

# Parental Child Abductions to India

- **India** - a Safe Haven for Child Abductors
- **Wife jumps jurisdiction from US to India.** Pertinent evidence does not exist in India, Parental abduction is not a crime and US court orders can be conveniently ignored
- **Wife abducts children to India.** In almost all cases when the husbands contest the case, misuse of laws like 498a, 506 are definite
- **A Child Custody case** – which is a civil case gets easily morphed into a criminal case
- **NRI family** – aged parents, senior citizens or young children – it does not matter, are jailed and harassed without an iota of evidence. In most cases these victims are not even allowed to participate in the investigation process
- **Paternal side of the child's family** completely loses contact with their child. Despite court orders, the abusive women do not comply (as no penalty for perjury, domestic violence, adultery, false accusations & fraud by errant wives).
- **According to UN Convention on Rights of the Child**, the State should ensure that the identity of the child is retained and he/she remains in constant touch with both parents. Indian Courts are either indifferent or are oblivious of the noble Articles enshrined in the UN Convention
- **Result** - left-behind parents have lost contact with their beloved children, and in many cases children are subjected to severe mental abuse and start exhibiting severe symptoms of Parental Alienation Syndrome

- First, the child gets abducted
- If the abductor is the NRI mother, the child is not returned to the NRI father (despite foreign Court orders granting him sole custody).
- If the father contests the case in India, false cases like 498a and various other allegations are leveled against him and his family
- Family gets arrested – elders and children alike
- By converting a civil case to criminal case, fathers are prevented from entering India as the threat of arrests loom very large
- Their passports get confiscated
- Courts do not ensure that the child remains in contact with his father.
- The best interests of the child is ignored
- *However, if the NRI father is the abductor, the Indian Courts return the child to the NRI mother (based on joint custody orders from foreign courts) and the Ministry of Home Affairs / Foreigner's Regional Registration Office helps by not extending the abductor/child's visa.*

## ■ Ram

- A well known doctor earning an average of \$300,000 per year, married in the USA to a US citizen divorcee (she was previously married to an American Christian).
- Ram's wife was abusive towards him, his family/friends, and was only interested in a good life style. Ram discovered that his wife had a personality disorder (confirmed by Court appointed psychologist) and numerous failed relationships (because of her unfaithful and abusive nature).
- After marriage counseling failed, Ram filed for divorce on grounds of cruelty (a detective's video shows his then wife checking into a hotel with her boyfriend).
- After 3 years of litigation (that cost \$500,000 and ex-wife took \$500,000), Ram obtained a divorce, and his ex-wife's lies were exposed before US Courts, psychologists and custody evaluators.
- Ex-wife then abducted the US citizen children to India (her family has political/bureaucratic/legal connections) and threatened that her family could influence even Supreme Court judges.
- Months after the US divorce (wherein no dowry was alleged), ex-wife filed a false dowry complaint (claiming that her family had given \$12,000 over the life of the marriage) and wants the Indian Court to overturn the US Court's custody orders, and give her Ram's family's assets (worth crores) and \$10,000/month as support.
- With the blessings of some government officials, the kidnapped children's surnames were altered, cases dragged out in Indian Courts, and for 6 years they have been denied all access (phone, email and letters) to their own father (the natural guardian) who was awarded sole custody by the US Courts.

- **Niren (Married for 16 years, last 14 years in USA, 2 US Citizen children)**
  - During a pre-planned holiday in India, wife takes the children to her parent's place 2 days before return trip on pretext of celebrating Rakshabandhan and stops communicating with the father and locks herself and kids up in her parent's house
  - Wife withdraws close to 20,000 USD from joint account online
  - Niren extends stay in India and attempts to make contact with wife and kids which were futile
  - Wife files divorce, custody, maintenance petitions in India
  - Niren approaches US courts who offer several opportunities to wife to come back and orders her to return the children but she refuses. US courts grant sole custody to father, issue injunction order against wife pursuing child custody outside US, and issue contempt of court summons
  - Niren also moves Delhi HC and ultimately Supreme Court who refers case to mediation.
  - 3 days before first mediation hearing, wife files false 498A case in bid to thwart mediation and get old (75+) in-laws jailed. 498A filed on trumped up 16 year old allegations of cruelty due to dowry demands and jewelry misappropriation.
  - Children are exhibiting extreme signs of PAS, have been severely brainwashed and mentally abused
  - Wife and her parents actively try to prevent contact of father with children, do not allow any Skype sessions, and refuse to let paternal grandparents meet children in neutral location
  - As Niren later realizes, these actions were pre-planned by wife, her sister, and her parents. Wife's credit card statements show that she and her family were celebrating their impending actions by spending on expensive suits and sarees in Delhi 2 weeks prior to kidnapping children



