

## **THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION BILL, 2016**

### **A BILL**

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

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

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

AND WHEREAS the said Convention entered into force on the 1<sup>st</sup> December, 1983;

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

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

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

## **Chapter I**

### **Preliminary**

- 1.(1) This Bill may be called the Civil Aspects of International Child Abduction Bill, 2016
- (2) It extends to the whole of India (except Jammu and Kashmir)
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

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

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

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

- (j) “Right of custody” in relation to a child includes rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence.
3. (1) For the purposes of this Act, the removal to or the retention in India of a child is to be considered wrongful where –
- 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
  - at the time of removal or retention those rights were actually exercised, either jointly or alone, by a person, an institution or any other body, or would have been so exercised, but for the removal or retention.
- (2) The rights of custody mentioned in Sub-section (1) above, may arise in particular:
- by operation of law;
  - by reason of judicial or administrative decision; or
  - by reason of an agreement having legal effect under the law of the Contracting State in which the child was habitually resident immediately before the removal or retention.

## **Chapter II**

### **Constitution, Powers and Functions of the Central Authority**

4. (1) With effect from such date as the Central Government may, by notification in the Official Gazette, appoint, there shall be appointed by the Central Government for the purposes of this Act, an officer of the Central Government not below the rank of Joint Secretary to the Government of India, to be called as the Central Authority.
- (2) Such Central Authority shall, unless removed from office under Section xx, hold office for a period not exceeding three years or until he attains the age of sixty years, whichever is earlier.
- (3) If a casual vacancy occurs in the office of the Central Authority, whether by reason of his death, termination or otherwise, such vacancy shall be filled within a period of ninety days by making afresh appointment in accordance with the provisions of sub-section (1)

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

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

- (a) To discover the whereabouts of a child who has been wrongly removed to, or retained in, India, and where the child's place of residence in India is unknown, the Central Authority may obtain the assistance of the police to locate the child;
- (b) To prevent further harm to any such child or prejudice to any other interested parties, by taking or causing to be taken, such provisional measures as may be necessary;
- (c) To secure the voluntary return of any such child to the country in which such child had his or her habitual residence or to bring about an amicable resolution of the differences between the person claiming that such child has been wrongfully removed to, or retained in, India, and the person opposing the return of such child to the Contracting State in which such child has his or her habitual residence;
- (d) To exchange, where desirable, information relating to any such child, with the appropriate authorities of a Contracting State;
- (e) To provide, on request, information of a general character, as to the law of India in connection with the implementation of the Convention in any Contracting State;
- (f) To institute judicial proceedings with a view to obtaining the return of any such child to the Contracting State in which that child has his or her habitual residence, and in appropriate cases, to make arrangements for organising or securing or to institute judicial proceedings for securing the effective exercise of rights of access to a child who is in India;
- (g) Where circumstances so require, to facilitate the provision of legal aid or advice;

- (h) To provide such administrative arrangements as may be necessary and appropriate to secure the safe return of any such child to the Contracting State in which the child has his or her habitual residence;
  - (i) Such other functions as may be necessary to ensure the discharge of India's obligations under the Convention.
6. The Central Authority shall, while inquiring into any matter referred to in Section 5, have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908, and in particular, in respect of the following matters, namely:
- (1) summoning and enforcing the attendance of any person and examining him on oath;
  - (2) discovery and production of any document;
  - (3) receiving evidence on affidavit;
  - (4) requisitioning any public record or copy thereof from any court or office;
  - (5) issuing commissions for the examination of witnesses or documents.

