



International parental child abductions to India: Years of policy missteps, miscarriage of justice, and broken lives of American children and families victims of a heinous crime and human rights violation.

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A policy document and call to action to address the failure of successive U. S. Administrations starting in the mid-1980s, to draft and implement policies that would have prevented the abductions of hundreds, if not thousands of American children to countries like India and averted the suffering for American families for over a period of 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, @bokhome)



International Parental Child Abduction to India: *Is a story of missed opportunities and misguided public policies of the world's two largest democracies. This document contains bold new policy goals and approach for Obama Administration, to end years of human suffering and deliver justice to victimized American children and left behind families*

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.

There is a perception that Indian Justice is slow and victims eventually get justice. Victims’ experiences over several decades say otherwise. In India, cultural bias, absence of laws against parental child abduction and systemic delays¹, cause of enormous frustrations for left behind families from around the world who seek to return abducted children, cases

drag on for years, most cases children aren’t returned to their home countries.

Yet, for decades neither the United States nor India have engaged seriously to remedy this situation, the proof of which lies in ever increasing volume of unresolved abductions cases to India, 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 emanating from India and from the neglect of the United States to protect interests of American children and families.

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 both India and the United States. Without significant private and public pressure by the United States and other nations impacted by IPCA, India’s attitudes and policy response may not change adequately to effectively deal with the serious issue of parental child abduction.

¹ <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

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

- ❖ **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 stated² 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). Abducting parents consistently gain custody of children in India, for a multitude of reasons, including parental gender bias, excessive delays in court proceedings and even corruption. Thus, even when Indian judiciary claims that their decisions are based on the “best interest of the child”, these decisions are not supported by an objective review of the facts, appropriate interpretation of children’s rights and law; nor consistent with modern international standards (i.e. Hague Abduction Convention);
- ❖ **Lack of policy or law that recognize parental child abduction as a crime In India, is resulting in wrongful assertion of jurisdiction on American citizens and non-resident Indians (NRIs) who are domiciled in the United States.** 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 much as those of the United States. A study commissioned by Department of Justice (“DoJ”), titled NISTMART-2³, estimated that 262,100 children were abducted in 1999; 203,900 (78 per cent) of them were abducted by a parent or family member; approximately 1,000 of the abductions were international⁴. There are no such publicly available estimates 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 at least 200,000 Indian children, within India are victims of family abductions, including parental child abductions;
- ❖ **Litigants in Indian Courts face catastrophic delays and procedural inefficiencies.** Left behind families from around the world, 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. In the absence of an effective Indian law against international parental child abduction and/or accession to the Hague Abduction Convention, left behind American families are forced to litigate in Indian Courts, leading to wastage of precious legal resources for a country that has

² 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

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

⁴ The purpose of the Uniform Child Abduction Prevention Act (UCAPA) is to deter both pre-decree and post-decree domestic and international child abductions by parents, persons acting on behalf of a parent or others.



over 31 million⁵ 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, including those that are U.S. Citizens, routinely accuse left behind fathers and their families of non-bailable offenses such as Indian Penal Code section 498A (anti-dowry) law, where the mere accusation of dowry will lead to automatic arrest of the father and his family members. Gender biased 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 for retribution or harassment by women litigants and their lawyers⁶, after perpetrating child abductions to India. Victims in India face several years of costly, litigation, 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 laws are facing opposition from within the Indian Administration and vested interests⁷. Indian policy makers must recognize that, remedies to societal ills cannot be addressed by undermining basic constitutional protections, due process and universal human rights.



The United States has no exit controls for children travelling with one parent, however a 4oz bottle of shampoo will not make it on a plane leaving this country...

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

⁵ <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/>

⁶ 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>;

⁷ 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 United States policy response to this seemingly overwhelming challenge to a serious human rights issue affecting American Children and families be?

For years, the State Department has pursued quiet diplomacy in these case, and left behind families have learned that there has not been a concerted, sustained and serious effort by all branches of the U.S. Government to address this issue with India.

The August 2014, passage of the Goldman Act (ICAPRA), is a major milestone. It provides the President, the State Department and other agencies, tools to deal with this issue in a coordinated and systemic manner. Accurate reporting of abduction cases is the foundation for determining if any country is exhibiting patterns of non-compliance (with Hague) or non-cooperation in returning abducted

American children. Once that determination is made, the President and the State Department can enforce a serious of escalating actions against those nations who have been identified as non-compliant or non-cooperative.

In the case of India, there can be no doubt that there has been years of non-cooperation with regard to return of abducted American children. In the words of Ambassador Susan Jacobs from a July 2015 House Foreign Affairs committee hearing, "India never cooperates". As of June 2015, the NCMEC states that there are over 53 pending abduction cases to India. 51 of which are pending over 1 year and over 50% pending over 5 years.

The U.S. Government, must pursue a three pronged, sequential steps requiring simultaneous engagement with India, in a time bound manner:

- ❖ **Seek urgent return American children, whose cases have been pending as of 2015.** Ensure that the Department of State case list is comprehensive and includes all cases listed by the NCMEC and DoJ. For all pending abduction return cases to India, formally submit repatriation request with Prime Minister Modi and the MEA, by September 30, 2015, and that India must return all abducted American children to the United States within 6 weeks of the formal request, either via a special Supreme Court of India order or Executive Order from the PMO. All existing litigation must be terminated and abducting parents must be extradited to the United States for prosecution under U.S. Law
- ❖ **Sign MOU/bilateral agreement to establish mechanism for all unresolved cases registered prior to India's likely accession to the Hague Convention.** Given our experience with Japan, even 18 months after acceding to the Hague Abduction Convention (Hague is not retroactive—and it only results in less than 40% of children returned), the Japanese Courts have not ordered the return of a single American child, abducted to Japan pre-Hague. Thus, a lack of an MOU/bilateral agreement is hurting American children and families, who desperately seek their return from Japan. 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 American children and families. The MOU/bilateral agreement ought to extend as long as there are unresolved pre-Hague cases.



- ❖ **Encourage India to accede to the Hague Abduction Convention by June 30, 2016 and fully implement all provisions under the treaty within 12 months of accession.** If necessary, the United States provide legal and technical assistance to India, so it can be fully compliant with the requirements within 12 months of acceding to the convention.

We are not demanding any special favors from our Government. But when parents are being left behind twice, once by the abductors and then by our own Government, to fight a State machinery in another country, without direct and sustained U.S. Government intervention, it is no coincidence that for every Sean Goldman, there are hundreds of Reyansh Parmar.

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, who may be 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, United States and International laws. 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.

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. America expect its friends 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 U.S. Government, led by the President and Department of State need to speak with one voice on what America expects from its friends in India. The United States must not hesitate to apply all diplomatic and economic pressure, including linking execution of key trade and defense deals with the successful completion of three pronged action items (listed above) in a timely manner.

Years of neglect and policy missteps, has created a pandemic that requires urgent and sustained efforts by both governments. The issue of parental child abductions must become part of the bilateral strategic agenda between the United States and India, as both Governments seek to build closer and deeper strategic ties. 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! Government 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 President Obama and Prime Minister Modi to publicly commit their support for upholding the rule of law when it comes to international parental child abductions. We ask both leaders to act decisively and urgently to mend broken lives of victimized American children and families. We are asking for action, we are asking to Bring Our Kids Home!