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# **AN ANALYSIS OF THE INDIAN SUPREME COURT'S APPROACH TOWARDS PROTECTION OF THE BEST INTEREST OF THE CHILD IN INTERNATIONAL PARENTAL CHILD ABDUCTION CASES**

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## **ABSTRACT**

The 1980 Hague Convention on the Civil Aspects of International Child Abduction seeks to secure prompt return of children to the place of their habitual residence in cases of wrongful removal by a parent across borders. The Convention aims to protect the best interest of the child as guaranteed under the United Nations Child Rights Convention. However, India refuses to sign this Convention stating that India's judiciary has developed sufficient jurisprudence to safeguard the best interest of the child in cases of international parental child abduction. The parent who abducts the child to India initiates multiple proceedings, under the applicable personal laws, against the left behind parent. By the time guardianship or custody issues are finally decided, the child becomes accustomed to its new environment or already crosses the young tender age. The Court gives the decision on a case-to-case basis, and in many cases tends to favour the abducting Indian parent. A lot of time is lost in deciding these multifarious legal proceedings which runs counter to the speedy disposal mechanism for return provided in the Hague Convention. The Hague Convention is against such rulings, as they facilitate child abductions by favouring parents who wrongfully bring about a change in child's habitual circumstances. This paper studies the international child abduction case-laws decided by the Supreme Court of India to ascertain its established jurisprudence; and to examine whether it is sufficient to protect the best interest of the abducted child.

## I. Introduction

The globalisation induced trans-national movement of people has given rise to complex private law issues in recent times. Cross-border matrimonial relationships where spouses belong to different countries and cultures are common.<sup>1</sup> This gives rise to international families which are often governed by multiple legal systems in matters of marriage, divorce and custody of children. In the event of failure of these marriages, the spouses often want to return to their own countries to be in the comfort of their families and legal systems.<sup>2</sup> However, the return is not made alone but with the children. In cases of divorce or disputes over custody, the spouse who loses custody or is in the apprehension of it prefers to take away the children from their country of residence to another country. This action is termed as abduction and results in emotional suffering to the child whose custody becomes the focal point.<sup>3</sup> This leads to disconnecting the child with its left-behind parent, natural living environment, culture, identity, relatives and friends.<sup>4</sup> The 1980 Hague Convention on the Civil Aspects of International Child Abduction (Child Abduction Convention) provided remedy for this legal situation in order to protect children. The process of removal or retention of a child from its habitual residence is considered wrongful in law when done against the lawful custody rights of other parent,<sup>5</sup> and to evade the interim or final orders of the competent courts.<sup>6</sup> The Convention provides for a simple procedure for timely return of the children in their habitual environment.

This paper seeks to suggest that ratification of the Child Abduction Convention is beneficial for India in protecting the rights of children involved in abduction cases. The paper proceeds to establish that the Convention provides the most suitable procedure to promote the best interest of the child principle under Article 3 of the United Nations Convention on the Rights of Child. The paper analyses the approach of the Indian Supreme Court in assessing the criteria for best interest determination in abduction cases and concludes that it lacks uniformity and

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<sup>1</sup> Law Commission of India, *The Protection of Children (Inter-Country Removal and Retention) Bill, 2016* (Report No. 263, 2016) Para 2.1. (Report No. 263)

<sup>2</sup> Anil Malhotra and Ranjit Malhotra, *International Indians & The Law* (Universal Law Publishing Co. Pvt. Ltd., 3<sup>rd</sup> edn 2015) 272-296. (Anil & Ranjit Malhotra 2015)

<sup>3</sup> Report No. 263 (n1).

<sup>4</sup> Elisa Perez-Vera, 'Explanatory Report on the 1980 Hague Child Abduction Convention' Acts and Documents of the Fourteenth Session' [1980] 3 Child Abduction 426 (1982). The Hague Conference on Private International Law. (Perez-Vera Report)

<sup>5</sup> The Convention on The Civil Aspects of International Child Abduction 1980, Art 3. (HCCH 1980 Child Abduction Convention)

<sup>6</sup> Report No. 263 (n 1).

certainty. Thus, ratification is the need of the hour and should be undertaken by the Indian government.

