

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

[www.ijlra.com](http://www.ijlra.com)

## DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, or distributed in any form or by any means, whether electronic, mechanical, photocopying, recording, or otherwise, without prior written permission of the Managing Editor of the *International Journal for Legal Research & Analysis (IJLRA)*.

The views, opinions, interpretations, and conclusions expressed in the articles published in this journal are solely those of the respective authors. They do not necessarily reflect the views of the Editorial Board, Editors, Reviewers, Advisors, or the Publisher of IJLRA.

Although every reasonable effort has been made to ensure the accuracy, authenticity, and proper citation of the content published in this journal, neither the Editorial Board nor IJLRA shall be held liable or responsible, in any manner whatsoever, for any loss, damage, or consequence arising from the use, reliance upon, or interpretation of the information contained in this publication.

The content published herein is intended solely for academic and informational purposes and shall not be construed as legal advice or professional opinion.

**Copyright © International Journal for Legal Research & Analysis.  
All rights reserved.**

## ABOUT US

The *International Journal for Legal Research & Analysis (IJLRA)* (ISSN: 2582-6433) is a peer-reviewed, academic, online journal published on a monthly basis. The journal aims to provide a comprehensive and interactive platform for the publication of original and high-quality legal research.

IJLRA publishes Short Articles, Long Articles, Research Papers, Case Comments, Book Reviews, Essays, and interdisciplinary studies in the field of law and allied disciplines. The journal seeks to promote critical analysis and informed discourse on contemporary legal, social, and policy issues.

The primary objective of IJLRA is to enhance academic engagement and scholarly dialogue among law students, researchers, academicians, legal professionals, and members of the Bar and Bench. The journal endeavours to establish itself as a credible and widely cited academic publication through the publication of original, well-researched, and analytically sound contributions.

IJLRA welcomes submissions from all branches of law, provided the work is original, unpublished, and submitted in accordance with the prescribed submission guidelines. All manuscripts are subject to a rigorous peer-review process to ensure academic quality, originality, and relevance.

Through its publications, the *International Journal for Legal Research & Analysis* aspires to contribute meaningfully to legal scholarship and the development of law as an instrument of justice and social progress.

## ***PUBLICATION ETHICS, COPYRIGHT & AUTHOR RESPONSIBILITY STATEMENT***

The *International Journal for Legal Research and Analysis (IJLRA)* is committed to upholding the highest standards of publication ethics and academic integrity. All manuscripts submitted to the journal must be original, unpublished, and free from plagiarism, data fabrication, falsification, or any form of unethical research or publication practice. Authors are solely responsible for the accuracy, originality, legality, and ethical compliance of their work and must ensure that all sources are properly cited and that necessary permissions for any third-party copyrighted material have been duly obtained prior to submission. Copyright in all published articles vests with IJLRA, unless otherwise expressly stated, and authors grant the journal the irrevocable right to publish, reproduce, distribute, and archive their work in print and electronic formats. The views and opinions expressed in the articles are those of the authors alone and do not reflect the views of the Editors, Editorial Board, Reviewers, or Publisher. IJLRA shall not be liable for any loss, damage, claim, or legal consequence arising from the use, reliance upon, or interpretation of the content published. By submitting a manuscript, the author(s) agree to fully indemnify and hold harmless the journal, its Editor-in-Chief, Editors, Editorial Board, Reviewers, Advisors, Publisher, and Management against any claims, liabilities, or legal proceedings arising out of plagiarism, copyright infringement, defamation, breach of confidentiality, or violation of third-party rights. The journal reserves the absolute right to reject, withdraw, retract, or remove any manuscript or published article in case of ethical or legal violations, without incurring any liability.

# **STOLEN ACROSS BORDERS: INTERNATIONAL CHILD ABDUCTION AND THE QUEST FOR EFFECTIVE LEGAL REMEDIES**

AUTHORED BY - SWETHA S & SEMMATHI B

## ***Abstract***

*International child abduction has emerged as a significant challenge in an increasingly globalized world where **cross-border marriages, migration, and international mobility** are common. Such situations often arise when one parent removes or retains a child in another country without the consent of the other parent or in violation of existing custody arrangements. These disputes create complex legal issues involving jurisdiction, **recognition of foreign custody order**, and **enforcement of parental rights** across different legal systems. Within the framework of **Private international law**, **international child abduction** raises critical questions about how courts can effectively protect the rights and welfare of children while respecting international legal cooperation.*

*This research paper examines the legal dimensions of international child abduction and the remedies available to address such disputes. It analyzes the role of the **Hague Convention on the Civil Aspects of international Child Abduction** in providing a global legal mechanism for the prompt return of abducted children and highlights the importance of the **principle of habitual residence** in determining jurisdiction. The study also evaluates the legal position of India, where courts primarily rely on domestic legislation such as the **Guardians and Wards Act, 1890** and judicial principles emphasizing the best interests of the child in resolving cross-border custody disputes.*

*Furthermore, the paper analyzes important judicial decisions from Indian and international court to illustrate how legal principles have been applied in real cases of parental child abduction. It also identifies key challenges. Including jurisdictional conflicts, delays in judicial processes. And the lack of uniform participation in international conventions. The study concludes by emphasizing the need for stronger international cooperation, legal reforms, and child-centered dispute resolution mechanisms to ensure effective protection against*

