A COMPARATIVE ANALYSIS OF ADOPTION & DOMICILE IN CANADA, INDIA, USA AND UK[1]

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CHAPTER 1: INTRODUCTION

Before the dawn of legal revolution, Adoption initially was neither a legal right nor a God-given right to any person. History dating back as early to the Roman Empire speaks volumes on Adoption and the inherent economic and political interests of the adopter. The practice of Adoption in ancient Rome is well documented in *Codex Justinianus* (a.k.a. The Code of Justinian). For instance, the use of Adoption by the Aristocracy in Roman Empire is well documented where many of Rome's Emperors were adopted sons. Markedly different from the modern period, ancient Adoption was a double standard strategy used by the adopter to strengthen political ties between wealthy families to create male heirs to manage big estates. The *Code of Hammurabi* details the rights of adopters and the responsibilities of adopted individuals at length. Other ancient civilizations, notably India and China, used some form of adoption but in a very restricted sense that too depending on exigencies and grave circumstances.

With the gradual marching of time, the modern form of adoption emerged in the United States of America (USA) when the 'Baby Scoop Era' (1945-1974) saw rapid growth and acceptance of Adoption worldwide. The reasons for Adoption could be many but the most common cited reason is "Infertility". Normally, Adoptions can occur either between related family members or unrelated individuals though historically most Adoptions took place between related family members. Adoption brought in its ambit new complicated and intricate issues intertwined with Domicile (*Lex Domicilii*) of a person. In recent years, Adoption and Domicile has become a subject of serious concern owing to the slow paced development and traditional approach of Conflict of Laws by the international community. Against this backdrop, the present paper comparatively analyses the scope of Adoption Laws against Domicile in Western Powers such as Canada, USA and UK against India by suggesting pragmatic remedies to redress this unique blistering issue.

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Additionally, the paper discusses the genesis of Private International Law in western countries and their different approaches in dealing with disputes involving foreign elements.

Generally, Private Law is concerned with all legal relationships between private entities and thus includes, for example, family law and the law of contracts and obligations. These laws differ from country to country. Private International Law is one branch of Private Law which is recently making waves globally in the name of Conflict of Laws."*Private International Law*" (hereinafter PIL) or "*Conflict of Laws*" (hereinafter CoL) is a branch of Private Law or commonly in India (it's a branch of Indian Law) which deals with disputes involving "foreign element (s)". The question of what exactly is foreign element had been an age long debated issue unresolved even today with differing views across jurisdictions. Foreign Element in this context means a fact relevant to the issues involved in the proceedings which has a geographical or other connection with a territorial unit other than the territorial unit where the Court is dealing with the proceedings. Thus, PIL automatically comes into play when there is an involvement of Foreign Element in the dispute between the parties. The Foreign Element could be anything ranging from Adoption, Contract, Divorce, Domicile, Immovable Properties, Marriage, etc. The two most significant Foreign Elements which has recently gained much momentum in PIL is Adoption and Domicile as the issues revolving around these elements has completely revolutionized the understanding of PIL in its entirety across jurisdictions.

CHAPTER 2: ADOPTION & DOMICILE: *Traditionalism vis-à-vis Modernism*?

Simply put, 'Adoption' is a process whereby a person assumes the parenting of another, usually a child, from that person's biological or legal parent or parents and in doing so permanently transfers all rights and responsibilities, along with filiations, from the biological parent or parents[2].While the modern form of adoption emerged in the United States, forms of the practice appeared throughout history. The *Code of Hammurabi* and the *Codex Justinianus* in ancient Rome are some best examples of adoption. Infant Adoption during antiquity appeared quite rare. Abandoned children were often picked up for slavery and composed a significant percentage of slave supply. Ancient civilizations of India used some form of adoption as well.

Other ancient civilizations, notably India and China, used some form of adoption as well. In ancient India, Secondary Sons, were clearly denounced by the Rigveda, continued in a limited

[2]See Bartholet & Elizabeth, **International Adoption: Overview, In *Adoption Law and Practice***,1988, Edited by Joan H. Hollinger, et al, New York: Matthew Bender Publisher, p. 41

and highly ritualistic form so that an adopter might have the necessary funerary rites performed by a son. China had a similar idea of adoption with males adopted solely to perform the duties of ancestor worship. The practice of adopting the children of family members and close friends was common among the cultures of Polynesia including Hawaii where it was commonly referred as *hānai*[3].

