



## **Anil Malhotra**

### **EXPERT REPORTS AND PROFESSIONAL OPINIONS**

#### **2006**

1. Expert Report on **Indian Family Law** in India.Switzerland, 2006.
2. Expert Report on **Inter Parental Child Abduction**. United States of America, 2006.
3. Expert Report on **Intern Parental Child Abduction**. United Kingdom / New Zealand, 2006.

**2007**

1. Draft Opinion on **Pious Obligation of Son under Hindu Law.** In re X & Y, 2007.
2. Professional Opinion on **Options of Muslim Divorce.** United Kingdom, 2009.
3. Expert Report on the **mechanisms for securing the return of the minor child from India who is habitually resident in England.** United Kingdom, 2007
4. Professional Opinion on **Validity of Guardianship Proceedings in India in 1997 and the consequent adoption in year 2002 in the Netherlands and India 2007.**
5. Expert Report on **Parents Right to Maintenance from Married Daughters.** In re Z, 2007.

**2008**

1. Joint Expert Report on **Orders by the High Court of Justice, Family Division, London, on issues raised in matters relating to Indian law.** United Kingdom, 2008.
2. Expert Opinion to opine upon an **Indian Family Law and on the issue of dissolution of marriage and all other ancillary issues arising thereto between the parties.** India, 2008.
3. Expert Opinion on **Indian Family Law with regard to the matrimonial proposition of divorce and related issues of property settlement** in Australia / United Kingdom, 2008.
4. Expert Report on the **applicability of the Hindu Marriage Act on instructions from Solicitors representing the wife.** Singapore, 2008.
5. Expert report on **U.S. divorce validity and annulment of marriage.** United Kingdom, 2008.

6. Expert opinion on **Indian Immigration Law for Indian work Visa for requirements of Employment in India by Foreign Nationals.** United States of America, 2008.
7. Expert report to opine on the **validity /invalidity of a customary adoption in terms of an adoption deed in 2008.** United States of America, 2008.
8. Expert Report upon **Surrogacy Arrangements and consequential rights of parties arising from such agreements in India** as instructed by the Australian High Commission, New Delhi. India, 2008.
9. Expert Opinion report to opine upon the fact **whether he is eligible or qualifies to be a citizen of India in terms of The Citizenship Act, 1955.** Uganda / United Kingdom, 2008.
10. Expert opinion on Family Law upon instructions to opine on the **validity and enforceability in India of the final judgment of divorce passed by the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, USA, whereby the marriage between parties has been dissolved by a final Judgment of divorce.** United States of America, 2008.

## 2009

1. Expert report in the matter of **Protection of Women from Domestic Violence Act, 2005, The Indian Penal Code, 1860, The Code of Criminal Procedure, 1973 and The Family Courts Act, 1984.** United Kingdom, 2009.
2. Expert report to on the **validity of the adoption deed executed under the provisions of the Hindu Adoptions and Maintenance Act, 1956 between parties as adoptive parents and the natural parents of the minor, Middlesex.** United Kingdom, 2009.
3. Expert report on **Indian family law in the matter of applicability of the Hindu Marriage Act, 1955.** United States of America, 2009.

4. Legal opinion on the **validity of the adoption under the provisions of the Hindu Adoptions and Maintenance Act, 1956**, New York. United States of America, 2009.
5. Written Opinion and responses to questions raised in England, on **maintenance and alimony issues in divorce proceedings in India under the Hindu Marriage Act, 1955 / Special Marriage Act, 1954 by spouse living in India**. United Kingdom, 2009.
6. Expert report to opine on the **validity of the adoption deed executed under the provisions of the Hindu Adoptions and Maintenance Act, 1956**. United States of America, 2009.
7. Legal opinion on a **Surrogacy agreement executed in India**. New South Wales. Australia, 2009.

## 2010

1. Professional opinion on the **validity of the adoption deed, executed under the provisions of the Hindu Adoptions and Maintenance Act, 1956 on behalf of the Embassy of Austria**, New Delhi. India, 2010.
2. Expert report/ opinion on the **legal position regarding the Indian law of Wills and Succession**, London. United Kingdom, 2010.
3. Expert opinions on **Indian family law and on divorce proceedings, ancillary relief, division of property and child custody issues in India** / United States of America 2010.
4. Single joint expert report on the **joint instructions in proceedings instituted in the Family Division of the High Court of London in child custody, conditional visit to India and mirror orders provisions**. United Kingdom, 2010.