*international child abduction and to safeguard the welfare and rights of children involved in cross-border custody disputes.*

**Key Words:** *International Child Abduction, Private international law, cross-border custody Disputes, Hague Convention on the Civil Aspects of International Child Abduction, habitual residence, best interest of the Child, Recognition of Foreign Custody Orders, Guardians and Wards Act, 1890, International Legal Remedies, Comity of courts*

## I. Introduction:

**“There is no trust more sacred than the one of the World with children”**

- Kofi Annan

**“When a child is taken across borders, it is not only a family that is divided, but justice itself that must travel across nations to restore what was lost**

- Swetha

International mobility, migration, and cross-border marriages have significantly increased disputes involving child custody across different jurisdictions. One of the most serious issues arising from such disputes is **international child abduction**, where a parent removes or retains a child in another country without the consent of the other parent or in violation of custody rights granted by a court. Unlike criminal kidnapping by strangers, international child abduction is often committed by a parent seeking to gain a strategic advantage in a custody battle. This situation creates complex legal challenges because it involves multiple legal systems, conflicting jurisdictional rules, and the urgent need to protect the welfare of the child.<sup>1</sup>

Within the framework of [Private International Law](#), international child abduction raises critical questions regarding jurisdiction, recognition of foreign custody orders, and the appropriate legal mechanisms to secure the return of abducted children. To address these issues at the global level, the international community adopted the [Hague Convention on the Civil Aspects of International Child Abduction](#), which aims to ensure the prompt return of children wrongfully removed or retained across international borders and to protect rights of custody and access

---

<sup>1</sup> <https://ccyj.nalsar.ac.in/child-abduction-in-nri-marriages-conflict-of-jurisdictions/#:~:text=AND%20INDIAN%20EFFORTS-.The%20Hague%20Convention%20on%20the%20Civil%20Aspects%20of%20International%20Child,states%20to%20enforce%20returns%20summarily.> - The [Hague Convention](#) on the Civil Aspects of International Child Abduction provides a legal structure for dealing with abductions, that is, to order the prompt return of children to their habitual residence, except in narrowly defined exceptions. It grants priority to custody rights under the law of the country of origin and requires recipient states to enforce returns summarily.

under the laws of the child's habitual residence. The convention emphasis international cooperation and establishes a system through which states work together to resolve cross-border child abduction cases efficiently.<sup>2</sup>

However, despite these international mechanisms, the problem persists due to jurisdiction conflicts, delays in judicial process, and the non-participation of some countries in the Hague Convention framework. In countries like India where the convention has not yet been fully implemented, courts rely on domestic laws and the principle of the **best interests of the child** to resolve such disputes.

This research paper examines the legal dimensions of international child abduction, focusing on the available legal remedies, the role of international conventions, and the challenges faced in ensuring the prompt return and protection of abduction children across borders.

## II. Concept of International Child Abduction

International child abduction refers to the **wrongful removal or retention of a child across internation borders by a parent or guardian**, typically in violation of custody or access rights granted to another parent. Unlike traditional kidnapping, this form of abduction usually occurs within the context of family disputes, particularly during divorce, separation, or custody battles. The parent who abducts the child often believes they are acting in the child's best interests or attempting to secure a more favorable legal environment in another country.

However, such actions can disrupt the child's stability, emotional well-being, and relationship with the other parent.

In the context of Private International Law, international child abduction raises complex legal questions regarding **jurisdiction, applicable law, and enforcement of custody rights** across different legal systems. Sinch each country has its own family law rules and judicial

---

<sup>2</sup> <https://cjl.uchicago.edu/print-archive/cured-proposing-solution-hague-conventions-zone-disease-defense> - Within the framework of [Private International Law](#), international child abduction raises critical questions regarding jurisdiction, recognition of foreign custody orders, and the appropriate legal mechanisms to secure the return of abducted children. To address these issues at the global level, the international community adopted the [Hague Convention on the Civil Aspects of International Child Abduction](#), which aims to ensure the prompt return of children wrongfully removed or retained across international borders and to protect rights of custody and access under the laws of the child's habitual residence. The convention emphasis international cooperation and establishes a system through which states work together to resolve cross-border child abduction cases efficiently.

procedures, determining which court has authority to decide the child's custody becomes a challenging task. As a result, international legal cooperation becomes necessary to resolve these disputes effectively.

A key concept in determining wrongful removal is the violation of custody rights that exist under the law of the child's **habitual residence**, a principle recognized under the Hague Convention on the Civil Aspects of International Child Abduction. Habitual residence generally refers to country where the child has been living regularly and where their social, educational, and family connections are established. The convention considers the removal or retention of a child wrongful if it breaches the custody rights exercised by another parent under the law of that country.<sup>3</sup>

It is also important to distinguish **parental child abduction** from **child trafficking or criminal kidnapping**. In parental abduction cases, the abducting individual is usually a biological parent or legal guardian with an emotional or familial relationship with the child. In contrast, child trafficking involves exploitation, illegal adoption, or financial gain. While both situations involve the unlawful movement of children, their legal treatment and policy responses differ significantly.