Europe's cultural makeover marked a period of significant innovation for adoption. Without support from the nobility, the practice gradually shifted toward abandoned children. Subsequently, with drastic rising levels of abandonment, abandoned children did not have any legal, social and moral disadvantages. Gradually, institutions informally adopted out children which gradually led to the first modern adoption law in 1851 by the "*Commonwealth of Massachusetts*" unique in that it codified the ideal of the "best interests of the child[4]".

In 1923 in America, only two per cent of children without parental care were in adoptive homes, with the balance in foster arrangements and orphanages. Less than forty years later, nearly one-third were in an adoptive home. Nevertheless, the popularity of eugenic ideas in America put up obstacles to the growth of adoption with grave concerns about the genetic quality of illegitimate and indigent children[5].

The period from 1945 to 1974, commonly referred as the 'Baby scoop Era' saw rapid growth and acceptance of adoption as a means to build a family[6].Illegitimate births during World War II and rapid scientific developments resulted in a new American Model for Adoption. Americans in this context severed the rights of the original parents while making adopters the new parents in the eyes of the law. Two innovations were added viz., 1) Adoption was meant to ensure the "best interests of the child" whose idea can be traced to the first American Adoption Law in Massachusetts and 2) Adoption became infused with secrecy, eventually resulting in the sealing of adoption and original birth records by 1945[7].

The number of adoptions in the United States peaked in 1970. It is uncertain what caused the subsequent decline. The years of the late 1960s and early 1970s saw a dramatic change in society's

[3]**Beyond Biology: The Politics of Adoption and Reproduction**, Duke Journal of Gender Law and Policy, 1995, 2 (Spring), pp. 5-14
[4]**International Adoption: Propriety, Prospects and Pragmatics**, 1996, *Journal of the American Academy of Matrimonial Lawyers*, 13 (Winter), pp. 181-210
[5]*Ibid*
[6]See **Family Bonds: Adoption, Infertility and the New World of Child Production**, 1999, Boston: Beacon Press, p. 59
[7]Dillon Sarah, **Making Legal Regimes for Inter-Country Adoption Reflect Human Rights Principles: *Transforming the United Nations Convention on the Rights of the Child with the Hague***,2003 Convention on Inter-Country Adoption, *Boston University International Law Journal* 2, pp. 179-257

view of illegitimacy and in the legal rights of those born outside of wedlock. In response, family preservation efforts grew so that few children born out of wedlock today are adopted.

In the age of modernisation, Contemporary adoption practices can be either Open or Closed[8].

'Open Adoption' allows identifying information to be communicated between adoptive and biological parents and, perhaps, interaction between kin and the adopted person.Rarely, it is the outgrowth of laws that maintain an adoptee's right to unaltered birth certificates and/or adoption records, but such access is not universal (it is possible in a few jurisdictions—including the UK and six states in the United States). Open adoption can be an informal arrangement subject to termination by adoptive parents who have sole authority over the child.

The practice of 'Closed Adoption' (a.k.a. Confidential or Secret Adoption)seals all identifying information, maintaining it as secret and preventing disclosure of the adoptive parents, biological kins, and adoptees identities. Nevertheless, Secret Adoption may allow the transmittal of non-identifying information such as medical history and religious and ethnic background.

Attitudes, Cultures and Laws regarding adoption vary greatly. Whereas almost all cultures make arrangements whereby children whose birth parents are unavailable to rear them can be brought up by others, not all cultures have the concept of adoption, that is treating unrelated children as equivalent to biological children of the adoptive parents. For instance, cultural distinctions made adoption illegal in Egypt[9].

So, International Adoption has also been closely linked to Identity Construction which includes racial, ethnic and national identification. Transracial and transnational adoptees tend to develop feelings of a lack of acceptance because of such racial, ethnic, and cultural differences[10]. Therefore, exposing transracial and transnational adoptees to their "Cultures of Origin" is important in order to better develop a sense of identity and appreciation for cultural diversity. For instance, the US Child Citizen Act of 2000 grants immediate US Citizenship to adoptees[11].