**2011**

1. Legal Opinion on **void marriage under the provisions of the Hindu Marriage Act, 1955** in and about the matter of investigation report furnished to the Embassy of Federal Republic of Germany, New Delhi. India, 2011.
2. Expert Opinion on **Child Custody issues in India on Hindu/Indian Family Law relating to the issue, that in a judicial determination of child custody there is a presumption or definitive preference for a biological parent over third parties**. United States of America, 2011.
3. Single joint expert report on **Indian law regarding the financial remedies available to a Hindu wife in relation to her Hindu marriage and divorce proceedings initiated under the provisions of the Hindu Marriage Act, 1955, in India, in respect of proceedings at the High Court of Justice, Family Division, London**. United Kingdom, 2011.
4. Expert Opinion on **legal custody and citizenship issues arising in India in respect of a child born to Muslim parents in New Jersey**, United States of America, 2011.
5. Legal opinion on **applicability on Goan law regarding divorce and financial matters**. Instructed, Solicitors, based in, London. United Kingdom, 2011.
6. Legal opinion on the **available to immediate aggrieved family members, upon death of a British national in India**. United Kingdom, 2011.
7. Legal opinion on the **validity of the adoption deed, executed under the provisions of the Hindu adoptions and Maintenance Act, 1956**, on queries raised by the Canadian High Commission, New Delhi. Canada, 2011.
8. Legal Opinion on the **validity of Hindu marriage solemnised and registered under provisions of the Hindu Marriage Act, 1955**. United States of America, 2011.

9. Legal opinion on **Indian Matrimonial Law relating to Alimony, maintenance and division of matrimonial assets**. United Kingdom, 2011.
10. Expert report on the **legal position with regard to the present position of Surrogacy law in India and related immigration/citizenship issues, on instructions received from Solicitors in England**. United Kingdom, 2011.
11. Expert Report on the **extra territorial applicability of the Hindu Marriage Act and available grounds for divorce in USA**. United States of America, 2011.
12. Legal opinion relating to **potential legal avenues for tracing of assets in the Indian jurisdiction of the divorced husband in India as instructed by Solicitors in England**. United Kingdom, 2011.
13. Queries and Legal Opinion with regard to **maintenance claim and divorce proceedings under Hindu Law in India**. United Kingdom, 2011.

## 2012

1. Expert report on **family settlements executed in family run companies in India and in the event of family disputes in the Indian jurisdiction. Based on instructions received from, Solicitors, acting on behalf of the applicant wife in the High Court of London**. United Kingdom, 2012.
2. Single Joint expert report on **applicability of prevalent Indian Law specifically with regard to international enforcement of child custody orders made in the United Kingdom, legal remedies available for inter parental and inter country child removal and forum under the relevant legislation for custody proceedings i.e. the provisions of Guardian And Wards Act, 1890 duly supplemented by the provisions of the Hindu Minority and Guardianship act, 1956**. Re matter in the principal registry of the Family Division of the High Court of London. United Kingdom, 2012.

3. Expert written report on **India inter-parental child removal and the law on the current status and position of custody law as well as suggest all possible remedies available upon inter-parental child abduction to India with regard to son's proposed visit to India.** United States of America, 2012.
4. Legal opinion regarding **levy of alleged excess customs duty in India by the customs authorities in New Delhi and Chennai under the provisions of the Customs Act, 1962.** India. 2012.
5. Written Opinion on **Law Of Marriage and Divorce in India and Italy, Provisions of Prevention of Women from Domestic Violence Act, 2005 and matrimonial offences under Indian Penal Code, 1860,** Rome. Italy, 2012.
6. Expert report on **applicability of prevalent Indian law specifically with regard to the provisions of Guardian and Wards Act, 1890 and the provisions of the Hindu Minority and Guardianship Act, 1956, instructions received from, Harrow Council, Harrow.** United Kingdom, 2012.
7. Expert written report on **India inter-parental child removal and the law, relating to Indian child removal and custody law pertaining to the Canadian children resident in India.** Canada, 2012

## **2013**

1. Expert legal on **Passport Renewal of Child in a broken marriage.** Hyderabad. India, 2013.
2. Expert opinion on **divorce procedure and financial settlement on divorce under Family Law in India in respect of Italian and Indian spouses. Instructed by Solicitors, London.** United Kingdom, 2013.
3. Expert Opinion on **Interparental child removal issues in India in respect of proceedings pending before the Principal Judge, Family Court, Mumbai at Bandra and High Court of Justice, Family Division, Royal Courts of Justice, London.** United Kingdom, 2013.

4. **Expert Report/opinion on the applicability of prevalent Indian law regard to international enforcement of child custody orders in Canada, and legal remedies available in the Indian jurisdiction for inter parental and inter country child removal/abduction and forum under the relevant legislation for custody proceedings i.e. the provisions of Guardian and Wards Act, 1890 duly supplemented by the provisions of the Hindu Minority and Guardianship Act, 1956 in the matter instituted in the Court of Queen's Bench of Alberta. Report furnished. Canada, 2013.**
5. **Law and surrogacy arrangements in India pursuant to a petition by surrogate parents in UK and the Order of HHJ Plunkett Sitting in the High Court in Birmingham. United Kingdom, 2013.**
6. **Expert written report on custody law and all possible remedies available upon inter-parental child removal to India with regard to her daughter based on instructions of mother permanently resident in Ontario. Canada, 2013.**
7. **Expert legal opinion on enforcement of foreign matrimonial judgments in the Indian civil jurisdiction, and issues relating to seeking of maintenance claims by a wife of a Jewish origin, resident outside the territories of India against her German husband, planning to relocate for work purposes to India on instructions by X. (2013)**
8. **Expert written report on position of Indian law on interparental child removal issues. Based on questions of parent. United States of America, 2013.**
9. **Legal opinion on law and surrogacy arrangements in India on instructions by Z, 2013.**
10. **Legal opinion on the legal position with regard to enforcement of pre-nuptial agreements in the Indian context, instructed by Solicitors in Singapore, 2013**