The rise in international marriages, migration, and global mobility has contributed to an increase in cross-border custody disputes and cases of parental child abduction. These developments highlight the urgent need for effective legal frameworks and international cooperation to safeguard the best interests of the child and to prevent wrongful removal across borders.

### III. International Legal framework

The increasing number of cross-border custody disputes has led to the development of an international legal framework aimed at addressing cases of international child abduction.

---

<sup>3</sup>[https://www.humanium.org/en/international-child-abduction-conflict-of-parents-and-laws-detrimental-to-children/#:~:text=Article%20states%20that%20%E2%80%9Cthe,or%20retention%20had%20not%20happened.%20\(- Article 3 states that “the removal or retention of a child is deemed wrongful if it is in breach of custody rights attributed to a person, an institution, or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention”. \(The World Organisation for Cross-border Co-operation in Civil and Commercial Matters, 1980\) Additionally, it is considered as an international child abduction if at the time of removal or retention those rights have been exercised, or would have been exercised if the removal or retention had not happened.](https://www.humanium.org/en/international-child-abduction-conflict-of-parents-and-laws-detrimental-to-children/#:~:text=Article%20states%20that%20%E2%80%9Cthe,or%20retention%20had%20not%20happened.%20(- Article 3 states that “the removal or retention of a child is deemed wrongful if it is in breach of custody rights attributed to a person, an institution, or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention”. (The World Organisation for Cross-border Co-operation in Civil and Commercial Matters, 1980) Additionally, it is considered as an international child abduction if at the time of removal or retention those rights have been exercised, or would have been exercised if the removal or retention had not happened.)

Because such disputes involve more than one country, domestic laws alone are often insufficient to provide effective remedies. Therefore, international cooperation and uniform legal principles play an essential role in ensuring the protection of children who are wrongfully removed or retained across borders.

One of the most significant international instrument addressing this issue is the Hague Convention on the Civil Aspects of International Child Abduction, adopted under the auspices of the Hague conference on Private International law. The primary objective of this convention is to secure the **prompt return of children who have been wrongfully removed or retained from their country of habitual residence** and to ensure that custody rights are respected across international borders. Rather than determining custody itself, the convention focuses on restoring the status quo by returning the child to the jurisdiction where the custody dispute should properly be decided.<sup>4</sup>

A central principle of the convention is the concept of **habitual residence**, which refers to the country where the child normally lives and has established social and family connections. If a child is taken to another country without the consent of the parent who holds custody rights, the convention allows that parent to file a return application in country where the child has been taken. Courts in the requested state then examine whether the removal or retention was wrongful under the law of the child's habitual residence.

The convention also establishes a system of **Central Authorities** in each member state to facilitate cooperation between countries. These authorities assist in locating abducted children encouraging voluntary return, initiating judicial proceedings, and providing information about legal procedures. By promoting administrative and judicial cooperation, the convention aims to reduce delays and prevent abducting parents from gaining an advantage through forum

---

<sup>4</sup>[Article 3 states that “the removal or retention of a child is deemed wrongful if it is in breach of custody rights attributed to a person, an institution, or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention”. \(The World Organisation for Cross-border Co-operation in Civil and Commercial Matters, 1980\) Additionally, it is considered as an international child abduction if at the time of removal or retention those rights have been exercised, or would have been exercised if the removal or retention had not happened. \(](https://www.humanium.org/en/international-child-abduction-conflict-of-parents-and-laws-detrimental-to-children/#:~:text=Under%20the%20Hague%20Convention%20on,or%20retention%20had%20not%20happened.%20(-,Under the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention) is a multilateral treaty, which seeks to <b>protect</b> children under the age of sixteen from the harmful effects of wrongful removal and retention across international boundaries by providing a procedure to bring about their prompt return and ensuring the protection of rights of access. (The World Organisation for Cross-border Co-operation in Civil and Commercial Matters, 2021).</a></p></div><div data-bbox=)

shopping.<sup>5</sup>

In addition to the Hague Convention, principles of Private International Law guide courts in determining jurisdiction and the recognition of foreign custody decisions. International cooperation among courts, governments, and legal institutions plays a crucial role in addressing the complex legal challenges posed by international child abduction and in protecting the welfare of affected children.

#### IV. Legal Remedies available in cases of international child abduction

Legal remedies play a crucial role in addressing cases of international child abduction, as they provide mechanisms for the prompt return of the abducted child and the protection of custody rights. Because these cases involve multiple jurisdictions, remedies must operate through both international instrument and domestic legal systems. The main objective of these remedies is not necessarily to determine long-term custody but to restore the child to the country of habitual residence so that the appropriate court can decide custody matters.

