

F.No. 19-2/2014 CW-I
Government of India
Ministry of Women and Child Development

Sub: The Civil Aspects of International Child Abduction Bill, 2016 - reg.

The issue of accession to the Convention on the Civil Aspects of International Child Abduction 1980 has been under consideration of the Government of India. In recent years the issue of international parental child abduction has assumed relevance in India, which has fast been emerging as a major hub, not only for emigration out of the country but also for immigration to it. A large number of Indians live and work abroad. In addition to this, large numbers of foreign nationals have been arriving to work and live in India, and a number of Indian nationals who had previously settled abroad are also returning to resume their residence in India. In a situation like this, it is natural that these persons will bring their children with them. The problem arises when one spouse decides to return to India with their child, without the permission of the other parent, who remains in the foreign country. In such cases, it is seen that the welfare of the child suffers as he is often forcibly uprooted from his habitual residence and made to take up residence in a new and often alien country. In situations like these, the child is forcibly separated from one parent. The international community acted to solve such crisis by adopting on 25th October, 1980 an International Convention on the Civil Aspects of International Child Abduction. The Hague Convention on the Civil Aspects of International Child Abduction, 1980 came into force on December 1, 1983.

2. The Hague Convention is expressly intended to enhance the international recognition of rights of custody and access arising in the place of habitual residence, and to ensure that any child wrongfully removed or retained from that place is promptly returned. It seeks to return children abducted or retained overseas by a parent to their country of habitual residence for the courts of that country to decide on matters of residence and contact. The objects of the Convention are:

- To secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
- To ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

3 The Hague Convention lays down that, when a court has jurisdiction over a child, the first question to determine is whether the Hague Convention applies to the case. Two conditions must be satisfied before the Convention applies:

- (a) The child must be under 16 years of age; and
- (b) The child must have been habitually resident in a Convention country immediately before any breach of custody or access rights.

4. India does not have exhaustive and uniform laws to deal with the issue of child custody. In India, matters of custody have so far been left largely to be determined by the Courts. There has been no

uniform policy followed by the courts, which tend to treat the issue of child removal as a custody dispute between parents. Some matters are decided with regard to the welfare of the child, while others are determined on the basis of the technicalities of various provisions of law or jurisdictional contests. The ultimate sufferer is the child, who is caught in the crossfire between the parents.

5. India's accession to the Convention would resolve this issue, as it is based on the principle of returning the situation to *status quo* and upon the notion that the child should be promptly restored to his or her country of habitual residence so that a court there can examine the merits of the custody dispute and award custody in the child's best interests. This is because the courts in the country where the child had his or her habitual residence are usually considered as being in a better position to determine the best interests of the child, given that the child lived and grew up in that country for a substantial period of his or her life. Needless to say, it is that court which would have better access to the child's school records, health records, etc, rather than the court in a country where the child has been forcibly installed. Thus, that is the correct law to be applied to the decision affecting the child's custody.

6. Before accession of the above convention it is imperative to have enabling legislation in India to give effect to the conventions provision in India. Accordingly it has been decided to enact enabling legislation. The draft legislation provides to designate Central Authority, appointment, functions and powers of Central Authority, procedure to be adopted by Central Authority, applications to the

High Court by Central Authority, applications in respect of the child removed from India, right of access and miscellaneous issues thereto. A copy of the draft proposed Bill to be renamed as “**The International Child Removal and Retention Bill, 2016**” is placed on the website of this Ministry for suggestions/comments from Civil Society Organizations, Non-Governmental Organizations and Individuals (**not in more than three A4 size papers**) to the Ministry at email id of Joint Secretary, sahni.rashmi@gov.in with a copy to anand.prakash62@nic.in/sonia.boora@nic.in/satish.k77@nic.in by 13.07.2016. The title of the email must mention the subject as given above.

Date:22/06/2016

Place: New Delhi.


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Joint Secretary to the Government of India

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