11. Expert Report on **guardianship proceedings for a British child to be relocated to India, based on instructions from The Director of Legal and Democratic Services, Borough of Ealing, Ealing House, London.** United Kingdom, 2013.
12. Expert report on **validity of guardianship proceedings in India based on instructions of, London Borough of Brent Legal Services Department, as per directions of District Judge MacGregor, London.** United Kingdom, 2013.
13. Professional opinion by way of affidavit on the **validity of the adoption deed executed under the provisions of the Hindu Adoptions and Maintenance Act, 1956, in a matter in the High Court Of Justice Chancery Division, London in the matter of the Inheritance (Family Provision & Dependents) Act 1975.** United Kingdom, 2013.

## **2014**

1. Expert report on **India, Inter-Parental Child Removal and The Law on instructions received from Attorney in Massachusetts.** United States of America, 2014.
2. Expert report on **Indian family law, on the issue of Jurisdiction under the provisions of the Hindu Marriage Act, 1955, instructions received from Solicitors at London.** United Kingdom, 2014.
3. Single Joint expert report on **financial remedies available to a spouse in Bangalore under Indian law with particular reference to capital assets, periodical payments and pension sharing considering factor.** Instruction received jointly from Solicitors. United Kingdom, 2014.
4. Expert report on **India, Inter parental child removal & the law.** In the matter in the Reading County Court before District Judge Wakem. United Kingdom, 2014.

5. Legal opinion on **procedure and legal requirements for a person applying to register as an Overseas citizen of India (OCI) under Section 7A of the Indian Citizenship Act, 1955 and the Citizenship rules, 2009.** United States of America, 2014.
6. Opinion on **Law of Succession and Inheritance and issuance of Probate of a Will under the provisions of the Indian Succession Act, 1925.** United Kingdom, 2014.
7. Expert report on **validity of Guardianship proceedings in India instructed by South Tyneside Council, Town Hall & Civic Offices, Tyne and Wear. In The Matter Of South Tyneside Metropolitan Borough Council In Placement Order Proceedings Before His Honour Judge Simon Wood/Mr Justice Moylan In Sunderland County Court Sitting In Newcastle Upon Tyne.** United Kingdom, 2014.
8. Legal Opinion under the provisions of The Citizenship Act, 1955. Instructed by the Canadian High Commission, New Delhi to provide a legal opinion on the **potential citizenship rights of a person of Indian origin as per Indian citizenship laws, who is not found to be a Canadian citizen.** High Commission of Canada, New Delhi, 2014.

## 2015

1. Two Expert written reports on the **law in relation to the Inter-Parental Custody of children and child abduction safeguards in India in the matter in the High Court of Justice Family Division, London.** United Kingdom, 2015.
2. Expert report on **validity of guardianship proceedings in India in the matter of Leicester City Council and ongoing court proceedings in respect of the children at the High Court.** United Kingdom, 2015.
3. Expert report on **Indian law of marriage and divorce, relating to validity of a Hindu ceremonial marriage. Instructions received from Attorney at Chicago,** United States of America, 2015.

4. Expert Opinion on the **validity of a partial incomplete marriage ceremony performed by a Hindu priest under the provisions of the Hindu Marriage Act, 1955**. United Kingdom, 2015.
5. Legal Opinion on **Inter-Country adoption from India on the process of determination and finding that an Indian child is “eligible” for inter-country adoption in the best interest of the child and the proposition which relates to whether “contact” with the proposed child to be adopted is legally permissible for the prospective adoptive parents**. USA 2015.
6. Expert Opinion on the **validity of a Sikh marriage, under Indian Family Law, as instructed by Solicitors in London**. United Kingdom, 2015.
7. Expert report on **Indian Law of Marriage and Divorce in the matter in the Supreme Court of British Columbia**. Canada, 2015.
8. Professional Opinion on **Indian guardianship / custody laws. Instructed by Advocaten En Mediators**. Amsterdam, 2015.
9. Expert report on **validity of Guardianship proceedings in India asinstructed by Legal Services, Leicester, in the matter of Leicester city Council and ongoing court proceedings in respect of the children**. United Kingdom, 2015.

## 2016

1. Expert report on **Indian Law on Succession Re: Indian property of Lord R and Late U**. New Delhi. India, 2016.
2. Expert report on **Indian family law issues on validity of Hindu Marriage On the orders by the District Judge at the Family Court at Stoke on Trent**. United Kingdom, 2016.
3. Expert report on **Indian Inheritance Law on joint instructions were received from Solicitors In the matter of in the Family Court at Willesden County Court, in terms of the Orders of the Family Court at Willesden**. United Kingdom, 2016.