One of the primary remedies is the **return mechanism established under the Hague Convention on the Civil Aspects of International Child Abduction**. Under this convention, a parent whose custody rights been violated can file an application through the designated Central Authority in their country. The authorities of the country where the child has been taken are then responsible for locating the child and initiating judicial proceedings to secure the child's return. The convention emphasizes prompt return in order to discourage parents from abducting children to obtain a more favorable legal forum.<sup>6</sup>

---

<sup>5</sup><https://lawandmore.eu/child-contact-arrangements-in-the-netherlands-when-can-they-be-restricted/#:~:text=If%20your%20child%20has%20been%20wrongfully%20taken,can%20be%20decided%20by%20the%20proper%20court.> - If your child has been wrongfully taken to another country, you can file a request for return through the Central Authority. The Hague Convention requires signatory countries to return children to their country of habitual residence so custody matters can be decided by the proper court.

<sup>6</sup> <https://www.mondaq.com/india/family-law/1597190/between-rights-and-welfare-navigating-international-parental-child-abduction-disputes#:~:text=To%20address%20this%20issue%2C%20the,international%20parental%20child%20abduction%20cases.> - To address this issue, the Hague Convention on Civil Aspects on International Child Abduction, 1980<sup>1</sup> ("Hague Convention") was introduced to coordinate responses among participating nations and to ensure the swift return of abducted children to their country of habitual residence. The Hague Convention, adopted under the Hague Conference on Private International Law, establishes a cooperative legal framework to facilitate the prompt return of children abducted across borders by a parent from one member country to another and to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States. As of 2025, 103<sup>2</sup> countries have signed the Hague Convention, but its effectiveness remains limited due to the existence of non-signatory nations, leading to inconsistent legal procedures for handling international parental child abduction cases.

Another important legal remedy involves judicial proceedings in domestic courts. Courts may issue order for the return of the child or enforce existing custody rights granted in another country. In many jurisdictions, courts consider whether the removal violated custody rights recognized under the law of the child's habitual residence. Domestic courts therefore play a critical role in implementing international obligations and ensuring that the legal rights of both parents are respected.

In addition to court proceedings, **mediation and alternative dispute resolution mechanisms** are increasingly encouraged in international child abduction cases. Mediation can help parents reach a mutually acceptable arrangement regarding the child's residence, visitation rights, and future custody arrangements without prolonged litigation. International organization and legal authorities often promote mediation because it focuses on cooperation and prioritizes the emotional well-being of the child.<sup>7</sup>

Furthermore, diplomatic and administrative assistance may also serve as supportive remedies in cross-border abduction cases. Government authorities may assist in locating the child, facilitating communication between parents, and coordinating with foreign legal institutions. These combined legal and administrative measures demonstrate how the principles of Primate International Law operate to resolve complex disputes involving multiple jurisdictions.

Overall, effective legal remedies are essential to prevent wrongful removal, ensure the swift return of abducted children, and uphold the principles that custody disputes should be decided by the courts of the child's habitual residence.

## V. Position of India in International Child Abduction

The legal position of India regarding international child abduction differs from many other countries because India is not yet a signatory to the Hague Convention on the Civil Aspects of

<sup>7</sup>

<https://www.anilmalhotra.co.in/post/international-child-relocation-issues-an-indian-perspective#:~:text=Parens%20Patriae%20Writ%20Jurisdiction,no%20statutory%20definition%20under%20GWA,-Parens Patriae Writ Jurisdiction> - Against backdrop of this statutory position, Supreme Court and High Courts in India, in exercise of their extraordinary writ jurisdiction under Articles 32 and 226 of Constitution of India respectively, can issue a prerogative writ of Habeas Corpus exercising jurisdiction as *parens patriae* in their best discretion to adjudicate upon conflicting claims of parents for relocation, support and welfare of children. Hence, invoking of writ of Habeas Corpus by a non-resident parent for child custody or violation of consensual relocation, on strength of a consequential foreign court custody order is only efficacious, speedy and effective remedy because minor 'ordinarily resides' abroad and there is a bar of jurisdiction under GWA for a guardianship petition before a Guardian Judge, and fact that violations of consensual relocation find no statutory definition under GW

International Child Abduction. As a result, there is no specific legislation in India that directly deals with the prompt return of abducted children to their country of habitual residence. Instead, Indian courts handle such disputes primarily through existing domestic laws and judicial principles that focus on the welfare of the child.

In the absence of a dedicated legal framework for international child abduction, Indian courts often rely on statutes such as the Guardians and Wards Act, 1890 and other family law provisions to determine custody matters. These laws empower courts to appoint guardian and make custody decisions based on **the best interests and welfare of the child**, which is considered the paramount consideration in family law disputes. Consequently, when a parent brings a child into India without the consent of the other parent, Indian Courts typically examine the circumstances of the case and decide whether returning the child would serve the child's welfare.<sup>8</sup>

The Supreme Court of India has addressed several cross-border child custody disputes and has developed important principles in such cases. In many decisions, the court has emphasized that while foreign custody orders may be considered as a relevant factor, they are not automatically binding on Indian Courts. Instead, the courts must independently evaluate whether the return of the child would be in the best interests of the child.

