Consultation on Draft 'International Child Removal and Retention Bill, 2016

Organized by National Commission for Women

on 30th August 2016

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CHAPTER I

INTRODUCTION

The Ministry for Women and Child Development, in light of rising number of Parental Child Abduction cases of the Indian Diaspora and the lack of uniformity in laws in dealing with custody issues has proposed that India should sign the Hague Convention on the Civil Aspects of International Child Abduction, 1980 **(marked as Annexure I)** and has also drafted an enabling legislation for the same, namely, "The International Child Removal and Retention Bill, 2016" **(marked as Annexure II)**.

The aims of the draft "The International Child Removal and Retention Bill, 2016" are:

i. To secure the prompt return of children wrongfully removed to or retained in any contracting state.

ii. To ensure that the rights of custody and access under law of one Contracting State are respected in other Contracting State.

In order to achieve the above stated aims the Bill proposes establishing a Central Authority to coordinate with Central Authorities in Contracting States to ensure safe return of the child to his/her place of habitual residence.

The Bill also introduces some important concepts which are as under:

1. **Habitual Residence** – Defined under S 2(f) as:
   "Habitual residence" of a child is the place where the child resided with both parents; or, if the parents are living separately and apart, with one parent under a separation agreement or with the implied consent of the other parent or under a court order; or with a person other than a parent on a permanent basis for a significant period of time, whichever last occurred.

2. **Right of Access** - Defined under S 2 (i) as:
   "Right of access" in relation to a child includes the right to take a child for a limited period of time to a place other than the child's habitual residence.

3. **Right of Custody** - Defined under S 2 (j) as:
   "Right of custody" in relation to a child includes rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence.

4. **Wrongful removal and retention** - Defined under S 3 as:
(1) For the purposes of this Act, the removal to or the retention in India of a child is to be considered wrongful where –

(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the Contracting State in which the child was habitually resident immediately before the removal or retention; and
(b) at the time of removal or retention those rights were actually exercised, either jointly or alone, by a person, an institution or any other body, or would have been so exercised, but for the removal or retention.

(2) The rights of custody mentioned in Sub-section (1) above, may arise in particular:
(a) by operation of law;
(b) by reason of judicial or administrative decision; or
(c) by reason of an agreement having legal effect under the law of the Contracting State in which the child was habitually resident immediately before the removal or retention.

5. **Exceptions to return-** The Bill under S16 envisages certain situation where the child may not be returned place of habitual residence, which are as under:

16. (1) Notwithstanding the provisions of Section 15, the High Court is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:
(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

(2) The High Court may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

(3) The return of the child may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

(4) In exercising its powers under this Section, the High Court shall have regard to any information relating to the social background of the child provided by the

appropriate authority of the Contracting State in which that child has his or her habitual residence.

(5) The High Court shall not refuse to make an order under this Section for the return of a child to the Contracting State in which that child has his or her habitual residence, on the grounds only that there is in force, a decision of a court in India or a decision entitled to be recognised by a court in India relating to the custody of such a child, but the High Court shall, in making an order under Section 10, take into account the reasons for such decision.

CHAPTER II

OVERVIEW OF THE CONSULTATION ORGANIZED BY NCW

National Commission for Women has been nominated as coordinating agency at the national level for dealing with issues pertaining NRI marriages vide Ministry of Overseas Indian Affairs order dated 28th April 2008. The NRI Cell of the Commission also receives complaints from aggrieved mothers regarding disputes arising out of issues of custody of their children and therefore had concerns regarding the proposed bill and its implications on Indian women estranged from their overseas/NRI spouse and engaged in custody disputes with them.

National Commission for Women organized a consultation on 30th August, 2016 under the chairpersonship of Ms. Lalitha Kumaramangalam, Chairperson of National Commission of Women to discuss and review the proposed draft legislation along with providing recommendations to the Ministry of Women and Child Development.

The Consultation was attended by diverse key stakeholders, ranging from Ministry of External Affairs (MEA), Telangana Police, Punjab Police, National Human Rights Commission (NHRC), National Commission for Protection of Child Rights (NCPCR), Telangana State Commission for Women, State Commission for NRI Affairs Punjab, affected mother of child abduction and panel of Legal Experts (**List of participants placed at Annexure III**)

CHAPTER III

DISCUSSION

The key issues raised during the Consultation have been summarized below:

- **Need for a Bill** – During the Consultation, a clear consensus emerged that an urgent need exists to address the conflicts pertaining to custody matters, especially in NRI cases, where no clear guidelines/ laws exist. It was noted that 94 Countries were already signatories to the Hague Convention. The discussion highlighted the complexities around issues of child custody in India and apprehension was raised on India becoming a signatory to the Hague Convention as a potent solution to deal with custody cases. The group demanded for the proposed bill to be more balanced and culturally sensitive in respect to NRI Custody cases, as any decision could lead to the child losing access to one parent, which would not be in the best interest of the child. The group expressed that even though 94 countries had signed the Convention, almost each country has made set of reservations given their social and cultural context.

  The panel of legal experts highlighted that Japan had in fact signed the Hague Convention with a Caveat. In **t**heir internal implementing legislation, Japan has made a clarification to the clause in the Hague Convention which states that the Court may take into consideration that there is a grave risk that child's return would expose to its physical or psychological harm or otherwise place it in an intolerable situation. Since the Courts have not been considering that domestic violence causes such harm, Japan has specifically stated in Article 28 of its legislation the following clarifications for the Court to examine:

  "(i) Whether or not there is a risk that the child would be subject to the words and deeds, such as physical violence, which would cause physical or psychological harm (referred to as "violence, etc." in the following item) by the petitioner, in the state of habitual residence;

  (ii) Whether or not there is a risk that the respondent would be subject to violence, etc. by the petitioner in such a manner as to cause psychological harm to the child, f the respondent and the child entered into the sate of habitual residence;

  (iii) Whether or not there are circumstances that make it difficult for the petitioner or the respondent to provide care for the child in the state of habitual residence."

- **Focus of the Bill:** The group expressed that perusal of the bill gives an impression that women's concerns have not been taken into account since the proposed Bill essentially advocates for return of children to a place where they "habitually resided". It was also felt that the solution proposed by the Convention as well as the draft bill proposed – that of returning the child to the place of habitual residence was rather narrow, considering the complexity of the laws dealing with custody issues in India. It was noted that in cases of estrangement, the first act of the estranged NRI/overseas spouse was to withdraw the dependency visa, forcing her to return to India. In such a scenario, it would be inherently unfair and unjust to expect the mother to leave her child abroad, especially when she would have been the primary caregiver, up until that time.