4. Legal Opinion on **validity of divorce in British Columbia, on the issue whether marriage between parties solemnized in India and residing in Canada, can be dissolved in British Columbia (BC).** Canada, 2016.
5. Expert Written Opinion on **The Law In Relation to the Custody of Children and Child Abduction in India, Suggested safeguards for return of children from India In the Family Court of District Judge sitting at Halifax, on instructions from a parent.** United Kingdom, 2016.

## **2017**

1. Expert Report on **Indian family law in a Family Law Matter. Instructions received from Family Law & Mediation Specialists.** Australia, 2017.
2. Expert report on **child custody issues modification of custody, visitation and related relief, pending in the Circuit Court for modification Montgomery County, Maryland, Family Law Division.** United States of America, 2017.
3. Legal expert report on **The Law In Relation To The Custody Of Children And Child Abduction In India. In the matter in the Family Court at Croydon.** United Kingdom, 2017.
4. Expert report and legal advice on **custody, guardianship and citizenship issues in India, in the matter at Leicester instructed by Leicester City Council, Leicester,** United Kingdom, 2017.
5. Legal opinion and Expert report re: **perspectives of parallel divorce, property, maintenance, and custody proceedings in India and Ontario,** Canada, 2017.
6. Expert Legal Opinions on **issues related to child custody laws in India,** Canberra, Australia, 2017.

**2018**

1. Legal expert report on **The Law In Relation To The Custody Of Children And Child Abduction In India before the West London Family Court in the matter of a Child**. United Kingdom, 2018.
2. Single joint expert report in the High Court of Justice Family Division, London on **enforceability of British Court children custody orders in India and safeguards suggested**. United Kingdom, 2018.
3. Expert Opinion on the **validity and enforceability of the British court orders/judgment on the matrimonial proceedings before Central Family Court, instituted in London**. United Kingdom, 2018.
4. Legal expert report on **Family Law matters in India and Hague Convention on the Civil Aspects of International Child Abduction in the Federal Circuit Court of Australia re child custody issues in India**. Australia, 2018.
5. Expert report and legal advice in the matter of **law applicable for adoption, guardianship, citizenship and nationality in India in relation to care proceedings concerning three children in the UK as directed by the Royal Courts of Justice, London. Instructed by Harrow Council, Civic Centre, Harrow**. United Kingdom, 2018.
6. Updated Expert report on **India, Inter-parental child removal & the law, instructions jointly received from Solicitors, London**. United Kingdom, 2018.

**2019**

1. Expert opinion on **Hindu Marriage and Divorce Law**. United Kingdom, 2019.
2. Professional Opinion in the Superior Court of the State of California, on **Hindu marriage and divorce law and Indian law regarding enforcement of Foreign Judgment/decrees; Position in Indian law for registration of Stipulation and Order between parties and registration of foreign judgments passed by foreign Courts. Position of Indian law for joint petition for divorce by mutual**

**consent between parties under Section 13-B of the Hindu Marriage Act, 1955.** United States of America, 2019.

3. Legal Opinion on **compliance of necessary formalities under Indian law relating to the law of Wills under the applicable law i.e. under the provisions of the Hindu Succession Act, 1956 and the Indian Succession Act, 1925.** United Kingdom, 2019.
4. Single joint expert report on **child custody, guardianship and enforcement of English Court Child Custody orders in India in the matter of a child before the Family Division of the High Court of Justice at London.** United Kingdom, 2019.
5. Single joint expert report on the **Law in relation to the custody of children and Child Abduction in India.**In and about the matter at the **Superior Court of Justice, Toronto, Ontario.** Canada, 2019.
6. Expert report **Indian visas under Indian Immigration Law in respect of foreign nationals and children born abroad to an Indian national parent in the matter of, Article 8 Application ECHR.** Instructed by **McGlashan Mackay Solicitors, Glasgow, Scotland,** 2019.
7. Expert report on **validity of a Hindu marriage and consequences of Registration under Hindu Law in the Superior Court for the State of California, County of Santa Clara, Family Law Division.** Instructed by **Magdalena Law Group, Family Law Attorneys, San Jose, CA, USA,** 2019.
8. Expert opinion on **Hindu Marriage, Divorce, Child Custody and Settlement of Matrimonial Property in India in respect of a Marriage in South Dakota USA and Indore (MP), India for solutions of division of matrimonial and joint corporate assets in USA and in India besides child custody, alimony and property division of assets in USA and in India.**
9. Expert opinion on **permanent Domicile in India of Person Resident Abroad in respect of movable and immovable properties in UK and India in respect of applicability of succession, inheritance and taxation issues.**