### 1. Landmark Indian Case Laws

[Elizabeth Dinshaw v. Arvand Dinshaw \(1987\)](#): this is one of the earliest Indian cases involving international parental child abduction. In this case, a child who was living in the United States

---

<sup>8</sup> <https://www.anilmalhotra.co.in/post/india-inter-country-parental-child-removal-and-the-law-2#:~:text=This%20watershed%20verdict%20rendered%20on,child%20to%20a%20foreign%20court>. - This watershed verdict rendered on February 27, 2015 by Justices Madan B. Lokur and U. U. Lalit laid down salutary principles as follows:

- The Principle of Comity of Courts and Nations must be respected and the best interest/ welfare of the child should apply in such cases.
- The Principle of “first strike”, i.e., whichever court is seized of the matter first, ought to have prerogative of jurisdiction in adjudicating the welfare of the child.
- The 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.
- 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 not ordered as routine when a local court is seized of a child custody litigation.
- The nature and effect of a foreign court order, reasons for repatriation, moral, physical, social, cultural or psychological harm to the child, harm to the parent in the foreign country and alacrity in moving a concerned foreign court must be considered before ordering return of a child to a foreign court.

with the father was brought to India by the mother without the father's consent. The father filed a petition before the Supreme Court of India seeking the return of the child.

The court held that the removal of the child from the United States to India by the mother was wrongful and ordered that the child be returned to the father. The court emphasized that the mother had taken the child to India in violation of the custody arrangement and that the welfare of the child would be best served by restoring the child to would be best served by restoring the child to the jurisdiction where the child normally resided.<sup>9</sup>

Legal principle established in this case was restoration of the child to the **country of habitual residence** and Prevention of wrongful parental removal.

[V. Ravi Chandran V. Union of India \(2010\)](#): this case involved a child taken from the United States to India by the mother without the consent of the father, who had custody rights under a US court order. The father approached the Indian courts seeking the return of the child.

The Supreme Court directed that the child be returned to the United States and emphasizes the importance of respecting foreign custody orders and maintaining international judicial cooperation.<sup>10</sup>

The court observed that if a child is wrongfully removed from another country, the courts should normally order the return of the child unless there are exceptional circumstances and the court established the principles of recognition of foreign custody orders and Respect for international judicial cooperation.

[Surya Vadanam v. State of Tamil Nadu \(2015\)](#): In this case, the children were brought to India from the United Kingdom by the mother without the consent of the father. The Supreme Court emphasized the doctrine of **comity of courts**, meaning that courts in one country should respect the judicial decisions of another country.<sup>11</sup>

---

<sup>9</sup> <https://www.casemine.com/commentary/in/international-child-abduction-and-custody:-elizabeth-dinshaw-v.-arvand-m.-dinshaw/view#:~:text=The%20Supreme%20Court%20of%20India's,minor%20in%20cross%2Dborder%20disputes.> - The Supreme Court of India's decision in *Elizabeth Dinshaw v. Arvand M. Dinshaw* serves as a cornerstone in the legal discourse surrounding international child abduction and custody. By prioritizing the child's best interests, respecting existing custody decrees, and promoting adherence to legal processes, the court has reinforced a framework that safeguards the welfare of minors in cross-border disputes.

<sup>10</sup><https://indiankanoon.org/doc/57724793/> - In the case of [V. Ravi Chandran\(Dr.\) \(2\) v. Union of India](#), (2010) 1 SCC 174, it was held that merely because a child had been brought to India from a foreign country does not necessarily mean that the domestic court should decide the custody issue and it would be in accordance with principles of comity of courts to return the child back to the appellate court from which he or she has been removed.

<sup>11</sup><https://indiankanoon.org/docfragment/85436368/?big=3&formInput=Foreigners%20order> - the domestic court must take into consideration:

(a) The nature and effect of the interim or interlocutory **order** passed by the **foreign** court.  
(b) The existence of special reasons for repatriating or not repatriating the child to the jurisdiction of the **foreign** court.

The court held that if a competent foreign court has already issued a custody order, Indian courts should generally respect that order and consider returning the child to that jurisdiction and thus give importance to comity of courts.

Legal principles established are importance of comity of courts and Respect for foreign custody decisions.

[Nithya Anand Raghavan v. State \(NCT of Delhi\) \(2017\)](#): This case clarified the legal approach taken in Surya Vadan. The Supreme Court held that the **welfare of the child must remain the paramount consideration**, even if there is a foreign court order regarding custody.<sup>12</sup>

The court emphasized that Indian Courts are **not automatically bound by foreign judgments** and must independently evaluate the best interests of the child. By this decision we come to the understanding that welfare of the child overrides foreign court orders when necessary.

## 2. Comparative international case laws

[McKee v. McKee \(1952\)](#): this case was decided by the privy council and involved a custody dispute where the child was taken from one country to another. The court emphasized the principle that custody decisions should generally be made by the courts of the child's **ordinary residence**.<sup>13</sup>

Jurisdiction based on the **ordinary residence of the child** is the legal principle established in the case.

[Abbott v. Abbott \(2010\)](#): this case was decided by the Supreme Court of the United States and involved a dispute over whether a parent's right to prevent the child from leaving the country constituted a custody right.

The court held that such rights are recognized under the Hague Convention and that removing

---

(c) The repatriation of the child does not cause any moral or physical or social or cultural or psychological harm to the child, nor should it cause any legal harm to the parent with whom the child is in India. There are instances where the **order** of the **foreign** court may result in the arrest of the parent on his or her return to the **foreign** country.[35] In such cases, the domestic court is also obliged to ensure the physical safety of the parent.

