

The United Nations Convention on the Rights of the Child (UNCRC)

- The United Nations Convention on the Rights of the Child (UNCRC) was developed in 1989 and is the first legally binding international instrument to incorporate the full range of human rights for children —civil, cultural, economic, political and social.
- It is a recognition by world leaders that children have human rights and people under 18 years old often need special care and protection that adults do not.
- By agreeing to undertake the obligations of the Convention governments across the world have committed themselves to protecting and ensuring children’s rights and to hold themselves accountable for this commitment before the international community.
- States parties to the Convention are obliged to develop and undertake all actions and policies in the light of the best interests of the child.
- The Convention sets out these rights in 54 articles and two Optional Protocols.
- More countries have ratified the Convention than any other human rights treaty in history.
- The Convention is in force in virtually the entire community of nations, thus providing a common ethical and legal framework to develop an agenda for children. At the same time, it constitutes a common reference against which progress may be assessed.
- Currently, 194 countries are party to it, including every member of the United Nations except Somalia, South Sudan and the United States.
- The Convention deals with the child-specific needs and rights. It requires that states act in the best interests of the child. This approach is different from the common law approach found in many countries that had previously treated children as possessions or chattels, ownership of which was sometimes argued over in family disputes.
- In many jurisdictions, properly implementing the Convention requires an overhaul of child custody and guardianship laws, or, at the very least, a creative approach within the existing laws. The Convention acknowledges that every child has certain basic rights, including the right to life, his or her own name and identity, to be raised by his or her parents within a family or cultural grouping, and to have a relationship with both parents, even if they are separated.
- The Convention obliges states to allow parents to exercise their parental responsibilities.

Links to the UNCRC:

<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

Link to the list of countries that have ratified it:

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en

The UNCRC and India

Does the UN Convention of the Rights of the Child legally bind the Convention-ratifying nations to use legislative and administrative measures to stop International Parental Child Abduction and/or illegal retention of children?

YES, IT DOES.

Children who are the victims of international parental child abduction and/or illegal retention abroad are protected under the United Nations Convention on the Rights of the Child. Listed below are the UNCRC Articles specifically pertaining to:

- 1- The State's responsibility to take measures, including the conclusion of bilateral & multilateral agreements, to combat child abduction and the non-return of children abroad – Articles 11, 35.**
- 2- The child's right to maintain regular access to both parents, and to be cared for by both parents - Articles 3, 5, 7, 8, 9, 10.**
- 3- The child's right to preserve his or her own identity- Articles 7, 8.**
- 4- The child's right to be heard in any judicial and administrative proceedings affecting the child – Article 12.**
- 5- The child's right to be protected from all forms of abuse while in the care of parent(s)/legal guardian(s), and the responsibility of the State to identify, report and investigate such instances – Article 19.**
- 6- The recognition by the State that both parents have common responsibilities for the upbringing of the child – Article 18.**
- 7- The State's responsibility in making the principles and provisions of the Convention widely known, to adults and children alike – Article 42.**
- 8- Timely reports submitted to the UN Committee on the Rights of the Child of the measures taken by the State and the progress made - Article 44**

Article 3

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 interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be,

legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient

information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

In 2002 at the UN General Assembly Special Session on Children, the world re-committed to the UNCRC.

“A World Fit for Children”, its official outcome document, addresses the issue of international parental kidnapping of children in its Plan of Action.

“The UN General Assembly Special Session on Children May 2002, culminated in the official adoption, by some 180 nations, of its outcome document, 'A World Fit for Children'. The new agenda for - and with - the world's children, including 21 specific goals and targets for the next decade.

The Plan of Action sets out three necessary outcomes: the best possible start in life for children, access to a quality basic education, including free and compulsory primary education, and ample opportunity for children and adolescents, to develop their individual capacities. There are strong calls to support families, to eliminate discrimination and to tackle poverty. A wide range of actors and partners are called upon to play active roles, including children themselves; parents, families and other caregivers; local governments; parliamentarians; NGOs; the private sector; religious, spiritual, cultural and indigenous leaders; the mass media; regional and international organizations; and people who work with children.

The Plan of Action also reaffirms previous goals and targets relevant to children endorsed by world summits and conferences, including the UN Millennium Summit. It lists 21 goals for children in the four priority areas of action, goals considered a vital step towards the achievement of the Millennium Development Goals adopted in 2000 by world leaders at the Millennium Summit.”

“III. Plan of Action→B. Goals, strategies and actions→ 3.Protecting against abuse, exploitation and violence→ General protection→ **Address cases of international kidnapping of children by one of the parents.** ”

<http://www.unicef.org/specialsession/wffc/>

http://www.unicef.org/specialsession/docs_new/documents/childrenforumreport-en.pdf

http://www.unicef.org/specialsession/docs_new/documents/A-RES-S27-2E.pdf

India and its history of re-commitment to the UN Convention of the Rights of the Child since India's ratification of the Convention in 1992:

- **India acceded to UNCRC on 11th December, 1992**
- **National Plans of Action for Children, 2005**
- **India adopted the National Charter for Children, 2003**
- **The Commission for Protection of Child's Rights Act, 2005**
- **The National Policy for Children, 2013**

National Charter for Children, 2003

http://www.childlineindia.org.in/CP-CR-Downloads/national_charter.pdf

Excerpts:

"Whereas we affirm that the best interest of children must be protected through combined action of the State, civil society, communities and families in their obligations in fulfilling children's basic needs,

All children have a right to be protected against neglect, maltreatment, injury, trafficking, sexual and physical abuse of all kinds, corporal punishment, torture, exploitation, violence and degrading treatment.