  It was also pointed out that Indian laws on guardianship are inadequate and there is no uniform application of custody laws. Most importantly, the fact that the mother is fleeing from a situation of domestic violence and abuse, has not been provided for in the Hague Convention as a circumstance which would justify the non-return of the child. It was expressed that The Hague Convention is gender neutral and did not recognize the special circumstances in which a woman may be forced to flee from her home.

- **Issues of Parental Abduction** – The Consultation included diverse voices ranging from a victim of parental abduction to a mother who had been accused of parental abduction. The participant who became a victim of parental abduction when her husband, bought her infant child-an American Citizen to India from the USA without her consent, stated that she had not been able to meet her infant child for over 6 months and expressed the need for a robust system where such cases were dealt with in a more timely and efficient manner. Another participant-a victim of domestic abuse had escaped from her marital home with her child, without the consent of her husband opined that such a legislation should not be blindly passed as it did not differentiate between 'parental abduction' and 'escape due to threat of life', and that both cases should not be treated at par.

- **Indian Society and Parental Abduction** – With regard to the proposed Bill, it was noted that it was not only the child who was affected, but also the mother. It was opined that the bill ignored the realities of Indian Society where mother was the primary care giver and father, the primary bread earner. The mother would therefore always be at a disadvantage in custody proceedings in a foreign court potentially due to her weaker economic status. Furthermore, in Indian Society it is usually the 'wife' who leaves her place of residence to live with her 'husband' at his place of work. Hence, the child's place of "Habitual Residence" would always be where the husband lives and works. A need was felt for a more gender

sensitive legislation supported by well defined terminology of ambiguous terms like-abduction, custody, etc. The experts highlighted that the proposed Bill did not take into account live-in relationships or children in custody cases who maybe victims of domestic violence. The Bill also does not consider the criminal background, of the parent in India or in any other country.

- **India as a signatory to the Hague Convention** – During the Consultation the wisdom of signing a Convention drafted in 1980, which is currently not in consonance with the present day reality was also discussed. At the time the Convention was signed, there was an underlined assumption, according to some, that the typical "abductor' would be a non-custodial father running away with the kid to another country. However during the Consultation, it was opined that according to certain studies (www.global-xpats.com/queny@global-xpats.com), it has now been shown that 68% of the so called abductors are in fact mothers fleeing with their children from their abusive spouses and the failure of the judicial system of the countries in which they were living to protect them. Thus, the treaty is now being increasingly used as a tool by violent and abusive husbands and fathers to persecute and harass their wives for years. A judgment of the US Supreme Court (Abbott v. Abbott) recognizes that the Convention in a sense forces women to choose between their lives and their child.

  The changing Indian social fabric was also discussed. Over the last decade things have changed in the Indian context at least since a large number of young men are going abroad for work and take their brides on a dependant VISA. Amongst these women who face domestic violence, abandonment and abuse, they are forced to flee the country, often with children who hold a passport of the country they are born in. The women may have a different passport. The women would not have the resources to support themselves or their children and are forced to come back and seek refuge in the parental homes. It was raised that in recognition of this problem, the Government of India had also set up a program called "NRI marriages" with the main objective of providing support to deserted wives. In these circumstances, if their children are taken away from them by an executive order, the injustice meted out to them would be further compounded. Given this background, the Convention actually becomes redundant in the Indian context. The experts cautioned the gathering that a rush to sign the existing Bill could potentially be dangerous and violate women rights in India.

- **Existing Legal system:** The gathering expressed that Indian Courts take orders passed by any foreign court seriously while very few countries treat order passed by the Indian Courts with the respect it deserves. Hence, even though the women may have got an order of custody passed in her favour in India, her non compliance of the order passed by the foreign courts, even if it is passed after the order passed by the Indian courts would attract criminal action against her and she would not be allowed to enter that country. In these circumstances, if her

children are sent away to that Country, there are no safeguards to ensure that the children will return to her. In many cases, the father, also refuses to sign the application for VISA or renewal of passport exposing the child to be "stateless**".** The legal experts pointed that the proposed Bill or the background note does not give any indication as to steps required to be taken cases where a similar law is not in force in the Country where the child has to be taken. The bill also does not acknowledge the lack of acceptance of Indian law in other countries, the pre-caution that needs to be taken when a child is moved out of a jurisdiction to a place where Indian authorities have no access. Indian women who face domestic violence abroad are barely provided any support.

It was discussed how the laws of other countries were usually tilted towards the person bringing in the case, with the legal fees being normally prohibitive. In most cases, the men obtain ex parte decrees and sometimes also get orders of custody of the children even when the women are already away in India and may have even instituted cases in India. Many foreign countries disregard the fact that legal cases are pending in India and orders are also passed.

- **Contravention of the laws of India**: The gathering was alarmed to note that the proposed Bill in its current form is in contravention of the laws of India regarding recognition of foreign decrees. Section 13 of the Code of Civil Procecure clearly lays down the parameters for recognizing foreign judgments as conclusive and states that where such a judgment does not recognize the law in India or where the proceedings in which the judgments are obtained are opposed to principles of natural justice. It has been held by the Supreme Court of India in Satya's case that for instance an ex-parte judgment in which the wife could not effectively participate will not be recognized. In many of the cases in which the wives flee to India, the husband obtains an ex-parte judgment and tries to implement this. It has thus been said that "the power granted to Indian Courts by and under Section 13 of the Code of Civil Procedure, to examine and scrutinize foreign decrees in order to decide whether or not they ought to be executed in India, would be totally nullified in the even India were to sign the Hague Convention, as it stands at present, in so far as cases pertaining to child abduction are concerned."

- **Growing International Concern about the Convention**: It was also stated that there is a growing international concern and movement to re-examine the Convention and to ensure its relevance in current times. In the United States itself, the American Overseas Domestic Violence Crisis Centre (AODVC) provides support to American victims of domestic violence in foreign countries and are engaged in several cases of women seeking to flee to safety with their children and being subjected to the Hague Convention. The legal experts

highlighted the ongoing 'The Hague Domestic Violence Project' at the University of Berkeley Goldman School of Public Policy which has been trying to establish child exposure to domestic violence as an exception in the Hague Convention on the Civil Aspects of the International Child Abduction.

- **Plight of Indian women**: The Indian law also does not take into account the fact those Indian women who may have settled abroad after marriage and may be victims of domestic violence and abuse and think of India as their haven for refuge. These women often flee from their husbands along with their children to India to be with their extended families who are residing here. They cannot leave their children as they are primary care givers of the children. This has been clearly brought about by a large group of women who have sent a Petition to the Prime Minister of India. The gathering discussed the Petition which states the following: "Very often, even in Indian families living abroad, the mother is the prime and sometime the only care-giver of children. The children are her prime responsibility even though she may be earning as much as, or sometimes even more than her husband, if such a woman faces marital problems with her husband while abroad, which in many instances takes the form of extreme abuse and domestic violence, and decides to come back to the safety and security of her own family and extended family in India, it is but natural that she would bring her children along with her."