## ▪ Rana

- Rana is a US citizen who works for a reputed financial company.
- Rana has a daughter in Aug 2000 who he took care of while wife Nandini advanced her dancing career
- In Jan 2005, they were divorced in the US after 8 years of marriage because Nandini had a covert extra-marital affair with her best friend's husband and cajoled him into dumping his wife (her best friend) and two children.
- Rana got visitation rights and was very involved in daughter's academic and co-curricular activities
- In June 2006, Nandini married her best friend's husband and started cutting down on visitation time for Rana. Rana got a revised visitation and custody arrangement from court.
- In retaliation on November 26th, 2006, his 6-year-old US citizen daughter Nalanda was abducted from the US and taken to India by his ex-wife Nandini.
- Rana lost contact with his daughter. On Dec 19th Rana was granted sole custody and Nandini was given 30 days to return Nalanda to the US.
- Rana is hoping to get Nalanda back in his life so that he can give her an emotionally and financially stable life that she deserves.

## ▪ Deshmukh

- Father is a Pediatrician and has been paying alimony and child support for over 15 years. Yet does not have access to his child
- Has court orders from Germany and from India giving him the custody of the child. Wife has refused to obey the orders
- False criminal cases have been filed against him and his family

## ▪ Vilas

- Father is surgeon by profession and now student of international human rights
- Children abducted while in transit via Mumbai
- Approach to child line India, childline UK, RPCC and several letters/verbal presentations to Local police plus District Suptd. Police/Suptd. of Police/CHIEF Secretary, NZ Consulate in India, Reunite in UK, Children and Youth family services NZ were either unheard or did little to help us
- Father has no contact with his children



## ▪ Ramesh Krishnan – Married for 5 years

- E-mail received from father-in-law indicating that he was ill and wants to see the child
- Ramesh buys return tickets for his wife and son
- Wife within 2 weeks of her stay in India files for child custody
- Ramesh moves the court in the US (where the child “Ordinarily resided” for child custody. Summons sent to his wife. Wife sends her objection letter to the US Court; the court considers the letter and passes an order in favour of Ramesh indicating that it had the Jurisdiction to decide as the child had and would have continued to reside in the US but for the child abduction.
- Ramesh contests the case in India and gets a court order in favour of him asking his wife to ensure that the child has constant contact with the father. Several evidences including letter from the US Department of Justice provided to the court. None was considered.
- In all proceedings prior to this order (for almost 5 months) there was no mention of any dowry or threatening calls. But within a matter of few hours, allegations of dowry harassment and threatening calls surfaced and a civil case was converted easily to a criminal case.
- 80 years old father arrested along with his sister. Her two children did not know where their mother was for 2 days.
- Ramesh has not been able to talk to his son for over a year now. Contempt of court was also filed in India; but the Indian court’s response has been lukewarm. So far 4 dates have been given, the other side missing and family court is silent



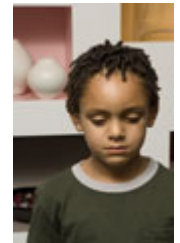








**In all this, Who LOSES out most?**



**The CHILD, who ends up with a FRACTURED childhood**



## IS THIS WHAT WE WANT THE FUTURE OF OUR CHILDREN TO BE???

### Kids from Fatherless Homes

- 5 times more likely to commit **suicide**.
- 32 times more likely to **run away**.
- 20 times more likely to have **behavioral disorders**.
- 14 times more likely to commit **rape**
- 9 times more likely to **drop out** of high school.
- 10 times more likely to **abuse drugs**.
- 9 times more likely to end up in a state-**institution**.
- 20 times more likely to end up in **prison**.

