



GOVERNMENT OF INDIA

LAW COMMISSION OF INDIA

Report No.263

**The Protection of Children (Inter-Country
Removal and Retention) Bill, 2016**

October 2016

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D.O.No.6(3)292/2016-LC(LS)

17th October, 2016

Shri Ravi Shankar Prasad Ji,

The protection of children is, nowadays, recognized as a critical issue of national importance. The principle of 'best interest of the child' can be found in the provisions of the Convention on the Rights of the Child, 1989 which came into force on 2nd September, 1990 and the Preamble and object of the Hague Convention, 1980. In brief, the desire to protect children must be based upon the true interpretation of their best interests.

The High Court of Punjab and Haryana, in **Seema Kapoor & Anr. v. Deepak Kapoor & Ors.** CR No.6449/2006 vide order dated 24.02.2016, referred the matter to the Law Commission of India "to examine multiple issues involved in inter-country, inter-parental child removal amongst families and thereafter to consider whether recommendations should be made for enacting a suitable law for signing the Hague Convention on child abduction."

The Law Commission of India examined the issues involved and found that the Commission had already examined the said issues and submitted the 218th Report titled "**Need to accede to the Hague Convention on the Civil Aspects of International Child Abduction (1980)**" on 30th March 2009, advising the Government of India to sign the Hague Convention on the Civil Aspects of International Child Abduction, 1980, which came into force on 1st December, 1983. While examining these issues, the Law Commission found that the Government of India has already prepared a draft of the "**Civil Aspects of International Child Abduction Bill, 2016**", which attempted to bring the Bill in consonance with the Hague Convention, 1980 and has been put on the website of the Ministry of Women and Child Development.

Appreciating the importance of the matter and the concerns raised from time to time, the Law Commission decided to examine the matter meticulously and examined the various provisions of the said Bill thoroughly. On perusal of the said Bill, the Law Commission is of the opinion that it requires revision keeping in view the Legislative precedents

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and practices followed in the drafting of Bills and to suitably harmonize its provisions with the Hague Convention 1980.

The Law Commission of India has prepared a comparative statement showing the provisions of the said Bill, placed on the website of the Ministry of Women and Child Development, and the revised Bill recommended by the Law Commission indicating the changes/modifications made by the Commission. The text of "THE PROTECTION OF CHILDREN (INTER-COUNTRY REMOVAL AND RETENTION) BILL, 2016" as recommended by the Law Commission is attached as Annexure-II. I believe this 263rd Report of the Law Commission addresses the concerns relating to children and their parents and makes an attempt to set the stage for India to sign the Hague Convention, 1980.

I am enclosing a copy of the Report number 263rd for consideration by the Government.

The Commission acknowledges the contribution made by Ms. Aditi Sawant, Consultant to the Commission in preparation of the Report.

with warmest regards.

Yours sincerely,


(Dr. Justice B.S. Chauhan)

Shri Ravi Shankar Prasad
Hon'ble Minister for Law & Justice
Shastri Bhawan,
New Delhi.

Report No. 263

The Protection of Children (Inter-Country Removal and Retention) Bill, 2016

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1. BACKGROUND

1.1 The High Court of Punjab and Haryana, in **Seema Kapoor & Anr. v. Deepak Kapoor & Ors.**, CR No.6449/2006 *vide* order dated 24.02.2016, referred the matter to the Law Commission of India “to examine multiple issues involved in inter-country, inter-parental child removal amongst families and thereafter to consider whether recommendations should be made for enacting a suitable law for signing the Hague Convention on child abduction.”

1.2 After receiving this reference, the Law Commission examined the issues involved and found that the Law Commission had already examined the said issues and submitted the 218th Report titled “**Need to accede to the Hague Convention on the Civil Aspects of International Child Abduction (1980)**” on 30 March 2009, advising the Government of India to sign the Hague Convention on the Civil Aspects of International Child Abduction, 1980, which came into force on 1st December, 1983 (hereinafter referred to as Hague Convention, 1980).

1.3 During the examination of the issues, the Commission also found that the Government of India has already prepared a draft of the “**Civil Aspects of International Child Abduction Bill, 2016**” (hereinafter referred to as the Bill), which is broadly in consonance and conformity with the Hague Convention, 1980. The said Bill has been put on the website of Ministry of Women and Child Development so that stakeholders may file their comments or make suggestions for improving the same.

2. INTRODUCTION

2.1 The world has become a global village. There is an increased movement of people from all cultures and backgrounds, due to the globalized job market. Thus, people from different countries and cultural backgrounds have optimistically created family units. More than three crores of Indians live in the foreign countries, having cross border matrimonial relationships. When such a kind of diverse family unit breaks down, children (sometimes babies) suffer, as they are dragged into international legal battle between their parents. Inter-spousal child removal can be termed as most unfortunate as the children are abducted by their own parents to India or to other foreign jurisdiction in violation of the interim/final orders of the *competent* courts or in violation of parental rights of the aggrieved parent. In such an eventuality, the child is taken to a State with a different legal system, culture and language. The child loses contact with the other parent and is transplanted in an entirely different society having different traditions and norms of life.

2.2 The preamble and object of the Hague Convention, 1980 and the International Child Abduction Bill, invokes the principle of 'best interests of the child'. In other words, the object of the aforementioned laws in obtaining the return of the child must be subordinate when considered against the child's interest. The desire to protect children must be based upon a true interpretation of their best interests.

2.3 The principle of 'best interests of the child' can also be found in the provisions of the Convention on the Rights of the Child, 1989, which came into force on 2nd September 1990. India ratified the Convention on 11th December, 1992. The Juvenile Justice (Care and Protection of Children) Act, 2000, (as re-enacted by Act 2 of 2016) defines the term 'best interests of the child' in clause (9) of section 2 as under:

‘ “best interest of child” means the basis for any decision taken regarding the child, to ensure fulfilment of his basic rights and

needs, identity, social well-being and physical, emotional and intellectual development.'

3. SOME JUDGEMENTS OF THE SUPREME COURT OF INDIA

3.1 In **re: McGrath (Infants)**, [1893] 1 Ch 143 Lindley LJ said:

“The dominant matter for the consideration of the Court is the welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare of the child must be considered as well as its physical well-being. Nor can the ties of affection be disregarded.”

3.2 These words are relevant even a century later, and have found place in various Indian judicial pronouncements. The Courts referred to the Convention on the Rights of the Child, 1989 and emphasized the importance of the principle of best interests of the child in **Laxmi Kant Pandey v. Union of India**, AIR 1984 SC 469; **Gaurav Jain V. Union of India**, AIR 1997 SC 2021; and **Nil Ratan Kundu v. Abhijit Kundu**, (2008) 9 SCC 413.