## II. The Hague Child Abduction Convention

The Child Abduction Convention ensures restoration of legal and physical status quo by providing for immediate return of the child<sup>7</sup> to its habitual residence where a parent wrongfully removes it to another country.<sup>8</sup> It covers situation of cross border abductions by parents and provides for an objective solution for the same. The main aim of this Convention is to ensure the welfare of the child by deterring the parents from taking such abrupt actions. This primary aim is aligned with the need to foster respect, among its member States, for lawfully acquired custody rights in the place of habitual residence of the child. The Convention does so through a web of Central Authorities in each member State which co-operate in the return of abducted child. The Central Authorities or courts dealing with return applications are to strictly refrain from dwelling on the merits of any custody dispute as those determinations fall within the domain of court of habitual residence.<sup>9</sup>

The Convention stresses on return to habitual residence of the child as the child has most substantial connection with such place, and its custody matters should be governed only by this law.<sup>10</sup> This settles the issue of placing jurisdiction and avoiding forum shopping from private international law perspective.<sup>11</sup> Further, the Convention also includes certain exceptional circumstances in which the return of the child is not mandated but provides for a narrow interpretation of them.<sup>12</sup>

## III. Best interest of the Child Principle and International Child Abduction

The 1989 United Nations Convention on the Rights of Child (UNCRC) has established children as the subjects of rights. It lays down not only the subjective rights of children but also puts an obligation on the State parties to implement them in a proper manner. The right of the child to

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<sup>7</sup> HCCH 1980 Child Abduction Convention, Art 4: “The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.”

<sup>8</sup> HCCH 1980 Child Abduction Convention, Preamble and Art 1.

<sup>9</sup> HCCH 1980 Child Abduction Convention, Art 16 & 19; A.E. Anton, ‘The Hague Convention on International Child Abduction’ [1981] 30(3) ICLQ <<https://www.jstor.org/stable/759286>> accessed 19 August 2021.

<sup>10</sup> Elisa Perez-Vera Explanatory Report (n 5) 444.

<sup>11</sup> Elisa Perez-Vera Explanatory Report (n 5) 429.

<sup>12</sup> HCCH 1980 Child Abduction Convention, Arts 12, 13 & 20.

have its concerns taken into consideration during the decision-making process, is secured by Article 3 of the UNCRC. It binds the member parties to protect the best interest of the child.<sup>13</sup> The best interest principle lays down a rule of substantive right, interpretation as well as procedure.<sup>14</sup> The principle mandates the development of rights approach in all State parties, “engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity.”<sup>15</sup> The principle is also inter-linked to other provisions of UNCRC such as right to non-discrimination (Article 2), right to life, survival and development (Article 6) and also the right of child to be heard (Article 12). The right to be heard in all matters concerning the child when found to be of intelligible age is complimentary and of utmost importance to achieve the objectives of Article 3 UNCRC.<sup>16</sup>

Further, Article 11 of the UNCRC obliges the state parties to prevent illicit transfers and non-return of children abroad.<sup>17</sup> This obligation comes with the duty to ratify other human rights instruments including the HCCH 1980 Child Abduction Convention.<sup>18</sup> The procedure of prompt return established by the Child Abduction Convention helps in protection of the best interest of the abducted child, as it ensures its reintegration in its natural environment while restoring connect with both parents.<sup>19</sup> The Convention has also included the child’s right to be heard in some circumstances as per the discretion of hearing authority.<sup>20</sup> The Child Abduction Convention also implements several other provisions of UNCRC<sup>21</sup> and is found to be consistent with well accepted human rights provisions.

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<sup>13</sup> The United Nations Convention on the Rights of Child 1989, Art 3 para 1- “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.” (UNCRC)

<sup>14</sup> UN Committee on the Rights of the Child (CRC), ‘General comment No. 14 (2013) on the right of the child to have his or her best interest taken as a primary consideration (art. 3, para. 1)’ CRC /C/GC/14. (UNCRC GC No. 14)

<sup>15</sup> Ibid.

<sup>16</sup> Council Regulation (EU) 2019/1111 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction OJ L 178, 2.7.2019, Art. 21 & 26; Jean Zermatten ‘The Best Interest of the Child: Literal Analysis, Function and Implementation’ [2010] 18(4) The International Journal of Children’s Rights <<https://doi.org/10.1163/157181810X537391>> accessed 15 August 2021.

<sup>17</sup> UNCRC Art.11.