2020

1. **Expert opinion and report on the General Process and Laws Governing the Division of Matrimonial Assets on the breakdown of a marriage, as applied by a Family Court in India. Position of Indian Law on recognition of Orders made by a Family Court in Australia and status regarding enforcement of Orders made in Australia transferring properties in India. Position of Law on Anti Injunction Suits on divorce actions, property disputes and child parenting issues arising in Australia. Procedure followed in Family Courts in divorce proceedings in India and basis of division of matrimonial assets in issues of divorce, settlement of matrimonial property and ancillary issues. Instructed by M/s Nolan Lawyers Pty. Ltd. Sydney, Australia.**
2. **Expert report on Inter-country adoptions, applicability of the provisions of the Hindu Adoption and Maintenance Act, 1956 and non applicability of the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015 as also the Adoption Regulation 2017. Report rendered as Amicus Curiae in the High Court of Punjab and Haryana at Chandigarh as Court appointed counsel in the matter of Civil Writ Petition No. 10555 of 2019 Jasmine Kaur Vs. Union of India and Others.**
3. **Expert report on Essential Requirements under Hindu Law of a valid adoption under Hindu Adoption and Maintenance Act, 1956, its consequences thereto and maintainability of a Habeas Corpus petition in child custody matters by a natural guardian, besides a supplementary report on an "International Adoption." Reports rendered as Amicus Curiae in the High Court of Punjab and Haryana at Chandigarh as Court appointed counsel in the matter of Criminal Writ Petition No. 820 of 2020, Richa Gupta Vs. Union of India & Others.**
4. **Expert report on Inter-Parental Child Custody Issues and position of Foreign Court Orders in India. Report rendered as Amicus Curiae in the High Court of Punjab and Haryana at Chandigarh as Court appointed counsel in the matter of Criminal Writ Petition No. 3440 of 2020, Kiran V. Bhaskar Vs. State of Haryana and Others.**

5. Expert Report and Supplementary Report regarding **Adoption and Immigration Laws in India, IN Re: Care Proceedings in the East London Family Court, on instructions of Waltham Forest Town Hill Legal Services, Walthamstow, U.K.**

## 2021

1. Clarifying legal advice regarding **Adoption and Immigration Laws in India, IN Re: Care Proceedings on Consent Order passed by East London Family Court, for granting permission on behalf of the mother and the guardian to instruct the International expert.**
2. Expert testimony on **India Inter-Parental Child Removal and The Law in India, on instructions of M/s Arnold Rodman & O'keefe PA, Bloomington, Minnesota, USA. Appeared as Expert witness on international family law and family law in India before District Court, Family Court Division, State of Minnesota, County of Ramsey, USA for cross examination on October 13, 2021.**

## 2022

1. Professional Opinion & Expert Report on **Hindu Marriage and Divorce Law**, on instructions of Counsel for Respondent-Wife, before Judicial District, Judicial Circuit, County of Macomb, State of Michigan, USA.
2. Expert Report on **Recognition of Foreign Court custody orders and return of children to Australia.** Family Law Proceedings No. PAC6919/2021 in The Federal Circuit and Family Court Of Australia (Division 2) under the Family Law Act, 1975. Report prepared on instructions of M/s Watts McCray (NSW) Pty Ltd., NSW, Australia.
3. Expert Report on **Guardianship and Adoption** in Case No. FD22P00448 pending in the Family Division of Royal Court of Justice, London. Report prepared on instructions of HopeHolm Family Law, London.



4. Expert Report on **Hindu Marriage, Divorce, Child Custody and Guardianship in India** pending in the Superior Court of Washington for King County, USA and in the Family Court at Bandra, Mumbai, India.

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:** )  
 )  
Jyoti Lakhtakia ) *Steven Benmor and Misha Leslie, for the*  
 ) Applicant )  
 )  
– and – )  
 )  
Vineet Mehra ) *Elena Mazinani, for the Respondent*  
 ) Respondent )  
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 ) **HEARD:** February 16, 17, 18, 19, 22, 23, 24,  
 ) 25, 26, March 1, 2 and 3, 2021

**PINTO J.**

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**REASONS FOR DECISION**

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court has pure discretion whether to hold a summary inquiry or detailed investigation into a case. India follows a procedure of detailed, bulky, written pleadings, followed by hearing arguments at length. Depending on the workload and other matters occupying the judiciary, it is impossible to define a timeframe for deciding a child custody dispute.

[346] Mr. Morley also disagreed with the suggestion that Indian jurisprudence since 2018 has evolved and allows for the issuance of a “mirror order” whereby an Indian court would issue an order that contains all the terms of an order of a foreign court. He indicated that, to date, mirror orders do not exist in Indian family law as doing so would contravene Indian law itself. Moreover, he clarified that there have been a couple of Indian cases where the Indian courts have asked courts in foreign jurisdictions to issue a mirror order, but that does not constitute the Indian court issuing a mirror order.

[347] With respect to Dubai, UAE, Mr. Morley indicated that the UAE has chosen not to accede to the *Hague Convention*. The U.S. government has reported to Congress that “The UAE does not adhere to any protocols with respect to international parental child abduction.” The UAE authorities persistently failed to work with the American Department of State to resolve child abduction cases. 50% of requests for the return of abducted children remained unresolved for more than 12 months.