3.3 The Supreme Court in **Dr. V. Ravi Chandran v. Union of India**, (2010) 1 SCC 174; and **Arathi Bandi v. Bandi Jagadrakshaka Rao**, AIR 2014 SC 918, directed to return the respective children to the country of their ‘habitual residence’ on the principle of ‘comity of courts’ principle for the determination of their best interests and welfare which is the prime consideration.

3.4 In **Roxann Sharma v. Arun Sharma**, AIR 2015 SC 2232, the Apex Court deprecated the practice of ‘forum shopping’ requiring the entitlement of custody rights of the other spouse to be judicially determined. The Court observed that:

“...the child is not a chattel or a ball that is bounced to and fro the parents. It is only the child’s welfare which is the focal point for consideration”.

3.5 In such cases, the Court exercises its *parens patriae* jurisdiction to decide the best interests and welfare of the child. In view thereof, the issue of conflicting interests of the contesting parents remain insignificant. The Court exercise this extraordinary jurisdiction *de hors* the statutory right of the parties.

3.6 In **Ruchi Majoo v. Sanjeev Majoo**, AIR 2011 SC 1952, the Supreme Court emphasised that in case the child is not ‘ordinarily resident’ in the territorial limits of the Court, the Court must examine the matter independently.

3.7 Recently, the Supreme Court succinctly reiterated all principles, the Courts have applied over the course of years to judge cases of international parental abduction, in the case of **Surya Vadan****v. State of Tamil Nadu**, AIR 2015 SC 2243. The Court stated that:

- principle of ‘comity of courts and nations’ must be respected and the principle of ‘best interest and welfare of the child’ should apply;
- rule of ‘comity of courts’ should not be jettisoned except for compelling special reasons to be recorded in writing by a domestic court;
- interlocutory orders of foreign courts of competent jurisdiction regarding child custody must be respected by domestic courts; and
- an elaborate or summary enquiry by local courts when there is a pre-existing order of a competent foreign court must be based on reasons and should not be ordered as routine when a local court is seized of a child custody litigation.

3.8 To state it simply, the welfare of the child must have primary importance and secondly, the ‘principle of comity of courts’ – a principle of ‘self –restraint’, must be considered.

3.9 In cases, where the jurisdiction of the foreign court is not in doubt, the “first strike” principle could be applicable, namely, whichever court seized the matter first, ought to have prerogative of jurisdiction in adjudicating the welfare of the child. Further, whenever the matter is pending in a foreign court and interim order has been passed by the said court, the Indian court should not proceed with the matter.

3.10 It has repeatedly been held by the Courts that repatriation of the child to the foreign land should not (a) cause any moral, physical, social, cultural or psychological harm to the child; (b) cause any legal harm to the parent with whom the child is in India; (c) violate the fundamental principles of human rights and freedoms of the receiving country, i.e., where the child is being held and; (d) considering the child welfare principle, due importance must be given to the primary care-giver of the child.

3.11 More so, in such matters, it is of primary importance to decide whether the foreign court has jurisdiction over the child in question if the child is ‘ordinarily resident’ in the foreign court’s territorial jurisdiction, and, then the order of the foreign court must be given due weight and respect. No litigant can be permitted to defy and decline compliance to an interim or final order of a court merely, because one of the parents is of the opinion that the order is incorrect. (*vide* **Surya Vandanan v. State of Tamil Nadu**)

4. JUDGEMENTS OF SUPREME COURTS OF CANADA, UNITED KINGDOM AND UNITED STATES OF AMERICA

4.1 In **Thomson v. Thomson**, (1994) 3 SCR 551, the Supreme Court of Canada while dealing with the issue as what should be the magnitude of physical, moral or cultural harm, which may justify refusal of the order of return of the child to his or her 'habitual residence', explained that harm must be "to a degree that also amounts to intolerable situation". It must be a "weighty" risk of "substantial" psychological harm. "Something greater than that would normally be expected on taking a child away from one parent and passing him to another."

4.2 In **the matter of S (a Child)**, (2012) UKSC 10, the UK Supreme Court referred to its own judgment in **Re E (Children) (Abduction: Custody Appeal)**, (2011) UKSC 27, and observed that a defence under Article 13 (b) of the Hague Convention, 1980 could be founded upon the anxieties of a parent about a return with the child to the state of 'habitual residence', which were not based upon objective risk to her, but nevertheless of such intensity as to be likely to destabilise the parenting of that child to the point at which the child's situation would become intolerable.

4.3 The United States Supreme Court in **Lozano v. Montoya Alvarez**, 34 S.Ct. 1224 (2014), a Hague Convention, 1980, case in US, relating to domestic violence, recognized the impact of domestic violence on the child, observing:

"the return of the child may be refused if doing so would contravene fundamental principles relating to the protection of human rights and fundamental freedom."

5. DOMESTIC VIOLENCE IMPACTING CHILDREN

5.1 In case, a woman suffers from domestic violence and runs away along with the child from the place of 'habitual residence', though violence may not be against the child, it may have very serious impact and repercussions on the child. Thus, in such a case, the Court has to consider whether repatriation of the child would cause any moral, physical, social, cultural or psychological harm to the child or any other legal harm to the mother, with whom the child is in India or violates fundamental rights or human rights, as provided in the Hague Convention, 1980, itself.

5.2 Unfortunately, women involved in cross-jurisdictional divorces, 'holiday marriages' or 'limping marriages' have to face additional challenges in the custody battle, which also relate to jurisdiction, access to judicial recourse and resources. This may be viewed as a bias against the interests of women. The woman must not be put in a situation where she has to make the impossible choice between her children and putting up with abusive relationship in a foreign country. This kind of discord between the husband and wife also creates apprehension as to risk to the lives of the wife and her family members at the hands of the husband or others, and many a times, the party seeks police protection and the help of civil society/social workers.

5.3 Interestingly, the statistics, of particular import to the developing countries, where the conditions of women battling for divorce is deplorable, shows that globally, 68 per cent of the taking parents were mothers; 85 per cent of these respondent mothers were the primary caregivers of their children and 54 per cent had gone home to a country in which they held citizenship-even if that was not their 'habitual residence'.

6. SALIENT FEATURES OF THE HAGUE CONVENTION, 1980

6.1 Essentially, the Hague Convention, 1980 seeks to achieve two objectives namely—to protect a child from the harmful effect of such removal; and to secure prompt return and re-integration of the child in an environment of his or her ‘habitual residence’; and both these objectives correspond to the specific idea as to what constitutes the ‘best interest of the child’.

