTRA





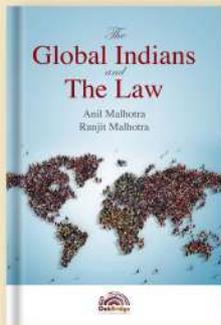
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## VIRTUAL BOOK LAUNCH AND DISCUSSION ON THE GLOBAL INDIANS AND THE LAW

WRITTEN BY



ADV. ANIL MALHOTRA AND ADV. RANJIT MALHOTRA

### PANELISTS



HON'BLE JUSTICE  
DR. S MERALIDHAR,  
JUDGE, PUNJAB AND HARYANA HIGH COURT



ADV. ANIL MALHOTRA,  
SENIOR ADVOCATE, PUNJAB AND  
HARYANA HIGH COURT



DR. SHASHIKALA GURPUR, FULBRIGHT SCHOLAR  
DIRECTOR, SYMBIOSIS LAW SCHOOL, PUNE  
DEAN, FACULTY OF LAW



MR. NARINDER SINGH,  
SECRETARY GENERAL OF THE  
INDIAN SOCIETY OF INTERNATIONAL LAW  
(ISIL)

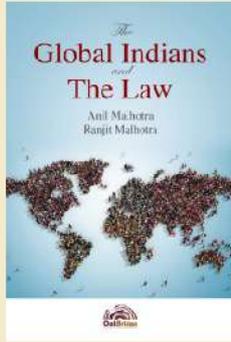


MS. RESHIMA SAMBARE,  
ATTORNEY AND COUNSELOR AT LAW (STATE OF MICHIGAN AND  
ILLINOIS, USA)

DATE: SATURDAY, 03<sup>RD</sup> OF OCTOBER, 2020 | TIME: 12:00 PM

SYMBIOSIS INTERNATIONAL (DEEMED UNIVERSITY)

## VIRTUAL BOOK LAUNCH AND DISCUSSION ON THE GLOBAL INDIANS AND THE LAW



WRITTEN BY  
**ADV. ANIL MALHOTRA &  
ADV. RANJIT MALHOTRA**

### PANELISTS



**HON'BLE JUSTICE  
DR. S MURALIDHAR**  
JUDGE  
PUNJAB AND HARYANA HIGH COURT



**ADV. ANIL MALHOTRA**  
AUTHOR, LEGAL ANALYST  
IAFL FELLOW &  
ALUMNI OF SOAS, LONDON



**DR. SHASHIKALA GURPUR**  
*FULBRIGHT SCHOLAR*  
DIRECTOR  
SYMBIOSIS LAW SCHOOL, PUNE  
DEAN, FACULTY OF LAW



**MR. NARINDER SINGH**  
SECRETARY GENERAL  
INDIAN SOCIETY OF  
INTERNATIONAL LAW (ISIL)



**MS. RESHMA SAMBARE**  
ATTORNEY AND COUNSELOR AT LAW  
STATE OF MICHIGAN  
AND ILLINOIS, U.S.A.

**DATE: SATURDAY, 03<sup>RD</sup> OF OCTOBER, 2020 | TIME: 12:00 PM**

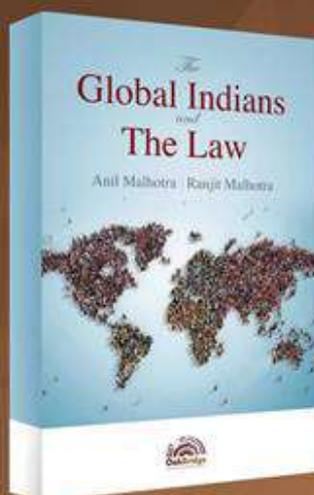
**SYMBIOSIS INTERNATIONAL (DEEMED UNIVERSITY)**



O.P. JINDAL GLOBAL  
INSTITUTION OF EMINENCE DEEMED TO BE  
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cordially invites you to a

# BOOK LAUNCH AND PANEL DISCUSSION



### PROF. UPENDRA BAXI

Research Professor of Law and  
Distinguished Scholar in  
Public Law & Jurisprudence



### PROF. (DR.) C. RAJ KUMAR

Vice Chancellor  
O.P. Jindal Global [Institution of Eminence  
Deemed To Be University]



### MR. ANIL MALHOTRA

Author, Legal Commentator & Analyst  
Senior Partner,  
Malhotra & Malhotra Associates.



### PROF. SAUMYA UMA

Professor  
Jindal Global Law School



### PROF. SAPTARSHI MANDAL

Associate Professor  
Jindal Global Law School



### PROF. TANVEE NANDAN

Assistant Professor  
Jindal Global Law School

**MODERATOR**

FRI | 10 SEP 2021

4:30 PM  
6:00 PM



<https://youtu.be/NircnnDYxbA>

## **Prof. Upendra Baxi**

Research Professor of Law and Distinguished Scholar in Public Law & Jurisprudence

Prof. (Dr.) Upendra Baxi, born at Rajkot, Saurashtra, graduated from Rajkot (Gujarat University), read law at the University of Bombay, and holds LL.M. degrees from that University and the University of California at Berkeley, which in 1973 also awarded him a Doctorate in Juristic Sciences.

