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Exercise of joint parental authority: In the case of the adoptive parent married to the minor's biological father or mother

Bussayamas Ngamjit-aeua¹, Kamonwan Yoowattana^{2*} and Nichakorn Khonthong³

^{1,2,3} Faculty of Law, Suan Sunandha Rajabhat University, Bangkok, Thailand

E-Mail: ¹s66123440020@ssru.ac.th, ²kamonwan.yo@ssru.ac.th, ³nichakorn.kh@ssru.ac.th

Abstract

This article aims to examine the joint exercise of parental authority by adoptive parents and birth parents under Thai law and comparative foreign legal systems, with a view to proposing legislative reforms that would enable the shared exercise of such authority where the adoptive parent and a birth parent are spouses. Employing a documentary research methodology, the study analyzes statutory provisions alongside comparative doctrines and principles from selected jurisdictions. Although adoption is not, in itself, a ground that extinguishes the relationship between the child and the child's birth parents, the legal effect of adopting a minor in practice transfers parental authority over the minor entirely to the adoptive parent. This absolute transfer effectively displaces the natural and legally recognized authority of the birth parents and gives rise to incoherence in the allocation and exercise of parental powers between adoptive parents and birth parents—particularly in cases where the parties are married to each other. The study highlights these doctrinal tensions and uses comparative insights to formulate recommendations for clarifying and restructuring the legal framework governing shared parental authority in such family constellations.

The study finds that while jurisdictions vary, a common guiding principle is the best interests of the child. Canada, in particular, provides that when an adoptive parent and a birth parent are married to each other, they automatically share parental authority to safeguard the child's welfare in line with the Convention on the Rights of the Child. To enhance legal clarity and reduce interpretive disputes, this article proposes amending the Thai Civil and Commercial Code to recognize joint parental authority where the adoptive parent is the spouse of a birth parent who already exercises parental powers—without extinguishing the birth parent's authority, unless a court determines that joint authority would not serve the minor's best interests. Such a reform would promote family stability, protect children's rights, and strengthen the Thai family institution.

Keywords: Joint Parental Authority; Adoption; Family Law; Interests of Child

1. Introduction

Contemporary Thai society exhibits increasingly diverse family structures. Household arrangements have undergone significant shifts from traditional patterns, producing a spectrum that includes extended families, nuclear families, single-parent households, and blended families, visible in both urban and rural settings. These dynamics pose substantial challenges for cultivating healthy intra-family relationships—especially in remarriages where each spouse brings children from prior unions—leading to cohabitation among birth parents and stepparents

with their biological children and stepchildren, as well as relationships formed through adoption. These developments not only reflect social change but also test family-law frameworks that were designed on assumptions of the traditional family, particularly with respect to “parental authority,” the core mechanism for safeguarding a child’s best interests.

Under the Thai Civil and Commercial Code, adoption transforms legal status and relationships such that the adoptive parent attains the status of a lawful parent, while the legal relationship governing the birth parents’ parental authority is curtailed. This mechanism is intended to clarify the rights, duties, and liabilities of the legal holder(s) of parental authority to ensure continuous protection of the minor’s interests. Because depriving a birth parent of parental authority is a highly sensitive measure, it should occur only where strictly necessary and no less-restrictive alternative exists. This raises the question of whether the automatic transfer of parental authority to an adoptive parent upon adoption is truly appropriate for Thailand’s current social context, and whether it unduly intrudes upon the inherent rights and duties of birth parents.

When a marriage ends—by death, divorce, or judicial annulment—parental authority over a minor frequently vests in one parent alone, either by mutual agreement or by court order. In such cases, the legal authority remains that of the birth parent, even if exercised unilaterally. If that parent then remarries and the new spouse subsequently adopts the child, the birth parent’s authority may be destabilized at once, prompting further disputes. To be sure, extinguishing the birth parents’ authority after adoption may promote decisional unity and reduce conflict by consolidating responsibility in the adoptive parent—an appropriate outcome where the child lives exclusively with the adoptive parent and is fully integrated into that household. As the legal representative of the child, the holder of parental authority must scrutinize and consent to the child’s juridical acts and manage the child’s property.