6.2 Salient features of the Hague Convention, 1980 are:

- It ensures rapid procedure for the return of the child wrongly removed to or retained in contracting party to its country of ‘habitual residence’;
- It ensures that rights of custody and of access under the law of one of the Contracting States are effectively respected in another Contracting State;
- It re-establishes *status quo ante* by returning the child to the country of ‘habitual residence’;
- A return order is not a final determination of the issue of custody, rather, it provides for return of the child to the jurisdiction which is most appropriate to determine the issues of custody and access; and
- Each country that has signed the Convention must have established a Central Authority, which processes such applications. The Convention lays down certain roles and functions of the Central Authority. This Authority must, *inter alia*, help locate children; encourage amicable solutions and; help process requests for return of children.

7. INITIATIVES OF THE GOVERNMENT OF INDIA

7.1 The recently drafted Indian Bill on International Parental Abduction is broadly in conformity with the Hague Convention, 1980 and mirrors its provisions. India is currently not a signatory to the Hague Convention, 1980. The Bill is an attempt to set the stage for India to sign the Convention.

- The Bill provides for the constitution of a Central Authority.
- A decision under the Hague Convention, 1980 concerning the return of the child is not a final determination on merits of the issue of custody.
- It outlines the role of the Central authorities with regard to a child, who is removed *to India, and from India to another Contracting State* of the Hague Convention, 1980.
- It lays down procedure for securing the return of a child and provides for the Central Authority to apply to the High Court for restoring custody of the child.
- It empowers the Court to deny custody on certain grounds. It allows the Courts in India to recognise decisions of State of the 'habitual residence' of the child. It also states that the Indian Court that wants to disregard the interim/final order of the foreign court must record reasons for the same.

7.2 The Bill empowers Indian Courts to seek a decision from Central Authorities of the Contracting State from which the child was removed.

7.3 So far as the Indian law as reflected in the provision of the Guardians and Wards Act, 1890 (8 of 1890) are concerned, the issue of custody of a child, remains always open and does not attain finality as it is always being considered to be temporary order made in existing circumstances. With the changed conditions and circumstances,

including the passage of time, the Court may vary such an order, if, it is so necessary in the interests and welfare of the child. The doctrines of 'estoppel' and 'res judicata' have no application in such a case (vide **Rosy Jacob v. Jacob A. Chakramakkal**, AIR 1973 SC 2090; and **Dr. Ashish Ranjan v. Dr. Anupama Tandon**, (2010) 14 SCC 274;)

8. CHILD ABDUCTION DISTINGUISHED FROM INTER-COUNTRY REMOVAL OF CHILDREN

8.1 Child abduction is dealt with stringently by most countries; but ‘abduction’ of the child across borders by his or her own parent is governed by a rather arcane corpus of laws. The heterogeneity of rules applicable to cases traditionally qualified as “child abduction cases” at both the national and the supranational level, add to the complexity of the legal treatment of “parental child abductions”.

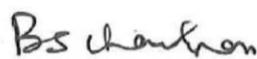
8.2 ‘Abduction’ is explained under section 362 of the Indian Penal Code, 1860 as an act compelling or taking away a person by deceitful means inducing him to go from any place. Abduction as such, is not simply an offence rather is an auxiliary act not punishable in itself, but when it is accompanied by an intention to commit another offence, it *per se* becomes punishable as an offence. In the case of ‘parental abduction’, these so-called ‘abductors’, are most of the times, loving parents. The child is taken away by a parent to any other place because of the fear of losing his/her custody i.e. such an abduction, as stated earlier, is out of overwhelming love and affection and not to harm the child or achieve any other ulterior purpose. Therefore, the Hague Convention, 1980, although uses the word ‘abduction’, it is not intended as in an ordinary case of abduction under criminal jurisprudence. As such, the word ‘abduction’ within the Hague Convention, 1980, is to be considered as short hand for a more appropriate terminology, “wrongful removal or retention” which appears throughout in the text of the Hague Convention, 1980. Hence, at the outset, the Law Commission is of the Opinion that the word ‘abduction’ in the current Bill, be dispensed with.

8.3 Be that as it may, wrongful removal and retention not only causes serious prejudice to the other parent, but may have a serious impact on the over-all development of the child. More so, such wrongful removal and retention may be in utter disregard or in violation of the

order of the competent court regarding custody of the child. In this backdrop, many countries have made such wrongful removal and retention a punishable offence. In United Kingdom, the **Child Abduction Act, 1984** has very stringent provisions making such wrongful removal and retention, as an offence punishable with the imprisonment up to seven years.

9. RECOMMENDATIONS

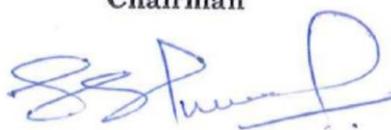
9.1 As the Law Commission of India has already submitted the Report and the Ministry of Women and Child Development has also drafted the Bill, we are of the considered opinion that submission of detailed report would not serve any purpose. However, on perusal of the draft Bill, the Law Commission is of the opinion that it requires revision keeping in view the foregoing discussions, the legislative precedents and practices followed in the drafting of Bills, and to suitably harmonise its provisions with the Hague Convention, 1980. A Comparative Statement showing the provisions of the draft Bill placed on the website of the Ministry of Women and Child Development and the Revised Bill recommended by the Law Commission of India indicating the changes/modifications made by the Law Commission is attached as **Annexure-I**. The text of the Protection of Children (Inter-Country Removal and Retention) Bill, 2016 as recommended by the Law Commission of India, is attached as **Annexure-II**.



[Justice Dr. B.S. Chauhan]
Chairman



[Justice Ravi R. Tripathi]
Member



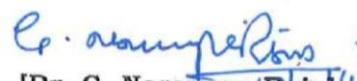
[Prof. (Dr.) S. Sivakumar]
Member



[Dr. Sanjay Singh]
Member-Secretary



[S. Suresh Chandra]
Ex-officio Member



[Dr. G. Narayana/Rajinikanth]
Ex-officio Member

Annexure-I

Comparative Statement showing the provisions of the draft Bill placed on the website of Ministry of Women and Child Development (WCD) and the Revised Bill recommended by the Law Commission of India

