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Parent of Child Abducted to India in 2013

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The Goldman Act to Return Abducted American Children: Enforcement is not Optional

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Honorable Chairman Smith, Ranking Member Bass and Members of the Committee and Congress. Thank you for giving me the opportunity to testify before this Committee today. I wish none of us had to testify on an issue like parental child abduction, but given the serious, humanitarian crisis, affecting thousands of children and families in America and around the World, I feel privileged to be able to speak about my daughter's abduction from her home in New York to Mumbai, India and the challenges I and many other left behind parents have faced in securing her return home.

My testimony today centers around our children – they are a product of love, and during their development it is critical for our children to receive the unconditional love of both parents. Even if the parents decide to part ways, it is wrong to rob a child the love and access of the other parent. Any problems that occur between a mother and father as they part ways have to be worked out in an orderly fashion through a court in the home jurisdiction. Abducting the child and using them as a pawn for revenge or as a leverage is incorrect and unacceptable.

In my case, my daughter Nikhita, was abducted to India, a non-Convention, non-bilateral treaty Country, in September 2013, when she was only 4 years old. Nikhita didn't know she was being abducted, nor could she have prevented her own abduction. This is the stark reality of International Parental Child Abduction (IPCA), which many Governments around the World, including India, fail to acknowledge.

Today India has a new leadership and it is my hope that the new leadership will see this as an urgent problem and tackle it in the right way, so that these cases get resolved. Just as the US had a great civil rights leader in Dr. Martin Luther King, India had Mahatma Gandhi. Both these leaders had human rights and social justice at the forefront of their campaigns. If Gandhi were alive today, he would support India's accession to the Hague Convention on Civil Aspects of International Parental Child Abduction.

At the time of the abduction, my wife & I had been living separately but we shared custody of Nikhita, who had just been enrolled at a new school on Manhattan's Upper East Side for the academic year 2013-14. My daughter was abruptly removed from school by her mother, citing a family emergency. Nikhita's mother, took a leave of absence from her job, terminated her lease, and travelled to Mumbai, India on a one-way ticket – coincidentally on the very day my dear father passed on in India. I happened to be visiting my ailing father in Mumbai at the time and after the final rites and mourning period, I returned to my home and my job in NY. My estranged wife meanwhile announced that she would not be returning nor would she permit the child to travel back with me. She had unilaterally decided to relocate to Mumbai because she claimed,

“her career prospects looked brighter”, and that she alleged, “Mumbai was her birth and matrimonial home”. Nothing could be further from the truth. She is a U.S. citizen, who abducted a U.S. born and raised child, both of whose habitual residence was in NY. My estranged wife was attempting to move the playing field to a favorable forum and using our child as a pawn to gain from her wrongful act. It was a sinister plan and I vowed to fight for my child’s rights.

On returning to NY, I heard from her friends that she had been planning this abduction for months, so I immediately consulted a lawyer and initiated a wrongful removal and custodial interference complaint. Due to challenges by the Abducting parent, it took me 18 months to complete service, upon which she became party to the custody case in NY. The court conducted a detailed investigation, I was awarded temporary custody, and my estranged wife was directed to immediately return Nikhita to New York. Of course she has not complied. As a result Nikhita’s mother has been charged with kidnapping by Federal prosecutors in the Southern District of New York.

A battle is won or lost by choosing the terrain on which it will be fought. While thwarting service of NY proceedings and orders, Nikhita’s mother, embarked on a series of malicious civil and criminal proceedings in India, not only against me, but against members of my extended family in India. With an array of favorable laws and extensive support base in India, Nikhita’s mother has relentlessly pursued a slandering campaign in multiple courts and multiple jurisdictions. Jurisdictional arbitrage is the practice of taking advantage of discrepancies between competing legal jurisdictions – using whatever tactics and loopholes imaginable. For those on the receiving end, India can feel like the “wild, wild West” and abducting parents in India play a nefarious game by filing false, unsubstantiated criminal charges in India, while as in my case, use the local police to harass my extended family.

Interestingly, India is a signatory to the Hague Convention on Service of Process of Judicial documents, a founding Member of the Hague Conference, but is not a signatory to the Hague Convention `on Civil Aspects of International Parental Child Abduction. This has resulted in unnecessary hardships, wrongful separations of children from their loving parents, legal delays and prohibitive costs.