Conversely, where the minor continues to live with both a birth parent and an adoptive parent who is the birth parent’s spouse, the situation can cut both ways. A careful appraisal of advantages and drawbacks is needed, including whether joint parental authority could be recognized without undermining legal certainty or the child’s best interests. International standards favor clear identification of the child’s legal caretakers and robust protection of the right to care and support. If the birth parent-spouse lacks authority equivalent to that of the adoptive parent, key decisions may be concentrated in a single individual, generating intra-family tension borne of legal exclusion. Given the enduring blood relationship between a child and a birth parent, which typically reflects deep-rooted ties, any legal scheme should preserve continuity of bonds, avoid overlapping mandates and legal vacuums, and protect the child’s welfare across dimensions. Comparative analysis can illuminate workable boundaries for allocating parental authority in ways that best serve the interests of minors.

1.1 Research Objective

1.1.1 To comparatively examine the joint exercise of parental authority by adoptive parents and biological parents under Thai law and in selected foreign jurisdictions.

1.1.2 To propose legal reform options for recognizing and structuring the joint exercise of parental authority between an adoptive parent and a biological parent who are spouses.

2. Literature review

Concept of the Best Interests of the Child

Influenced by Roman law, early legal thought sought to protect children—persons unable to adequately protect or help themselves—by vesting paramount power in the father and treating the child as the father’s property; maternal authority did not yet appear. By the early nineteenth century, however, the notion of joint parental authority began to take shape (Worapat Rattanaphanich, 2023, pp. 53–54). Thai society historically reflected a similar pattern in which paternal power was exclusive, yet the exercise of such power has long been tethered to the best interests of the child. Consistent with the Convention on the Rights of the Child, Article 3(1) requires that “in all actions concerning children,” whether undertaken by public or private social welfare institutions, courts, administrative authorities, or legislative bodies, “the best interests of the child shall be a primary consideration”; Article 3(2) further obliges States Parties to ensure the protection and care necessary for the child’s well-being, taking into account the rights and duties of parents, legal guardians, or other persons legally responsible for the child, and to take all appropriate legislative and administrative measures to that end. Accordingly, any measure or action must always safeguard rights and freedoms while giving primacy to the child’s welfare, both in general contexts and as necessitated by specific circumstances.

Parental Authority under Thai and Foreign Law

As a matter of natural familial relations, the law places a legitimate child under the parental authority of the birth parents from the inception of legal personality until the child attains majority. Under Thai family law, parental authority is, in principle, exercised jointly by the father and mother, except where there is no lawful father or where one parent has been deprived of parental authority, in which case authority vests in the remaining parent alone. Upon divorce, the court may determine which parent shall exercise authority over each child, with the child’s best interests as the paramount consideration (Pairoj Kampusiri, 2024, p. 294).

Parental authority over a minor entails protective and supervisory powers—caring for the child and shaping conduct—and includes authority to manage the child’s property. Because legal status and rights vary with age and capacity, a person in the status of a child is subject to the decisive authority of the parents (Kittisak Prokati, 2024, p. 17). The holder of parental authority therefore bears both rights and duties toward the child and must exercise authority cautiously, with the child’s welfare as the foremost concern.

Where a minor is adopted, the general principle is that the child does not lose rights and duties within the family of origin: the child and the birth parents remain bound by reciprocal duties of support, and the child retains rights as a statutory heir. Nevertheless, adoption has the effect of immediately transferring parental authority over the minor to the adoptive parent from the time of registration, thereby cutting off the natural, personal authority that the law otherwise recognizes in the birth parents.

Under New Zealand law, pursuant to the Adoption Act 1955, an adoption order severs all legal ties with the birth parents and substitutes the adoptive parent–child relationship (section 16). Recognizing the impact on the rights of birth parents, New Zealand has designed tools to expand options for adoptive and birth families, including the appointment of joint guardians to facilitate shared decision-making on significant matters. Day-to-day care and guardianship—covering major decisions on residence, healthcare, education, religion, language, culture, and

more—are structured under the Care of Children Act 2004, with such responsibilities generally falling to the legal guardian(s) after adoption.