[8]Maravel & Alexandra, **The U.S. Convention and Co-operation on the Rights of the Child and the Hague Conference on Private International Law: *The Dynamics of Children's Rights through the Legal Strata***, 1996, *Journal of Transnational Law and Contemporary Problems* 6 (Fall), pp. 309-328

[9]New York Law School Justice Action Center, **Inter-Country Adoption Conference: Inter-Country Adoption, the European Union and Transnational Law**, 2004

[10]Van Leeuwen & Michelle, **The Politics of Adoptions across Borders: *Whose Interests are Served: A Look at the Emerging Markets of Infants from China***, *Pacific Rim Law and Policy Journal* 8 (January), 1999, pp. 189-218

[11]Talbot & Margaret, **The Disconnected Attachment Theory: *The Ultimate Experiment***, 1999, *New York Times,* (Sec. 6)

Identity is defined both by what one is and what one is not. Adoptees born into one family lose an identity and then borrow one from the adopting family. Adoption may threaten member's sense of identity[12]. Members often express feelings related to confused identity and identity crises because of differences between relationships. Adoption, for some, precludes a complete or integrated sense of self. Members may experience themselves as incomplete, deficient or unfinished who lack feelings of well-being, integration or solidity associated with a fully developed identity. Family plays a vital role in identity information by developing a positive racial identity an overcoming racial/ethnic discrimination[13].

Parallel to Adoption, "Domicile" (*Lex Domiciliii*) is the status or attribution of being a lawful permanent resident in a particular jurisdiction. A person can remain domiciled in a jurisdiction even after he has left it, if he has maintained sufficient links with that jurisdiction or has not displayed an intention to leave permanently (i.e. if that person has moved to a different state but has not yet formed an intention to remain there indefinitely)[14].Traditionally under PIL, many Common Law jurisdictions considered a person's domicile to be a determinative factor in CoL and would, for example, only recognize a divorce conducted in another jurisdiction if at least one of the parties were domiciled there at the time it was conducted.

In ancient days, Domicile had very firm roots owing to people's strong patriotic feeling attached towards their homeland. But there was a blurred distinction between Domicile and Nationality and the subtle distinction between them couldn't be distinguished for a long time. It was widely believed then that a national of a particular homeland would also be domiciled in the same homeland. So, Domicile and Nationality were considered to be collaterals with no distinguishing features, uncertain about the classical difference between the two interchangeable variables[15].

Domicile is governed by *Lex Domicilii*, as opposed to *Lex Patriae* which depends upon nationality is the relationship between an individual and a country. Where the State and the Country are co-extensive, the two may be the same.

- Where the country is federated into separate legal systems, citizenship and domicile will be different. For example, one might have a US citizenship and a domicile

[12]Woodhouse & Barbara B, **The Constitutionalization of Children's Rights: *Incorporating Emerging Human Rights into Constitutional Doctrine***, 1999, *University of Pennsylvania Journal of Constitutional Law* 2 (December), p. 53
[13]U.S. Department of State, 2004, Hague Convention on Inter-Country Adoption; http://www.travel.state.gov/family/adoption_hague.html/, last visited on 05/08/2017.
[14]Fawcett James, Carruthers Janeen & North Peter, **Cheshire, North & Fawcett: Private International Law** (14th ed.), London: Oxford University Press, p. 15
[15]Robertson Gerald B, **Alberta Law Review**48 (1), pp. *189–194* discussing the rule expressed in *IRC v Duchess of Portland* [1982] 1 Ch 314, endorsed in *Re Foote Estate* (2009 ABQB 654) at par. 508 (13 November 2009)

in Kentucky, Canadian citizenship and a domicile in Quebec, or Australian citizenship and a domicile in Tasmania.

- One can have Dual Nationality but not more than one domicile at a time. A person may have a domicile in one state while maintaining nationality in another country.
- Unlike nationality, no person can be without a Domicile even if stateless.

Thus, the basic principles of domicile are:

1. No person can be without a domicile;

2. No person can at the same time for the same purposes have more than one domicile;

3. An existing domicile is presumed to continue until it is proved that a new domicile has been acquired.

The burden of proving a change of domicile lies on those who assert it. The change of a Domicile of Origin must be proved beyond reasonable doubt but the change of a Domicile of Choice may be proved on a balance of probabilities[16]. Also, a person's domicile can have important personal consequences:

- A marriage is valid only where properly performed under the law of the jurisdiction in which it takes place, as well as under the law applicable to each of the participants in effect in their respective domiciles. If someone is an infant and therefore has reduced contractual capacity, then that reduced capacity will tend to apply wherever they go;
- When a person dies, it is the law of their domicile that determines how their will is interpreted or if the person has no valid will, how their property will pass by intestate succession;
- Historically, divorce could only take place in the domicile of the parties concerned.