  It also stated that Indian laws did not acknowledge parental child abduction. It was also reported that in countries like the USA, judgments regarding custody are often different. Foreign Courts often do not recognize the norm that the mother is the primary care-giver and proceed on the hypothetical assumption that both parents are equal care-givers.

CHAPTER IV

IMPORTANT JUDGEMENTS OF SUPREME COURT OF INDIA ON CHILD CUSTODY AND COMITY OF COURTS

The laws governing child custody in India are the Guardians and Wards Act 1890 and the Hindu Minority and Guardianship Act 1956. The Hindu Minority and Guardianship Act states that the 'natural guardian of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property …. in the case of a boy or unmarried girl- the father, and after him, the mother, provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother'. There are numerous connotations this can take, some of these are: that the law reflects our patriarchal social structure and that small children are always better off with the mother... Matters are also complicated by a legal process that does not view legal guardianship to be co- terminus with physical custody of a child.

The Supreme Court of India has consistently held that in deciding cases of child custody 'the first and paramount consideration is the welfare and interest of the child and not the rights of the parents under a statute' . As if to dispel any doubts on the matter the Court held 'no statute on the subject can ignore, eschew or obliterate the vital factor of the welfare of the minor'. In a landmark judgement the SC driving home the equality of the mother to fulfil the role of a guardian held that 'gender equality is one of the basic principles of our Constitution, and, therefore, the father by reason of a dominant personality cannot be ascribed to have a preferential right over the mother in the matter of guardianship since both fall within the same category

1) THE PETITION BY MOTHER UNDER 'GURDIAN AND WARDS ACT, 1890' SEEKING GURDIONSHIP OF THE CHILD AT THE TIME WHEN LEGAL PROCEEDINGS HAS BEEN INITIATED IN FOREIGN COURT.

Ruchi Majoo vs. Sanjeev Majoo

The Apex court was hearing the appeal petition of the mother - appellant who was challenging the quashing of interim order by the Delhi high Court that had granted interim custody of child to the appellant-mother. The respondent-father had alleged that appellant had abducted the minor child and come to India in spite of the orders of US court where they had set up matrimonial home. The appellant had sought guardianship of the minor child under the section 9(1) of the Guardian and wards act, 1890 in the district court of Delhi and the court had decreed in her favour.

The apex court as mentioned above was hearing the challenge to the order of Delhi

high court that set aside District court order.

The apex court relying upon legal principles laid down by supreme Court of India held that the jurisdiction of the Indian court are not barred in all those cases that involve removal by parent of minor children to India in contravention of the orders of the courts of the country where the minor's parents have set up matrimonial home. The court said that the welfare of child is the paramount consideration for deciding such matters and thereby held in the favour of the appellant-mother.

The court held that jurisdiction of the Delhi trial court in view of the petition under the Guardian and Wards Act depended upon the question whether the minor was 'ordinary' residing within the territorial jurisdiction of the court. The court said that ordinary residence here referred to the fact whether the quality of residence is 'ordinary' and general and not merely for some limited or special purpose. The court held that the intension of the parties shall also go on determine whether the residence is ordinary. The court also observed in this respect that there was a significant difference between Habeas Corpus petition and petitions under guardian and wards act through which custody of minor children are sought in cross-border matrimonial disputes. The court observed that high court in habeas corpus petition exercises its jurisdiction only when the minor or detained individual is within the jurisdiction of High court and in case of petitions under guardian and wards act, the district court exercises its jurisdiction only in case the minor is ordinary residing within district court jurisdictions clearly demarcating the jurisdictions factors that are considered for the exercise of jurisdiction by the courts in respective cases.

The court also held that the principle of comity of courts by virtue of which the foreign judgments are enforced in the country are not applicable to the present case and that the applicability of the said principle shall depend only upon the facts and circumstances of each case. Comity of court is the principle followed across the countries wherein not out of obligation but out of respect, the courts of the country enforce foreign judgments in view of common belief that laws across the countries run on same set of universal principles.

The court further said that in matters involving custody of the child, the welfare of child is primarily important and thereby the Indian courts are entitled and duty bound to examine the matter independently and take the foreign judgment in case they exists as a factor for deciding the dispute and should not oust their jurisdiction simply because the foreign court have passed judgments on the same subject matter.

The court held that courts of the country to which child is removed should first

consider the question whether court could conduct elaborate enquiry or deal with the matter summarily and order return of the child by the parent to the country from which the child was removed. The court also observed that only in case the court has jurisdiction to entertain the matter than only the court can hold summary or detailed enquiry and in case it does not have jurisdiction to entertain the matter, **than it cannot order repatriation of the minor child to the country from** where the minor was removed and the party aggrieved should try and explore different legal remedy for doing the same. The court also said and noted the fact that there was no final court order in the present case that the appellant-mother had violated and legal proceeding had just been initiated in the foreign court after the respondent had left the appellant and child for the appellant to explore career options in India.

The court also observed that the role of the father was very important in the development and growth of minor child and therefore granted visitation rights to the respondent-father. The apex court thereby set aside the judgment of High court and granted interim custody of the minor child to the appellant-mother till the final disposal of the case with visitation rights to the father-respondent.

2) THE REMOVAL OF THE CHILD BY A PARENT IN CONTRAVENTION TO THE ORDERS OF THE COURT OF THE COUNTRY WHERE THE PARTIES HAVE SET UP THEIR MATRIMONIAL HOME.

The question before the Apex court in **V. RAVI CHANDRAN V. UNION OF INDIA** was whether the court should order the handing over the custody of the minor child to the petitioner –father in view of interest of the minor child and the orders of the court of country of which the child is a national.

The Petitioner father was a US citizen and had been granted divorce by US family court. The petitioner and the respondent-mother were ordered by the US court to have joint legal and physical custody of the child. The parties were also ordered that minor child shall stay in Allen Texas and both shall keep each other informed about each other whereabouts with providing all details to each other.

The respondent took the minor child to India and told the petitioner that she shall stay only in India. The petitioner in response to these sought orders from US court which therein ordered that petitioner shall be the sole temporary guardian of the minor and the respondent guardianship shall be suspended and also ordered that the issue of custody of the minor child shall be heard in the jurisdiction of US courts especially in Albany County Family Court.

The petitioner filed writ petition in apex court seeking production of the minor child and handing over the custody to him and hence the matter came before the apex court. The apex court relying upon the Legal principles laid down by various courts on the issue of custody of child in cross border disputes observed that under the Modern theory of conflict of Laws, the jurisdiction of those states are preferred who have the most intimate contact with the issues arising in the case. The court further said that ordinarily, jurisdiction must follow upon functional lines with the law of that state to govern the situation that has closest concern with the well-being of the spouse and welfare of the off-spring. The court also said that jurisdiction of the courts cannot be attracted with the operation or creation of fortuitous facts like circumstance as to where is the child etc.