Canadian law adopts a broadly similar approach: upon an adoption order, the adoptive parent becomes the legal “parent,” and the birth parents’ rights and duties generally cease. For example, in British Columbia, the Adoption Act, section 37, provides that upon an adoption order the child becomes the child of the adoptive parent(s), who in turn become the child’s parent(s), while the birth parents’ rights and duties are extinguished—except in stepparent adoptions, where the court may provide for joint status with the remaining birth parent. Moreover, existing contact or access orders lapse unless the court orders otherwise in the child’s best interests (section 38). In short, New Zealand and Canada converge on the principle that adoptive parents acquire full legal parenthood and parental authority upon adoption and that the rights of birth parents terminate, subject to specific exceptions—most notably in blended-family contexts.

3. Methodology

This research employed a documentary research approach, involving a comprehensive review of various sources including electronic books, textbooks, journals, articles, and research papers

4. Results

Adoption is a legal mechanism that, through registration, creates a parental authority status over a minor and corresponding rights and duties under family, succession, and other laws. The core principle governing the exercise of this authority is the best interests of the child under the Convention on the Rights of the Child, implemented through statutes, regulations, and administrative measures designed to prevent improper exploitation of adoption, including human trafficking. Under Thai law, adoption is perfected by registration, and the process must comply with the Adoption of Children Act B.E. 2522 (1979).

This study focuses on cases where a birth parent—who singly holds parental authority—remarries, and the new spouse adopts the child. Section 1598/28 of the Thai Civil and Commercial Code provides that “an adopted child has the same status as a legitimate child of the adoptive parent; however, the child does not lose rights and duties within the family of origin. In such a case, the birth parents lose parental authority from the time the child becomes an adopted child.” Consequently, the birth parent’s authority terminates upon registration of the adoption (Awikarat Niyomthai, 2021), even when the adoptive parent is the new spouse of the birth parent.

Because Thai law effects an automatic transfer of parental authority to the adoptive parent upon adoption—even though other mutual rights and duties between the child and the birth parents remain—any significant matter affecting the child’s status thereafter must be brought before a court through separate legal mechanisms; the birth parent’s natural authority cannot be lawfully exercised. In such circumstances, this paper argues for a clear, tailored legal measure enabling joint exercise of **authority** by the birth parent and the adoptive parent who is the birth parent’s spouse. This would allow both parties to act systematically, reduce incoherence in practice, and eliminate uncertainty for schools, hospitals, and public agencies, while keeping the best interests of the child at the forefront (Ajaree Me-inkerd Meesit, 2021).

As the family is the primary social institution for raising resilient youth, permanently stripping a birth parent of authority risks severing vital bonds and harming the child.

Comparatively, New Zealand—while severing birth-family legal ties upon adoption under the Adoption Act 1955—offers alternatives such as joint guardianship or day-to-day care under the Care of Children Act 2004, empowering caregivers adequately without requiring a complete legal break with the family of origin or an adoption in every case. Canada, for its part, permits courts—particularly in stepparent adoptions—to recognize joint status with the remaining birth parent, aligning with the international principle of the child’s best interests. Taken together, these models suggest pathways for Thailand to recognize joint parental authority in blended families, preserving continuity of bonds, ensuring legal clarity for institutions, and—above all—advancing the welfare of the child.

5. Conclusion

Adoption is a vital option for strengthening and completing the family institution. Thailand’s screening procedures and adoption processes are stringent and child-centered, prioritizing the best interests of the child. Yet as social contexts evolve and blended families proliferate, measures and practices concerning children must be recalibrated to reflect these structural changes. Properly designed, such measures can mitigate post-adoption conflicts while simultaneously safeguarding the child’s interests and reinforcing family stability—thereby making Thailand’s adoption system more humane, flexible, and resilient.

To bring greater clarity to the protection of minors’ rights and to address practical issues in the allocation and exercise of parental powers after adoption, this paper recommends creating a clear pathway for appointing joint guardians where the adoptive parent is the spouse of the child’s birth parent. This framework would enable shared decision-making on matters of significance, align the exercise of parental authority with the principles of natural family law, and better meet contemporary social needs. Ultimately, it would advance the best interests of the child while strengthening the Thai family as a legal and social institution.

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