Generally, there is tension between "Domicile of Origin" and "Domicile of Choice" which arises out of the fact that the latter can only be acquired through fulfilling both:

- the ability to settle permanently in another place; and
- the intention to remain there permanently.

The ability to settle permanently has been held to arise only when one can become a permanent resident of the jurisdiction for immigration purposes[17]. However, it is more difficult to abandon a Domicile of Choice than to acquire it. In the case of abandonment, both the above conditions

[16]Hill Jonathan & Ní Shúilleabháin Máire, **Clarkson and Hill's Conflict of Laws** (5th ed.), Oxford University Press, 2016, p. 323
[17]*Ibid*, p. 329

must be fulfilled simultaneously as they are interrelated whereas they are discrete in the latter case of acquisition. The rules determining Domicile in Common Law jurisdictions are based on Case Law in Origin and most jurisdictions have altered some aspects of the Common Law rules by Statute[18].

CHAPTER 3: ADOPTION LAWS vs. DOMICILE IN CANADA, INDIA, UK & USA

Canada:-

Canada has one of the simplest yet liberal adoption policies in the world. Adoption policies in Canada greatly differ from the province or territory each person resides in. The 'Adoption Council of Canada' (ACC) is the umbrella organization for adoption in Canada. Based in Ottawa, the ACC connects and supports domestic, private and international adoptees, birth families, and adoptive and kinship families. Its services include adoption resources, referrals, education and support. Canada, being a federal parliamentary democracy and constitutional monarchy, adoption laws again vary from province to province, i.e. Adoption is regulated provincially. Canada is a party to the Hague Convention of 29 May, 1993 on Protection of Children and Co-operation in Respect of Inter-Country Adoptions'[19]. So, Canadian Adoption policies are one of a kind which strikes a balance both domestically and internationally.

In sharp contrast to Adoption, Domicile in Canada has many connecting factors not only to Adoption but also on personal laws. For instance, until the passage of the *Divorce Act* of 1968, divorce could only be obtained in the province of domicile, which effectively required those domiciled in Quebec and Newfoundland to obtain divorce only through an Act of the Parliament of Canada. The 1968 Act required Canadian domicile only, with one year's residence in the province where the divorce order was sought and the later 1986 Act removed the domicile requirement completely[20]. When later Court proceedings revealed complications arising from the impact of domicile on the validity of same-sex marriages solemnized in Canada, the *Civil Marriage Act*was amended in 2013 to provide for divorce to be available to non-resident spouses in the province where the marriage took place.

Outside marriage and divorce, rules relating to domicile generally fell under provincial jurisdiction. The *Civil Code of Quebec* standardizes rules for that province while 'Manitoba' is the only Common

[18] *Supra Note* 14, p. 167
[19] See Castel & Walker, **Canadian Conflict of Laws**, (6th edn.), para 4.5 and Laurie Baird (1946) 4 DLR 53
[20] *Ibid*, para 7.2

Law province to attempt to completely revise and simplify the rules within its scope[21]. Other provinces have modified their rules as the need arose. Ontario has modified the following rules relating to domicile:

- Effective from 1 January 1959, the domicile of origin for an adopted child was declared to be that of its adoptive parents, "as if the adopted child had been born in lawful wedlock to the adopting parent".
- On 31 March 1978, the doctrine of illegitimacy was abolished, as well as the rule deeming a married woman's domicile to be that of her husband's and the rules governing the domicile of minors were simplified.
- Again effective from 1 March 1986, the rules governing the domicile of minors were simplified further.

This drives home the point that Adoption in Canada is mostly based on Domicile of Origin than Domicile of Choice as most of these adoptions are being regulated provincially. Thus, Domicile of Origin is a necessary pre-requisite for smooth adoption in Canada against any other kind of Domicile[22].