The apex court also said that it is duty of courts of all the country to see that the parent who has committed wrong by removing the child from his native country does not gain any advantage from his/her wrong doing. The court further observed that the court of the country to which the minor child had been removed must first consider the question whether the court can conduct an elaborate enquiry or can conduct summary enquiry upon the issue of custody and further said that this question shall primarily be determined in accordance to the welfare of the child.

The court said that in case the court decides to exercise summary jurisdiction, than, the court shall return the custody of child to the country from which the child is removed (his native country) leaving all aspects of the child welfare to be decided by that country unless such return is shown harmful for the welfare of the child. The court also said that this jurisdiction is generally invoked in case the application for return or custody of child is moved promptly with does not allow the minor to develop roots in the other land other than his native land or in case it is shown that the minor child is being far removed from social system from his native land or his education is being interrupted all indicating the return of child is in best interest of the child. The court also said that in case the court decides on to conduct elaborate enquiry than, it is required to decide independently on merits whether it is interest of child to return and shall consider factors like time that has lapsed after removal etc. and even factor of unauthorised removal of the child shall not come in the way to decide the said matter independently.

The court also observed that sole and predominant criteria in deciding any question pertaining to the custody of child what shall best serve the best interest of the child.

The apex court relying upon these above mentioned legal principles held in favour

of petitioner and ordered it be ward of the US court with respondent open to modify the custody order. The court in case decides to conduct an elaborate enquiry as to issue of custody than the court is bound and under legal obligation to consider the welfare and happiness of the child as a paramount consideration for deciding the issue and should go into all relevant aspects of the welfare of the child that includes stability, security etc. The court also held that order of the foreign court shall also be an important consideration in deciding the same and the persuasive effect of the said order in determining the issues of custody shall depend upon circumstances of each case.

The court also reaffirmed the legal principles laid down by the courts in respect of exercise of summary jurisdiction and held that in case the court decides to deal with the matter summarily and orders returns of the child to the native country from where he was removed keeping in view the jurisdiction of the court of the native country which has closest concern and intimate contact with issues arising there under, than, the court may leave all aspects relating to the welfare of child to be investigated by the court of native country of the child in view of the best interest of the child.

The court thereby held that the minor was a US citizen who was born and brought up in US and had spent his initial years over there making it his natural habitat and thereby in his interest and welfare the child should be returned to US. The court also noted the fact that respondent was on a run with minor that had not provided a stable environment to him and held it was harmful to the interest of the child. The court also noted the fact the petition had been filed promptly with the minor not developing roots in India and therefore in view of principle of comity of courts and facts held that in view of the best interest of the child, the child should be returned to US. The Court also held that it was open for the respondent to seek modification of the custody order in US court by presenting petition over there.

3) REMOVAL OF THE CHILD BY THE PARENT IN CONTRAVENTION TO THE INTERIM ORDERS OF THE FOREIGN COURT THAT ORDERED RETURN OF THE CHILD TO FOREIGN COURT JURISDCTION FOR FINAL DETERMINATION OF THE ISSUE OF CHILD CUSTODY.

Shilpa Aggrawal vs. Aviral Mittal arising out from S.L.P (Crl.) 5995 of 2009

The Apex court was hearing appeal petition of the appellant mother against the

order of Delhi High Court which on the basis of comity of courts had ordered return of the minor child to the respondent for safe return to England as a measure of interim custody in accordance to order passed by British High court where the issue of custody was to be decided by the British courts in the near future. The British family division High court had passed ex-parte order (without the other party present) declaring the minor as award of the court till the time she attains majority or till the time the court passes appropriate order. The court had also directed return of child to UK or British jurisdiction for the court to decide the issue of custody of the child in view of the fact that both parents were permanent residents of UK and minor child had British passport (on account of birth in UK).

The apex court in the present case dismissed the appeal petition of the appellant and observed that High court had not erred in the ordering the return of child and had in fact taken into consideration both facts that is comity of courts and welfare of the child which were of paramount importance.

The apex court observed that the UK court did not wanted to separate the minor from the appellant-mother and had only directed the return of the child to UK jurisdiction so that the courts of UK could proceed with the determination of the question as to who shall be granted with the custody of the minor child. The apex court also noted the fact and observed the fact that the minor was considered ward of the court is an important fact in considering whether the UK court's order shall be interfered or not. The Apex court also noted the fact that the appellant and respondent were permanent residents of the UK and the minor held British passport by virtue of being born in UK and therefore the courts of UK were closely and intimately linked to decide upon interest and welfare of child of the child.

The Apex court therefore held that High court did not commit an error on relying upon the principle of comity of courts since the question as to what is in interest of the minor and custody of the child was yet to be determined by UK Courts and the order passed by UK court was only interim in nature and only in view to return the child to the jurisdiction of the court.

The Supreme Court of India through these above mentioned judgments have tried to clear the doubt over the issue of conflict of jurisdiction and importance of foreign judgments on the decisions that are to be rendered by the Indian courts in respect to the custody of children or removal of minor child from foreign countries to India by parents in contravention to foreign court orders.

The Supreme Court through these judgments have held that the jurisdiction of

Indian courts is not barred in such issues and the courts are entitled and duty bound to examine the matter independently taking welfare of child as important consideration to determine the same. The Apex court also said that judgments passed by foreign courts should also be considered as a factor in finally adjudicating the matter and the applicability of principle of comity of courts or enforcing foreign judgments shall or the Indian courts deciding the issue of custody of minor child in such cross-border parent disputes shall purely depend upon the facts and circumstance of each case. The welfare of the child shall be the paramount consideration in deciding the return of child or deciding the issue of custody by Indian courts.