The State shall take legal action against those committing such violations against children even if they be legal guardians of such children.

The State shall in partnership with the community set up mechanisms for identification, reporting, referral, investigation and follow-up of such acts, while respecting the dignity and privacy of the child.

Every child has a right to a family. In case of separation of children from their families, the State shall ensure that priority is given to re-unifying the child with its parents.

The State shall ensure that appropriate rules with respect to the implementation of such services are drafted in a manner that are in the best interest of the child and that regulatory bodies are set up to ensure the strict enforcement of these rules.

All children shall have the right to meet their parents and other family members who may be in custody.

All matters and procedures relating to children, viz. judicial, administrative, educational or social, should be child friendly. All procedures laid down under the juvenile justice system for children in conflict with law and for children in need of special care and protection shall also be child-friendly."

The Commission for Protection of Child's Rights Act, 2005, and the subsequent constitution of the National Commission for the Protection of Child's Rights.

<http://wcd.nic.in/The%20Gazette%20of%20India.pdf>

Excerpts:

"An Act to provide for the constitution of a National Commission and State Commissions for Protection of Child's Rights and Children's Courts for providing speedy trial of offenses against children or of violation of child's rights and for matter connected there with or incidental thereto.

...and Whereas India acceded to the Convention of the Rights of the Child...

and Whereas CRC is an international treaty that makes it incumbent upon the signatory States to take all necessary steps to protect children's right enumerated in the Convention;

and Whereas in order to ensure protection of the rights of children one of the recent initiatives that the Government have taken for children is the adoption of **National Charter for Children 2003;**

and Whereas the UN General Assembly Special Session on Children held in May, 2002 adopted an Outcome Document titled "**A World Fit for Children**" containing the goals, objectives, strategies and activities to be undertaken by the member countries for the current decade;

and Whereas it is expedient to enact a law relating to children to give effect to the policies adopted by the Government in the regard, **standards prescribed in the CRC**, and all other relevant international instruments;

The Central Government shall...constitute a body to be known as the National Commission for the Protection of Child's Rights."

The Functions and Powers of the Commission for the Protection of Children's Rights:

"The Commission shall...

(a) examine and review the safeguards provided by or under any law for the time being in force for the protection of child rights and recommend measures for their effective implementation,

(b) present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;

(c) inquire into the violation of child right and recommend initiation of proceedings in such cases;

...(f) study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities on child's rights and make recommendations for their effective implementation in the best interest of children;

(j) inquire into complaints and take suo motu notice of matters relating to

...(ii) non-implementation of laws providing for protection and development of children."

National Policy for Children, 2013

<http://wcd.nic.in/childwelfare/npc2013dtd29042013.pdf>

Excerpts:

"India is home to the largest child population in the world. The Constitution of India guarantees Fundamental Rights to all children in the country and empowers the State to make special provisions for children.

Declaring its children as the nation's "supremely important asset" in the National Policy for Children, 1974, the Government of India reiterated its commitment to secure the rights of its children by ratifying related international conventions and treaties...including United Nations Convention on the Rights of the Child".

Every child is unique and a supremely important national asset; all children have the right to grow in a family environment, in an atmosphere of happiness, love and understanding;

6.3. The Ministry of Women and Child Development (MWCD) will be the nodal Ministry for overseeing and coordinating the implementation of this Policy. A National Coordination and Action Group (NCAG) for Children under the Minister in charge of the Ministry of Women and Child Development will monitor the progress with other concerned Ministries as its members. Similar Coordination and Actions Groups will be formed at the State and District level.

6.4. The Ministry of Women and Child Development, in consultation with all related Ministries and Departments, will formulate a National Plan of Action for Children. Similar Plans at the State, District and local level will be formulated to ensure action on the provisions of this Policy. The National, State and District Coordination and Action Groups will monitor the progress of implementation under these Plans.

6.5 The National Commission for Protection of Child Rights and State Commissions for Protection of Child Rights will ensure that the principles of this Policy are respected in all sectors at all levels in formulating laws, policies and programmes affecting children.

7.1 The implementation of this Policy will be supported by a comprehensive and reliable knowledge base on all aspects of the status and condition of children. Establishing such a knowledge base would be enabled through child focused research and documentation, both quantitative as well as qualitative. A continuous process of indicator-based child impact assessment and evaluation will be developed, and assessment and evaluation will be carried out on the situation of children in the country, which will inform policies and programmes for children.

International parental child abduction (IPCA) and the illegal retention of children abroad are violations of the UN Convention on the Rights of the Child.

The UNCRC was ratified by 194 nations, including India, which ratified the UNCRC in 1992.

However these violations of children's rights remain unaddressed by the legislative, administrative, judicial and law enforcement authorities of India. Subsequently the problem continues to grow. Today India is the #3 top destination in the world for IPCA and illegal retention of children.

According to the US State Department office of Children's issues, following the Enactment of the Sean & David Goldman Act in August 2014, <https://www.govtrack.us/congress/bills/113/hr3212>, there are "ongoing bilateral government to government communications and bilateral efforts" underway between India and the USA and they are working on bringing all our abducted and illegally retained children home from India.

However, the State Department also states clearly in their recent communications with left-behind parents that they (the State Department) are not authorized to make any inquiries to the Indian authorities about the abducted child's legal status in India including whether the child has a visit visa /OCI card/ PIO card/ Indian passport.

This is necessary information for a left-behind parent as most of these documents have been acquired for their child by the abducting parent through forgery of the left-behind parent's signature on Indian Consulate/Embassy application forms.