<sup>12</sup> <https://indiankanoon.org/doc/53310178/#:~:text=The%20High%20Court%20passed%20the,6>. - The High Court passed the Impugned Judgment dated 8th July, 2016, inter alia directing the appellant to produce her daughter and comply with the orders passed by the UK Court or handover her daughter to respondent no.2 within 3 (three) weeks from the date of the order.

<sup>13</sup> <https://jgu.edu.in/child-rights-clinic/ordinary-residence-not-temporary-location-determines-court-jurisdiction-in-child-custody-cases-allahabad-high-court-rules/#:~:text=It%20ensures%20that%20the%20jurisdiction,minor's%20transient%20or%20forced%20relocations>. - It ensures that the jurisdiction for guardianship and custody cases remains anchored to the minor's ordinary place of residence, thus providing stability and preventing jurisdictional disputes arising from the minor's transient or forced relocations.

the child without the other parent's consent amounts to wrongful removal.<sup>14</sup>

The principle of Ne exeat rights is recognizing as custody rights under international law is build in the case.

This approach reflects the broader principles of Private international law, where courts must balance respect for foreign judgments with domestic legal principles.

The absence of Indian from the Hague Convention framework has led to ongoing debates among legal scholars, policymakers, and child rights advocates. Some argue that India should join the convention to ensure faster resolution of international child abduction cases and to strengthen international cooperation. Others express concerns that automatic return mechanisms may be adequately protect the welfare of children in certain situations, particularly where there are allegations of domestic violence or abuse.

Therefore, the Indian legal system continues to address international child abduction cases through judicial discretion and existing domestic laws. While this approach prioritizes the welfare of the child, it also highlights the need for a more structured legal framework to effectively handle the growing number of cross-border custody disputes.

## VI. Challenges in Addressing International Child Abduction

Despite the existence of international conventions and domestic legal mechanisms, addressing international child abduction remains a complex and challenging task. The involvement of multiple legal systems, differing national laws, and jurisdictional conflicts often make it difficult to resolve such cases quickly and effectively. As a result, abducted children may remain separated from one parent for extended periods, which can negatively affect their emotional and psychological well-beings.

One of the primary challenges is **jurisdictional conflict between different countries**. In many

---

<sup>14</sup>

<https://caselaw.findlaw.com/court/us-supreme-court/08-645.html#:~:text=Denying%20such%20a%20remedy%20would,Breyer%2C%20JJ.%2C%20joined.> - Denying such a remedy would legitimize the very action, removal of the child, that the Convention was designed to prevent, while requiring return of the child in cases like this one helps deter abductions and respects the Convention's purpose to prevent harms to the child resulting from abductions. Pp. 16-18.

(c) While a parent possessing a *ne exeat* right has a right of custody and may seek a return remedy, return will not automatically be ordered if the abducting parent can establish the applicability of a Convention exception, such as "a grave risk that ... return would expose the child to ... harm or [an] otherwise ... intolerable situation," or the objection to removal by a child who has reached a sufficient "age and degree of maturity" to state a preference, Art. 13(b). The proper interpretation and application of exceptions may be addressed on remand. P. 18. 542 F. 3d 1081, reversed and remanded.

Kennedy, J., delivered the opinion of the Court, in which Roberts, C. J., and Scalia, Ginsburg, Alito, and Sotomayor, JJ., joined. Stevens, J., filed a dissenting opinion, in which Thomas and Breyer, JJ., joined.

cases, courts in two or more countries may claim authority to decide the custody of the child. While the Hague Convention on the Civil Aspects of International Child Abduction attempts to resolve this issue by prioritizing the child's habitual residence, not all countries are parties to the convention. This lack of universal participation creates legal uncertainty and may lead to inconsistent decisions by courts in different jurisdictions.<sup>15</sup>

Another major challenge is the **delay in legal proceedings**. Even in countries that are parties to international conventions, court procedures, appeals, and administrative processes can significantly delay the return of abducted children. These delays may allow the abducting parent to establish new living arrangements for the child, making it more difficult for courts to order the child's return. Such delays can ultimately undermine the objective of prompt return established under international legal frameworks.

The **non-recognition or limited enforcement of foreign custody orders** also presents difficulties. Courts in some countries may be reluctant to enforce foreign judgments, particularly if they believe that the welfare of the child may be affected. In countries like India, the Supreme Court of India has repeatedly emphasized that the welfare and best interests of the child must remain the paramount consideration, even when foreign custody orders exist.

Additionally, **social and cultural differences between legal systems** can influence how courts approach child custody dispute. Different countries may have varying interpretations of parental rights, child welfare, and family law principles. These differences can complicate international cooperation and make it more difficult to establish uniform legal solutions.

Finally, the **lack of awareness and coordination among authorities** can further hinder effective responses to international child abduction. Parents may face difficulties in navigating foreign legal systems, locating abducted children, or obtaining legal assistance in another country. These practical barriers highlight the need for stronger international cooperation and more efficient legal mechanisms to address cross-order child abduction cases.