<sup>18</sup> UN Committee on the Rights of the Child (CRC), ‘General Comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)’ CRC/GC/2003/5; Rachel Hodgkin and Peter Newell, *Implementation Handbook for the Convention on the Rights of the Child* (United Nations Children’s Fund 2002) 153-58.

<sup>19</sup> Elisa Perez-Vera Explanatory Report (n 5) 432.

<sup>20</sup> HCCH 1980 Child Abduction Convention, Art. 13.

<sup>21</sup> UNCRC Art. 8, 9.3, 35, 10.2.

#### IV. Indian Legal Position

However, India has not yet ratified the Convention which already has the support of 101<sup>22</sup> contracting States and thus lacks uniformity in procedure and decisions. India has neither any civil nor any criminal law to deal with the issue of international abductions by parents. Therefore, such issues of abductions are dealt in Indian courts as custody matters by the abducting under the Guardians and Wards Act, 1890. In deciding custody issues, the courts rely on the principle of 'welfare of child to be of paramount consideration'.<sup>23</sup> As a policy of interpretation, the courts regard welfare of the child as paramount consideration in such matters.<sup>24</sup> The left-behind parents, who come in search of child, have to initiate habeas corpus petitions and herein the court finds itself bound by the principle of best interest of the child.<sup>25</sup>

#### V. Indian Judiciary's Approach and Best interest Principle

The United Nations Convention on the Rights of Child (UNCRC) was ratified by India in 1992. Thus, India is bound by the UNCRC and has to incorporate the rights of child in all situations concerning them. The best interest principle necessitates the assessment and determination of all factors relevant in child abduction cases.<sup>26</sup> It is the duty of the courts to objectively lay down the factors to be weighed in international child abduction cases and assess them on a case-to-case basis.<sup>27</sup>

However, bringing in such objectivity is difficult and often the courts end up relying on different factors in different cases. This goes against the basic intent of best interest principle as it requires some formal criteria to be created by authorities dealing with child related issues. Indian laws do not recognize abduction as a special child related issue and thus, no such criteria have been formalized by parliament or by the courts. Thus, analysis of relevant factors for assessing the best interest of child differs from case to case. This presents two major issues:

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<sup>22</sup> HCCH, < <https://www.hcch.net/en/instruments/conventions/status-table/?cid=24> > accessed 18 August 2021.

<sup>23</sup> The Guardians and Wards Act, 1890 S 7(i) & 17, Dr. V.Ravi Chandran v Union of India & others 2010 (1) SCC 174.

<sup>24</sup> Dr. V.Ravi Chandran v Union of India & others 2010 (1) SCC 174.

<sup>25</sup> LC Report No. 263 (n 1) para 3.2, Dr. V. Ravi Chandran v Union of India, (2010) 1 SCC 174; Arathi Bandi v. Bandi Jagadrakshaka Rao, AIR 2014 SC 918.

<sup>26</sup> UNCRC GC No. 14 (n 14).

<sup>27</sup> Ibid.

inherent subjectivity in deciding what constitutes the "best interest of the child" and potential conflict between the child's best interest and the rights of abducting parent.<sup>28</sup>

## **VI. Methodology**

This study uses the case-law methodology to scrutinize 9 judgements of Indian Supreme Court decided between the years 2017 to 2020. These case-laws essentially pertain to the issue of international parental child abduction. The study seeks to analyze the approach of Supreme Court while deciding these cases to trace the established jurisprudence and procedure. As discussed in the last section, the UNCRC mandates each State party to develop procedures to safeguard the best interest of child in all matters where children are involved. The use of case-law methodology supports the inquiry by providing definite evidence of the same. The judgements have been taken from online case law search engines on the basis of issue involved and time period under consideration.

The analysis is done on the following five parameters:-

- A) Factors considered by the Court for determining the best interest of abducted child.
- B) Whether child's right to be heard was recognized or not.
- C) Whether return order was made or not.
- D) Whether custody was granted to mother or father.
- E) Whether abducting parent ordered to return with the child.

## **VII. Observations and Discussion**

In this part, the paper discusses the relevant Supreme Court (SC) judgements on the basis of five parameters one by one.

A. Factors considered by the Court for determining the best interest of child in return and custody matters.

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<sup>28</sup> Asha Bajpai, 'Custody and Guardianship of Children in India' [2005] FLQ 39(2) 441-457.