### Teenage Pregnancy

#### Daughters of single parents are

- 53% more likely to **marry as teenagers**
- 164% more likely to have **premarital birth**
- 92% more likely to **dissolve their own marriages**

### Child Abuse

In 1983, 60% of documented **child abuse perpetrators** were **women with sole custody**

**Shared parenting** reduces isolation and introduces the needed **checks and balances**

### Poverty

75% of children living in **single parent homes** will **experience poverty** before they turn 11

**Only 20%** of those in **two family homes** will

Source: CDC, DHHS, Bureau of census, Rainbows for all god's children, DOJ, Atlantic Monthly, San Jose Mercury News

- Seminar on this subject titled, 'Conflict of Jurisdiction in Inter-Parental Child Custody Disputes,' – May 5<sup>th</sup>, 2006
  - Discussing the issue **Indira Jaisingh, senior advocate the Supreme Court of India**, said: "The problem of divorce and child custody cases is really complicated when the two battling parents are based in different countries. In such situations, visitation by the other parent becomes nothing but a legal formality on paper with no practical possibilities. Then, there is the tendency of one parent turning the child against the other or the parental alienation syndrome." Jaisingh stressed that, "today it is important that India signs The Hague Convention. Especially due to the problem raised on recognising and respecting foreign judgements on this issue. In India, we have no bilateral agreements by which our agreements can be enforced abroad. This often has serious repercussions for children."
    - In many cases such acts of emotional enslavement of the children is inadvertently encouraged by the courts



- At the same conference,
  - **Dr Justice A.R. Lakshmanan, Judge, Supreme Court**, was especially articulate on the issue saying: “Statistics show that divorce and custody cases are on the rise. The practice of international child abduction has its roots in these inter-parental custody battles.” The Hague Convention on Civil Aspects of International Child Abduction came into force on December 1, 1983, and has 75 contracting nations to it. The convention secures the prompt return of children wrongfully removed or detained in any contracting state and ensures the rights of custody and access under the was of such contracting nations.

**Question:** Is this talk just Lip Service by our legal luminaries?

- **Reeta Sharma reports that more and more separated NRI couples are taking advantage of India's inability to resolve inter-country disputes over child custody**  
<http://www.tribuneindia.com/2006/20060430/society.htm#2>

### **INDIA is becoming a safe haven for child abductors**

- With the increasing number of NRIs and multiple problems arising leading to family conflicts, inter parental child removal to India now needs to be resolved on an international platform. It is no longer a local problem. The phenomenon is global
- Steps have to be taken by joining hands globally to resolve these conflicts through the medium of Courts interacting with each other. Until India becomes a signatory to the Hague Convention, this may not be possible
- As Supreme Court in a matter heard in 1994 rightly said "it does not buy the argument that only mothers can take care of young children". The notion of family has changed dramatically and many men are better at taking care of children than women

- **Priyanka Khanna wrote in Hindustan Times (New Delhi, December 29, 2007)**

### **In 2007, India let its children down**

- As per UNICEF's Progress for Children report released in December 2007, India continues to be among the worst performers in the world in terms of ensuring that children have the basic right.
- Said a UNICEF spokesperson: "Much like the public outcry that ensued following the discovery of children's remains in Nithari, a similar alacrity is needed to ensure that India's children get their due

[http://www.hindustantimes.com/Frames.htm?pageid=http://www.htnext.in/news/5922\\_2082407,00870000.htm](http://www.hindustantimes.com/Frames.htm?pageid=http://www.htnext.in/news/5922_2082407,00870000.htm)

## Child Abduction and the subsequent brainwashing to turn the child against the other parent is child abuse

- While releasing a report at a press conference in the capital, Delhi, Minister for Women and Child Development Renuka Chowdhury said: “In India there’s a tradition of denying child abuse. It doesn’t happen here is what we normally say. But by remaining silent, we have aided and abetted the abuse of children”. Describing the findings of the study as “disturbing”, Ms Chowdhury called for an end to the “conspiracy of silence”.
  - The study called for efforts to make society aware of the rights of children and officials say the data will help them formulate better policies to protect children.
- We hope that NCPCR, which is entrusted with the work of ensuring that UNCRC is implemented in India takes a serious note of Child Abduction and Child Abuse and act promptly and swiftly against the child abusers

