



## ORIGINAL RESEARCH PAPER

Law

### INTERNATIONAL CHILD APPROPRIATION

**KEY WORDS:** Discrimination, humanity, violation, vulnerable, frontier, international, legality.

Avinash Pandey

#### ABSTRACT

The world is a far smaller place it was decades ago. after the existence of human civilization, the world has grown rapidly. Inter-country & Intercontinental travel has become very easy & cheap it has ever been. In a population of over a billion Indians, 25 millions are non-resident Indians who by migrating to different jurisdictions have generated a new cross-border frontier family issue. The intention of this report is to convey some information regarding the issue of Transnational child abduction also lacking responsibility & obligations between authorities causes undue suffering to innocent children's all over the world. It's a phenomenal sociological international issue with which each & every country is frustrated & trying to resolve it. The coward part of humanity which came into the framework is using of children as soldiers in armed conflict is among the most morally repugnant practices in the world. Human rights watch has traditionally focused its effort on violation of children's rights as well as vulnerable group of our society. As children as vulnerable to this dynamic due to which all around world billions of children are still suffering from discrimination in basic No girl or boy should be made a child soldier or a bonded laborer. on the grounds of legality & humanity, no child should be discriminated from schools on the basis of their caste, color, religion or gender. every human has their own rights. At the same time, real protection from such harms lacks criteria to ensure that children enjoy passage to education, health services and protection for their other own economic and social rights.

#### PUBLIC INTERNATIONAL LAW

The United Nations had taken a prelude initiative after the introduction of Convention on the Rights of the Child (CRC or UNCRC) is a human rights convention which keeps the regular check upon various areas comprising of civil, political, economic, social, health and cultural rights of children. The Convention defines a child as any human being under the age of eighteen unless the completed complete transformation of maturity. The nations who voluntarily engaged themselves to being a part of this conventions are bound by certain criteria which have to be followed by every single member of this respective convention. Docility is watched by the UN Committee on the Rights of the Child, which is created by the combination of several members all around the globe. after the intense development of this convention **two optional protocols** were approved on 25 May 2000. The First Optional Protocol restricts the association of children in military disputes and the Second Optional Protocol prohibits the sale of children, child prostitution and child pornography. Both etiquettes have been enacted by more than 160 countries. A third optional protocol relating to communication of complaints was adopted in December 2011.

#### PRIVATE INTERNATIONAL LAW

Hague convention which works for "Both personal and commercial positions" which are correlated with more than one nation are becoming frequently standard in the renovated world. There may be little conflicts due to the different legal machinery of respective nations. With a prospect to settling these differences, States have ratified appropriate rules known as 'private international law' rules. under this convention, all members come to internationally mutual interest to accomplish certain jurisdiction of the courts, applicable law, & recognition & respective enforcements of judges for a vast range of areas in aspects of commercial law, banking laws, international civil & criminal procedure from child protection to matters of marriage and personal status. it's an inter-governmental organization consists of 81 members, 80 states & one regional economic integration organization situated in Hague, Netherlands.

#### CHILD ABDUCTION VIOLATION OF HUMAN RIGHTS

Children were spanked and wounded by police, the inhuman behavior of forcing innocent children's for working numerous hours under the certain dangerous condition or warehoused in custody hubs and orphanages. Due to that humongous obstacle uncountable crossed international frontiers in search of more secure & safety also were dislodged from their own nation. Uncountable children's are still serving as soldiers in army conflicts. as children's considered as the vulnerable group in society they are also entitled to get certain priority & privilege, the fact is they often suffer discrimination in basic education, health care, and other

services. In particular, girls are often subjected to deliberately prejudicial approach.

At the same time, it is moral obligations of all respective nations to monitor the human rights abuses undergone by child soldiers, children in conflict with the law, children who were refugees, migrants, stateless, or denied of the benefits of citizenship, and children who labored under perilous conditions. The CRC (convention on the rights of the child) which has been established to watch deprived children's all over the globe from their rights. as according to **CRC Article 29** of the convention specifies five goals of education, consisting of "enhancement of the child's temperament abilities & psychological as well as physical abilities to their comprehensive potential." it's important to assure child living in free society, having a sense of compromise, peace, humanity, equality of sexes & maintain friendship among all peoples all religious groups no discrimination. according to the report of Universal Human Rights commission which says that in **2001 systematic bias against nearly one-fourth of Israel's 1.6 million schoolchildren**. Palestinian Arab citizens who were educated in a public-school system that was completely separate from the schools of the Jewish majority. The Israeli government spent less per Palestinian Arab child than per Jewish child, and Arab schools were considered as inferior to Jewish schools in practically every respect. Arab schools offered fewer facilities and educational opportunities were offered other Israeli children, and some lacked basic learning facilities like libraries, computers, science laboratories, and recreation space. sort of priority & privilege Palestinian Arab children's enjoyed those days like they attended schools in larger classrooms as compared to Jewish students also fewer teachers than those in the Jewish school system.

