

Behind India's unease with a global child abduction law

A significant piece of legislation was introduced in the US Congress last week - the Bindu [Philips](#) and Devon Davenport International Child Abduction Return Act of 2017 seeks to punish countries that do not adhere to US court orders on the return of abducted children. The Bill is named after two women - an Indian American and a Brazilian American - who allege their children were abducted and taken to India and Brazil by their husbands.

Back home, India has been struggling for years with legislation on the custody of children caught in transnational marital discord. The central government decided last year to not ratify The Hague Convention on the Civil Aspects of International Child Abduction (1980), which would force Indian women who return with their children after conflict with their husbands, to go back to the foreign country for settlement of custody.

A Committee headed by Punjab and Haryana High Court Justice Rajesh Bindal subsequently studied the issue in depth. Last month, the committee released a concept note on its recommendations.

What is The Hague Convention on international child abduction?

It is an international treaty to ensure the prompt return of a child who has been "abducted" from the country of their "habitual residence". Ninety-seven countries are party to the Convention. Despite pressure from the US and European countries, India is yet to ratify it. Under the Convention, contracting countries must establish a central authority to trace unlawfully removed children and secure their return to the country of habitual residence, irrespective of the country's own laws on the issue. The Convention applies to children under age 16.

Where does India stand on this matter?

In 2009, the Law Commission of India recommended signing The Hague Convention, because it "will in turn bring the prospects of achieving the return to India of children who have their home in India". The Commission observed that in the absence of a law, Indian courts had not followed a pattern in such cases.

In February 2016, Punjab and Haryana High Court again referred the matter to the Law Commission and Ministry of Women and Child Development. In his interim order, Justice Rajive Bhalla (now retired) noted that "the removal or retention of a child in breach of custody rights is a wrong under The Hague Convention but for want [of] the Union of India acceding to The Hague Convention or enacting a domestic law, children will continue to be spirited away from and to India, with courts and authorities standing by in despair".

The court asked the Commission and the Ministry to "consider whether recommendations should be made for enacting a suitable law and for signing The Hague Convention...".

In June 2016, a draft Civil Aspects of International Child Abduction Bill, 2016, with provisions similar to The Hague Convention, was uploaded on the Ministry website for public comments. After examining the Bill and the issue, the Law Commission submitted a revised version of the Bill, called The International Child Removal and Retention Bill, 2016, in October, in line with The Hague Convention and legal precedents in the country.

What were the key recommendations?

The Commission noted that "women involved in cross-jurisdictional divorces, 'holiday marriages' or 'limping marriages' have to face additional challenges in the custody battle", and that "the woman must not be put in a situation where she has to make the impossible choice between her children and putting up with an abusive relationship in a foreign country".

In most cases of so-called "parental abduction", parents take away the child because "of the fear of losing his/her custody", the Commission said - "such an abduction... is out of overwhelming love and affection and not to harm the child or achieve any other ulterior purpose". The Commission, thus, dropped the word 'abduction' from the title of the revised Bill.

The report did not, however, remove the previous Bill's provisions on sending the child back to her habitual residence, as envisaged by The Hague Convention. It also retained the provision that gave the central authority the power "to secure the voluntary return of any such child to the country (of)... habitual residence, (and) to bring about an amicable resolution of the differences" between the parties in the dispute.

Given the draft Bill is largely in conformity with The Hague Convention, why is India still not keen to join the treaty?

Critics have argued that the legislation would affect the interests of Indian mothers fleeing from abusive or difficult marriages. The law, the critics said, would compel these women to return to the foreign country where the child was born, to fight for custody in possibly unfavourable conditions. The Ministry of Women and Child Development, wary of Indian women being charged or prosecuted in foreign countries, declined to back the law.

In February 2017, at a national consultation on signing the Convention chaired by WCD Minister Maneka Gandhi and attended by judges from the Delhi and Punjab and Haryana High Courts and a member of the Law Commission among others, it was again decided to constitute a committee to draft suitable legislation, and to advise on whether India should become a signatory. The committee was asked to submit its report in four months.

What has happened since then?

Last month, the committee, comprising two Punjab and Haryana HC judges, a Delhi HC judge, the chairman of the Punjab NRI Commission, a family law expert, and six representatives of various Ministries released a concept note for public suggestions. The committee is learnt to have received a large number of representations, and its major challenge is to reconcile contradictory views.

The foremost legal question is which court will have jurisdiction to decide custody - one in the country of habitual residence, or one where the child has been removed which, in most cases, is India. The committee has not met after the compilation of the feedback, and its report has been delayed.

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