Bill prepared by WCD	Revised Bill
<p>THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION BILL, 2016</p> <p style="text-align: center;">A BILL</p>	<p>THE PROTECTION OF CHILDREN (INTER-COUNTRY REMOVAL AND RETENTION) BILL, 2016</p> <p style="text-align: center;">A Bill</p>
<p>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.</p> <p>WHEREAS the interests of children are of paramount importance in matters relating to their custody;</p> <p>AND WHEREAS India is a party to the Hague Convention on the Civil Aspects of International Child Abduction;</p> <p>AND WHEREAS the said Convention entered into force on the 1st December, 1983;</p> <p>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;</p> <p>AND WHEREAS it is considered necessary to provide for the prompt return of children wrongfully removed or retained in a contracting</p>	<p>to ensure 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 of the Contracting States are effectively respected in another Contracting States, and to establish a Central Authority, inter alia, for the purposes of providing assistance to help locate such children, encourage amicable solutions and help process of requests for return of children and for matters connected therewith or incidental thereto.</p> <p><i>WHEREAS</i> the best interests of children are of paramount importance in matters relating to their custody in view of the Convention on the Rights of the Child, 1989 which came into force on 2nd September, 1990;</p> <p><i>AND WHEREAS</i> the Hague Convention on the Civil Aspects of International Child Abduction, 1980, came into force on the 1st December, 1983;</p> <p><i>AND WHEREAS</i> it would be necessary to implement the said Convention in so far as they relate to an expeditious return of a child who has been wrongfully removed or retained in contracting party to its country of his or her habitual residence in violation of the custody rights or access rights;</p>

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;

Be it enacted by Parliament in the (_____) year of the Republic of India as follows:-

CHAPTER I Preliminary

1. Short title, extent, application and commencement.

- (1) This **Act** may be called the **Protection of Children (Inter-Country Removal and Retention) Act, 2016**.
- (2) It extends to the whole of India except the **State of** Jammu and Kashmir.
- (3) **The provisions of this Act shall apply to every child who has not completed sixteenth year of age and has either wrongfully removed to, or retained in India, irrespective of his or her nationality, religion, or status in India.**
- (4) 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 **any** such provision to the commencement of this Act shall be construed as a reference to the **commencement** of that provision.

2. Definitions

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 **State** 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 **said** Convention;
- (b) "Central Authority" means the Central Authority **constituted under section 4**;
- (c) "Contracting State" means a State signatory to the Hague Convention on the Civil Aspects of International Child Abduction;

<p>(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;</p> <p>(e) "Chairperson" means the Chairperson of the Central Authority;</p> <p>(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.</p> <p>(g) "Member" means a member of the Central Authority and includes the Chairperson, if any;</p> <p>(h) "prescribed" means prescribed by rules made under this Act;</p> <p>(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;</p> <p>(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.</p> <p>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 –</p> <p>(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</p> <p>(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.</p> <p>(2) The rights of custody mentioned in Sub-section (1) above, may arise in particular:</p>	<p>(d) "Convention" means the Hague Convention on the Civil Aspects of International Child Abduction which was signed at the Hague on the 25th October, 1980, as set out in the Schedule;</p> <p>(e) "Chairperson" means the Chairperson of the Central Authority;</p> <p>(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 of the 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 occurred last.</p> <p>(g) "member" means a member of the Central Authority and includes the Chairperson;</p> <p>(h) "prescribed" means prescribed by rules made under this Act;</p> <p>(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;</p> <p>(j) "right of custody" in relation to a child includes the right to take care of the person of the child, to make long-term decisions about child's development and well-being and, in particular, to determine the child's place of residence.</p> <p>3. Wrongful removal or retention</p> <p>(1) For the purposes of this Act, the removal to or the retention in India of a child is to be considered a wrongful act where –</p> <p>(a) such an act 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</p> <p>(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 shall have been so exercised, but for the removal or retention.</p> <p>(2) The rights of custody specified in the Act, may arise in particular—</p>
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- (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.

- (a) by operation of law; **or**
- (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 Central Authority

4. Constitution of Central Authority.

- (1) **The Central Government may, by notification in the Official Gazette, constitute an Authority to be called as the Central Authority to exercise the powers conferred on, and perform the functions assigned to it, under this Act.**
- (2) **The Central Authority shall consist of , -**
- (a) **a Chairperson, who is an officer not below the rank of Joint Secretary to the Government of India, and**
 - (b) **two members out of which at least one shall be an advocate with ten years of practicing experience and another member having such qualification, experience and expertise in matters related to inter-country removal or retention of child and child welfare as may be prescribed, to be appointed by the Central Government.**
- (3) **The tenure of the Chairperson or any member of the Central Authority shall be three years from the date on which he assumes office as such or till the age of his superannuation, whichever is earlier.**
- (4) **If a casual vacancy occurs in the office of the Chairperson or a member in the Central Authority, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled within a period of ninety days by making a fresh appointment in accordance with the provisions of sub-section (2) and the person so appointed shall hold the office for the remainder of the term**

<p>(5 - No such section proposed by WCD)</p> <p>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:-</p> <p>(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;</p> <p>(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;</p> <p>(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;</p> <p>(d) To exchange, where desirable, information relating to any such child, with the appropriate authorities of a Contracting State;</p> <p>(e) To provide, on request, information of a general character, as</p>	<p>of office of the person in whose place he is appointed.</p> <p>(5) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed.</p> <p>5. Appointment of officers and other staff of Central Authority:-</p> <p>(1) The Central Government may provide to the Central Authority, such officers and other staff as it considers necessary, for its efficient discharge of functions under this Act.</p> <p>(2) The salary and allowances payable to and other terms and conditions of service of the officers and other staff of the Central Authority shall be such as may be prescribed.</p> <p>6. Functions of Central Authority.</p> <p>The Central Authority or any other officer authorized by the Central Authority in this behalf, shall take all appropriate measures while performing all or any of the following functions, namely—</p> <p>(a) to discover the whereabouts of a child who has been wrongfully removed to, or retained in, India, or outside India, and in case where the child's place of residence in India is not known, the Central Authority may obtain the assistance of the police to locate the child;</p> <p>(b) to prevent further harm to any such child or prejudice to any other interested parties, by taking or causing to be taken, such measures as may be considered necessary;</p> <p>(c) to secure the voluntary return of any such child to the country in which the 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 the child has his or her habitual residence;</p> <p>(d) to exchange, where desirable, information relating to any such child, with the appropriate authorities of a contracting State.</p>
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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.

(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 **secure** 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 instituting 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 **providing** legal aid or advice;

(h) to **make** 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.

7. Powers of Central Authority.

The Central Authority shall, **have for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court** under the Code of Civil Procedure, 1908 (**5 of 1908**) while trying a suit, in respect of the following matters, namely:-

- (1) summoning and enforcing the attendance of any person and examining him on oath;
- (2) **requiring the** discovery and production of documents;
- (3) receiving evidence on affidavits;
- (4) **subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872),** requisitioning any public record or **document or a copy of such record or document**, from any 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 III
Procedure for Application to Central Authority

8. Procedure for making application to Central Authority.

- (1) The appropriate authority of a contracting State, or a person, institution or **any** other body claiming that a child has been wrongfully removed to, or retained in India in breach of **the** rights of custody, may apply to the Central Authority for assistance in securing the return of **the** child.
- (2) Every application made under sub-section (1) **shall be in such form as may be** prescribed.
- (3) The application under sub-section (1) **shall** be accompanied by—
- (a) a duly authenticated copy of 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 **any** other competent authority of the contracting State in which that child has his or her habitual residence or from **an attorney or** 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.