He began his law teaching career in the Department of Jurisprudence and International Law at Sydney Law School (1969-1973), and served as Professor of Law, University of Delhi (1973-1996.) He also served as the Vice-Chancellor of Delhi University (1990-1994), as well as the Vice-Chancellor, University of South Gujarat, Surat (1982-1985), the Honorary Director (Research) of the Indian Law Institute (1885-1988), and the President of the Indian Society of International Law (1992-1995.)

He was Professor of Law at the University of Delhi from 1973 to 1994 (and Professor Emeritus since 2010), and Professor of Law at the University of Warwick from 1994 (and an Emeritus since 2009). He has been Director's Guest Fellow at the Nantes University Institute of Advanced Studies, and a senior fellow of the Institute of Law as Culture at the University of Bonn.

Prof. Baxi is currently on the editorial board of: the Human Rights Law Review (UK); SUR: International Journal of Human Rights (Brazil); Law in Context (Australia); Macquarie Law Review (Australia); Journal of International Law and International Relations (Canada); Human Rights & International Legal Discourse (Belgium); and The Journal of Human Rights and the Environment (UK.) In 2011, he was awarded the Padma Shri, the fourth highest civilian award in India, by the Government of India.

## **Prof. (Dr.) C. Raj Kumar**

Vice Chancellor, O.P. Jindal Global [Institution of Eminence Deemed To Be University]

Professor (Dr.) C. Raj Kumar, a Rhodes Scholar, is the Founding Vice Chancellor of O.P. Jindal Global (Institution of Eminence Deemed To Be University) (JGU) in India. He was appointed as the VC at the age of 34 in 2009 when the university was established. JGU is one of only 20 universities in India and the only non-STEM university, which has been declared as an "Institution of Eminence" by the Government of India.

Professor Kumar is an accomplished legal scholar and works in the fields of human rights and development, comparative constitutional law, terrorism and national security, corruption and governance, law and disaster management, legal education and higher education. He has seven books and over hundred and fifty publications to his credit and has published widely in peer reviewed journals, law reviews in Australia, Hong Kong, India, Japan, Singapore, UK and the USA. Professor Kumar has held consultancy assignments in the field of human rights and governance. He has been a Consultant to the United Nations University (UNU), Tokyo; United Nations Development Programme (UNDP); UN Office of the High Commissioner of Human Rights, Geneva; and the International Council for Human Rights Policy (ICHRP), Geneva. He has advised the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) in Sri Lanka and the National Human Rights Commission (NHRC) in India on issues relating to corruption and good governance. Professor Kumar is an Attorney at Law and is admitted to the Bar Council of Delhi, India and the Bar of the State of New York, USA.

## **Mr. Anil Malhotra**

Author, Legal Commentator & Analyst, Senior Partner, Malhotra & Malhotra Associates

Anil Malhotra is a practising Advocate based at Chandigarh, India with appearances at High Courts and Supreme Courts. He attained Bachelor of Science (1980) and Bachelor of Laws (Professional) (1983) degrees from Panjab University, Chandigarh & an LL.M degree from the University of London, London in 1985. He studied Comparative Family Law at London School of Economics, besides Law & Society at School of Oriental & African Studies.

For over 36 years, he continues to act as an Indian expert to render reports in foreign courts on appointment by the Bench in overseas jurisdictions. As Amicus Curiae regularly assists High Court on International Family Law Issues. He has co-authored nine books titled Acting for Non-resident Indian Clients (Jordans 2005), India, NRIs and the Law (Universal 2009), Indians, NRIs and the Law (Universal 2011), Surrogacy in India: A Law in the Making (Universal 2013), International Indians and the Law, (Universal 2014), Surrogacy in India – A Law in the Making : Revisited (LexisNexis 2015), India, Inter Country Parental Child Removal and the Law (Lexis Nexis 2016), The Removed Child and The Law in India (2018) and The Global Indians and the Law (Oakbridge 2020).

He has significant published work and has both international and domestic conference participations besides over 1000 newspaper columns to his credit. He is a Fellow of International Academy of Family Law (IAFL), & India Representative, Family Law Committee, International Law Association, London. Has expertise with numerous expert reports and professional opinions in issues related to Surrogacy, Inter country Adoptions, Nationality, Citizenship, Marriage, Divorce, Maintenance and Succession involving Global Indians / foreigners.