---

<sup>15</sup><https://iclg.com/practice-areas/family-laws-and-regulations/2-responding-to-international-child-abduction-legal-pathways-and-enforcement-challenges#:~:text=What%20makes%20international%20child%20abduction,such%20cases%20fairly%20and%20quickly>. - What makes international child abduction particularly difficult is its cross-border nature. While the physical relocation of a child may take only hours, the resulting legal and emotional consequences can last months or even years. Families can be abruptly separated, legal jurisdictions may conflict, and the child is often caught in the middle of a dispute that affects their stability, emotional health, and future relationships. Legal systems across countries differ significantly, further complicating efforts to resolve such cases fairly and quickly.

Overall, these challenges demonstrate that while legal frameworks exist, significant obstacles remain in ensuring the timely and effective resolution of international child abduction disputes. Strengthening international cooperation and improving legal procedures are therefore essential steps in protecting the rights and welfare of affected children.

## VII. Need for Reform and Recommendations

The increasing number of cross-border custody disputes highlights the urgent need for stronger legal reforms and improved international cooperation to effectively address international child abduction. Although several legal mechanisms exist, gaps in enforcement, jurisdictional conflicts, and delays in legal proceedings continue to undermine the protection of children who are wrongfully removed or retained across borders. Therefore, reforms at both the national and international levels are necessary to ensure more efficient and child-centered solutions.

One important reform is **the adoption of comprehensive international legal standards**. Countries that are not yet parties to the Hague Convention on the Civil Aspects of International Child Abduction should consider joining the convention to strengthen global cooperation in addressing child abduction cases. Membership in the convention would enable countries to benefit from a structured legal framework that facilitates the prompt return of abducted children and promotes cooperation between national authorities.

In the context of India, the development of a **specific legislative framework** addressing international child abduction would significantly improve the handling of cross-border custody disputes. At present, Indian courts rely mainly on existing laws such as the [Guardians and Wards Act, 1890](#) and general family law principles to resolve such disputes. While these laws prioritize the welfare of the child, they do not provide detailed procedures for handling international abduction cases. Introducing specialized legislation court establish clear procedures for the return of abducted children and improve coordination with foreign authorities.

Another important recommendation is the promotion of mediation and alternative dispute resolution mechanisms in cross-border custody conflicts. Mediation allows parents to reach mutually acceptable agreements regarding custody and visitation arrangements while minimizing the emotional and psychological impact on the child. International organization such as the [Hague Conference on Private International Law](#) have increasingly emphasized

mediation as a complementary tool in resolving international child abduction disputes.<sup>16</sup>

Furthermore, **greater awareness and legal support of affected parents** are necessary. Governments should provide accessible legal information, counseling services, and assistance in navigating foreign legal systems. Establishing specialized units within legal institutions could help families address international child abduction cases more efficiently.

Finally, reform should focus on reinforcing the fundamental principle of the **best interests of the child**, which remains the cornerstone of family law and Private International law. Legal mechanisms should aim not only to resolve jurisdictional disputes but also to ensure that children are protected from emotional harm and instability caused by cross-border custody conflicts.

Through these reforms and cooperative efforts, legal systems can better respond to the challenges of international child abduction and ensure stronger protection for children and families involved in cross-border disputes.

### VIII. Conclusion

International child abduction has become a significant legal issue in an increasingly globalized world where cross-border marriages, migration, and international mobility are common. When a parent wrongfully removes or retains a child in another country, it creates complex legal disputes involving multiple jurisdictions and legal systems. Such situations not only challenge the functioning of courts but also deeply affect the emotional and psychological well-being of the child involved.

Within the framework of Private International law, international child abduction raises important questions concerning jurisdiction, recognition of foreign custody orders, and the

---

<sup>16</sup><https://www.casemine.com/judgement/in/5e4efba546571b56b1ea5231#:~:text=The%20Court%20forwarded%20a%20reference,in%20cross%2Dborder%20custody%20disputes.-,The%20Court%20forwarded%20a%20reference,in%20cross%2Dborder%20custody%20disputes.-,The%20Court%20forwarded%20a%20reference,in%20cross%2Dborder%20custody%20disputes.-,The%20Court%20forwarded%20a%20reference,in%20cross%2Dborder%20custody%20disputes.-,The%20Court%20forwarded%20a%20reference,in%20cross%2Dborder%20custody%20disputes.-> **The Court forwarded a reference to the Law Commission of Indian and the Ministry of Women and Child Development to examine the issues related to inter-country, inter-parental child removal and to consider recommendations for enacting appropriate legislation and for India's accession to the Hague Convention on the Civil Aspects of International Child Abduction, 1980.**

The direct effect of this decision is the formal acknowledgment by the High Court of the pressing need for legislative intervention to address inter-country child removal in India. No new precedent was set regarding custody or enforcement of foreign order; rather, the Court emphasized the systemic legal deficiencies and the necessity for a statutory framework. This decision signals a call for policy reform and international cooperation to protect children's welfare in cross-border custody disputes.

enforcement of parental rights across borders. The Hague convention on the Civil Aspects of International Child Abduction represents one of the most significant international efforts to address these issues by promoting the prompt return of abducted children and encouraging cooperation between states. By focusing on the principle of habitual residence, the convention attempts to prevent parents from exploiting jurisdictional differences to gain an advantage in custody disputes.

