



**International parental child abductions: Years of policy missteps, denial of justice, and broken lives of children and families globally, victims of a heinous crime and human rights violation.**

December 18, 2015

A call to action document to address the failure of Governments to draft and implement policies that would have prevented the abductions of thousands, if not millions of children from across the world and averted the suffering for victimized families for over thirty (30) years. Bring Our Kids Home is a parent led, advocacy group focused on return of American children victims of parental child abductions to India and prevention of future abductions. ©2015 Bring Our Kids Home ([www.bringourkidshome.org](http://www.bringourkidshome.org), @bokhome)



**International Parental Child Abduction:** *Is a story of missed opportunities and misguided public policies of leading nations. This document contains bold new policy goals and considerations for the Modi Administration, to end years of human suffering and deliver justice to victimized children and left behind families from around the world.*

Most civil societies recognize crimes against children and know how to deal with them effectively. The lines are blurred when a crime is committed by a parent or a family member.

The act of wrongful removal and/or retention of a child by a parent is referred to as Parental Child Abduction (“PCA”). Often, children are kidnapped from the country of their habitual residence, like the United States and taken to another country, such as India.

Parental child abduction is child abuse and a crime against children, perpetrated not by a stranger, but by their own parent. Children are deprived of the love and affection of the parent left behind, often subjected to sustained mental manipulation to believe the parent left behind is the cause of their problems, and robbed of their sense of security, leading to parental alienation and other consequences.

Victims often fail to get the support they need due to a lack of understanding by governments and society at large, who fail to recognize this as a crime. Fortunately, in the United States and most western countries, Governments have enacted laws against parental child abductions.

Often, abducting mothers, upon reaching India, claim “flight from abuse” and seek protection from Indian Courts. While there may be some cases of abuse, the vast majority of the time, abducting

parents by illegally separating children from their left behind parent is committing child abuse and violating human rights of victimized children and left behind parent.

Even if allegations of abuse in some cases are true, the appropriate response to that is to seek legal protection from local authorities where the child is habitually residing. In the United States and other Western countries, there are numerous NGOs and Government agencies who provide assistance to victims of domestic violence and abuse, often without cost to victims of domestic violence.

Policies that encourage women to “flee” alleged abuse from other nations to India<sup>1</sup>, contributes to the higher instances of child abductions perpetrated by mothers from countries like the United States and U.K.

There is a perception that Indian Justice is slow and victims eventually get justice. However, victims’ experiences over several decades say otherwise. In India, absence of laws against parental child abduction, cultural bias, and systemic delays<sup>2</sup>, cause enormous frustrations for victimized families, For left behind parents and abducted children, justice delayed is justice denied, as Indian Courts often grant custody to the abducting parents, and in most cases children aren’t returned to their home countries.

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<sup>1</sup> <http://www.hindustantimes.com/india-news/justice-has-a-mountain-to-climb-of-31-3-million-pending-cases/article1-1259920.aspx> AND [http://articles.economictimes.indiatimes.com/2014-12-07/news/56802830\\_1\\_120-cases-high-courts-expeditious-disposal](http://articles.economictimes.indiatimes.com/2014-12-07/news/56802830_1_120-cases-high-courts-expeditious-disposal)

<sup>2</sup> <http://www.hindustantimes.com/india-news/justice-has-a-mountain-to-climb-of-31-3-million-pending-cases/article1-1259920.aspx> AND [http://articles.economictimes.indiatimes.com/2014-12-07/news/56802830\\_1\\_120-cases-high-courts-expeditious-disposal](http://articles.economictimes.indiatimes.com/2014-12-07/news/56802830_1_120-cases-high-courts-expeditious-disposal)



Yet for decades India has not engaged seriously to remedy this situation, the proof of which lies in ever increasing volume of unresolved abductions cases to India from the United States, over 50% of them pending for five (5) years or more. In an interconnected world, the laws of one nation impact those living in foreign nations.

