

CHAPTER II

An Insight into Parental Child Abduction

"Authored By - Shruti Singh"

- INTRODUCTION

"Parental Child Abduction is a Child Abuse" - Chris Smith

Akash, an Engineer from Bangalore living in California for 18 years, is frustrated and denied an opportunity to see his son living in India for the last four years. His divorced wife took their son to India with her in 2013 and never came back.

The news in the column of *THE HINDU* published about Sunny (name changed), a student of class 3rd in Chennai, gets emotional over seeing his friend being picked up by his father or enjoying and getting gifts from his grandma. He stays alone with his mother and hasn't seen his father or grandparents for years.

In above scenarios it can be seen that after the separation from marital relations, the couples separate, along with custody of children with anyone of the parents and common thing in both the situation is inaccessibility which is caused due to rigidity of our legal system that is nowhere sensitive for emotions. One of the problems behind all this is lack of access to Hague Convention. Society witnesses many cases going around where there is unilateral removal of child from Parents and in some cases, one of the parent who is deprive of custody of their child

loses all his sense and elopes by taking child with him or her to another place or country.

This instance is not discovered by Indian Law as an offence and no legal stand is given to child abduction by Parents in India. In India, if one Parent takes away the child from other and further refrains other from meeting the child, it is not recognized as criminal offence. In such case, Apart from fighting a civil battle there is no other remedy available with the Parent who suffers. In this Article, we will examine different aspects of Parental child Abduction regarding its causes, lacunae in law and speedy remedy available for it.

- ***WHAT IS EXACTLY PARENTAL CHILD ABDUCTION OR PARENTAL KIDNAPPING?***

“When a Parent takes away the child without the consent of another Parent it is termed as Parental Abduction.” In many cases of parental Abduction it is seen that the Parent who is deprived of child custody is often an Abductor and he or she is convicted of Parental Kidnapping. So, in case of Parental Kidnapping the Abductor is generally a known guardian of Child who has no ulterior motive to hurt child rather he does this Act in fear of losing the child care.

“Parental Abduction” is not titled as an offence under any specific Law in most of the states but

Many states have included this offence under the shade of general laws available for Abduction.

In case a Parent takes away the child from the custodial Parent without his or her consent, the Court will take into consideration following stated three factor to consider the Act as Parental Abduction or not-

- The legal status of the culpable Parent
- Order of the Court in regard to custody
- The intent of culpable Parent

Certain Circumstances Which Lead Parent to Kidnap Their Child:

- When Parent is deprived of Child's Custody by the order of the Court and he or she does not agree with the Court's Order.
- In cases when Parent fears harm to his or her child.
- In cases where one Parent has motive to take revenge from another.

Scenario when one Parent takes child away from another and is considered as Legal-

- When there is no order of the court regarding custody then both the spouses have equal Right towards child and child can be taken away by anyone of them.
- In cases of divorce where one Parent who has not received legal custody but is entitled to physical custody of the child can take away the child from another Parent who has legal custody. In case, a Parent has physical custody, the child cannot be taken away from him or her by another parent who has legal custody.

Scenario when one Parent takes child away from another and is considered as Illegal-

- In cases where a parent has sole physical custody and another parent takes away the child from him or her it would amount to parental Kidnapping.

- In case where both the Parents share legal custody and one of the Parent violated the visiting hours timing and did not let other parent take back child with him or her in such case that parent who is not allowing other Parent to take back child is violating the custody order and also he or she would be seen as offender of Parental Kidnapping.

This offence of Parental Abduction which I mentioned above has not been recognized under Indian Laws and due to which the matter of custody always remains a matter of war in the Indian Courts. Indian Courts are flooded with the cases where due to absence of absolute law for Parental Abduction, cases of abduction by one Parent knock the court as the case of child custody. It is mostly seen that one of the lagging point in these situation is that India has not signed Hague Conventions. So, let's discover in brief what the Hague Convention is.

- ***THE HAGUE CONVENTION, 1980***

The *Hague Convention of 1980 on the "Civil Aspects of International Child Abduction"* aims to guard from harmful effects of abduction and retention across international boundaries by laying down a procedure to initiate their prompt return. The "Child Abduction Section" provides information about the operation of the Convention and therefore the work of The Hague Conference in monitoring its implementation and promoting international co-operation within the area of child abduction.