Challenges in India – Urgent need for reform

Based on recent press reports, more than 27 million cases are pending in India’s district courts – 6 million of which having lasted longer than 5 years while another 4.5 million are waiting to be heard in the High Courts. A former esteemed Supreme Court of India Justice B N Agrawal stated: *“Delay in disposal of cases, not only creates disillusionment amongst the litigants, but also undermines the capability of the system to impart justice in an efficient and effective manner.”* Abducting parents and their aiders/abettors use India’s systemic delays in the Judiciary as a tool to benefit from their wrongdoing, seeking to delay or deny the return of abducted children to their countries of habitual residence.

Left behind parents, face another major hurdle, India’s institutional bias against recognizing parental child abduction as violation of human rights and law, and gender stereotypes, which manifests itself in various forms:

- Indian Judiciary and Policymakers view international parental child abduction, not as a children’s rights issue and legal violation, but rather as “routine child custody” issue. And

when mother's perpetrate child abductions, they often treat these cases as women's rights issue. The result being, Indian Court routinely relitigate divorce and child custody cases, decided by competent courts in other Nations where children habitually resided, thus creating a complex legal web.

- When mothers of Indian origin, regardless of their Nationality, abduct children to India, they are often viewed as "helpless" women (or "Abla Naaris") who cannot legally defend themselves in a foreign country, and hence need protection in "Mother India".
- When father's abduct children to India, left behind mothers often face other forms of gender bias. Left behind mothers are asked by Indian Courts to "return" to India to fulfill their "duty towards their children and spouse".
- Often, Indian Courts usurp jurisdiction and issue arbitrary orders without framing of issues or examining evidence that then become cumbersome to remove.
- Ex-parte interim orders are often issued without due process, linger for years, compounding the pain for seeking parent and the child.
- When a mother abducts children and flees to India, there is a whole cocktail of legal procedures to avail of, and numerous nefarious operators to advise them. Two of the most commonly misused and draconian laws are related to the Protection of Women Violence Act 2005 & Section 498A of the Indian Penal Code. While the intent of many of these laws may be good, quite often during implementation the spirit is lost, when the lines get blurred between allegation, fact, imagination & reality.

It is no wonder that parents, regardless of gender, who abduct their children to India, find safe haven under Indian laws. In all cases, children are the innocent victims of a crime, that India refuses to recognize.

Recently in a PIL (Public Interest Litigation) to amend some draconian laws, the petition stated – "It is a common feature of many laws, enacted ostensibly for women's protection and strengthening of women's rights, that in practice they tend to negate the presumption of innocence, a founding principle of Indian criminal jurisprudence and arm the police with enormous powers of arrest and harassment, thus jeopardizing life and liberty."

My family and I are victims not only of IPCA, but of India's legal system, which is failing to deliver justice. My daughter is an innocent, voiceless victim of a crime committed by her mother, aided and abated by India's refusal to recognize IPCA as child abuse, a human rights violation and a crime! I am left with no choice but to litigate in a broken legal system and a cross border legal vacuum, trying to reunite with my only child, my daughter Nikhita.

For the last 3 years since the passage of The Goldman Act, we at Bring Our Kids Home, have been tirelessly advocating for the Indian and U.S. Governments to work together to address the pain and suffering caused by the lack of a legal framework that deals with this serious and growing issue. For our part, the many left behind parents have successfully obtained US Court orders establishing our children were habitual residents of the United States and were wrongfully removed from the U.S. or retained in India. Starting in December 2015, the Department of State has sent formal written requests to India's Ministry of External Affairs, and our Government has engaged with powers in India to provide a commonsense solution to have our children returned. However, the State Department, the Department of Justice and others have failed to convince our "Strategic Partner", India to cooperate with us in the return of American children. The institutional and systemic complacency in India, and the lack of urgency by both our

governments to decisively address this serious and growing issue only hurts our children our National interests. We are a rule of law based society, but when it comes to international child abductions to India, there is no rule of law!

During PM Modi's visit to the U.S. in June 2016, we were pleased to note that the issue of IPCA was raised in the strategic dialogue, and was part of the bilateral statement [[Joint Statement Link](#)]:

“48) Recognizing its mutual goal of strengthening greater people-to-people ties, the leaders intend to renew efforts to intensify dialogue to address issues affecting the citizens of both countries that arise due to differences in the approaches of legal systems, including issues relating to cross-country marriage, divorce and child custody.”