[348] Mr. Morley further explained that the concepts of child custody in the UAE are completely different than a Canadian or American context and encompass age-specific and gender-specific criteria. He states, “in the pending case, if either party brings a case concerning the custody of the child in Dubai, and if the Father is a lawful resident of Dubai, the courts in Dubai will normally deem him to be the legal guardian of the Child with the right to decide where she should live”, and “if the Child is taken to the UAE, the Father will be able to place a travel ban on the Child leaving the country except with the Father.” The UAE does not enforce foreign custody orders or use mirror orders. There is no extradition treaty between Canada and the UAE.

#### **B. Expert Evidence of Anil Malhotra**

[349] The respondent proffered Anil Malhotra as an expert witness on custody, access and child abduction in India, and on the wrongful removal of children to India and their return to their country of origin.

[350] Mr. Malhotra is a senior advocate who has practiced law for the past 37 years in the Indian courts. He obtained his LL.B. degree in 1983 from Punjab University in Chandigarh, India, and his LL.M. from the University of London, U.K, in 1985.

[351] Mr. Malhotra provided a report dated March 14, 2019 that constituted the bulk of his evidence-in-chief. I note that, at the time of his retainer, the respondent was represented by different counsel and that, in the retaining letter, Mr. Malhotra was asked to provide “an opinion regarding what safeguards are available in India to ensure the return of N to Ontario should Mr. Mehra remove N to India.”

[352] Initially, Mr. Malhotra had not included, in the *curriculum vitae* section of his report, a list of cases where he had been retained as an expert. In cross-examination, he testified that, in India he is not permitted under the *Advocates Act* to display all his work in a public document. However, he indicated that he would be prepared to provide a list of cases in which he has acted as an expert. Upon the court's request, Mr. Malhotra supplemented his *CV* with this information.

[353] In cross-examination, Mr. Malhotra acknowledged that he has never been declared by a Canadian or American court to be an expert on custody, access and child abductions.

*Applicant's Challenge to Mr. Malhotra as an Expert*

[354] Mr. Malhotra was accepted as a duly qualified expert by the parties on a previous version of the TSEF leading up the trial in 2019 that was adjourned. Different counsel acted on both sides at the time. On December 11, 2020, Mr. Benmor advised his counterpart that he accepted the qualifications of Mr. Malhotra as an expert. However, before me, Mr. Benmor sought to challenge the admission of Mr. Malhotra as an expert primarily on two grounds under the *Mohan* factors: his purported expertise was no longer necessary because the respondent had changed his plea of relief and no longer sought to travel with N to India; and because Mr. Malhotra was not sufficiently qualified in his purported areas of expertise. Mr. Benmor reminded me that the court is the ultimate gatekeeper of expert evidence.

[355] The inquiry for determining the admissibility of expert opinion evidence is divided into two steps. At the first step, the proponent of the evidence must establish the threshold requirements of admissibility. These are the four factors set out in *R. v. Mohan*, [1994] 2 S.C.R. 9: relevance, necessity, absence of an exclusionary rule and a properly qualified expert. Evidence that does not meet these threshold requirements should be excluded. At the second discretionary gatekeeping step, the trial judge must decide whether expert evidence that meets the preconditions to admissibility is sufficiently beneficial to the trial process to warrant its admission despite the potential harm to the trial process that may flow from the admission of the expert evidence: *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, [2015] 2 S.C.R. 182, at para. 24.

[356] On the first "necessity" argument, the applicant submitted that I should distinguish between the issue of whether the respondent is a flight risk, and the issue of whether the judicial system in India and elsewhere would promptly return N to Canada if she were taken without the applicant's consent and in defiance of an Ontario judicial order. The applicant argued that Mr. Malhotra was not an expert on flight risk. And, with the respondent amending his relief to only seeking visitation rights in Ontario, the purported expert opinion of Mr. Malhotra was no longer necessary, as that related to N's potential return to Ontario.

[357] I agree that the two issues are different, but I still find them related. Obviously, if the respondent has unsupervised access to N, he can more easily flee with N to India or Dubai or some other non-signatory to the *Hague Convention* and then, to the extent that that such jurisdiction will not facilitate her prompt return to Ontario, supervised parenting may be seen as necessary. I therefore reject the applicant's suggestion that, because the respondent has changed the relief being sought, Mr. Malhotra's evidence is not necessary.

[358] On the second “not sufficiently qualified” point, the applicant placed undue emphasis, in my view, on Mr. Malhotra not having been accepted previously as an expert by a Canadian or American court. As I stated at trial, the world is a big place. Canada and the United States represent a small fraction of the world’s population. Given Canada’s geography, while Canadian judges are familiar with American and Canadian individuals appearing before them as putative experts, they should be very open to individuals from other countries and cultures *who have the necessary qualifications and expertise* being considered as experts without expecting them to present their expertise in the same fashion as Westerners. Here, Mr. Malhotra did not initially append to his *CV* a list of all his expert retainer engagements but, accepting his evidence at face value, this was because under the *Advocates Act* and the *Bar Council of India Rules*, he is not allowed to solicit work by exhibiting the cases which he has worked on, and he did not necessarily need to provide such information before being retained as an expert. I was satisfied with Mr. Malhotra’s explanation and I granted him leave to supplement his *CV* with the list of purported expert retainers without the usual notice required under the *Family Law Rules*, O. Reg. 114/99. I do note, however, that respondent’s counsel should have picked up on this omission in Mr. Malhotra’s *CV* and rectified it with proper notice to the applicant well before trial.