India:-

In India, the rules are far more complex concerning adoption. An Indian, Non Resident Indian (NRI) or a foreign citizen may adopt a child. India is party to the 'Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption' (Hague Adoption Convention). There are specific guidelines and documentation for each group of prospective adoptive parents. A single female or a married couple can adopt a child. In India, a single male is usually not eligible to be an adoptive parent. A single man desiring to adopt a child may be eligible if he applies through a registered agency. However, he will still only be able to adopt a male child. Indian citizens who are Hindus, Jains, Sikhs, or Buddhists are allowed to formally adopt a child. The adoption is under the "Hindu Adoption and Maintenance Act of 1956". Under this Act, a single parent or married couples are not permitted to adopt more than one child of the same sex. Foreign citizens, NRIs, and those Indian nationals who are Muslims, Parsis, Christians or Jews are subject to the "Guardian and Wards Act of 1890[23]". Under this Act, the adoptive parent is the only guardian of the child until he/she reaches 18 years of age.

[21]See Dicey, Morris & Collins, **Conflict of Laws**, 14th edition, para 6-076
[22]*Supra Note* 19, para 8.1
[23]Section 7, *The Guardian and Wards Act of 1890*

Foreign citizens and NRIs are supposed to formally adopt their child according to the adoption laws and procedures in the country of their residence. This must be carried out within two years of the individual becoming a child's guardian. There is also a "Juvenile Justice Act of 2000", a part of which deals with adoption of children by non-Hindu parents. However, this Act is applicable only to children who have been abandoned or abused and not to those children who have been voluntarily put up for adoption. So, the following broadly covers the Adoption process in India:

- An Indian, NRI or a foreign national can adopt in India;
- The parent(s) need to be financially stable;
- The parent(s) should not have any major physical or mental problems;
- Marital status is not a criteria, meaning single parents can also adopt;
- Having a biological child also does not impact adoption;
- The couple cannot have a cumulative age of more than 110 years;
- The couple should have been married for at least 2 years;
- The single parent cannot be older than 55 years.

However, a male is not allowed to adopt a girl child, and the age difference between the adoptive parents and the adopted child should not be less than 25 years. In the context of Domicile, India has an altogether different outlook. India, being a multi-cultural ethnic diversity with diversified religions and sects, Adoption can become a very daunting process if intertwined with Domicile.

Under the Indian Common Law system, a married woman is deemed to have the same domicile as her husband so the Domicile of Origin of the children of the marriage was the same as that of their father and the time of birth. Children gained their mother's domicile if their father was predeceased or they were born outside marriage. An orphan always has the jurisdiction over the original domicile where he or she was found. Every adult (other than married women) can change their domicile by leaving the jurisdiction of the prior domicile with an intention of permanently residing somewhere else which is referred to as Domicile of Choice. A Domicile of Choice can be abandoned if a new Domicile of Choice is acquired or if the Domicile of Origin revives. So, a married woman can only get domicile from her husband's jurisdiction. Hence, a child's domicile is dependent and, therefore the same, as the adult on whom he or she is dependent.

Thus, the Indian systems preferred the husband's domicile as the place of domicile for the married wife even in case of an Adoption. The legal obstacle here is that if the husband's domicile applied to the wife for all practical purposes, will it affect adoption if either of the spouse from a different nationality or will Domicile of Choice come to play in case of an International Adoption. Till now,

no consensus on this issue has been arrived even at the Hague Conference on Private International Law.

United States:-

Each state of the United States is considered a separate sovereign within the U.S. federal system and each therefore has its own laws on questions of marriage, inheritance, and liability for tort and contract actions[24].

Persons who reside in the U.S. must have a State Domicile for various purposes. For example, a person can always be sued in their state of domicile. Furthermore, in order for individual parties (that is, natural persons) to invoke the diversity jurisdiction of a United States District Court (a federal trial court), all the plaintiffs must have a different State of Domicile from all the defendants (so-called "complete diversity").