Today India is the Top 5 destinations of international parental child abductions from the U.S., U.K. and other Western nations. Globalization, interconnected societies and a closer strategic relationship between the United States and India, are not the only reasons for the alarming rate of child abductions to India and the lack of India's cooperation in resolving these cases. Its roots lie in

decades of public policy missteps, lack of social awareness within India, and the failure of the global community to seriously engage India on this issue.

A deeper dive into India's legal, political and cultural realities provides ample evidence that the high rates of abduction, almost non-existent repatriation of abducted children, and the resulting suffering of victims of this crime are here to stay, unless urgent and bold actions are taken by India, partnering with other nations, including the United States. Time is of the essence, delay in India's policy response to effectively deal with the serious and growing issue of parental child abduction, children's lives will continue to be endangered.

*Let's look at a few drivers that have made India a preferred choice of international parental child abduction from not just the United States, but also from other western nations*

- ❖ **Lack of policy or law that recognize parental child abduction as a crime In India, is resulting in wrongful retention of abducted children in India and negatively impacting lives of foreign nationals and non-resident Indians (NRIs) who are permanently residing abroad.** Indian Courts use outdated divorce and custody laws to decide on parental abduction cases, where judges exercise significant discretion, leading to legal confusion, inconsistent decision making and wrongful assertion of Indian jurisdiction on foreign nationals and non-resident Indian (NRIs), who are neither domiciled nor residing in India. Abductors from all over the world are finding safe haven in India, knowing fully well the system is stacked in their favor.

This legal vacuum is hurting Indian interests as well. Case in point, in the United States, the National Crime Information Center's (NCIC) Missing Person File (implemented in 1975), contains records for individuals reported missing. During 2014, 635,155 missing person records were entered into NCIC, an increase of 1.2% from the 627,911 records entered in 2013. A study commissioned by Department of Justice ("DoJ"), titled NISTMART-2<sup>3</sup>, estimated that 262,100 children were abducted in 1999; 203,900 (78 per cent) of them were abducted by a parent or family member. There is no publicly available estimates for family or parental abducted children from within India. However given that India's population is almost 3 ½ times the size of the United States, it is safe to assume, that 200,000-600,000 children within India could be victims of family abductions, including parental child abductions. If these estimates are true, they are staggering;

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<sup>3</sup> <https://www.ncjrs.gov/pdffiles1/ojdp/196465.pdf>



- ❖ **Cultural and gender bias are pervasive in Indian society, and Indian Judiciary and policy makers are not immune.** In 2014, India's Ministry of Law and Justice stated<sup>4</sup> that, “if India signs the pact, it would put Indian women married to non-resident Indians or foreign nationals to disadvantage in cases of divorces and legal battles over the custody of children”. Linking children’s rights and their wellbeing to “women’s rights” is a regressive view and undermines India’s own legal commitments under the UN Convention for the Rights of Children (UNCRC). Thus, even when Indian judiciary claims that their decisions are based on the “welfare of the child”, these decisions are made in the absence of clear guidelines and often inconsistent with modern international standards governing children’s rights and law (i.e. Hague Abduction Convention, UNCRC, etc.), because other considerations supersede children’s rights;
- ❖ **Litigants in Indian Courts face catastrophic delays and procedural inefficiencies.** Left behind parents have experienced enormous frustrations, as they seek to reunite with their abducted children. Cases typically drag on for several years, and in most cases children aren’t returned to their home countries, as Indian Judges deem that the children have “adjusted to their new environment”. In the absence of an effective Indian law against international parental child abduction, bilateral agreements and/or accession to the Hague Abduction Convention, left behind parents from the United States and other nations, are forced to litigate in Indian Courts, leading to wastage of precious legal resources for a country that has over 31 million<sup>5</sup> pending cases, which may take anywhere from 15-20 years to clear the backlog, given current judicial resources;
- ❖ **Cocktail of well intentioned, but poorly drafted and/or implemented laws have led to what many Indian Judges and victims of these laws call, “judicial terrorism”.** Abducting mothers, many of who are foreign nationals of Indian origin, routinely accuse left behind fathers and their families of domestic violence and dowry. Under Indian Penal Code section 498A (anti-dowry), mere accusation of dowry will lead to arrest of the father and his family members. Gender specific domestic violence law, such as the “Protection of Women from Domestic Violence Act 2005”, which is designed to only protect one gender, is routinely invoked by abducting mothers as means of retribution or harassment<sup>6</sup>, after perpetrating child abductions from United States and other nations. While criminal cases are pending, abducted children are deprived of their left behind parent and alienated in many cases, resulting in long-term emotional and psychological damage to the children. Even modest, sensible attempts to amend these