[359] To be fair, the applicant also had more substantive concerns with Mr. Malhotra’s professed experience and qualifications in child removal from India based on his now supplemented *CV*. The applicant pointed out, fairly in my view, that among the 112 or so occasions that Mr. Malhotra was retained to provide expert evidence, many of those retainers were in respect of family law issues like validity of marriage and surrogacy that had nothing to do with the instant case. For example, I note that Mr. Malhotra provided an expert report on the Indian law of marriage and divorce in a matter before the Supreme Court of British Columbia reported at *Brar v. Brar*, 2016 BCSC 678, 78 R.F.L. (7th) 174.

[360] Under Rule 20.1(2) and (3) of the *Family Law Rules*:

(2) It is the duty of every expert to whom this rule applies to,

- (a) provide opinion evidence that is fair, objective and non-partisan;
- (b) provide opinion evidence that is related only to matters that are within the expert’s area of expertise; and
- (c) provide such additional assistance as the court may reasonably require to determine a matter in issue.

(3) In the case of a litigation expert, the duty in subrule (2) prevails over any obligation owed by the expert to a party.

[361] For the reason that follow, I accepted Mr. Malhotra as a duly qualified expert regarding the law of and processes available in India with respect to the return of a child to Canada. Mr. Malhotra did not purport to opine on the law outside India.

[362] Mr. Malhotra provided a list of 112 cases ranging from 2006 to 2021 that he was involved in as an expert. Based on the brief written description of the retainers, six of them related to interjurisdictional family law issues as between India and Canada.

[363] Mr. Malhotra's is the author or co-author<sup>7</sup> of several books on family law in India including:

- Author, *India, NRIs and the Law*, 2009
- Co-author, *India, NRIs and the Law*, 2011
- Co-author, *Surrogacy in India – A Law in the Making*, 2013
- Co-author, *International Indians and the Law*, 2014
- Co-author, *Surrogacy in India – A Law in the Making – Revisited*, 2015
- Co-author, *India, Inter Country Parental Child Removal and the Law*, 2016
- Co-author, *The Removed Child and the Law in India*, 2018
- Author, *The Global Indians and the Law*, 2020 which contains 3 chapters dealing with:
  - the law in relation to custody of children and child removal in India;
  - child custody and guardianship issues and challenges in India; and
  - enforceability of foreign court custody and contact orders and possible safeguards for securing return of children from India to foreign jurisdictions.

[364] Mr. Malhotra has frequently lectured to judges in India and to Sri Lankan judges visiting India.

[365] He has presented papers at domestic conferences on inter-country child removal issues throughout India, and at international conferences around the world including in Australia, UK, South Africa, Canada, Spain and Brazil.

[366] Mr. Malhotra's expertise has been recognized by his peers. He was elected in 2007 as a Fellow, International Academy of Family Law Lawyers, and nominated in 2010 as the India Member of the Family Law Committee of the International Law Association.

[367] Finally, I note that Mr. Morley, the expert retained by the applicant in this proceeding, himself recognized Mr. Malhotra and his brother Ranjit Malhotra as leading practitioners in the area of international family law as it relates to India.

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<sup>7</sup> With his brother Ranjit Malhotra.

[368] I am satisfied that Mr. Malhotra is qualified to provide expert evidence in this matter.

*Content of Mr. Malhotra's Expert Opinion*

[369] Mr. Malhotra's report was organized in several parts, with one part being in question and answer format. In answer to "what is the legal position in India if the father (i.e. the respondent) does not return to Canada with the minor child?", Mr. Malhotra answered (in part):

In answer to this question, it may be stated that if the father retains the minor child in India, a Habeas Corpus petition may have to be invoked by the mother of the minor child to seek the return of the child back to Canada. However, in view of one of the most recent judgments of the Hon'ble Supreme Court of India in the case of *Raghavan*, the Canadian Court order making her return mandatory to Canada "**will be only one consideration before the Indian Court and it would be the discretion of the Court to decline the return of the child, depending on the interpretation drawn by the Indian Court in the best interest and the welfare of the child.**"

[Emphasis in original.]

[370] In answer to "Are there any practical or legal safeguards for effective recourse of the return of the minor child that can be put in place before or on the father's arrival in India to ensure the return of the minor child to Canada?", Mr. Malhotra described a number of safeguards. In outline form, these were:

- a) Notarised agreement between parties before leaving Canada
- b) Placing of notarized agreement before the Canadian Court and/or the consular department of the Canadian High Commission
- c) Documents of Indian Guarantors be furnished to the consular department of the Canadian High Commission or the Office of the Consul general of the appropriate jurisdiction
- d) Caveats be filed before Guardian Judge/ Hight Court in India
- e) Advance prior intimation / confirmation from the consular department of the Canadian High Commission, New Delhi in this case or the Office of the Consul General / Consul of the appropriate jurisdiction, if the respondent father is planning to relocate to any other geographical territory in India
- f) Advance Intimation to Indian Embassy / Consular Office in Canada

[371] In the general conclusion of his report, Mr. Malhotra stated:

1. If the father is under agreement not to oppose or contest any agreed term of the return of the minor child, a duly notarized agreement would be a best possible wholesome remedy as an effective recourse in India. Hence, the safeguards/ measures suggested for the notarized agreement to be executed between the parties is the best possible alternative solution in the Indian jurisdiction for seeking the return of the minor child back to Canada.