CHAPTER V

LEGAL CONCERNS PERTAINING TO THE DRAFT CHILD REMOVAL AND RETENTION BILL, 2016

The panel of legal experts focussed on the technical /legal aspects of the Bill and opined the following:

Section	Definition as per the Bill	Concerns raised during the Consultation
S 2 (a) "Applicant"	"Applicant" means any person who, pursuant to the Convention, files an application with the Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention	• "…means any person who files an application" is a very vague term. • Anybody can file an application for custody. • This definition is hostile to the custody/ guardianship rights of father/ mother. • It does not indicate if the person applying has to be related to the child • A third person, which might not even be interested in the child's welfare, can deprive a deserving parent of his or her rights of custody. • Any authority of Government etc. may also become an applicant, which may work against an individual.
S 2 (f) "Habitual Residence"	"Habitual residence" of a child is the place where the child resided with both parents; or, if the parents are living separately and apart, with one parent under a separation agreement or with the implied consent of the other parent or under a court order; or with a person other than a parent on a permanent basis for a significant period of time,	• "Where the child resided with both parents" is a lopsided expression, in most of the cases in favor of father because as a matter of practice it is generally the wife/mother who leaves her parental home to live with her husband. • The definition does not factor in what is in the interests of the child. Habitual residence of a child must be a place where the primary care giver

	whichever last occurred.	of the child is living.
S 2 (i) **"Right of access"**	"Right of access" in relation to a child includes the right to take a child for a limited period of time to a place other than the child's habitual residence	• The definition needs to be reconsidered in light with how 'Habitual residence', has been defined.
S 2 (j) **"Right of custody"**	"Right of custody" in relation to a child includes rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence.	• "Right of custody" as defined in the Bill does not deal comprehensively with the rights of child and of parents and does not take into account a situation where the Courts have not adjudicated upon who has the "right of custody". • Visitation rights of the parent who has not been given the custody of the child, guardianship of the child needs to be elaborated upon.
S 3 (1)(a) **"Removal of child"**	(1) For the purposes of this Act, the removal to or the retention in India of a child is to be considered wrongful where – (a) It is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the Contracting State in which the child was habitually resident immediately before the removal or retention	• Making removal of child attributable to a person, an institution, or any other body makes it very vague because if the 'removal of child" is not by a parent/guardian/care giver, it would be a criminal offence under the IPC.
S 14	Where an application is made to a High Court under Section 14, the Court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the	• Section 14 gives very wide powers to the High Court even to pass interim orders. If the court is persuaded, the court may at an interim stage, direct return of the child irrespective of the fact that there may be custody cases pending in

	welfare of the child concerned, or of securing the child's residence pending the proceedings, or to prevent the child's return for being obstructed, or of otherwise preventing any change in the circumstances relevant to the determination of the application.	Indian courts.
S 19	(1) In ascertaining whether there has been a wrongful removal or retention within the meaning of Section 3, the High Court may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable. (2) The High Court may, before making an order under Section 13 for the return of a child to the Contracting State in which that child has his or her habitual residence, request the central Authority to obtain from the relevant authorities of the Contracting State in which that child has his or her habitual residence, a decision or determination as to whether the removal	• The section that disregards the Indian law which strongly revolves around the best interests of the child principles and recognizes the mothers' role in upbringing and instead relies on foreign laws. Thus section is undoing many years of jurisprudence developed in India.

	to, or retention in, India, of that child, is wrongful under Section 3.	
S 20	Upon making an order under Section 13 for the return of a child to the Contracting State in which that child has his or her habitual residence, the High Court may order the person who removed that child to India, or who retained that child in India, to pay the expenses incurred by the Central Authority. These expenses may include costs incurred in locating the child, costs of legal representation of the Central Authority, and costs incurred in returning the child to the Contracting State in which that child has his or her habitual residence.	• After taking the child away, the proposed Bill proposes to recover the costs from the parent who took away the child from place of "Habitual Residence" which in many cases is likely to be the mother, who has escaped a domestic violence situation and is therefore inherently unfair and unjust.
S 21	An order made by the High Court under Section 13 shall not be regarded as a decision or determination on the merits of any question relating to the custody of the child to whom an order relates.	• This is in complete contradiction to other section. Custodial rights and judgements generally originate with the physical custody of the child. If the child is not with a parent for a considerable period of time, it is highly unlikely that the child would go back to that parent even if it is legally ordered that the custody be restored. Thus, this section ignores the premise of "welfare of the child" which is the guiding principle for determining custody under Indian law.

S 23 - 24	S 23. (1) A person, institution or other body in India claiming that a child has been wrongfully removed to a Contracting State or is being wrongfully retained in a Contracting State in breach of rights of custody of such person, institution or other body, may apply to the Central Authority for assistance in securing the return of that child to India. (2) On receipt of an application under Sub-section (1), the Central Authority shall apply in the appropriate manner to the appropriate authority in the Contracting State to which such child is alleged to have been removed or in which such child is alleged to be retained, for assistance in securing the return of that child to India. (3) The rights of custody mentioned in Sub-section (1)above, include rights of custody accruing to any person, institution or other body by operation of law; (a) by reason of judicial or administrative decision; or (b) by reason of an agreement having legal effect under the law of India. S 24. The High Court may, on application made by or on behalf of the appropriate	• These sections should have been the basis of this law. However, these are stated in a very generic manner without laying down the executive role in bringing the child back to India.

	authority of the Contracting State, declare that the removal of a child to that Contracting State or the retention of that child in that Contracting State is wrongful within the meaning of Section 3.	
Lack of definition		The definitions clause of the proposed Bill was found to be lacking clarity. The Bill has not defined "Abduction" or "Custody". Therefore criminal acts of kidnapping and abduction are not differentiated from acts of "removal of custody" by a parent. Concepts of 'age and maturity' which would determine if the opinion of the child should be taken while deciding on the place of 'Habitual Residence' have not been defined.
Under the Convention, the contracting parties are supposed to set up a central authority to ensure the prompt return of a child to the country where he/she was habitually residing.		The appointment of the Central Authority does not spell out if the Central Authority should possess any specific qualification. It may not be adequately equipped to deal with complex legal issues that are likely to arise in child custody matters.

CHAPTER VI

KEY RECOMMENDATIONS ARISING FROM THE CONSULTATION

After deliberation with various stakeholders and in-house review, NCW opposes the Draft Child Removal and Retention Bill, 2016 in its current form as proposed by MWCD. Unfortunately, the proposed Bill is a replica of the Hague Convention on the Civil Aspects of International Child Abduction, 1980 with small procedural variations. This Bill is not in accordance with other laws and legal principles in the country. In view of this and the following reasons, India should not pass this legislation:

1. The Bill in its present form does not recognize the plight of women who are escaping from domestic violence to a place of refuge in India. Many of these women have gone abroad after marriage and in case of marital breakdown seek to come back to their home in India. To force these women, who are often primary care givers of their children, to come without their children will be inhuman and will be against the welfare and best interest of the child. In these situations, the mothers cannot be expected to return to violent homes with their children. Children who have faced domestic violence or have witnessed violence cannot also be expected to stay in or return to their place of habitual residence.
2. It has been reported that in countries like the USA, judgments regarding custody are often different. Foreign Courts do not recognize the norm that the mother is the primary care-giver and proceed on the hypothetical assumption that both parents are equal care-givers.
3. The Supreme Court of India has held in some cases that since India is not a signatory to The Hague Convention, the welfare of the child will be a primary consideration on the basis of which custody petitions will be decided. The Supreme Court of India has also held that it is not necessary to rely on the principles of Comity of Courts and in the case of Ruchi Majoo did not return a child to the US where his father was residing and where his mother and he had stayed. The Court held that the interest and welfare of the minor is paramount and the competent Court in this country is duty bound to examine the matter independently taking the foreign judgment only as an input. (See also Dhanwanti Joshi Vs. Madhav Unde [(1998) 1 SCC 112].
4. Hague Convention on the Civil Aspects of International Child Abduction, 1980 and the Draft Child Removal and Retention Bill, 2016 state unequivocally that when a minor is abducted from one Contracting Party and taken into the territory of another Contracting Party, the Contracting Party from whom the child is taken away, may make a request for immediate return of the said child to the Central Authority of the Contracting Party where the child has been taken away to. The Requested state is expected to adhere to or comply with such requests from the Requesting State, irrespective of its own laws regarding child abduction**.** Thus under the present draft Bill, the Indian Courts have to comply with such

requests, notwithstanding the fact that as per existing Indian law, a child being in the custody of either of its parents, is a child in lawful custody and such a child is not defined to be an "abducted" child.