9. Transfer of applications to contracting State.

Where, on receipt of an application under **section 8**, the Central Authority has reason to believe that the child in respect of whom the application **has been** 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 **as the case may be, the applicant referred to in sub-section(1) of section 8.**

10. Calling Report from Police.

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

Where the Central Authority is requested to provide information relating to a child under clauses (a) and (d) of section 6, it may call for a report from the police in writing with respect to any matter relating to the child that appears to the Central Authority to be relevant.

CHAPTER IV
Refusal by Central Authority to accept Applications

11. Refusal by Central Authority to accept Applications.

- (1) The Central Authority may refuse to accept an application made to it under section 8, if it is manifest that the requirements of the Convention are not fulfilled or that the application is **otherwise not complete**.
- (2) The Central Authority **on its refusal to accept an application**, shall forthwith inform the appropriate authority or person, institution, or **any** other body making the application, the reasons for such refusal.

12. Additional Information.

- (1) The Central Authority **shall** not reject an application solely on the **ground** that additional documents or information are needed.
- (2) The Central Authority may, **where there is a need for such additional information or documents**, ask the applicant to provide these additional documents or information, **and** if the applicant does not do so within a reasonable period specified by the Central Authority, **it may decide not to** process the application.

13. Appeal to Central Government.

- (1) Any party aggrieved by the refusal of the Central Authority to accept an application made under section 8, may appeal against such refusal **to the Central Government in such manner as may be prescribed**.
- (2) Such an appeal shall be made within **a period of** fourteen days from the date of receipt of the decision of the Central Authority; **and the appeal shall be disposed off as early as possible but not later than six weeks from the date of receiving of the appeal**.

CHAPTER V

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;

Procedure for Application to High Courts

14. Power of Central Authority to apply to the High Court.

Without prejudice to any other means for securing the return of a child in respect of whom an application has been made under **section 8**, 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.

15. Interim Order by High Courts.

Where an application is made to **the** 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 purpose of securing the welfare of the child concerned, **or for making such provisions for the child**, pending the proceedings, or to prevent the child's **return, or for otherwise** preventing any change in the circumstances relevant to the determination of the application.

16. Power of High Courts to return child to contracting State.

Where the High Court is satisfied, upon an application made to it under **section 14**, 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 elapsed between the date of the alleged removal or retention and the date of such application;

it may order the return of such child to the contracting State in which the child has 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, **if the High Court** is satisfied that the child is not settled in his or her new environment.

17. Possible exceptions to the return of the child

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.

(1) Notwithstanding **anything contained in** section 16, the High Court may not pass the order of return of the child if the person, institution or **any** other body, **opposing the return**, establishes that-

(a) the person, institution or **any** 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 has consented to or subsequently acquiesced in the removal or retention; or

(b) there is a grave risk that **the return of the child** would expose the child to physical or psychological harm or otherwise place the child in a **non-conducive** situation.

(c) **the person who is allegedly involved in wrongful removal or retention, was fleeing from any incidence of 'domestic violence' as defined in section 3 of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005).**

(2) The High Court may refuse to order the return of the child if -

(a) **the court** finds that the child objects to being returned and has attained an age **and level** of maturity at which it is appropriate to take **into account of his or her** views;

(b) the return is not permitted **under** the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms;

(c) **the High Court, while** exercising powers under this section, **considers** 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, **as inappropriate**;

(3) The High Court may 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-

(i) that there is in force, a decision of a court in India or,

(ii) a decision entitled to be recognised by a court in India relating to the custody of such child:

Provided that the High Court shall record reasons while passing such orders relating to the return of a child.

18. Rights of access of person, institution or any other body to a child in India.

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.

(1) The appropriate authority, or a person, institution or **any** 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 and in such manner as may be prescribed.

19. Application to the High Court for exercise of rights of access of any person to a child in India.

(1) Without prejudice to any other means for securing the exercise of rights of access of any person, institution or **any other** body of the contracting State 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, **the court may, subject to such conditions as may be considered necessary, make an order to secure the effective exercise of those rights of access.**

20. Relaxation of requirements of proof of foreign law.

(1) **The High Court, while** ascertaining whether there has been a wrongful removal or retention within the meaning of section 3, **may take notice 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 15** for the return of a child to the Contracting State in which that child has his or her habitual residence; **direct the Central Authority**, to obtain from the **concerned** 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 **within the meaning of** section 3.

21. Costs.

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

(1) The High Court may, while making an order under section 15 for the return of a child to the contracting State in which that child has his or her habitual residence, order the person who removed that child to India, or who retained the child in India, to pay the expenses incurred by the Central Authority.

(2) The expenses referred to in sub-section (1), may include costs incurred in locating the child, costs of legal proceedings incurred by the Central Authority, and costs incurred in returning the child to the contracting State in which that child has his or her habitual residence.

22. Adjudication not to cover determination of custody rights of parent.

An order made by the High Court under **section 16** shall not be regarded as a decision or determination on the merits of any question relating to the custody of the child to whom **the** order relates.

23. Arrangements to return a child to Contracting State.

Where an order is made under **section 16** 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 **the** child to such contracting State **within a period of sixty days from the date of such order.**

CHAPTER VI **Application in respect of child removed from India**

24. Application to Central Authority for return of child to India.

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

(2) Every application made under sub-section (1) shall be made in such form as may be prescribed.

(3) On receipt of an application under sub-section (1), the Central Authority shall **forthwith** apply to the appropriate authority, **in the manner, if any, specified** in the contracting State to which **the** child is alleged to have been removed or retained, for assistance in securing the return of that child to India.

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.

(28. No such provision made by WCD)

(Provision relating to Declaratory Powers of High Court not necessary in view of clause 16)

CHAPTER VII Rights of Access

- 25. Rights of access of person, institution or body in India.**
A person, institution or **any** other body in India claiming that a child has been wrongfully removed to, or is being retained in, a Contracting State in breach of **the** rights of access of such person, institution or **any** other body, may apply to the Central Authority for assistance in organising or securing the effective exercise of **the** rights of access, **in such form as may be prescribed.**
- 26. Application to Central Authority of Contracting State to exercise rights of access of any person, institution or body in India.**
An application to make arrangements for organising or securing the effective exercise of rights of access **under section 25 shall be** presented forthwith to the Central Authority of the Contracting State in the same **manner** as an application for the return of a child **under section 24.**
- 27. Coordination between Central Authorities to secure rights of access.**
On receipt of an application under **section 26**, the Central Authority shall **forthwith** apply to the appropriate authority, **in the manner if any, specified**, in the Contracting State to which **the** child is alleged to have been **wrongfully** removed, or retained, for assistance in making arrangements to **secure, or** organise the effective exercise of rights of access.