Palestinian Arab teenagers with unfitness were especially marginalized. an international treaty which has been created for safeguard children to discourage dragging into armed conflicts. the optional protocol of CRC, adopted by the U.N general assembly in may 2000, established eighteen as the minimum age for direct participation in the armed conflict also it came into force on 12 February 2012 after the acceptance of all the respective members.

#### TYPES OF CHILD ABDUCTION

Child appropriation is a serious crime that is falsely believed to be epidemic all over all world. Basically, there are two types of abductions which are:-

- a) family abductions
- b) non-family abductions

each segment consists different casual circumstances, developmental factors & certain motives because types of offender try to perform each of these abductions. Thus, child abduction considered as criminal behavior of a human as came to light after the case of (**Megan<sup>2</sup> Kanka**) here a young girl named Megan gone missing, after then her parents came to know that she forcefully captured in a trap by their neighbor Jesse, he sexually assaulted her & hide her body in a toy box & dumped her body to a portable toilet.

this is a somewhat normal case of a transient abduction comprising normal motives. However, not all types of abduction involve the same motives. Coming to our next field which is **parental - child abduction** it's a seeking child or keeping of a child by a family member in violation of a custody order, a verdict or any other legitimate custodial rights. it also consists of intention to deprive a lawful custodian of privileges. one of the most prominent Case of (**David Goldman**) were **Sean Richard Bianchi Carneiro Ribeiro Goldman** child of his American father & Brazilian mother.

many years ago, Sean visited Brazil with his mother at the age of 4, for spending his early childhood vacation. however, his mother denied returning to the United States. his father David Goldman swore to have his son back for which he followed many proceedings in the United Nations & in Brazil. after the frustration, his wife Bruna filed & got permitted for divorce by the Brazilian court. then eventually she married a Brazilian lawyer, subsequently, she died while giving birth to their second child. however, Her's Ex-husband took responsibility of custody for the child from the Brazilian court.

as the father following the Brazilian concept of socio-affective authorship on the basis of which, he refused to return the boy to his genetic real father. Based on a judgment of Brazil's Supreme Court, Sean was returned over to his father. As finally, the verdict came into the favor of his real genetic father.

According to **article 2 & article 7 of CRC** convention which respectfully lays down "legal guardian of the child's within the particular jurisdictions & the child should be immediately registered so that he can acquire nationality & right of the name".

### Cross-Frontier Deployments Of Children

The convention provides the cooperation between the states in relation for growing number of cases where children are placed in alternatives care across frontiers also manage long-term adoption schemes this also include management done by the several institutions like **DIFI**<sup>4</sup>.

In case of **Surinder Kaur vs Harbax Singh Sandhu**, 1984 Hindu law reporter 780 supreme court, it was held that the provisions of the Hindu minority & guardianship act 1956 cannot replace the predominant concern as what is the benefit for the child while applying the control on the contrast, according to **article 9 of CRC** which respectively says that "parties shall ensure that a child shall not be separated from his or her parents against their will, except competent authorities subject to judicial review accordance with applicable law & decisions such is necessary for welfare for the children as when the parents are separated then decision must be made to children residence.

### INTERNATIONAL PARENTAL KIDNAPPING CRIME ACT

International Parental Kidnapping Crime Act (IPKCA) act 1993 is a United States federal law. removal of the child or retaining a child from outside the United States with the intention to obstruct a parents' custodial rights this crime consists of 3 years imprisonment. The law provides an affirmative defense where the abducting parent acted pursuant to a valid court order obtained under the uniform custody Uniform Juvenile Custody Jurisdiction And Enforcement Act. where the abducting parent was escaping domestic brutality or where the breakdown to return the child resulted from conditions beyond the taking parent's control. Since its statute, the law has only been used in a very small adolescence of international child abduction cases assisting parents of globally

abducted children to claim a harassment of or prosecutorial consideration on the part of federal prosecutors.

### HOW TREATY DIFFER FROM LAW

In the case of "**Susan Blumberg -Jason**" the court held that "international custodial conflicts are never notable, the changeable circumstances, the spouse in which one member belonged to China, it immediately makes the whole case bunch of complication". the main intention behind that is rejected to being a member of Hague convention on civil perspectives, of internationally child abduction & a multilateral convention that allows for the rapid refurbishment of seized children, there remains little legitimate refuge when a child is carried off.

**"Legal Kidnapping " & "custodial interference "** two phenomenal which is the base of child abduction.

certain important guidelines framed by the treaty for violations of custodial rights & also supported mechanisms, through which unknown children can be easily returned to their homes which have considered as a "habitual residence". Abduction, meanwhile, is described as a parent without single custody taking their child to another nation and neglecting to return the child or let the other parent visit. for the same 94 countries & region joined the convention.

### INNOCENT VULNERABLE GROUP ENGAGED IN ARMED CONFLICT

Moving on to our next non- parental abduction of the child from various part of the world after which they forced to perform certain unacceptable activities which contain sex-slaves, armed conflict soldiers, engaged in other criminal activities. one of the globe's most eminent institution the UNITED NATIONS CHILDREN FUND (UNICEF) describes child soldiers as "any kid whether boy or girl who is below eighteen years of age". any child who is a part of any sort of usual or extraordinary armed force. this age limit is new which has been established by the optional protocol to the convention on the rights of the child. but still, 80 percent of child soldiers are involved in various armed conflicts who is below eighteen possibly below ten.