5. Under Article 12 of The Hague Convention, the judicial or the administrative authority is mandated to return the child in all circumstances. However, the Court may refuse to return the child if the application is filed after a period of one year and the person who has "abducted" the child can demonstrate (prove) that the child is now settled in his new environment. The fact that the mother is fleeing from a situation of domestic violence and abuse, has not been provided for in the Hague Convention as a circumstance which would justify the non-return of the child. The Hague Convention is thus gender neutral and does not recognize the special circumstances in which a woman may be forced to flee from her home.
6. The power granted to Indian Courts by and under Section 13 of the Code of Civil Procedure, to examine and scrutinize foreign decrees in order to decide whether or not they ought to be executed in India, would be totally nullified in the event India were to sign the Hague Convention, as it stands at present, in so far as cases pertaining to child abduction are concerned. The Bill is in contravention of the laws of India regarding recognition of foreign decrees.

The Consultation concluded with the following key recommendations:

1. There is an urgent need to address the conflicts in custody matters, especially in NRI cases, where no uniform laws exist. India becoming a signatory of the Hague Convention is not advisable at present as the said Convention is neither in consonance with the present Indian laws or reflective of the current societal realities.
2. The Bill in its current form has ignored the fundamental fact that the number of Indian children taken away from India to foreign countries is miniscule, compared to the number of Indian-origin children who have been brought back into India, by either of their parents, mostly mothers, in the interest of protecting the life, safety and security of such children.
3. The proposed Bill in its current form should be re-examined as it has failed to evaluate its repercussions in the Indian Society vis-a-vis Indian women, who have been deserted or are facing domestic violence while cohabiting with their Overseas/NRI husband. The Bill lays immense emphasis on the child returning to their place of habitual residence on the assumption that this would be best for the child. This assumption fails to recognize that tearing the child away from his/her mother would often cause greater harm to the child.
4. Blindly adapting the Convention as a Law may compromise the welfare of the child, as it is not gender sensitive. It is essential that this step is backed with robust legal research and inputs from diverse stakeholders are included. There

should be provision to provide more comprehensive support to the Indian woman who is deserted abroad by her overseas/NRI spouse.

5. The laws relating to child custody should explicitly reflect the concept of "welfare of child' as already followed by judiciary as a guideline. The guardianship laws should also clearly refer to the mother as the natural guardian. Hence, the present Indian laws on guardianship and custody should be re-examined and amended to reflect the current conditions.

HCCH
HAGUE CONFERENCE ON
PRIVATE INTERNATIONAL LAW
CONFÉRENCE DE LA HAYE
DE DROIT INTERNATIONAL PRIVÉ

28. CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION[1]

(Concluded 25 October 1980)

The States signatory to the present Convention,
Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,
Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access,
Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions –

CHAPTER I – SCOPE OF THE CONVENTION

Article 1

The objects of the present Convention are –

a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and

b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 2

Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.

Article 3

The removal or the retention of a child is to be considered wrongful where –

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph *a)* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

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[1] This Convention, including related materials, is accessible on the website of the Hague Conference on Private International Law (www.hcch.net), under “Conventions” or under the “Child Abduction Section”. For the full history of the Convention, see Hague Conference on Private International Law, *Actes et documents de la Quatorzième session (1980)*, Tome III, *Child abduction* (ISBN 90 12 03616 X, 481 pp.).

Article 4

The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.

Article 5

For the purposes of this Convention –

a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;

b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

CHAPTER II – CENTRAL AUTHORITIES

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.

In particular, either directly or through any intermediary, they shall take all appropriate measures –

a) to discover the whereabouts of a child who has been wrongfully removed or retained;

b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;

c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;

d) to exchange, where desirable, information relating to the social background of the child;

e) to provide information of a general character as to the law of their State in connection with the application of the Convention;

f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;

g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;

h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;

i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

CHAPTER III – RETURN OF CHILDREN

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.

The application shall contain –

a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
b) where available, the date of birth of the child;
c) the grounds on which the applicant's claim for return of the child is based;
d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.

The application may be accompanied or supplemented by –

e) an authenticated copy of any relevant decision or agreement;
f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;
g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that –

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.
In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

CHAPTER IV – RIGHTS OF ACCESS

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

CHAPTER V – GENERAL PROVISIONS

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalisation or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.
Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.
However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.
Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units –
a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.
Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

CHAPTER VI – FINAL CLAUSES

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.
It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.
The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.
The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.
Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.
Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

Article 43

The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.

Thereafter the Convention shall enter into force –

(1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;

(2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.

Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.

Article 45

The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following –

(1) the signatures and ratifications, acceptances and approvals referred to in Article 37;
(2) the accessions referred to in Article 38;
(3) the date on which the Convention enters into force in accordance with Article 43;
(4) the extensions referred to in Article 39;
(5) the declarations referred to in Articles 38 and 40;
(6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
(7) the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

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' 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.

(Rashmi Saxena Sahni)

Joint Secretary to the Government of India

Ph:23388576

THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION BILL, 2016

A

BILL

to secure the prompt return of children wrongfully removed to or retained in any Contracting State, to ensure that the rights of custody and access under the law of one Contracting State are respected in other Contracting States, and to establish a Central Authority and for matters connected therewith or incidental thereto.