Shortly after we saw reports that the Ministry of Women & Child Development (“MWCD”) posted a draft bill for India's accession to The Hague Convention on Child Abduction, on their website [refer to link [Draft Bill](#) and [Notice](#)]. We were hopeful and excited to witness progress.

Bring Our Kids Home provided feedback and comments to help guide a fair and common-sense solution for our kids. Early in the Fall of 2016 we heard soundbites that the vested interests in India, including the National Commission for Women (Indian Government funded entity), prominent women's rights attorneys and abducting parents, were lobbying to maintain the status-quo, and had convinced the MWCD to oppose its own Draft IPCA Bill. Sure enough, by Thanksgiving we read news reports [[refer to link](#)] that they had “junked” their draft IPCA Bill and would not sign The Hague Convention. The stated reason being:

“We found that there are more cases of Indian women who return to the safety of their homes in India after escaping a bad marriage. Cases of women who are foreign citizens, married to Indian men, going away with their children are far fewer. Hence signing the Hague Convention would be to the disadvantage of Indian women. Also, a majority of such cases pertain to women instead of men running away”, said a WCD official”

As you can imagine we had pretty dismal holiday season without our children and being robbed of our hope for any solution at all.

Five weeks later, on January 3, 2017, we saw a report that India will reconsider their hasty decision and invite all the stakeholders to a meeting on Feb 3, 2017. As important stakeholders, we reached out to the MWCD through multiple channels, only to be informed that it would be a “closed inter-ministerial meeting”, and, the MWCD suggested we participate via Twitter. After push back from several left behind parents on Twitter, the Ministry tweeted an email address a couple of days before start of the “consultation”, but would not disclose the precise time and venue of the “Consultation” which would a significant impact to the lives of our children and families.

Bring Our Kids Home and several left behind parents emailed our concerns and suggestions to the Ministry to consider during the IPCA/Hague “Consultation” held on February 3rd, 2017. Based on independent sources who attended the “Consultation” in New Delhi, we were informed that, mothers who had abducted American children to India were at the “Consultation” and even presented at the event. However, no representation from left behind parents was invited. I was aghast to find out that amongst those who presented at the MWCD “Consultation” was my

estranged wife, who made a detailed presentation on why India must not accede to The Hague Convention on Child Abduction and presented a perverse narrative on IPCA.

Thus, over the past several months, left behind parents have been on an emotional and psychological roller coaster; while the Government of India gives mixed signals at best; and the U.S. Government offers no substantive relief. Left behind parents across the spectrum feel like we are fighting a “David vs. Goliath” battle and our Administration isn’t pulling its weight in this fight.

Before I conclude my testimony, I’d like to make a direct appeal to PM Modi, to Foreign Minister Swaraj, to Minister Menaka Gandhi, and to policy makers and judges in India. Instead of dehumanizing us left behind parents, who have had our children taken away from us, been robbed off the love and affection of our children in the best years of their lives, most often been denied any access, and in my case the abducting parent will not even disclose the physical location of the child in Mumbai. It’s heartbreaking when I receive a message from my Indian attorney, the morning of a scheduled Skype call with my daughter – that she is too busy with her friends or her activities, to come to the phone or computer to say “Hello”. This could happen to anyone, imagine if it was your child! Please engage with us, not symbolically, but as important stakeholders, and allow us to participate in creating a fair and just policy, so that no child or parent has to go through this trauma we have endured.

In conclusion, I respectfully, ask you, Chairman Smith and Members of Congress, “Is enforcement of U.S. Law optional”? How long should we, parents of America’s stolen children, wait for our Government to enforce our laws and hold perpetrators accountable? How many more hearings do we need, before countries like India, Japan, Brazil and others are held accountable for their lack of cooperation in returning American children?

We have a new President, who puts America First. I urge President Trump and our Federal Agencies, to enforce the Goldman Act, and to put America’s Children First, above other bi-lateral priorities. With Prime Minister Modi’s, possible trip to the U.S. in May of this year, I respectfully urge President Trump to use this opportunity with Prime Minister Modi, to resolve this issue as a bilateral priority and usher a new era of bilateral friendship between our two nations.

Please help bring my Nikhita back - Please help bring ALL our children home!

Thank you!