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<sup>4</sup> Economic Times, “US law plans penalties for refusing to return American children ‘abducted’ by parents”, January 1, 2014. [http://articles.economictimes.indiatimes.com/2014-01-01/news/45764585\\_1\\_civil-aspects-international-child-abduction-india-america](http://articles.economictimes.indiatimes.com/2014-01-01/news/45764585_1_civil-aspects-international-child-abduction-india-america)

<sup>5</sup> <http://www.hindustantimes.com/india-news/justice-has-a-mountain-to-climb-of-31-3-million-pending-cases/article1-1259920.aspx>; <http://www.bloomberg.com/news/articles/2015-01-08/indias-courts-resist-reform-backlog-at-314-million-cases>; <http://indianexpress.com/article/india/india-others/nearly-three-crore-cases-pending-cji-says-trial-to-end-within-5-years/>

<sup>6</sup> Time of India, “No arrests under anti-dowry law without magistrate’s nod: SC”, July 3, 2014. <http://timesofindia.indiatimes.com/india/No-arrests-under-anti-dowry-law-without-magistrates-nod-SC/articleshow/37661519.cms> ; First Post, “Flipside of Dowry Law...”, March 25, 2015: <http://www.firstpost.com/india/flipside-of-dowry-law-men-recall-how-section-498a-is-unfairly-used-against-them-2172943.html>; The Hindu, “Domestic Violence Act Prone to Misuse”, June 19, 2015: <http://www.thehindu.com/news/cities/Madurai/domestic-violence-act-prone-to-misuse-says-high-court/article7331523.ece>;



laws are facing opposition from within the Indian Administration and vested interests<sup>7</sup>. Indian policy makers must recognize that, remedies to societal ills cannot be addressed by undermining basic constitutional protections, due process and universal human rights.



*Indian Officials sympathized with our plight, however abducted children are being deprived of their left behind mothers and fathers, victims need prompt, tangible assistance forthcoming from the Government of India*

*Dr. Samina Rahman (mother of Abdullah who was abducted in 2013)*

*"In child stealing the children are used as both objects and weapons in the struggle between the parents which leads to the brutalization of the children psychologically, specifically destroying their sense of trust in the world around them." - Huntington, 1982*

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<sup>7</sup> Time of India, "Govt plans to amend anti-dowry law", March 15, 2015: <http://timesofindia.indiatimes.com/india/Govt-plans-to-amend-anti-dowry-harassment-law/articleshow/46571093.cms>; Times of India, "Maneka against dilution of anti-dowry law", March 23, 2015: <http://timesofindia.indiatimes.com/india/Maneka-against-dilution-of-anti-dowry-law/articleshow/46657002.cms>



*What should the Government of India's policy response to this seemingly overwhelming challenge to a serious human rights issue affecting thousands of children and families be?*

For years, Indian policy makers have failed to formulate and implement an effective policy to address domestic and international parental child abductions, despite mounting evidence of the scope and seriousness of the issue.

Accurate reporting of abduction cases is the foundation for determining an effective policy response and we urge India's Ministry of Women and Child Development to enhance their tracking and reporting of family & parental

child abductions both domestic and international.

In 2009, the Law Commission of India, in its report No. 218, titled, "Need to accede to the Hague Convention on the Civil Aspects of International Child Abduction (1980)"<sup>8</sup> recommended that India accede to the "Hague Abduction Convention". As of December 2015, India remains a non-signatory, without a public commitment to do so in the near future.