- **Australia Attorney General – Philip Ruddock MP**
  - 21 January 2007 : Mr Ruddock held talks with Indian government on the issue and urged it to consider adopting the *Hague Convention on the Civil Aspects of International Child Abduction*, by which disputes are determined under the law of the country where the child “normally resides”
  - The Attorney-General said he looked forward to working with India in taking a lead role in the Asia-Pacific region on the child abduction issue
  - "One of the problems arising from child custody disputes is that parents seek out countries with laws that would most likely deliver them is that a favourable custody outcome."
  - "Parents who wrongfully remove their child to another country ultimately leave the child wounded, particularly if by doing so they deprive the child spending time with or communicating with the other parent."

- **The U.S. Department of Justice reports:**
  - **many** children were the victims of family abductions
- **India: Safe Haven for International Child Abduction**
  - **The court system in India is extremely slow so that an abductor has ample time to create “facts on the ground” in terms of getting the child sufficiently settled into life in India as to justify an Indian court in ultimately deeming that it is best to keep the child in India**
  - **Courts outside India should be extremely wary about allowing parents to take children for temporary visits to India over the objections of the other parents since there is a great likelihood that parents who wrongfully retain children in India will get away with their wrongful conduct scot-free in India**

- In a journal from Northwestern law Univ.

<http://www.law.northwestern.edu/journals/jihr/v2/7/>:

Utilization of the United Nations' Convention on the Rights of the Child of 1989 (UNCRC) seems to be the most promising option in cases where the child has been abducted to non-Hague nations. India although is signatory to this convention, the problem is compounded due to the delays in the court and lack of understanding of these treaties in the lower courts.

## United Kingdom

<http://www.fco.gov.uk>: If traveling to India particular caution is needed when, for example, child custody becomes an issue. Please see the [child abduction](#) page on the FCO website

## Spain:

Child Abduction – the Unlawful Immigration of Children: Margarita Doménech explains how moving from one country to another with young children can, perhaps unexpectedly, be caught by international law dealing with parental child abduction

The list goes on.....The concern expressed by foreign countries about India as a safe haven for Interparental Child Abduction is conspicuous



- **Despite India not being a signatory to the Hague Convention, US Courts sent back to India a child who was kidnapped from Indore by the mother** AJAY GARG v. DEEPA GARG; No. 97, September Term, 2005; COURT OF APPEALS OF MARYLAND; 393 Md. 225; 900 A.2d 739; 2006 Md. LEXIS 344)
- In response to Ms. Garg's testimony regarding fear of her husband, the court stated that, if she did have that fear, "she manufactured that fear herself based on disappointment with the man she married," and her alleged fear was "not based on any other facts (than to hide her crime)."
- In reply to mother's claim that the child had resided in America for longer than 6 months, the US court observed that Indian Courts had the jurisdiction because she had abducted the child from India and therefore a fraud was perpetuated on the Indian Court
- **As per the US court:** "Jurisdiction or its exercise is a threshold legal issue that the law requires be resolved expeditiously. The 'best interest' language in the jurisdictional sections was not intended to be an invitation to address the merits of the custody issue in jurisdictional determination or to otherwise provide that 'best interests' considerations should override jurisdictional determinations or to provide an additional jurisdictional basis"

**Question: Why Indian Courts do not apply this principle?**

## Violations of the Indian Constitution

- While not going into each and every violation we would like to bring specific focus to Articles 39(e) and (f): the State shall direct its Policy in such a manner that the tender age of children is not abused and children are given opportunities and facilities to develop in a healthy manner and childhood is protected against exploitation and against moral and material abandonment.

## India and the UNCRC

- The UNCRC – a clarion of worldwide movement and the pinnacle of international effort to promote the basic needs of children as fundamental human rights
- a remarkable and wonderful gift to the Children.