CHAPTER VIII

(29. No such provision made by WCD)

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.

(clauses 29 & 33 made by WCD – has been merged in clause 31 prepared by the Commission)

Offences and Penalties

28. Punishment for wrongful removal or retention.

Whoever wrongfully removes or retains a child either himself or through other person from the custody of a parent in terms of sub-section (2) of section 3 of this Act, is said to commit the offence of wrongful removal or retention, and shall, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees or with both.

29. Punishment for willful misrepresentation or concealment of fact.

Whoever, by willful misrepresentation, or by concealment of a material fact, which he is bound to disclose, related to the location or information of the child under clause (a) of section 6, voluntarily causes to prevent the safe return of the child in pursuance to an order made under section 15 or section 16 of this Act shall be guilty of an offence punishable with imprisonment for a term which may extend to three months or with fine which may extend to five thousand rupees or with both.

CHAPTER IX Miscellaneous

30. Expeditious process.

(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 **a period of** six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own **motion** or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for delay.

(3) If **any information** or reply is received by the Central Authority of the requested State, that Authority shall transmit the **same** to the Central Authority of the requesting State, or to the applicant, as the case may be.

31. Reports and returns

(1) The Central Authority shall submit an annual report giving full account of its activities under this Act to the Central Government **in such** form as may be

<p>(32. No such provision made by WCD)</p> <p>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.</p> <p>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.</p> <p>32. (1) In the discharge of its functions under this Act, the Central</p>	<p>prescribed.</p> <p>(2) The Central Authority shall in addition to the report under sub-section (1) furnish such returns or other relevant information with respect to its activities as the Central Government may from time to time require.</p> <p>(3) The report submitted under sub-section (1) shall contain a full account of -</p> <ul style="list-style-type: none"> (a) a brief record of applications for the return of children submitted by applicants to the Central Authority. (b) detailed information on applications for the return of children that remain pending for more than one year after the date of filing and information on the current status of such children and specific actions taken by the Central Authority to resolve such cases. (c) A list of countries to which the children mentioned in clause (b) have been wrongfully removed to or retained in, countries which have failed to comply with their obligations set out in the Convention with respect to, return of children, access to children by applicants in India. <p>(4) The Central Authority shall inform to the parent, who has requested assistance regarding a wrongfully removed or retained child, once in every six months, except where the case has been closed by the Central Authority and the reason for the same has been conveyed to the person, institution or body seeking such assistance.</p> <p>32. Maintenance of Records. The Central Authority shall maintain detailed and updated records concerning the applications, and, or cases brought to its notice under this Act in such manner as may be prescribed.</p> <p>33. Protection of action taken in good faith. No suit, prosecution or other legal proceeding shall lie against the Central Government, Central Authority or any member or officer thereof or any officer acting under the authorization 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.</p>
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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

34. Members and officers of Central Authority to be public servants

Every member and officer of the Central Authority **and the officer authorized by the Authority to perform functions under this Act** shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, **1860** (45 of 1860).

35. Power to give directions.

(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 interests, the decision of the Central Government thereon shall be final.

36. Power of Central Government to make rules.

(1) The Central Government may, by notification **in the official Gazette**, make rules to carry out the **purposes** of this Act.

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

(a) **qualifications and experience for appointment of Members of Central Authority under clause (b) of sub-section (2) of section 4 ;**

(b) **the salary and allowances and terms and conditions of service of Chairperson and Members under sub-section (5) of section 4;**

(c) **the salary and allowances and terms and conditions of service of officers and staff of the Central Authority under sub-section (2) of section 5;**

(d) **form of application to Central Authority for assistance in securing return of child wrongfully removed or retained in India, under sub-section (2) of section 8;**

(e) **procedure for making appeal to the Central Government in case of refusal to accept the application by the Central Authority under sub-**

<p>(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.</p> <p>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:</p> <p>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.</p> <p>(2) Every order made under this Section shall be laid, as soon as may be after it is made, before each House of Parliament.</p>	<p>section (1) of section 13;</p> <p>(f) form of application to Central Authority for assistance in securing exercise of rights of access to a child in India, under sub-section (2) of section 18;</p> <p>(g) form of application to Central Authority for assistance in securing return of child wrongfully removed to or retained in the Contracting State under sub-section (2) of section 24;</p> <p>(h) the form of application for assistance in organizing or securing the rights of access to a child wrongfully removed to or retained in a Contracting State under section 25; and</p> <p>(i) the form in which annual report shall be prepared under sub-section(1) of section 31;</p> <p>(3) Every rule made under this Act 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.</p> <p>37. Power to remove difficulties.</p> <p>(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.</p> <p><i>Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.</i></p> <p>(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.</p>
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**THE PROTECTION OF CHILDREN (INTER-COUNTRY REMOVAL AND RETENTION)
BILL, 2016**

A
Bill

to ensure 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 of the Contracting States are effectively respected in another Contracting States, and to establish a Central Authority, inter alia, for the purposes of providing assistance to help locate such children, encourage amicable solutions and help process of requests for return of children and for matters connected therewith or incidental thereto.

WHEREAS the best interests of children are of paramount importance in matters relating to their custody in view of the Convention on the Rights of the Child, 1989 which came into force on 2nd September, 1990;

AND WHEREAS the Hague Convention on the Civil Aspects of International Child Abduction, 1980, came into force on the 1st December, 1983;

AND WHEREAS it would be necessary to implement the said Convention in so far as they relate to an expeditious return of a child who has been wrongfully removed or retained in contracting party to its country of his or her habitual residence in violation of the custody rights or access rights;

Be it enacted by Parliament in the (_____) year of the Republic of India as follows:-

**CHAPTER I
Preliminary**

2. Short title, extent, application and commencement.

- (1) This Act may be called the Protection of Children (Inter-Country Removal and Retention) Act, 2016.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) The provisions of this Act shall apply to every child who has not completed sixteenth year of age and has either wrongfully removed to, or retained in India, irrespective of his or her nationality, religion, or status in India.
- (4) 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 any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

2. Definitions

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 State party to the Convention for the return of a child alleged to have been wrongfully removed or retained, or for arrangements for organising or securing the effective exercise of rights of access pursuant to the said Convention;
- (b) “Central Authority” means the Central Authority constituted 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 the 25th October, 1980, as set out in the 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 of the 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 occurred last.
- (g) "member" means a member of the Central Authority and includes the Chairperson;
- (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 the right to take care of the person of the child, to make long-term decisions about child's development and well-being and, in particular, to determine the child's place of residence.