The Indian courts follow the universal principle of welfare of child to be of paramount consideration in matters of child removal and custody. These issues are decided by the courts by exercising *parens patriae* jurisdiction.<sup>29</sup> Since India is not a party to the Child Abduction Convention, it goes into the merits of custody issue<sup>30</sup> in a case involving child removal by parents. The considerations of the Supreme Court in deciding welfare of the child vary from case to case and there is no fixed formula applicable.<sup>31</sup>

In *Prateek Gupta v. Shilpi Gupta*,<sup>32</sup> the Supreme Court based the considerations on the fact that child removed by father, from United States (U.S.) to India, had already spent two and a half years in India and relocation back to United States would be unfavourable to his well-being as the child was in formative years and had adjusted to the environment. The United States court in this case had issued an order for return of child and custody being handed over to the mother. But the Supreme Court stated that such foreign orders and principle of comity and close contact can be ignored for the larger good i.e. the welfare of the child being of paramount consideration.

In *Nithya Anand* judgement of 2017 by 3 judge bench,<sup>33</sup> the Supreme Court held that India being a non-convention country has to decide the return issue on merits. In this case, the daughter was removed by mother from United Kingdom (U.K.) to India and the father had obtained *ex-parte* return order in UK. The SC explained the procedure to be followed in India in such cases, which can be either summary inquiry for return or elaborate inquiry on merits. The Courts are not under strict obligation to abide by the foreign court orders of return and have to go for detailed inquiry when needed in the best interest of child. For deciding the best interest of child in custody matter the SC considered the nationality and citizenship of parents and child, time spent by child in both countries, gender of the child, past foreign court orders passed against abducting mother and health condition of child. Further, the SC noted that child is living in joint family in India whereas she was staying in nuclear family in U.K. and reliance has also been placed on mother's statement about domestic violence caused by father. In both these cases from 2017, it is seen that the SC has considered those factors which favour the non-

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<sup>29</sup> Anil & Ranjit Malhotra 2015 (n 2).

<sup>30</sup> The Guardian and Wards Act, 1890, S 18, 19.

<sup>31</sup> Archana Parashar, 'Welfare of The Child in Family Laws- India and Australia' [2003] NALSAR Law Review 1(1)49 <<http://www.commonlii.org/in/journals/NALSARLawRw/2003/4.html>> accessed 10 July 2021

<sup>32</sup> *Prateek Gupta vs. Shilpi Gupta*, 2017 SCC OnLine SC 1421.

<sup>33</sup> *Nithya Anand Raghavan v State (NCT of Delhi)*. & Anr. (2017) 8 SCC 454.

return of child to its erstwhile place of habitual residence. Prompt action taken by the left-behind parent in a foreign court is not considered sufficient to order return of child.

These cases are in stark contrast to the SC's three judge bench judgement in *Smriti Kansagara* case.<sup>34</sup> While deciding the custody matter of a child removed from Kenya to India by the mother, the SC considered the nationality of child, education opportunities, exposure for all round development, inheritance of father's business in Kenya, adoption of language and culture among the best interest factors. In this case the child, having spent almost 8 to 9 years in India, was returned to Kenya to be in the custody of father with access rights given to mother.

In the case of *Aman Lohia* (2021)<sup>35</sup> the SC observed that in cases of custody and removal of child, it is only the welfare of child that should be given priority and not legal disputes between warring parents. The SC, while remanding the matter back to Family Court, observed that joint shared parenting should be considered while deciding the welfare of child.

The SC followed summary inquiry in the case of *Nilanjan Bhattacharya*,<sup>36</sup> where child was returned to his father in U.S. as he was born in US and was a citizen by birth. Further, the child had remained in India for a short time as the left-behind parent acted promptly to institute proceeding in U.S. as well as in India. In this case also, arrangement for access rights was considered for mother. In the recent cases, the SC has focused on presence of both parents for securing the welfare of child.