The two main Objectives lay down by Hague Convention are-

- To shield the prompt return or retention of a child from the contracting state from where he or she was removed in a wrong manner to the place from where the child was removed.
- To keep an eye on whether rights of custody and of access under the law of one contracting state are effectively respected in other contracting states or not.

It was reported by *THE HINDU* that India is not a signatory to the Convention, although 98 countries, including Pakistan and Sri Lanka are. In the absence of a law on the issue, many NRI parents — mostly mothers — unilaterally relocate to India with the child, causing mental agony to both the child and the left-behind parent.

On June 22, 2016 the Ministry of Women and Child Development proposed a draft of Civil Aspects of International Child Abduction Bill, 2016. It was set on the site of the Ministry for remarks till July 13, 2016. This was considered as it was basic to have an empowering enactment in India before the increase to The Hague Convention. The proposed Bill, to be renamed as the Civil Aspects of International Child Abduction Bill, 2016, was set on the Ministry's site for remarks till July 13, 2016.

- ***HARMFUL EFFECTS OF PARENTAL CHILD ABDUCTION:***

In case of Parental Abduction, the abducting parent tries to keep secrecy about the displacement of child with him or her just because of fear of losing their child again and due to which parentally abducted child is negatively affected and faces issues like:-

- Children face the issue of getting adequate education.
 - The Parent, who abducts the child, pollutes the mind of child against other parent by conveying negative thoughts and bad image of other parent.
 - Child is directed by the Abducting Parent to lie in order to keep his identity anonymous and secret.
 - If Abducted child returns back to lawful custody of other Parent then fears of getting abduct again grabs the mind of child , just like the situation in case of child abuse.
 - The child when he gets to know that his own parent has abducted him or her, they face the hardship in trusting anyone, such situations often trace the path of loyalty conflict and feeling of getting betrayed even after reaching adulthood.
 - In cases where child when abducted was young and at the time when returned back to the Parent who has the custody fails in adjusting friendly with that Parent, as the child feels that he or she has returned to someone who is stranger and to them living with Parent who was left behind years ago itself feels like getting Abducted.
- ***WRIT OF HABEAS CORPUS: AN EXISTING REMEDY***

Habeas Corpus literally means “to produce the body” under which the court orders a person or agency to present the individual who is unlawfully detained or to present before the Court the valid reasons of detention.

This writ is generally filed in case where illegal detention takes place and Court directs the person who has illegal custody of person to be produced before it. Even in the case of child custody the parent who has taken away child from another parent who has the legal custody of

child, can recover his or her child by using remedy of Habeas Corpus. While Awarding custody of child the welfare of the child is foremost consideration and same award can be made in the proceedings of the Habeas Corpus without being referred to the domicile of parents.

In case of Manju Tiwari v. Rajendra Tiwari(AIR 1990 SC 1156)writ of Habeas Corpus was issued by the Supreme Court in the matter of custody of children between the parents in the U.S.A.

- **CONCLUSION**

By seeing the cases of Abduction by Parents it can be realized that in the scenario where relationship between the couples become toxic, they decide to end it and the most effected one, in this battle of getting separated are the innocent children's. Parents need to understand that no matter their relationship works no more and has become toxic of them but their child has love, affection and attachment with both the Parent.

It has been reported by various news sites that in India statistics on Parental Abduction are high and India still fails to recognize it as an independent criminal offence. If there would be absence of clear provisions, Indian Court will keep on struggling with the issue of child custody without reaching a reasonable end. Even the Parent who engages in Parental Abduction due to custody dispute needs to understand that this act often has short-term and long-term traumatic impacts on child.

There are several awareness programs being carried forward by organizations like "cry" which shields children from abuse and mishandles. There are several NGOs who are working for securing Child Rights and they have even

highlighted the issue of Parental Child Abduction to be addressed by the nation. This Offence of Parental Child Abduction is no way less than child abuse. India has no law against Parental abduction and it is still a challenging scenario for the largest democracy of the world to address this issue and protect the interest of the child.

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