WHEREAS the interests of children are of paramount importance in matters relating to their custody;

AND WHEREAS India is a party to the Hague Convention on the Civil Aspects of International Child Abduction;

AND WHEREAS the said Convention entered into force on the 1st December, 1983;

And WHEREAS the said Convention has for its main objective, to secure the prompt return of children wrongfully removed or retained in any contracting state, to ensure that rights of custody and of access under the law of one contracting state are respected in other contracting states;

AND WHEREAS it is considered necessary to provide for the prompt return of children wrongfully removed or retained in a contracting state, and to ensure that rights of custody and of access under the law of one contracting state are respected in other contracting states, and thereby to give effect to the provisions of the said Convention;

Be it enacted by Parliament in the sixty-fifth year of the Republic of India as follows:-

Chapter I

Preliminary

1. (1) This Bill may be called the Civil Aspects of International Child Abduction Bill, 2016

(2) It extends to the whole of India (except Jammu and Kashmir)

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

2. In this Act, unless the context otherwise requires,-

(a) "Applicant" means any person who, pursuant to the Convention, files an application with the Central Authority or a Central Authority of any other party to the Convention for the return of a child alleged to have been wrongfully removed or retained or for arrangements for organizing or securing the effective exercise of rights of access pursuant to the Convention;
(b) "Central Authority" means the Central Authority established under Section 4;
(c) "Contracting State" means a state signatory to the Hague Convention on the Civil Aspects of International Child Abduction;
(d) "Convention" means the Hague Convention on the Civil Aspects of International Child Abduction which was signed at the Hague on 25th October, 1980, as set out in the First Schedule;
(e) "Chairperson" means the Chairperson of the Central Authority;
(f) "Habitual residence" of a child is the place where the child resided with both parents; or, if the parents are living separately and apart, with one parent under a separation agreement or with the implied consent of the other parent or under a court order; or with a person other than a parent on a permanent basis for a significant period of time, whichever last occurred.
(g) "Member" means a member of the Central Authority and includes the Chairperson, if any;
(h) "prescribed" means prescribed by rules made under this Act;
(i) "Right of access" in relation to a child includes the right to take a child for a limited period of time to a place other than the child's habitual residence;

(j) “Right of custody” in relation to a child includes rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence.

3. (1) For the purposes of this Act, the removal to or the retention in India of a child is to be considered wrongful where –
   (a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the Contracting State in which the child was habitually resident immediately before the removal or retention; and
   (b) at the time of removal or retention those rights were actually exercised, either jointly or alone, by a person, an institution or any other body, or would have been so exercised, but for the removal or retention.

(2) The rights of custody mentioned in Sub-section (1)above, may arise in particular:

(a) by operation of law;

(b) by reason of judicial or administrative decision; or

(c) by reason of an agreement having legal effect under the law of the Contracting State in which the child was habitually resident immediately before the removal or retention.

Chapter II
Constitution, Powers and Functions of the Central Authority

4. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be appointed by the Central Government for the purposes of this Act, an officer of the Central Government not below the rank of Joint Secretary to the Government of India, to be called as the Central Authority.

(2) Such Central Authority shall, unless removed from office under Section xx, hold office for a period not exceeding three years or until he attains the age of sixty years, whichever is earlier.

(3) If a casual vacancy occurs in the office of the Central Authority, whether by reason of his death, termination or otherwise, such vacancy shall be filled within a period of ninety days by making afresh appointment in accordance with the provisions of sub-section (1)

and the person so appointed shall hold office for the remainder of the term of office for which the Central Authority in whose place he is so appointed would have held that office.

5. The Central Authority or any other authority on its behalf shall take all appropriate measures to perform all or any of the following functions, namely:-

(a) To discover the whereabouts of a child who has been wrongly removed to, or retained in, India, and where the child's place of residence in India is unknown, the Central Authority may obtain the assistance of the police to locate the child;

(b) To prevent further harm to any such child or prejudice to any other interested parties, by taking or causing to be taken, such provisional measures as may be necessary;

(c) To secure the voluntary return of any such child to the country in which such child had his or her habitual residence or to bring about an amicable resolution of the differences between the person claiming that such child has been wrongfully removed to, or retained in, India, and the person opposing the return of such child to the Contracting State in which such child has his or her habitual residence;

(d) To exchange, where desirable, information relating to any such child, with the appropriate authorities of a Contracting State;

(e) To provide, on request, information of a general character, as to the law of India in connection with the implementation of the Convention in any Contracting State;

(f) To institute judicial proceedings with a view to obtaining the return of any such child to the Contracting State in which that child has his or her habitual residence, and in appropriate cases, to make arrangements for organising or securing or to institute judicial proceedings for securing the effective exercise of rights of access to a child who is in India;

(g) Where circumstances so require, to facilitate the provision of legal aid or advice;

(h) To provide such administrative arrangements as may be necessary and appropriate to secure the safe return of any such child to the Contracting State in which the child has his or her habitual residence;

(i) Such other functions as may be necessary to ensure the discharge of India's obligations under the Convention.

6. The Central Authority shall, while inquiring into any matter referred to in Section 5, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular, in respect of the following matters, namely:

(1) summoning and enforcing the attendance of any person and examining him on oath;
(2) discovery and production of any document;
(3) receiving evidence on affidavit;
(4) requisitioning any public record or copy thereof from any court or office;
(5) issuing commissions for the examination of witnesses or documents.

Chapter III
Procedure for Applications to Central Authority

7. (1) The appropriate authority of a Contracting State, or a person, institution or other body claiming that a child has been wrongfully removed to or retained in India in breach of rights of custody, may apply to the Central Authority for assistance in securing the return of such child.

(2) Every application made under Sub-section (1) shall substantially be in the form prescribed in the rules to this Act.

(3) The application under Sub-section (1) may be accompanied by -
(a) A duly authenticated copy of any relevant decision or agreement giving rise to the rights of custody claimed to have been breached;
(b) A certificate or affidavit from a Central Authority or other competent authority of the Contracting State in which that child has his or her habitual residence or from a qualified person setting out the law of that Contracting State relating to the rights of custody alleged to have been breached;
(c) Any other relevant document.

8. Where, on receipt of an application under Section 6, the Central Authority has reason to believe that the child in respect of whom the application is made is in

another Contracting State, it shall forthwith transmit the application to the appropriate authority of that Contracting State, and shall accordingly inform the appropriate authority or the applicant, as the case may be.

9. Where the Central Authority is requested to provide information relating to a child under Section 5 (d), it may request a police officer to make a report to it in writing with respect to any matter relating to the child that appears to it to be relevant.

Chapter IV
Refusal by Central Authority to accept Applications

10. The Central Authority may refuse to accept an application made to it under Section 7 if it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded. On its refusal to accept an application, the Central Authority shall forthwith inform the appropriate authority or person, institution, or other body making the application, the reasons for such refusal.

11. The Central Authority should not reject an application solely on the basis that additional documents or information are needed. Where there is a need for such additional information or documents, the requested Central Authority may ask the applicant to provide these additional documents or information. If the applicant does not do so within a reasonable period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application.

12. Any party aggrieved by the refusal of the Central Authority to accept an application made under Section 7 may appeal against such refusal to the Secretary, Ministry of Women and Child Development, Government of India. Such appeal shall be made within 14 days from the date of receipt of the decision of the Central Authority.

