

Protecting children from 'abduction'

Over three crore Indians living abroad have cross-border marriages. When such a diverse family unit breaks down, children suffer as they are dragged into an international legal battle between their parents. The Law Commission of India, led by Justice B.S. Chauhan, a former Supreme Court judge, describes inter-spousal child removal as one of the most unfortunate outcomes of such break ups. Children are "abducted" by one parent and taken to a country with a different culture. This can be traumatic as they are also cut off from the other parent. The Protection of Children (Inter-Country Removal and Retention) Bill, 2016 seeks to address the issue.

The Commission's draft is in consonance with the principles of the Hague Convention on the Civil Aspects of International Child Abduction, 1980, which seeks to protect a child from the harmful effect of wrongful removal and secure prompt return and reintegration of the child in an environment of his/her 'habitual residence'. The Bill defines 'wrongful removal or retention' as an act in breach of custody to a person or an institution or any other body under the law of the country in which the child was habitually resident immediately before the removal or retention. The Commission proposes to apply the law to those wrongfully removed or retained children in India who have not completed 16 years.

The Bill recommends the setting up of a Central Authority tasked with discovering the whereabouts of the child. The Authority will further act to prevent harm to the child, secure the voluntary return of the child to his or her habitual residence, exchange information relating to the child with the appropriate authorities of the contracting state, institute judicial proceedings in the High Court concerned to secure the return of the child, provide free legal aid advice, and make administrative arrangements for the return of the child.

The court can order the return of a child who has been wrongfully removed or retained in India and if a period of one year has not elapsed from the date of removal or retention. However, the one-year cap is not final. The court can order return if it is established that the child is not settled in his/her new environment. It can refuse to order return if returning would expose the child to harm or if the child, on attaining an age and level of maturity, refuses to go back, among other conditions.

The definition of harassment needs to be constantly updated, and the process for justice made more robust

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