The same is again echoed in the case of *Yashita Sahu*<sup>37</sup> where the SC ordered the return of a 3-year-old girl child to father in US and stressed on the importance of working out a scheme of visitation rights to the mother as a child needs care of both parents. In this case, the mother after abandoning the foreign court's proceedings instituted by herself and removed the child to India. The SC considered age of child, proceeding instituted in foreign court and nationality of the child as prime factors for deciding the best interest. The SC noticed that despite the child being of tender years, yet the mother should not get sole custody as she had violated the lawful

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<sup>34</sup> *Smriti Kansagara v Perry Kansagara* CIVIL APPEAL NO. 3559 OF 2020 (Arising out of SLP (C) No. 12910/2020 (Diary No.8161 of 2020).

<sup>35</sup> *Aman Lohia v Kiran Lohia* CIVIL ORIGINAL JURISDICTION TRANSFERRED CASE (CIVIL) NO. 25 OF 2021.

<sup>36</sup> *Sri Nilanjan Bhattacharya v The State of Karnataka and Others*. Case No.: Civil Appeal 3284 of 2020.

<sup>37</sup> *Yashita Sahu v State of Rajasthan* (2020) 3 SCC 67.



orders of a foreign court having jurisdiction. This is a unique case, where the return is ordered in favour of father even when the child is a girl child of tender years.

Again, in the case of *Lahari Sakhamuri*,<sup>38</sup> the wife had abandoned the divorce proceeding in U.S. which were initiated by her. Instead, she came to India along with her two children and filed the proceedings for custody in India. The SC took up the matter of summary inquiry and ordered the return of children to U.S. to be in their natural environment. In this case, the SC laid down the following to be factors for assessing the best interest of child- maturity, mental stability, access to school, moral character of parent, continued involvement in community, financial sufficiency and relationship of parent with child.

In *Jasmeet Kaur*<sup>39</sup>, the SC ordered the return of wife along with the two children back to U.S. In case the wife didn't wish to return then visitation rights and maintenance provisions to be made for her. The SC upheld the order of return of High Court without going into the merits of custody issue as all the parties were US citizens and the Indian courts had no jurisdiction to try the matter.

In these cases, the court has applied the principle of comity and ordered return of the children without going into the merits of the custody disputes. In fact, by laying down the factors for best interest consideration, the SC has come to the conclusion that return of the child with access rights to other parents would be in the welfare of child.

The view of the SC has considerably changed since its 3-judge bench judgement in 2018 in case of *Kanika Goel*.<sup>40</sup> In this case the SC ordered the parties to first pursue the divorce proceedings filed by the abducting mother of a girl child in India and then litigate in any other court of competent jurisdiction. The SC swayed away from the principle of comity of court and ordered the custody of child to be with the mother until majority or further custody order by a court. The Court's observations were not based on any earlier discussed factors and find no rationale.

From the above discussion, based on the Supreme Court judgements, it is seen that the best interest consideration are based on a variety of factors summarized below: -

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<sup>38</sup> *Lahari Sakhamuri v Sobhan Kodali* AIR 2019 SC 2881.

<sup>39</sup> *Jasmeet Kaur v State (NCT of Delhi) and Anr.* 2019 (17) SCALE 672.

<sup>40</sup> *Kanika Goel v State (NCT of Delhi)* (2019) 3 SCC 336.

- 1) The long stay of abducted child (caused, primarily by institution of judicial proceedings in India)
- 2) Nationality and citizenship status of parents and child
- 3) Duration for which child was in both countries in question
- 4) Child's gender and age
- 5) Constitution family i.e. nuclear or joint family setup
- 6) Allegations of domestic violence (need not be proved)
- 7) Opportunities of education, overall development and social involvement
- 8) Culture and Language
- 9) Inheritance opportunities
- 10) Possibilities of shared parentage and visitation rights
- 11) Promptness of proceedings instituted in other country
- 12) Moral character of parent

B. Whether child's right to be heard was recognized or not

Out of the 9 cases considered for current analysis, the child's right to be heard was recognized in only 1 case.<sup>41</sup> In other cases, the child/ren were either too young to be taken for consideration or the matters was dismissed summarily.

C. Whether return order was made or not

The return orders were made in 5<sup>42</sup>cases. While return was refused in 3<sup>43</sup> and in one case the

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<sup>41</sup> Smriti Kansagara v Perry Kansagara CIVIL APPEAL NO. 3559 OF 2020 (Arising out of SLP (C) No. 12910/2020 (Diary No.8161 of 2020).