Chapter V

Procedure for Application to High Court

13. Without prejudice to any other means for securing the return of a child in respect of whom an application has been made under Section 6, the Central Authority may apply to the High Court within whose territorial jurisdiction the child is physically present or was last known to be present for an order directing the return of such child to the Contracting State in which the child has his or her habitual residence.

14. Where an application is made to a High Court under Section 14, the Court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned, or of securing the child's residence pending the proceedings, or to prevent the child's return for being obstructed, or of otherwise preventing any change in the circumstances relevant to the determination of the application.

15. Where the High Court is satisfied, upon an application made to it under Section 10, that:-
    (a) The child in respect of whom the application has been made has been wrongfully removed to or retained in India within the meaning of Section 3; and,
    (b) A period of one year has not yet elapsed between the date of the alleged removal or retention and the date of such application;

    It shall forthwith order the return of such child to the Contracting State in which the child had his or her habitual residence;

    Provided that the High Court may order the return of a child to the Contracting State in which that child has his or her habitual residence even in a case where more than one year has elapsed between the date of the alleged removal or retention and the date of such application, unless it is satisfied that the child is settled in his or her new environment.

16. (1) Notwithstanding the provisions of Section 15, the High Court is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:

(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

(2) The High Court may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

(3) The return of the child may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

(4) In exercising its powers under this Section, the High Court shall have regard to any information relating to the social background of the child provided by the appropriate authority of the Contracting State in which that child has his or her habitual residence.

(5) The High Court shall not refuse to make an order under this Section for the return of a child to the Contracting State in which that child has his or her habitual residence, on the grounds only that there is in force, a decision of a court in India or a decision entitled to be recognised by a court in India relating to the custody of such a child, but the High Court shall, in making an order under Section 10, take into account the reasons for such decision.

17. (1) The appropriate authority, or a person, institution or other body of a Contracting State, may make an application to the Central Authority for assistance in securing effective exercise of rights of access of a person specified in the application to a child who is in India.

(2) An application made under Sub-section (1) shall be in such form in such manner as may be prescribed.

18. (1) Without prejudice to any other means for securing the exercise of rights of access of any person to a child in India, the Central Authority may apply to the High Court for an order of the Court for securing the effective exercise of those rights.

(2) Where the High Court is satisfied, on an application made to it under Sub-section (1), that the person who, or on whose behalf, such application is made has rights of access to the child specified in the application, it may make such order as may be necessary to secure the effective exercise of those rights of access, and any conditions to which they are subject.

19. (1) In ascertaining whether there has been a wrongful removal or retention within the meaning of Section 3, the High Court may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

(2) The High Court may, before making an order under Section 13 for the return of a child to the Contracting State in which that child has his or her habitual residence, request the central Authority to obtain from the relevant authorities of the Contracting State in which that child has his or her habitual residence, a decision or determination as to whether the removal to, or retention in, India, of that child, is wrongful under Section 3.

20. Upon making an order under Section 13 for the return of a child to the Contracting State in which that child has his or her habitual residence, the High Court may order the person who removed that child to India, or who retained that child in India, to pay the expenses incurred by the Central Authority. These expenses may include costs incurred in locating the child, costs of legal representation of the Central Authority, and costs incurred in returning the child to the Contracting State in which that child has his or her habitual residence.

21. An order made by the High Court under Section 13 shall not be regarded as a decision or determination on the merits of any question relating to the custody of the child to whom an order relates.

22. Where an order is made under Section 13 for the return of a child to the Contracting State in which that child has his or her habitual residence, the Central Authority shall cause such administrative arrangements as are necessary to be made in accordance with the order for the return of such child to such Contracting State.

Chapter VI
Application in respect of child removed from India

23. (1) A person, institution or other body in India claiming that a child has been wrongfully removed to a Contracting State or is being wrongfully retained in a Contracting State in breach of rights of custody of such person, institution or other body, may apply to the Central Authority for assistance in securing the return of that child to India.

(2) On receipt of an application under Sub-section (1), the Central Authority shall apply in the appropriate manner to the appropriate authority in the Contracting State to which such child is alleged to have been removed or in which such child is alleged to be retained, for assistance in securing the return of that child to India.

(3) The rights of custody mentioned in Sub-section (1)above, include rights of custody accruing to any person, institution or other body by operation of law;

(a) by reason of judicial or administrative decision; or

(b) by reason of an agreement having legal effect under the law of India.

24. The High Court may, on application made by or on behalf of the appropriate authority of the Contracting State, declare that the removal of a child to that Contracting State or the retention of that child in that Contracting State is wrongful within the meaning of Section 3.

Chapter VII
Rights of Access

25. A person, institution or other body in India claiming that a child has been wrongfully removed to a Contracting State or is being wrongfully retained in a Contracting State in breach of rights of access of such person, institution or other body, may apply to the Central Authority for assistance in organising or securing the effective exercise of rights of access.

26. An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of Contracting States in the same way as an application for the return of a child.

27. On receipt of an application under Sub-section (1), the Central Authority shall apply in the appropriate manner to the appropriate authority in the Contracting State to which such child is alleged to have been removed or in which such child is alleged to be retained, for assistance in making arrangements to organise or secure the effective exercise of rights of access.

Chapter VIII
Miscellaneous

28. (1) The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

(2) If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

29. The Central Authority shall submit an annual report to the Central Government through the Ministry of Women and Child Development in such form as may be prescribed.

30. No suit, prosecution or other legal proceeding shall lie against the Central Government, Central Authority or any member thereof or any person acting under the direction of the Central Authority, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder.

31. Every member of the Central Authority and every officer appointed in the Central Authority to exercise functions under this Act shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

32. (1) In the discharge of its functions under this Act, the Central Authority shall be guided by such directions on question of policy relating to national interest, as may be given to it by the Central Government.

(2) If any dispute arises between the Central Government and the Central Authority as to whether a question is or is not a question of policy relating to national purposes, the decision of the Central Government thereon shall be final.

33. The Central Authority shall furnish to the Central Government, such returns or other information with respect to its activities as the Central Government may from time to time require.

34. (1) The Central Government may, by notification, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) Form of application to Central Authority for assistance in securing the return of a child that has been wrongfully removed to or retained in India

(b) Form of application to Central Authority for assistance in securing the return of a child that has been wrongfully removed to or retained outside India

(c) Procedure for appointment of Chairman and Members of Central Authority/ recruitment of staff of Central Authority

(d) Procedure in case of refusal to accept an application by Central Authority under Section 7

(3) Every rule made under this Act (Sub-section (*1*))shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

35. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removal of the difficulty:

Provided that no order shall be made under this Section after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this Section shall be laid, as soon as may be after it is made, before each House of Parliament.

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National Commission for Women

Consultation on Draft "The International Child Removal and Retention Bill, 2016"

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