However, challenges remain in the effective implementation of these legal mechanisms. Differences in national legal systems, delays in judicial procedures, and the absence of uniform participation in international conventions continue to hinder the resolution of many cases. In countries such as India, where international child abduction is addressed primarily through domestic laws like the [Guardians and Wards Act, 1890](#), courts emphasize the **best interests and welfare of the child** as the primary consideration in custody disputes.

Ultimately, addressing international child abduction requires stronger international cooperation, clearer legal frameworks, and greater awareness among legal institutions and families. Legal reform, improved judicial coordination, and the promotion of mediation can contribute to more effective solutions. By prioritizing the welfare of the child and strengthening international legal mechanism, the global community can better protect children from the harmful consequences of cross-border abduction and ensure that their rights and well-being remain at the center of all legal decisions.

**“There can be no keener revelation of a society’s soul than the way in which it treats its children”**

- Nelson Mandela

**“Borders may divide nations, but they should never divide a child from justice, protection, and the right to a secure future”**

- Semmathi

## IX. References

1. <https://www.indiacode.nic.in/bitstream/123456789/2318/1/189008.pdf>
2. <https://www.europeanlawinstitute.eu/membership/institutional-members/hague-conference-on-private-international-law/>
3. <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>

4. <https://mdulawpapers.in/unit-private-international-law/>
5. <https://indiankanoon.org/doc/271434/>
6. <https://indiankanoon.org/doc/376248/>
7. <https://www.casemine.com/commentary/in/surya-vadanan-v.-state-of-tamil-nadu:-advancing-comity-of-courts-in-international-child-custody-disputes/view#:~:text=Summary%20of%20the%20Judgment,in%20favor%20of%20Surya%20Vadanan.>
8. <https://indiankanoon.org/doc/53310178/>
9. <https://cjl.uchicago.edu/print-archive/cured-proposing-solution-hague-conventions-zone-disease-defense>
10. <https://ccyj.nalsar.ac.in/child-abduction-in-nri-marriages-conflict-of-jurisdictions/#:~:text=AND%20INDIAN%20EFFORTS-.The%20Hague%20Convention%20on%20the%20Civil%20Aspects%20of%20International%20Child,states%20to%20enforce%20returns%20summarily>
11. <https://www.humanium.org/en/international-child-abduction-conflict-of-parents-and-laws-detrimental-to-children/#:~:text=Article%203%20states%20that%20%E2%80%9Cthe,or%20retention%20had%20not%20happened.%20>
12. <https://lawandmore.eu/child-contact-arrangements-in-the-netherlands-when-can-they-be-restricted/#:~:text=If%20your%20child%20has%20been%20wrongfully%20taken,can%20be%20decided%20by%20the%20proper%20court>
13. <https://www.mondaq.com/india/family-law/1597190/between-rights-and-welfare-navigating-international-parental-child-abduction-disputes#:~:text=To%20address%20this%20issue%2C%20the,international%20parental%20child%20abduction%20cases.>
14. <https://www.anilmalhotra.co.in/post/international-child-relocation-issues-an-indian-perspective#:~:text=Parens%20Patriae%20Writ%20Jurisdiction,no%20statutory%20definition%20under%20GWA>
15. <https://www.anilmalhotra.co.in/post/india-inter-country-parental-child-removal-and-the-law-2#:~:text=This%20watershed%20verdict%20rendered%20on,child%20to%20a%20foreign%20court>
16. <https://www.casemine.com/commentary/in/international-child-abduction-and-custody:-elizabeth-dinshaw-v.-arvand-m.-dinshaw/view#:~:text=The%20Supreme%20Court%20of%20India's,minors%20in%20cross%20border%20disputes.>
17. <https://indiankanoon.org/doc/57724793/>

18. <https://indiankanoon.org/docfragment/85436368/?big=3&formInput=Foreigners%20order>
19. <https://indiankanoon.org/doc/53310178/#:~:text=The%20High%20Court%20passed%20the,6>
20. <https://jgu.edu.in/child-rights-clinic/ordinary-residence-not-temporary-location-determines-court-jurisdiction-in-child-custody-cases-allahabad-high-court-rules/#:~:text=It%20ensures%20that%20the%20jurisdiction,minor's%20transient%20or%20forced%20relocations>.
21. <https://caselaw.findlaw.com/court/us-supreme-court/08-645.html#:~:text=Denying%20such%20a%20remedy%20would,Breyer%2C%20JJ.%2C%20joined>.
22. <https://iclg.com/practice-areas/family-laws-and-regulations/2-responding-to-international-child-abduction-legal-pathways-and-enforcement-challenges/#:~:text=What%20makes%20international%20child%20abduction,such%20cases%20fairly%20and%20quickly>.
23. <https://www.casemine.com/judgement/in/5e4efba546571b56b1ea5231#:~:text=The%20Court%20forwarded%20a%20reference,in%20cross%2Dborder%20custody%20disputes.->