3. Wrongful removal or retention

- (1) For the purposes of this Act, the removal to or the retention in India of a child is to be considered a wrongful act where –
 - (a) such an act 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 shall have been so exercised, but for the removal or retention.
- (2) The rights of custody specified in the Act, may arise in particular—
 - (a) by operation of law; or
 - (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 Central Authority

4. Constitution of Central Authority.

- (1) The Central Government may, by notification in the Official Gazette, constitute an Authority to be called as the Central Authority to exercise the powers conferred on, and perform the functions assigned to it, under this Act.
- (2) The Central Authority shall consist of , -
 - (a) a Chairperson, who is an officer not below the rank of Joint Secretary to the Government of India, and
 - (b) two members out of which at least one shall be an advocate with ten years of practicing experience and another member having such qualification, experience and expertise in matters related to inter-country removal or retention of child and child welfare as may be prescribed, to be appointed by the Central Government.
- (3) The tenure of the Chairperson or any member of the Central Authority shall be three years from the date on which he assumes office as such or till the age of his superannuation, whichever is earlier.

- (4) If a casual vacancy occurs in the office of the Chairperson or a member in the Central Authority, whether by reason of his death, resignation or inability to discharge his functions owing to illness or other incapacity, such vacancy shall be filled within a period of ninety days by making a fresh appointment in accordance with the provisions of subsection (2) and the person so appointed shall hold the office for the remainder of the term of office of the person in whose place he is appointed.
- (5) The salary and allowances payable to, and the other terms and conditions of service of, the Chairperson and other Members shall be such as may be prescribed.

5. Appointment of officers and other staff of Central Authority.

- (1) The Central Government may provide to the Central Authority, such officers and other staff as it considers necessary, for its efficient discharge of functions under this Act.
- (2) The salary and allowances payable to and other terms and conditions of service of the officers and other staff of the Central Authority shall be such as may be prescribed.

6. Functions of Central Authority.

The Central Authority or any other officer authorized by the Central Authority in this behalf, shall take all appropriate measures while performing all or any of the following functions, namely—

- (a) to discover the whereabouts of a child who has been wrongfully removed to, or retained in, India, or outside India, and in case where the child's place of residence in India is not known, 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 measures as may be considered necessary;
- (c) to secure the voluntary return of any such child to the country in which the 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 the 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 secure 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 instituting 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 providing legal aid or advice;
- (h) to make 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.

7. Powers of Central Authority.

The Central Authority shall, have for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:-

- (1) summoning and enforcing the attendance of any person and examining him on oath;
- (2) requiring the discovery and production of documents;
- (3) receiving evidence on affidavits;
- (4) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy of such record or document, from any office;
- (5) issuing commissions for the examination of witnesses or documents.

Chapter III Procedure for Application to Central Authority

8. Procedure for making application to Central Authority.

- (1) The appropriate authority of a contracting State, or a person, institution or any other body claiming that a child has been wrongfully removed to, or retained in India in breach of the rights of custody, may apply to the Central Authority for assistance in securing the return of the child.
- (2) Every application made under sub-section (1) shall be in such form as may be prescribed.
- (3) The application under sub-section (1) shall be accompanied by—
 - (a) a duly authenticated copy of 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 any other competent authority of the contracting State in which that child has his or her habitual residence or from an attorney or 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.

9. Transfer of applications to contracting State.

Where, on receipt of an application under section 8, the Central Authority has reason to believe that the child in respect of whom the application has been 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 as the case may be, the applicant referred to in sub-section(1) of section 8.

10. Calling Report from Police.

Where the Central Authority is requested to provide information relating to a child under clauses (a) and (d) of section 6, it may call for a report from the police in writing with respect to any matter relating to the child that appears to the Central Authority to be relevant.

CHAPTER IV

Refusal by Central Authority to accept Applications

11. Refusal by Central Authority to accept Applications.

- (1) The Central Authority may refuse to accept an application made to it under section 8, if

it is manifest that the requirements of the Convention are not fulfilled or that the application is otherwise not complete.

- (2) The Central Authority on its refusal to accept an application, shall forthwith inform the appropriate authority or person, institution, or any other body making the application, the reasons for such refusal.

12. Additional Information.

- (1) The Central Authority shall not reject an application solely on the ground that additional documents or information are needed.
- (2) The Central Authority may, where there is a need for such additional information or documents, ask the applicant to provide these additional documents or information, and if the applicant does not do so within a reasonable period specified by the Central Authority, it may decide not to process the application.

13. Appeal to Central Government.

- (1) Any party aggrieved by the refusal of the Central Authority to accept an application made under section 8, may appeal against such refusal to the Central Government in such manner as may be prescribed.
- (2) Such an appeal shall be made within a period of fourteen days from the date of receipt of the decision of the Central Authority; and the appeal shall be disposed off as early as possible but not later than six weeks from the date of receiving of the appeal.

CHAPTER V

Procedure for Application to High Courts

14. Power of Central Authority to apply to the High Court.

Without prejudice to any other means for securing the return of a child in respect of whom an application has been made under section 8, 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.

15. Interim Order by High Courts.

Where an application is made to the 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 purpose of securing the welfare of the child concerned, or for making such provisions for the child, pending the proceedings, or to prevent the child's return, or for otherwise preventing any change in the circumstances relevant to the determination of the application.

16. Power of High Courts to return child to contracting State.

Where the High Court is satisfied, upon an application made to it under section 14, 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 elapsed between the date of the alleged removal or retention and the date of such application;

it may order the return of such child to the contracting State in which the child has 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, if the High Court is satisfied that the child is not settled in his or her new environment.

17. Possible exceptions to the return of the child

- (1) Notwithstanding anything contained in section 16, the High Court may not pass the order of return of the child if the person, institution or any other body, opposing the return, establishes that-
 - (a) the person, institution or any 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 has consented to or subsequently acquiesced in the removal or retention; or
 - (b) there is a grave risk that the return of the child would expose the child to physical or psychological harm or otherwise place the child in a non-conducive situation.
 - (c) the person who is allegedly involved in wrongful removal or retention, was fleeing from any incidence of 'domestic violence' as defined in section 3 of the Protection of Women from Domestic Violence Act, 2005 (43 of 2005).
- (2) The High Court may refuse to order the return of the child if -
 - (a) the court finds that the child objects to being returned and has attained an age and level of maturity at which it is appropriate to take into account of his or her views;
 - (b) the return is not permitted under the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms;
 - (c) the High Court, while exercising powers under this section, considers 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, as inappropriate;
- (3) The High Court may 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-
 - (i) that there is in force, a decision of a court in India or,
 - (ii) a decision entitled to be recognised by a court in India relating to the custody of such child:Provided that the High Court shall record reasons while passing such orders relating to the return of a child.