Since U.S. is the originator of the modern Adoption, it is bound both by domestic and international laws regarding adoptions of children which cover US families adopting children from abroad and families abroad adopting US-born children. There are several international treaties and conventions regulating the inter-country adoption of children. When possible, the US prefers to enter into multilateral agreements over bilateral ones; because of the difficulty in getting the Senate to ratify international agreements and the following are the multilateral agreements:

- Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors, 1984 (US not signed or ratified);
- US bilateral agreement with Viet Nam on 1 Sept 2005;
- United Nations General Assembly Declaration on Social and Legal Principles Relating to Adoption and Foster Placement of Children Nationally and Internationally (adopted without vote);
- Hague Adoption Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption (Hague Adoption Convention). The US has acceded to (signed) but the Senate has not ratified the Hague Convention;
- United Nations Convention on the Rights of the Child. The US signed (16 Feb 1995)but the Senate has not ratified because of State's rights to execute children (minors tried as adults). This was deemed unconstitutional by Supreme Court in 2005 but the Senate has not reversed its position.

[24] *Supra Note* 6,

In particular, the Inter-Country Adoption Act of 2000 incorporates the Hague Convention into domestic law which stipulates requirements for US children being adopted internationally. Paragraph 97.3 stipulates the requirements for a US child being adopted internationally in a country that has also ratified the Hague Convention. The only requirement is that Persons adopting children must produce a proof of their Country domicile and State domicile[25]. In other words, Domicile is a pre-requisite for adoption is US. If not, the adoptee must at least fulfil the criteria for becoming domiciled in the US.

Since the Hague Adoption Convention of 1993 is the major multilateral instrument regulating international adoption which calls for coordination and direct cooperation between countries to ensure that appropriate safeguards promote the best interest of the child (Article 1) and prevent the abduction, sale, or trafficking of children, Inter-Country Adoption has gained much momentum surpassing all domestic barriers of legalities. But since majority of the States have not ratified the Convention except being signatories, the legitimacy of such kind of Adoption isn't being firmly justified. Whatever, the US has liberalized Adoption globally by incorporating some international conventions in to their domestic laws.

United Kingdom:-

The United Kingdom contains three major jurisdictions; viz., England and Wales, Scotland and Northern Ireland. All UK jurisdictions categorically distinguish between Domicile of Origin (decided by the domicile of their father, or if parents unmarried their mother), Domicile of Choice (when a person has exercised a legal option to change their domicile as can be done when attaining majority) and Domicile of Dependence (applicable to those legally dependent on another such as some incapable persons, children or women married before 1974) but in general only one place can be a person's domicile at any one time thus preventing the creation of differing simultaneous domiciles for different purposes; the three types of domicile can enable a voluntary change when a person reaches a relevant age[26]. If a Domicile of Choice lapses, it is not replaced by the Domicile of Origin. The concept of domicile is not rooted in statute but the basic matter of an individual's domicile is not decided by any single statute but rather by case law in combination with applicable international law and statutes following in accord[27].

In England and Wales, the Domicile and Matrimonial Proceedings Act, 1973 abolished the rule that a married woman had the domicile of her husband (with transitional rules for those married

[25] *Supra Note* 8, p. 67
[26] V.C. Govindaraj, **The Conflict of Laws in India: *Inter-Territorial & Inter-Personal Conflict***, Oxford University Press, 2017, p. 42
[27] *Ibid*, p. 49

before 1 January 1974) as well as reforming the rules dealing with the domicile of minors. The rules for persons under 16 for the particular purposes of some Scottish family law are dealt under the Family Law (Scotland) Act 2006 but this does not by itself fix the domicile for general purposes. The law in Northern Ireland is generally similar to England and Wales but with domestic statutes applying which are not inevitably coincident[28].

UK traditionally supported the practice of Adoption by removing a child from one family and raising him in another family of an altogether different environment. However, adoption, the permanent removal of a child into another family, had no legal basis in the United Kingdom until the 20th century and was done on an informal basis. Adoption has entered the mainstream of England's society only after 1968 but UK laws also place much significance to satisfy the criteria for Domicile before opting for adoption either in UK or outside the UK[29]. UK is only a signatory to the 'Hague Convention on Protection of Children and Co-operation in Respect of Inter-Country Adoption' and hence non-binding.

CHAPTER 4: CONFLICT OF LAWS PERSPECTIVE ON ADOPTION & DOMICILE: *Need for Revisiting the Changing Trends*?