- The Society for the Protection of the Rights of The Child (SPARC) categorized the various articles into Survival, Development, Protection and Participation. The violations that we have seen in the cases on hand fall under every category. Specific Articles violated include, but are not limited to, Articles 3, 5, 7, 8, 9, 12, 13, 14, 18, 20
- Violations of Committee UNCRC Recommendations CRC/C/93/Add.5 16 July 2003: We would like to draw your attention to Sections III, IV, V, VI, VII and VIII in particular.
- Section V, Subsection E titled Illicit Transfer and Non-Return is of vital importance and is germane to Child Abduction issue we are dealing with. Article 11 states:
  - States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
  - To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

- Paragraphs 366 and 377 are documented in the context of Article 11 of UNCRC and are provided hereunder for your ready reference:
  - 366. This article is primarily concerned with parental abductions or retention outside the jurisdiction of the State Party. Though the article includes non-parents in its scope, it should be noted that Article 35 covers the sale, trafficking and abduction of children. Article 11 applied to children taken for personal rather than “financial” gain, whereas “sale” and trafficking” have a commercial or sexual motive. Those who abduct children for purely personal motives are usually though not invariably, parents and other relatives.
  - 377. Such instances of illicit transfer and non-return of children abroad, usually by one of the parents, have been rarely reported in India. India, at present, is not a signatory to the Hague Convention on the Civil Aspects of International Abduction (1980).

1. Met with the Indian Ministry for Overseas Indian Affairs at the Indian Consulate in San Francisco to highlight the need to sign the Hague Convention on Civil Aspects of Child Abduction
2. The Guardian and Wards Act 1890 already protects the rights of the Child by ensuring that the Jurisdiction in which the Child Custody matters need to be heard resides with the court where the Child “Ordinarily Resides”
3. Letter sent to National Commission for Protection of Rights of the Child to at least help restore contact with the abducted child in accordance with the Articles of the UN Convention on Rights of The Child.
  - Highlighted the violations as per sections of the Indian Constitution
  - Highlighted the specific articles of UNCRC that were violated
  - **Yet to receive response**

## Pertinent Questions:

1. Can the best interest of the kidnapped non-Indian citizen/non-resident child who was born to non-Indian citizen/non-resident Indian parents be best decided based on local Indian parameters in an Indian Court by ignoring the evidence/testimony/jurisdiction that may have been presented in the foreign courts where the child resided prior to the abduction?
2. Would this be in the best interest of the kidnapped child? More often than not the abducting parents delays the Indian court proceedings for many years
3. Would it be appropriate to reward the errant parent/kidnapper with interim custody until the matter is adjudicated in regular custody proceedings lasting 6-8 years in a Custody Court in India?
4. Had the child not been abducted from a foreign country, where would the child “Ordinarily Reside”?

*Our children are our only hope for the future, but we are their only hope for their present and their future.--Zig Ziglar*

## STRENGTHEN CURRENT CUSTODY LAWS

### Treat Issues with Urgency, Resolve Exeditiously

When children are used as **PAWNS** in marital disputes, **SEPARATE** custody issue from other matters, give it **PRECEDENCE** over other matters, and **FAST TRACK** it – maximum **6 MOS.** to resolution

Apply **COMMONSENSE** principles to define **JURISDICTION** based on “habitual and natural residence” and prevent **FORUM SHOPPING**

### Prevent Abuse and Maintain Contact

At **FIRST** hearing pass orders to ensure that child maintains **CONTACT** with left behind **PARENTS** and **GRANDPARENTS**

**ENFORCE** orders and **PREVENT ABUSE** by assigning licensed child psychologist and counselor to case and order **BI-WEEKLY** welfare visits and **MANDATORY** child counseling

### Safeguard Children’s Rights

**NCPCR** should set up a **SPECIAL INDEPENDENT COMMISSION** immediately to investigate the **VIOLATION** of children’s rights under **UNCRC** in cases of parental child abduction

Submit **REPORT & RECOMMENDATIONS** within the next **6 MOS.**

### Make Parental Abduction a Crime

Parental abduction is a heinous **CRIME** and is tantamount to **CHILD ABUSE** of the worst kind

**DETER** abductions by treating it as a cognizable, non-bailable, non-compoundable **CRIME**

### Sign Hague Convention

Prompt **RETURN** of children wrongfully removed to and retained in India

Ensure that rights of custody and of access under the **LAW** of NRI’s country are **RESPECTED** in India