

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

كُونُوا قَوِّمِينَ بِالْقِسْطِ

Stand out firmly for Justice

انصاف پر قائم رہو





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Main Points to Consider while joining and Implementing the 1980 Child Abduction Convention in the Context of Pakistan



Manaan Omar, Focal Person on the 1980 Hague Convention



Why we became a Signatory

- ❖ Pakistan has a large population and the latest figure is of 241.49 Million. (pbs.gov.pk)
- ❖ Due to the large population, in order to find a better future and economic opportunities many Pakistani's live and work abroad.
- ❖ Approximately 09 Million Overseas Pakistani live abroad. (opf.org.pk)
- ❖ With such a large number settled abroad, there was a growing trend of parental child abduction to and from Pakistan, with no exact legal framework catering to the issue.





Why we became a Signatory....Continued

- ❖ The left behind parents would have to approach the Courts in Pakistan under the domestic law, to seek custody.
- ❖ The lack of legal clarity on International parental child abduction some time resulted in confusion and contradictory court decisions.
- ❖ Though the role of higher courts remained very positive, encouraging and in line with the spirit of Convention on Rights of Child when proceedings were brought before them since the High Courts and the Supreme Court most of the time ordered, that the minors be returned to their habitual place of residence in their best interests by replying on the Convention on the Rights of Child.
- ❖ Prior to the Hague Convention, the left behind parent or any person exercising custody at the time of wrongful removal was not able to have legal clarity, or any avenue of communication and understanding of the legal system, or the legal support and information.





Our Challenges during the Process Of Becoming a Signatory

- ❖ Can the Federal Government take a decision of signing the Convention when the subject of family and children is no longer in its domain?
- ❖ Would the Hague Convention work in tandem with our domestic legal framework and the Principles of Shariah (Islamic Law)?
- ❖ Would its signing be in line with our diverse culture and traditions?
- ❖ How and in what way its going to be beneficial for the Pakistani citizens?





How we addressed these Challenges (Constitutional and Legal)

- ❖ Though our Constitution empowers the Federal Government to sign a Convention or treaty, yet we decided to take Provinces on board and thus each Province was asked to provide its consent for signing of the Convention.
- ❖ Since we had many cases of higher courts where they ordered the wrongfully removed minors to be sent back to their habitual residence in their best interests therefore, we were confident that it would work well with our scheme of laws.
- ❖ To have clarity from the perspective of Shariah(Islamic) law, we consulted the Council of Islamic Ideology. Its an apex advisory body which advises the Parliament and the Federal Government on Islamic law and it is comprised of Islamic jurists. So it did not advised the Government against signing of the Convention.





How we addressed these Challenges (Cultural and Citizens Beneficial)

- ❖ In our Culture traditionally the parents are considered the natural guardian of their children and it is not believed that a parent could abduct his/her own children. Yet, since our Courts have consistently entertained petitions of *Habeas Corpus* domestically on parental child abduction and upheld the principle of the welfare and best interests of the child as of paramount consideration therefore, we were sure that the Convention would obtain acceptance in our society, since after all the Convention was not restricting, limiting or eliminating the right to custody of any of the parents but was all about the rules and procedure that needs to be followed in order to obtain custody by respecting each Countries laws and the legal system.
- ❖ There were case before the Courts in Pakistan where minors were taken out of Pakistan. The Courts used to order the law enforcement to produce the minors before the Court, yet the order Could not have to be implemented for the minor were no longer in Pakistan. Since the Convention works both ways therefore, it was going to benefit Pakistani nationals and in no way was going to place them in a disadvantageous position as compared to foreign nationals.





Pakistan Accession to the Convention

- ❖ The Islamic Republic of Pakistan signed The Hague Convention on the Civil Aspects of International Child Abduction, 1980 in December 2016, which has been enforced with effect from 01.03.2017.
- ❖ Two most significant steps that are required after acceding to the 1980 Hague Convention is :-
- ❖ *The designation of a Central Authority*:- It is the most important one, since the Central Authority is usually the first to be contacted by the left parents or the requesting authorities.
- ❖ *The implementing legislation*:- It should be simple, easy and should prefer to resolve the matters amicably by meaningful efforts.





What we did once we ratified the Convention

- ❖ *Appointing a Central Authority*
- ❖ We submitted the details of Central Authority with our instrument of Accession by designating the “Office of Solicitor General” in Ministry of Law and Justice as central authority.
- ❖ The Central Authority facilitates the incoming and outgoing applications under the Convention and ensures that the requirements of foreign and Pakistan Central Authority are complied with in this regard.
- ❖ It with the assistance of local departments traces the whereabouts of minors and also seeks voluntary return if so desired by left behind parent.
- ❖ The CA do not initiate legal proceedings in the court but can suggest lawyers for the left behind parent.
- ❖ It follows the Court directions in facilitating the return.
- ❖ It Provides no legal advice or free legal assistance due to reservations attached to Article 24 and 26. Free legal representation is subject to the relevant local laws.
- ❖ It is also coordinating with foreign central authority especially the United States Central Authority in raising awareness.





What we did once we ratified the Convention

Implementing Legislation

- ❖ Pakistan is a dualistic state, thus the Convention and treaties does not become a law automatically here, and implementing legislation is required. There were and there are still, two points of view from the legal perspective, one that there should be a stand alone implementing legislation and the other that it can be implemented through the Family Court of 1964, which is the existing law. Thus, the second view prevailed and as result the 1980 Hague Convention is implemented in extending the jurisdiction of Family Courts in Pakistan to entertain matters relating the international child abduction under the 1980 Hague Convention.
- ❖ The family Court Act, 1964 mandates for pre-trial and post trial reconciliation proceedings. The Court tries to resolve the issues amicably amongst the parties and thus reconciliation would be followed in Hague matters too.
- ❖ There are Court annexed mediation Centers working in some Cities and if the Court finds a Hague case suitable it may refer it for mediation.
- ❖ We are also having a national drive for the Alternate Dispute Resolution and obviously we are optimistic that mediation would also be applied effectively in Hague cases as well.





Where we are terms of Acceptance of Accession

- ❖ Our accession the Convention has yet to be accepted by other States. So far 15 States have accepted our accession. (<https://www.hcch.net/en/instruments/conventions/status-table/acceptances/?mid=1358>)
- ❖ In the past few years we have received a number of inquiries from parents reporting parental Child abduction too and from United Kingdom, U.A.E, Bahrain, Spain, and Canada.
- ❖ In the ongoing year of 2024, we came to know of one case each of parental Child abduction in Belgium, Uganda, Qatar and United Arab Emirates. We also received an inquiry of parental child abduction to Pakistan from Portugal.
- ❖ Amongst the Countries that have accepted our accession, we currently have one outgoing cases with Russia and six(06) ongoing cases with U.S.
- ❖ Since becoming a treaty partner with U.S we have so three amicable resolutions on each where the parents voluntarily returned the minors, and one court ordered return on each side.





Thank You.



molaw_pakistan



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contact@molaw.gov.pk



www.molaw.gov.pk