18. Rights of access of person, institution or any other body to a child in India.

- (1) The appropriate authority, or a person, institution or any 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 and in such manner as may be prescribed.

19. Application to the High Court for exercise of rights of access of any person to a child in India.

- (1) Without prejudice to any other means for securing the exercise of rights of access of any person, institution or any other body of the contracting State 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, the court may, subject to such conditions as may be considered necessary, make an order to secure the effective exercise of those rights of access.

20. Relaxation of requirements of proof of foreign law.

- (1) The High Court, while ascertaining whether there has been a wrongful removal or retention within the meaning of section 3, may take notice 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 15 for the return of a child to the Contracting State in which that child has his or her habitual residence; direct the Central Authority, to obtain from the concerned 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 within the meaning of section 3.

21. Costs.

- (1) The High Court may, while making an order under section 15 for the return of a child to the contracting State in which that child has his or her habitual residence, order the person who removed that child to India, or who retained the child in India, to pay the expenses incurred by the Central Authority.
- (2) The expenses referred to in sub-section (1), may include costs incurred in locating the child, costs of legal proceedings incurred by the Central Authority, and costs incurred in returning the child to the contracting State in which that child has his or her habitual residence.

22. Adjudication not to cover determination of custody rights of parent.

An order made by the High Court under section 16 shall not be regarded as a decision or determination on the merits of any question relating to the custody of the child to whom the order relates.

23. Arrangements to return a child to Contracting State.

Where an order is made under section 16 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 the child to such contracting State within a period of sixty days from the date of such order.

CHAPTER VI

Application in respect of child removed from India

24. Application to Central Authority for return of child to India.

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

- assistance in securing the return of that child to India.
- (2) Every application made under sub-section (1) shall be made in such form as may be prescribed.
 - (3) On receipt of an application under sub-section (1), the Central Authority shall forthwith apply to the appropriate authority, in the manner, if any, specified in the contracting State to which the child is alleged to have been removed or retained, for assistance in securing the return of that child to India.

CHAPTER VII

Rights of Access

25. Rights of access of person, institution or body in India.

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

26. Application to Central Authority of Contracting State to exercise rights of access of any person, institution or body in India.

An application to make arrangements for organising or securing the effective exercise of rights of access under section 25 shall be presented forthwith to the Central Authority of the Contracting State in the same manner as an application for the return of a child under section 24.

27. Coordination between Central Authorities to secure rights of access.

On receipt of an application under section 26, the Central Authority shall forthwith apply to the appropriate authority, in the manner if any, specified, in the Contracting State to which the child is alleged to have been wrongfully removed, or retained, for assistance in making arrangements to secure, or organise the effective exercise of rights of access.

CHAPTER VIII

Offences and Penalties

28. Punishment for wrongful removal or retention.

Whoever wrongfully removes or retains a child either himself or through other person from the custody of a parent in terms of sub-section (2) of section 3 of this Act, is said to commit the offence of wrongful removal or retention, and shall, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees or with both.

29. Punishment for wilful misrepresentation or concealment of fact.

Whoever, by wilful misrepresentation, or by concealment of a material fact, which he is bound to disclose, related to the location or information of the child under clause (a) of section 6, voluntarily causes to prevent the safe return of the child in pursuance to an order made under section 15 or section 16 of this Act shall be guilty of an offence punishable with imprisonment for a term which may extend to three months or with fine which may extend to five thousand rupees or with both.

CHAPTER IX

Miscellaneous

30. Expeditious process.

- (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 a period of six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own motion or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for delay.
- (3) If any information or reply is received by the Central Authority of the requested State, that Authority shall transmit the same to the Central Authority of the requesting State, or to the applicant, as the case may be.

31. Reports and returns

- (1) The Central Authority shall submit an annual report giving full account of its activities under this Act to the Central Government in such form as may be prescribed.
- (2) The Central Authority shall in addition to the report under sub-section (1) furnish such returns or other relevant information with respect to its activities as the Central Government may from time to time require.
- (3) The report submitted under sub-section (1) shall contain a full account of -
 - (a) a brief record of applications for the return of children submitted by applicants to the Central Authority.
 - (b) detailed information on applications for the return of children that remain pending for more than one year after the date of filing and information on the current status of such children and specific actions taken by the Central Authority to resolve such cases.
 - (c) A list of countries to which the children mentioned in clause (b) have been wrongfully removed to or retained in, countries which have failed to comply with their obligations set out in the Convention with respect to, return of children, access to children by applicants in India.
- (4) The Central Authority shall inform to the parent, who has requested assistance regarding a wrongfully removed or retained child, once in every six months, except where the case has been closed by the Central Authority and the reason for the same has been conveyed to the person, institution or body seeking such assistance.

32. Maintenance of Records.

The Central Authority shall maintain detailed and updated records concerning the applications, and, or cases brought to its notice under this Act in such manner as may be prescribed.

33. Protection of action taken in good faith.

No suit, prosecution or other legal proceeding shall lie against the Central Government, Central Authority or any member or officer thereof or any officer acting under the authorization 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.

34. Members and officers of Central Authority to be public servants

Every member and officer of the Central Authority and the officer authorized by the Authority to perform functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860 (45 of 1860).

35. Power to give directions.

- (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 interests, the decision of the Central Government thereon shall be final.

36. Power of Central Government to make rules.

- (1) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely:-
 - (a) qualifications and experience for appointment of Members of Central Authority under clause (b) of sub-section (2) of section 4 ;
 - (b) the salary and allowances and terms and conditions of service of Chairperson and Members under sub-section (5) of section 4;
 - (c) the salary and allowances and terms and conditions of service of officers and staff of the Central Authority under sub-section (2) of section 5;
 - (d) form of application to Central Authority for assistance in securing return of child wrongfully removed or retained in India, under sub-section (2) of section 8;
 - (e) procedure for making appeal to the Central Government in case of refusal to accept the application by the Central Authority under sub-section (1) of section 13;
 - (f) form of application to Central Authority for assistance in securing exercise of rights of access to a child in India, under sub-section (2) of section 18;
 - (g) form of application to Central Authority for assistance in securing return of child wrongfully removed to or retained in the Contracting State under sub-section (2) of section 24;
 - (h) the form of application for assistance in organizing or securing the rights of access to a child wrongfully removed to or retained in a Contracting State under section 25; and
 - (i) the form in which annual report shall be prepared under sub-section(1) of section 31;
- (3) Every rule made under this Act 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.

37. Power to remove difficulties.

- (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 such 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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