The Government of India, must pursue a multi-pronged approach, in a time bound manner:

- ❖ **PM Modi issue an executive order direct Indian Immigration Department and Law Enforcement to deny entry to all foreign national or non-resident Indian children traveling with one parent, without proper authorization to travel from their home countries.** Children traveling to India with one parent, must require a: (i) notarized consent letters from non-travelling parent specifying name of child(ren), DOB, passport number, and duration of travel or (ii) custody order from the jurisdiction where the child is habitually residing. Given increased cases of child abductions, an executive action, until a legislative response can be implemented is essential to protect children from being wrongfully brought to India and retained there.
- ❖ **The Attorney General or the Law Ministry of India petition the Supreme Court of India to urgently seek clear guidance on prosecution of child abduction cases.** Since there are no laws or policies in India against parental child abductions (domestic/international), the Supreme Court of India's direction on how child abduction cases ought to be prosecuted would enable systemic and consistent decision making until a legislative response is in place.
- ❖ **The Modi Administration seek the Supreme Court of India's assistance in setting up "Special Courts" at each of the High Courts and at the Supreme Court in India, to handle International Parental Child Abductions ("IPCA") cases.** While Supreme Court guidelines is a foundation of delivering justice to victims of IPCA, without timely and consistent decision making, victims will continue to face challenges. "Special Courts" with trained Judges to recognize and address IPCA cases, in accordance with the Hague Convention or bilateral agreement, will significantly benefit victimized children and families.
- ❖ **Sign MOU/bilateral agreement to establish mechanism for all unresolved cases registered prior to India's likely accession to the Hague Convention.** The Hague Abduction Convention is not

<sup>8</sup> <http://lawcommissionofindia.nic.in/reports/report218.pdf>



retroactive – even if India accedes to Hague today, pre-Hague cases will not be covered under the Convention. Thus, a lack of an MOU/bilateral agreement will hurting victimized families, who desperately seek the return abducted children from India. A separate and effective MOU/bilateral agreement with India for the unresolved pre-Hague cases is critical and must be in place before India signs the Hague Convention. Failure to do so will result in several years of more delay to resolve those cases and will compound the suffering of victimized children and families. The MOU/bilateral agreement ought to extend as long as there are unresolved pre-Hague cases.

- ❖ **Accede to Hague Abduction Convention by December 31, 2016 and fully implement all articles under the treaty within 12 months of accession.** If necessary, partner with the United States to seek legal and technical assistance, so that India can be fully compliant with the requirements of the convention in letter and spirit. India's actions on the Hague convention, will encourage other SAARC nations to do the same. Currently, Sri Lanka is the only Hague Abduction Convention signatory.
- ❖ **Ministry of Law and Justice, introduce robust legislation against parental child abduction (domestic and international).** As a society built on rule of law, absence of law with regard to IPCA is not only hurting children from around the world who are abducted to India, but India's own children. If necessary, research civil and criminal laws against parental child abductions (custodial interference) in other countries to ensure global best practices are implemented in India.

*India's leadership on the global stage will be judged by its record on upholding rule of law and respecting fundamental human rights of children*

*Ravi Parmar (father of Reyansh who was abducted in 2012)*



*Patricia Hoff, former Legal Director for the Parental Abduction Training and Dissemination Project, American Bar Association on Children and the Law. Hoff explains,*

*"Abducted children suffer emotionally and sometimes physically at the hands of abductor-parents. Many children are told the other parent is dead or no longer loves them. Uprooted from family and friends, abducted children often are given new names by their abductor-parents and instructed not to reveal their real names or where they lived before."*



## Conclusion

Parental child abduction is a calculated, malicious act committed by a disgruntled spouse/ex-spouse, resorting to forum shopping to avoid a fair and timely child custody determination, and who may be in violation of already existing custody orders. This is a violation of a child's rights and International laws should not go unpunished. The abducting parent inflicts emotional, psychological and financial pain on the parent left behind without regard to the child's wellbeing, often with the backing and support of the abductor's family and legal advisers in India.

It deprives the child the love and presence of the other parent, robs them of their family, friends, their home, their identity, and systematically alienates the child from their other parent. Worst of all, these children don't even know that they are being victimized by their abducting "parent" and in many cases, end up blaming the left behind parent.