Around 300,000 children are assumed to be combatants in some thirty battles worldwide. Children have also been used as scouts, agents, minesweepers, bomb-makers, and suicide bombers. Child units are also efficiently employed as advance troops in ambush strikes. Nearly 30 percent of armed organizations using children include girls. In extension to fighting, girls are often enslaved to sexual harassment, and in some cases are taken as caretakers by army commanders. many of them get pregnant & after that, they forced to enter into battle with their babies strapped to their backs. A ten-year-old boy or girl can easily learn to effectively fire an AK-47 in half an hour. The dictators and rulers typically employ children as efficient, cheap, and expendable soldiers. As soldiers, children often testify or perform horrifying slaughter including molestation, beheadings, amputations, and burning people alive. Those who are fortunate enough to survive their military experience are often left with severe mental health problems

### HAGUE CONVENTION

The Hague Conference on Private International Law (HCCH) is an intergovernmental body in the field of private international law, that emerges offers numerous international conventions, protocols and soft law instruments. The Hague Conference was first gathered by Tobias Asser in 1893 in The Hague. soon after that Tobias earned Nobel prize for the consistent work in the field of private international law, & particularly his achievements with respect to the HCCH. after seeing the progress of his convention Tobias Asser took his ambition to the next level by conducting the first diplomatic session of the HCCH which was convened in 1893. he included numerous multilateral protocols which promoted the integrity of the rules & principles of private international law or conflict of laws. after the prominent tie-up of various multilateral treaties & the Hague conventions that ratified the rules of private international law in the fields of Marriage (1902), Divorce (1902), Guardianship (1902), Civil Procedure

(1905), Effects of Marriage (1905), and Deprivation of Civil Rights (1905). Since 1955, the HCCH developed 38 international conventions and protocols that establish rules on jurisdiction, applicable law, the recognition and enforcement of international decisions, and on legal and judicial assistance. They are open for adoption, accession or acceptance by any State, including States that are not members of HCCH. The HCCH's instruments cover subject matters in the area of family law and child protection, international civil procedure and legal cooperation, as well as cross-border commercial and finance law. Thus, comprising all this fields which also considered as "three backbone " of the HCCH. The conventions applied to most members are:

- a) Taking of evidence abroad
- b) International child abduction
- c) Inter-country adoption
- d) Maintenance obligations
- e) Choice of Court Agreements
- f) Securities held with intermediaries

## CONCLUSION

Child abduction is a dangerous crime that has been sensationalized by the media and is now believed to be a disease & in all over the world. However, child abduction makes 2% of estimate over all crimes. There are two main types of child abduction, and each involves different causal factors, developmental factors, and different motives because different types of offenders commit each type of abduction. Some motivations that were suggested overall were the needs for control, order, significance, homeostasis, and nurturance. Child abduction is a very hazardous problem which cannot be taken lightly. With the knowledge of the typical offender, typical motives, and the highlights of an abduction investigation that were compiled and presented in this paper, law enforcement and the general public can have a better understanding of what to expect when a child goes missing. The research presented here will be useful in helping to solve future cases. Crime will still continue, but the research introduced in this paper may lead to a better understanding of child abductions in the future.

1. CRC OR UNCRC (UNITED NATIONS CONVENTION ON THE RIGHTS OF CHILD ) FRAMED THEIR OBJECTIVES & THREE PROTOCOLS WITH THEIR DIFFERENT & DYNAMIC PURPOSES.
2. MEGAN KANKA VS JESSE TIMMENDEQUAS 2000 U.S.A
3. DAVID GOLDMAN VS BRUNA BIANCHI GOLDMAN
4. DOHA INTERNATIONAL FAMILY INSTITUTE , SITUATED IN QATAR , SERVES AS FAMILY INTEGRITY IN ARAB COUNTRIES ALSO HELPS VULNERABLE GROUP OF SOCIETY.
5. ARTICLE 9 OF THIS CONVENTION SAYS THAT "CENTRAL AUTHORITY GETS THE APPLICATION FROM REPECTIVE PARTY THAT CHILD IS IN CONTARARY STATE".
6. case of Susan Blumberg -Kason vs Cai jun , 15 years ago Cai jun threatened his wife to take their infant son back to china. Blumberg-Kason, an American, first met Cai in Hong Kong while both were attending graduate school. After a whirlwind courtship, the two married in Cai's hometown in Hubei Province, and several years later moved to California to settle down. By that time, though, the cracks in their marriage had already started to show; in addition to cultural clashes, Cai revealed himself to be abusive. When, after giving birth to their first and only child, he began making noises about sending him to live with his parents, Blumberg-Kason became terrified that she might lose Jack forever. And so she began divorce proceedings, ultimately escaping the marriage and winning full custody of Jack.

"Since China hasn't signed the Hague Convention, which protects parents from losing their children to international abduction, foreign parents have no rights to ask for the return of their children if their spouse takes the child to China,"