The first truly significant international documents recognizing international adoption were the UN Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption, National and International, in 1986 and the UN Convention on the Rights of the Child in 1989. However they stopped short of fully legitimating such adoption. In 1993, a multilateral treaty called the Hague Convention on Inter-country Adoption was ratified by a number of countries. This constitutes the most significant legitimization of international adoption to date, making such adoption a preferred option for children over institutional care in their home countries, although indicating that adoption in-country should be preferred over adoption abroad[30].THE DECLARATION ON THE RIGHTS OF THE CHILD, 1959; CONVENTION ON THE RIGHTS OF CHILD, 1989; HAGUE CONVENTION, 1993, etc. are some of the well-known conventions in International Adoption. The parallel controversial contrasting factor to Adoption is Domicile. Domicile has been long debated owing to its uncertain criteria for classification. For instance, Article 5 of the Constitution provides for who can be regarded as a citizen of India when the Constitution came into force: any person domiciled in India and who, or either of whose parents were born in the territory of India

[28]Atul M Setalvad, **Setalvad's Conflict of Laws**, 3rd Edition, 2014, Lexis Nexis, Nagpur, p. 113
[29]*Supra Note* 26, p. 45
[30]*Supra Note* 12, p. 83

and who had not been ordinarily resident in the territory for at least five years before the commencement of the Constitution[31]. Not only does Article 5 use the expression "domicile" but it directly connotes the expression *domicile* by the use of phrases such as 'ordinarily resident' and 'migrated'.

Adoption and Domicile are two major sensitive social issues which have impacted the understanding of PIL on a larger scale. Despite many conventions and domestic laws, there couldn't be a commonality arrived between nations and hence this leads to ambiguous application of International Conventions and Laws. Moreover, Law of Territoriality erects a barrier in promoting commonality of laws between nations. PIL is not able to address some of the most intricate and complicated issues involving multitude of dynamics in the name of Nationality, Domicile and Adoption across jurisdictions.For instance, suppose A came from England to Canada on a visa to work for an employer in Ontario. While there, he adopted a son B in Canada. A likes Canada enough to have his status changed to that of landed immigrant. When B comes of age, he decides to leave Ontario for good but dies before settling permanently elsewhere. B's Domicile of Origin is Canada; because of A's initial inability to settle permanently in Ontario. When A obtains permission to land, Ontario becomes his domicile of choice, and B (provided he is still a minor) automatically acquires it as a Domicile of dependency. When B attains the age of majority, Ontario becomes his Domicile of Choice until he decides to leave for good, at which time it reverts back to the Domicile of Origin. His new Domicile of Choice would only occur once he had been able to settle permanently in a new jurisdiction. If there was commonality among laws, 'B' could have always acquired his domicile of Canada at any point of time despite being adopted by an international parent.

What's more staggering is that the concept of "Adoption" and "Domicile" have been interwoven to such an extent that there came to exist a blurred line of distinction leaving no chance of possible demarcation under PIL. On the one hand, Domicile is a mixed question of law and perhaps there's no chapter in the law available till date that can give a satisfactory settlement. Adoption, on the other hand, is a firebrand mix of many national and international factors swaying across jurisdictions with no valid legal recourse[32]. It is the need of the hour and high time that all International Conventions is revisited and domestic laws of foreign nations be amended on par with International Guidelines without any further animosity.

CHAPTER 5: CONCLUSION & SUGGESTIONS

[31] *Supra Note* 28, p. 116
[32] *Supra Note* 9.

Controversy exists at the heart of international adoption and domicile and makes progress hard to define. The world is divided between those who argue that the goal is to open up avenues for experimenting laws of adoption and domicieto facilitate the placement of children in need of homes and give people freedom to choose their own family and homeland. Others argue that the goal is to shut down avenues to avoid further exploitation and restrict the inflow of people into domestic countries. However, focusing on the reality warring factions may agree on a pathway to reformed policies. Large numbers of children are displaced in many of the poorer countries. Adoption can be a boon for them. If countries were open in encouraging the prospects of better domicile, adoption and domicile can do many great wonders in harmonizing the conflicts between countries in the world.

If policy makers were to genuinely commit themselves to improving a lot to enhance parenthood and promote harmony and sustainable development, then the concerns of international divide wouldn't figure in the picture. Policy makers committed to these twin goals should consider a variety of legal reforms by improving the scope of Adoption and conferring healthy status on Domicile for foreigners. The net effect is that the laws cannot promote equality and beneficial statues but policy making reforms and governmental actions can change the functioning of these laws. It is high time that the Governments of the world wake up to the protocol in making the world a better, safe and harmonious place in the days to come.