<sup>42</sup> Smriti Kansagara (n 46); Yashita Sahu (n 42); Nilanjan Bhattacharya (n 41); Jasmeet Kaur (n 45); Lahari Sakhamuri (n 43).

<sup>43</sup> Prateek Gupta (n 37); Kanika Goel (n 45); Nithya Anand cases (n 38).

issue has been remanded back to Family Court<sup>44</sup> and is pending.

#### D. Whether custody was granted to mother or father

In the 3 cases where return was refused, custody orders were granted to abducting mothers while in remaining 5 it was granted to father with access rights given to mother.

#### E. Whether abducting parent ordered to return with the child

The SC has observed that while returning the child, return of mother is optional and she cannot be compelled to do so.<sup>45</sup> While ordering the return of child in 5 cases, the abducting mother has been given sufficient security and maintenance in case she wishes to return or visit the child. This was ordered to be secured by the husband by getting a mirror order in the court of foreign jurisdiction where return of child was ordered.<sup>46</sup>

### **VIII. Analysis**

From the above, it becomes quite clear that the judiciary in India has not decided on any definite guidelines to be followed in the cases of inter-parental child abduction. The lack of guidelines, howsoever broad, result in varying results where court spends much time in laying down the framework.

It is to be noted that time is of essence in these cases and the primary reason for securing prompt return is to not allow any discontinuity in the normal life of the child. The considerations of time are lost when the child is abducted to India due to the lengthy legal requirements before any decision is reached. The discussion highlights the misadventures of the SC which reached their zenith in the case of *Smriti Kansagara*.<sup>47</sup> In this case almost a decade had passed before the SC ordered the return order for the child removed from Kenya to India. Such a long stay is sufficient enough to develop roots in the Indian culture whereafter the return becomes stale and is also against the objective of the Child Abduction Convention.<sup>48</sup> Further, the right of child to present its views is more often than not ignored by the Indian courts.

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<sup>44</sup> Aman Lohia case (n 40).

<sup>45</sup> *Yashita Sahu v State of Rajasthan* (2020) 3 SCC 67.

<sup>46</sup> *Smriti Kansagara* (n 46).

<sup>47</sup> *Ibid*.

<sup>48</sup> HCCH 1980 Child Abduction Convention, Art 12: "Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative

It's also been seen that courts are considering many factors which do not involve the child in deciding their best interest. Much reliance is being placed on the elements associated with parents rather than the child. The conflict between rights of child and those of parents find relevance when courts indulge in the dispute between father and mother as in Kanika Goel case.<sup>49</sup>

The entire object of the Convention is to ensure prompt return of child so that it can be reinstated in the habitual environment. This procedure has been equated with securing the best interest of child. India's failure to sign the Convention has led to filing of multiple parallel proceedings both in India and abroad and losing much crucial time in such legal battles. The important years of a child's life get lost in such scenarios which are definitely averse to their well-being.

## IX. Conclusion

The courts dealing with parental abduction cases are required to identify all elements necessary for a best-interests assessment. Moreover, there is a need to balance the different elements in order to reach a sound decision in favour of the child. This needs a multi-disciplinary approach and requires the participation of concerned child.<sup>50</sup> The problem in Indian courts is further complicated by the recognition of welfare of child principle where cases are filed under the GWA 1890. It is argued that judiciary, when applying the two notions of best interest or welfare of child, often indulge in coercive paternalism ignoring children's choices.<sup>51</sup>

However, there has been a definite shift of the judiciary towards recognizing foreign court's jurisdiction by adopting summary return inquiries but deviations do happen. The SC has also stressed on shared parenting, visitation and access rights in the recent decisions. This is in line with the right of the child to have love and care of both parents. Yet, the handling of such issues on a case-to-case basis with no specific legal framework always leaves the possibility of erratic judgements hampering the welfare of child. Therefore, the study promotes signing of the Child

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authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith. The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment..."

<sup>49</sup> Ibid (n 40).

<sup>50</sup> UNCRC GC No. 14 (n 14).

<sup>51</sup> J Eekelaar, 'The Emergence of Children's Rights' [1986] OJLS 6(2) 161-182 <[https://www.jstor.org/stable/764202?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/764202?seq=1#metadata_info_tab_contents)> accessed 20 August 2021.

Abduction Convention by India on the basis of identified parameters, to promote the protection of best interest of children.