Parental child abduction is a crime that impacts more Indian citizens than foreigners. India's global partners expect it to respect the rule of law and deliver justice to the victims of a crime. In the absence of modern laws compatible with International conventions and clear legal guidelines, judges in Indian courts do not have the tools to deal with modern realities.

All branches of the Indian Government, led by Prime Minister Modi, Indian Parliament and Judiciary need to speak with one voice when it comes to protection of children's rights and ensuring their wellbeing.

Years of neglect and policy missteps, has created a pandemic that requires urgent and sustained efforts by the Modi Administration. The issue of parental child abductions must become part of the bilateral strategic agenda between the India and its global partners. Time is of the essence. Children abducted from the United States and across the world, currently retained in India are suffering immensely and must be returned home to their loving parent and families immediately! Governments must hold each other accountable to ensure they do right by our children and abide by their own legal obligations.

David Goldman, left behind father of Sean Goldman who was abducted to Brazil stated in a Congressional hearing in 2013 words are stark reminder that the *dial on international parental child abductions has not moved*. He stated, *"Let us also be clear what we left-behind families are asking for. Some people mistakenly believe we are asking our government to intervene in custody disputes. We are not. All we are asking is that when our children are kidnapped to thwart a proper resolution of custody, the law governing their return to our country is upheld."*

*"When it comes to the international law that deals with children abducted from the United States to other lands – there is no rule of law. And the broken lives and broken spirits of left-behind parents across America, whom we represent here today, stand as a living rebuke to that failure to enforce the rule of law."*

*We urge Prime Minister Modi to publicly commit his support for upholding the rule of law when it comes to international parental child abductions. We ask our leaders to act decisively and urgently to mend broken lives of victimized children and families. We are asking for action, we are asking to Bring Our Kids Home!*





## *Additional Actions*

Victimized parent's face several challenges in seeking their children's return. Listed below are few actions, if taken urgently will deter potential abductions or help left behind parents reunite with their children:

1. Review pending cases of parental child abductions to India, reported by the U.S. Department of State, and assist victimized children and parents to re-unite in the United States (Consistent with India's obligations under UNCRC Articles #9-11, 35);
2. Assist left behind parents in the United States to get immediate access to their children in India, including daily access to them via phone/Skype and parental time in India, while pending abduction cases are being resolved (Consistent with India's obligations under UNCRC Article 10, 18);
3. Provide facility to enable "Hague convention on service" compatible service of legal documents. Many courts across United States mandate service through the Hague convention on service. U.S. based litigants face significant delays in India in serving defendants in India. These delays lead to prolonged separation of their abducted children who have been wrongfully retained in India, and benefit abducting parent;
4. Investigate claims of fraudulently obtained OCI/PIO cards and/or Indian Passports, and initiate legal proceedings against violators, including those who aided and abetted the fraud;
5. Indian Embassy and consulates have programs to advise and assist women "deserted" or "harassed" by their spouses abroad. They should include strong advisory to seek assistance in the United States or other nations where they reside, and **not remove from their children** from their countries of habitual residence, and illegally bring them to India, which is detrimental to the children and violation of International Law and human rights;
6. MEA and/or Ministry of Child and Women's Development, annually publish stats on inbound and outbound cases of IPCA, including; number of cases for country of origin (inbound) and destination (outbound); status of those cases; number of children involved and average age of case by country of origin/destination;
7. Investigate claims of U.S. Citizen children retained in India, whose U.S. passports and/or Indian visas have expired, and initiate legal proceedings against violators and expedite the return of children wrongfully retained in India, back to the United States (MHA/FRRO);
8. Setup program to block issuance of Indian passport and/or OCI cards for kidnapped children or at risk children based on court orders from the children' country of habitual residence;
9. Regarding OCI/Passport, provide exceptions for divorced parents, to ensure custodial parent can renew OCI/Passport and related applications at Indian Missions or within India, without written consent of the non-custodial parent;
10. Streamline renewal of Indian passport for divorced or legally separated individuals. Passport renewal currently requires copy of passport of spouse (notarized one).