Has conducted number of litigations on inter-country parental child removal matters. As amicus curiae, his report on inter-country parental child removal, is part of a Punjab and Haryana High Court judgment making reference to Law Commission of India, to recommend that India needs to consider signing the Hague Convention. Served as Member of Committee of Ministry of Women and Child Development, Government of India to examine legal issues involved on resolving problems of parents and children involved in issues relating to inter parental / inter country child removal, whose report was submitted to Government of India on 21 April 2018. Lectures as Resource Person at National Judicial Academy, Bhopal, Chandigarh Judicial Academy, National Law Universities, Symbiosis, Pune.

## **PROF. SAUMYA UMA**

Professor, Jindal Global Law School

Prof. (Dr.) Saumya Uma pursued her B.A. LL.B. (Hons.) from National Law School of India (NLSIU), Bangalore. While practising law in the courts of Mumbai, she went on to do her first LL.M. in Family Law and Human Rights from the University of Mumbai. Thereafter she received the prestigious British Chevening scholarship for human rights, administered by the Foreign and Commonwealth Office, U.K. for pursuing a second LL.M. in International Human Rights at the University of Nottingham, U.K. She returned to her alma mater – NLSIU – to work on and complete her doctoral research. The research focussed on developing an India legal framework on victim and witness protection, with a specific reference to gender-based violence.

Prof. Uma's teaching and research is at the intersection of gender, human rights and the law. She has over 25 years' combined work experience as an academic, law researcher, lawyer, trainer, writer and campaigner on gender, law and human rights. She has served as a research consultant on human rights, with international agencies such as the United Nations Development Fund (UNDP), United Nations Office of the High Commissioner on Human Rights (UNOHCHR) and the International Commission of Jurists (ICJ). She has a vast experience in engaging with a variety of international and national actors and institutions including universities, non-profit organizations, UN agencies, parliamentarians and bureaucrats from India and abroad. She has researched and authored twelve books, edited/co-edited books by reputed publishers such as the Oxford University Press, and has written and published more than 50 articles.

## **PROF. SAPTARSHI MANDAL**

Associate Professor, Jindal Global Law School

Prof. Saptarshi's research and teaching spans family law, disability law, sexual violence and sociology of law. In a previous professional life, he has worked in various capacities in a number of NGOs in New Delhi, such as the Lawyers Collective, Multiple Action Research Group and Partners for Law in Development. He has consulted with international NGOs like the Amnesty International and CREA and continues to conduct legal literacy trainings for a range of constituencies. He was a member of a sub-committee (2014-2015) constituted under the Twentieth Law Commission of India that recommended large scale reforms to child custody and guardianship laws.

Saptarshi's current research revolves around three themes: (a) intercaste marriage as the object of law in modern India; (b) the legal and constitutional dimensions of social reproduction by and in the family; and (c) conceptualizing legal change in group- and region-specific family law in India. He has been a TLSI Fellow at the inaugural Transnational Law Summer Institute, King's College, London (2015) and has held visiting fellowships at the International Institute for the Sociology of Law, Oñati, Spain (2015), and the Centre for the Study of Law and Governance, Jawaharlal Nehru University, New Delhi (2012).

## **ABOUT 'THE GLOBAL INDIANS AND THE LAW'**

**This commentary on private international law in the exclusive Indian context attempts to provide comprehensive answers to these problems of the Indian diaspora and the global transnational Indian which may not find a solution in the conventional statutory laws. The proposed publication aims to be a comprehensive commentary for the Courts abroad, an aggrieved spouse, a foreign litigant, an overseas practitioner, or any lay person who simply wants to know where he stands. A compilation of case law, enunciated by the vibrant Indian judiciary rendering a yeoman service, has been quoted for reliance. Unique case references fill in the statutory void in this ocean of ails.**

**The spectrum of reading is widespread. It ranges from nationality/citizenship issues to family and marital settlements, surrogacy agreements, child custody conflicts, secular adoptions, limping marriages, succession issues, conflict of jurisdictions besides the need for revamping family law for non-resident Indians. Law of spousal maintenance in India from a global perspective has been delved into. Child laws and global adoptions in the international jurisdiction as a fast-emerging jurisprudence in Indian law, has been examined at length in different perspectives. Issues relating to dual nationality, passports and citizenship are also looked into. Emerging predicaments and practices arising out of surrogacy with the law in flux have been focused in the book in detail. A dedicated chapter looks at NRI property problems, wills, succession and their possible solutions.**

**This unique reader friendly concise and crisp presentation in 7 individual Parts as expositions pose the problems and attempts to provide their answers. The authors with their years of expertise have aimed to project these problems as they have experienced them professionally. References to case law wherever necessary have been provided for the professional reader who wants an accurate and expeditious run down on Indian law on the subject of custom, marriage, divorce, spousal maintenance, domestic and inter-country adoptions, child abduction, surrogacy, child rights, matrimonial settlements, succession, inheritance besides issues of nationality and citizenship.**