### **Chapter III** **Procedure for Applications to Central Authority**

7. (1) The appropriate authority of a Contracting State, or a person, institution or other body claiming that a child has been wrongfully removed to or retained in India in breach of rights of custody, may apply to the Central Authority for assistance in securing the return of such child.
- (2) Every application made under Sub-section (1) shall substantially be in the form prescribed in the rules to this Act.
- (3) The application under Sub-section (1) may be accompanied by -
- (a) A duly authenticated copy of any relevant decision or agreement giving rise to the rights of custody claimed to have been breached;
  - (b) A certificate or affidavit from a Central Authority or other competent authority of the Contracting State in which that child has his or her habitual residence or from a qualified person setting out the law of that Contracting State relating to the rights of custody alleged to have been breached;
  - (c) Any other relevant document.
8. Where, on receipt of an application under Section 6, the Central Authority has reason to believe that the child in respect of whom the application is made is in

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

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

#### **Chapter IV** **Refusal by Central Authority to accept Applications**

10. The Central Authority may refuse to accept an application made to it under Section 7 if it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded. On its refusal to accept an application, the Central Authority shall forthwith inform the appropriate authority or person, institution, or other body making the application, the reasons for such refusal.
11. The Central Authority should not reject an application solely on the basis that additional documents or information are needed. Where there is a need for such additional information or documents, the requested Central Authority may ask the applicant to provide these additional documents or information. If the applicant does not do so within a reasonable period specified by the requested Central Authority, the requested Central Authority may decide that it will no longer process the application.
12. Any party aggrieved by the refusal of the Central Authority to accept an application made under Section 7 may appeal against such refusal to the Secretary, Ministry of Women and Child Development, Government of India. Such appeal shall be made within 14 days from the date of receipt of the decision of the Central Authority.

## **Chapter V**

### **Procedure for Application to High Court**

13. Without prejudice to any other means for securing the return of a child in respect of whom an application has been made under Section 6, the Central Authority may apply to the High Court within whose territorial jurisdiction the child is physically present or was last known to be present for an order directing the return of such child to the Contracting State in which the child has his or her habitual residence.
14. Where an application is made to a High Court under Section 14, the Court may, at any time before the application is determined, give such interim directions as it thinks fit for the purpose of securing the welfare of the child concerned, or of securing the child's residence pending the proceedings, or to prevent the child's return for being obstructed, or of otherwise preventing any change in the circumstances relevant to the determination of the application.
15. Where the High Court is satisfied, upon an application made to it under Section 10, that:-
  - (a) The child in respect of whom the application has been made has been wrongfully removed to or retained in India within the meaning of Section 3; and,
  - (b) A period of one year has not yet elapsed between the date of the alleged removal or retention and the date of such application;

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

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

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

(a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or  
(b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

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

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

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

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

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

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

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

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

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

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

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

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

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



## **Chapter VI**

### **Application in respect of child removed from India**

23. (1) A person, institution or other body in India claiming that a child has been wrongfully removed to a Contracting State or is being wrongfully retained in a Contracting State in breach of rights of custody of such person, institution or other body, may apply to the Central Authority for assistance in securing the return of that child to India.
- (2) On receipt of an application under Sub-section (1), the Central Authority shall apply in the appropriate manner to the appropriate authority in the Contracting State to which such child is alleged to have been removed or in which such child is alleged to be retained, for assistance in securing the return of that child to India.
- (3) The rights of custody mentioned in Sub-section (1) above, include rights of custody accruing to any person, institution or other body by operation of law;
- (a) by reason of judicial or administrative decision; or
  - (b) by reason of an agreement having legal effect under the law of India.

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

## **Chapter VII**

### **Rights of Access**

25. A person, institution or other body in India claiming that a child has been wrongfully removed to a Contracting State or is being wrongfully retained in a Contracting State in breach of rights of access of such person, institution or other body, may apply to the Central Authority for assistance in organising or securing the effective exercise of rights of access.
26. An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of Contracting States in the same way as an application for the return of a child.

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

## **Chapter VIII** **Miscellaneous**

- 28.(1) The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.
- (2) If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.
29. The Central Authority shall submit an annual report to the Central Government through the Ministry of Women and Child Development in such form as may be prescribed.
30. No suit, prosecution or other legal proceeding shall lie against the Central Government, Central Authority or any member thereof or any person acting under the direction of the Central Authority, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder.
31. Every member of the Central Authority and every officer appointed in the Central Authority to exercise functions under this Act shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.
- 32.(1) In the discharge of its functions under this Act, the Central Authority shall be guided by such directions on question of policy relating to national interest, as may be given to it by the Central Government.

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

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

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

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

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

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

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

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

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

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

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

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

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