2. If the father is under agreement not to oppose, contest or challenge any such proceedings in Indian Court seeking return of the minor child as per the notarized agreement between the parties, which is duly supported by the guarantee of two guarantors in India, the remedies are workable. Therefore, the best possible wholesome solution to counteract the above procedural issues would lie in the remedies / safeguards suggested wherein, the parties may be put to terms and the father may be bound down with conditions duly supported by guarantees to be offered in the event of a violation / breach. Moreover, if there is no opposition, contest or challenge by the father to any legal proceedings necessitated in India, these practical issues can be suitably resolved.

[372] Mr. Malhotra's report described a number of cases decided by the Indian courts and concluded:

The Indian Courts determine the welfare of the child in its best interest, before it is decided, if there should be a direction of return to the home country of the foreign child.

Generally, the position varies on the facts and circumstances of each case and no assurance or guarantee can be given that the children will be returned back from India on the strength of a foreign court Order since every matter is determined and decided on its independent merits.

The welfare of the child principle being the paramount consideration, there is a tendency among Indian Courts to digress from a consistent approach and accordingly, precedents may be distinguished or differed depending on the factual matrix and circumstances which may differ from case to case. Thus, the jurisprudence in child abduction law varies.

[373] At the start of Mr. Malhotra's testimony, he provided an update to certain legal developments that had occurred after the issuance of his report in March 2019. He acknowledged that the respondent was no longer seeking custody and the case had become one of visitation rights. He also suggested that, if the respondent were to commence a fresh custody application in India he would be barred on the basis of estoppel, and that safeguards could be implemented, as discussed in his report, to facilitate the return of N to Canada. The applicant objected to Mr. Malhotra's "update" and asked that it be struck on the basis that she was not provided any supplementary notice of it under the *Family Law Rules*. In my view, nothing turned on the update as I found it to be a repackaging of Mr. Malhotra's report.

[374] In cross-examination, Mr. Malhotra acknowledged that:

- The Indian courts conduct a welfare of the child analysis, which is synonymous with "best interests of the child" analysis, before deciding whether there should be a direction to return the child to its home country. This is fundamentally different than under the *Hague Convention*, where a court will honour the reciprocating country's order and immediately return the child (except where the child would be endangered), and let the originating country do the best interests analysis.

- To date, no mirror orders have been issued by an Indian court.
- However, in two cases, an Indian court has requested foreign courts in the US and in Kenya to issue an order that mirrors the Indian court.
- He does not know of any case in the last 50 years where an Indian judge has given effect to a notarized agreement for the return of a child to Canada.

**C. Conclusion re: Expert Evidence**

[375] India is not a signatory to the *Hague Convention*. While Mr. Morley and Mr. Malhotra did not disagree on fundamental points about the state of the law in India, their presentations were quite different. Mr. Morley was very stark in his assessment that if N is removed from Ontario and taken to India, the applicant's attempts to use the Indian judicial system will likely prove fruitless or it will likely take years of expensive litigation to return N to Canada.

[376] Mr. Malhotra was asked what steps could be taken, within the current state of the law in India, to safeguard the return of a foreign child from India. He was not as pessimistic in his assessment. While he spoke of recent advances via *habeas corpus* orders, he did not ultimately disagree with Mr. Morley's assessment of how the Indian legal and judicial system currently works.

[377] I find that Mr. Morley's report and assessment speak more directly to the issue at hand. Once a child is taken to India, the parent seeking to repatriate the child is left with a very formidable challenge since there is no predictability to the Indian legal system which will start a *de novo* hearing where a foreign order is but one element of consideration in the determination of the best interests of the child. The current Indian legal system involves significant delay which then changes the facts on the ground in favour of the child remaining in India. The situation in UAE is no better but for reasons peculiar to UAE law. With the strong likelihood of appeals all the way up to the highest courts, the prospects for an expeditious return of the child are minimal.

[378] There is no evidence that India will be acceding to the *Hague Convention* anytime soon, and there are no examples of mirror orders being issued by an Indian court.

[379] That the respondent and his family are very wealthy and well connected in India, means that any legal dispute over the return of N is likely to be protracted. While implementing safeguards as proposed by Mr. Malhotra appears prudent, the safeguards in and of themselves have not proven to be of much assistance against what currently appears to be a judicial paradigm involving a *de novo* review of the welfare / best interest of the child, with little regard for the orders of a foreign court.

[380] I shall factor my findings into my overall determination as to whether the respondent's parenting of N should be supervised in her best interests.