



A GUIDE TO INTERNATIONAL PARENTAL CHILD ABDUCTION TO INDIA

This guide gives you an overview of how cases of international parental child abduction to India are managed, and what your options are for seeking the return of your child. We have tried to make it as clear and detailed as possible, however it is impossible to cover everything in one document.

reunite are not lawyers and so the information in this leaflet should not be construed as legal advice. If you need legal advice please refer to the list of specialist lawyers on our website at www.reunite.org/lawyers. You can also access ongoing practical information, advice and support from the **reunite** advice line on 0116 255 6234.

This guide makes reference to the 'UK court'. Please be aware that England and Wales, Scotland, and Northern Ireland are different legal jurisdictions, and so you would need to use the court in the jurisdiction your child usually lives in.

If neither yourself nor your child are British nationals you should seek consular support from your own Foreign Ministry and Embassies rather than the British Foreign and Commonwealth Office.

This guide was created in 2017, so please be aware that law and practice may change over time

What is international parental child abduction?

International parental child abduction occurs when a child is wrongfully removed or wrongfully retained away from their home country. Both wrongful removal and wrongful retention are given equal treatment in the family court of the UK and many other countries, and you can request the return of your child if they have been wrongfully removed or retained. The only real difference between the two is whether your case can be considered as a criminal matter.

What is a wrongful removal?

A wrongful removal happens when a child is taken out of their country of **habitual residence** without the consent of everyone with **parental responsibility** or the consent of the court.

Wrongful removal of a child under the age of 16 is a criminal offence in England, Wales and Northern Ireland, and is an offence in Scotland if there is an interdict or residence order in place. This is under the Child Abduction Act 1984, which can be viewed in full at <http://www.legislation.gov.uk/ukpga/1984/37>.

If your child has been wrongfully removed and you would like the matter to be pursued by the police then you can report it to your local police force by calling the non-emergency number 101, or by visiting a police station.

Please be aware that it is highly unlikely that the police will go and recover your child for you. The police will be focused on the person who has committed the criminal offence and possibly pursuing their conviction. You may also be asked by the court of India not to support the conviction of the other parent if the return of your child is ordered. However once the case has progressed past a certain point you may not have much control over what happens next.

It is also worth noting that parental child abduction is not a criminal offence in India and there is no extradition arrangement between the two countries that would allow the British Police to extradite the abductor back to the UK.

Under UK law, **parental responsibility (PR)** is granted automatically to mothers, and to fathers who are married to the mother at the time of the child's birth.

If you are an unmarried father you will have PR for your child if you are registered on the birth certificate after December 2003 in England and Wales, April 2002 in Northern Ireland and from 2006 onward in Scotland. You can also be granted PR through a court order or formal agreement with the mother.

If you are in a same sex relationship, please seek legal advice from a specialist family lawyer as to whether or not you have PR for your child.

The country your child lives in is known as their **habitual residence**. Your child will only have one country of habitual residence and this country will have the jurisdiction to make legal decisions about them.

A child's habitual residence can change; for example if you and the other parent agree to move permanently to a different country.

Your child's place of habitual residence may also change if you do not take timely action to seek their return once they have been abducted by a parent. For example if you do not start proceedings asking for the return of your child within 12 months the court may want to know why you took so long. It may be felt that your child has set down such substantial roots in the other country that their place of habitual residence has in fact changed.

However, this change in habitual residence does not automatically occur once your child has been out of the country for 12 months, it very much depends on the facts of your situation.

It is worth noting that your child's place of habitual residence may be different to their nationality.

What is a wrongful retention?

A wrongful retention occurs when a child is taken out of their country of habitual residence with the consent of everyone with parental responsibility, or the court, for an agreed period of time, but the taking parent then refuses to return the child. An example of this would be if you agreed for your child to go on holiday or to visit family in India for 2 weeks, but then the other parent refuses to bring them home. Wrongful retention is not currently a criminal offence under the law of the UK, so if your child has been wrongfully retained in India there may be nothing the British police can do.

The role of the Foreign and Commonwealth Office and the British High Commission

The British High Commission in India, and the Deputy High Commissions throughout India, are able to provide specific assistance to British nationals, including travel advice, provision of lists of English-speaking lawyers and liaison with local authorities. The High Commissions can also signpost you to other organisations within India that may be helpful to you.

The British High Commission and the Deputy High Commissions cannot serve court orders on abducting parents, even if it says so in the UK court order. Requesting staff to serve an order will add delay to any process as the order will be returned back to you. Please speak to an Indian lawyer about how the order should be served.

We encourage you to report the abduction of your child to the British High Commission or the Consular Team in the Foreign and Commonwealth Office as soon as possible so that they are aware of your situation and can support you accordingly.

Contact details for the FCO and British High Commission can be found at the end of this guide.

If your child has gone missing

If your child has gone missing with the other parent and you believe they have travelled to India you can ask for help from your local police force. The police should be able to take actions such as searching within the UK, checking flight manifests and communicating with other police forces in the UK and internationally. Even if the police are not able to pin-point exactly where your child is, if they can confirm that your child is in fact in India this means you can start a legal process to seek their return.

From this point the Indian police and other organisations can help to locate your child. You should also think about anything you can do to help locate your child yourself, such as reaching out to friends and family of the other parent if possible.

Do be aware that if the police do find out where your child is they may not be able to disclose the exact address to you due to data protection and safeguarding. The police should disclose if they are in the UK or not so that you can start the necessary civil legal process.

Your Legal Options: Applicable Treaties

There are currently no treaties in place between the UK and India in relation to family matters generally, or child abduction specifically. As a result, if you are going to pursue the return of your child from India through the courts you will have to use the domestic courts in the UK and India.

Even though UK court orders are not automatically enforceable in the Indian court, recent cases have shown that they can be useful and at times persuasive. It is definitely worth considering obtaining UK court orders before starting any litigation in the Indian courts for a few reasons:

- The UK orders make it clear that the UK is your child's country of habitual residence.
- The UK courts may clearly state that they wish for your child to be returned to the UK.
- The UK courts may be able to put pressure on the other parent to return your child by freezing any UK-based assets.
- If locating the whereabouts of your child is very difficult, the UK courts can ask for information from family members, friends or other individuals living in the UK who may know where they are.
- If the other parent is in the UK then efforts can be made to stop them leaving the UK, and greater pressure can be put on them to facilitate the return of your child.

Try to avoid any court proceedings in India that relate to your child before getting UK orders. If you initiate or take part in such court proceedings in India before making an application to the relevant court in the UK you may be handing jurisdiction to the Indian courts. As a result the UK courts may not feel that they have the ability to issue orders relating to your child.

To start the necessary proceedings we advise that you have a conversation with a specialist solicitor in the UK. You may be entitled to legal aid to help fund proceedings in the UK. A list of specialist lawyers can be found on the **reunite** website, details of which can be found at the end of this leaflet.

UK Court Orders

England and Wales, Scotland and Northern Ireland are all different legal jurisdictions and have their own distinct legal systems. As a result you will need to make sure that you apply to the court in the jurisdiction your child has been taken from, even if you live in a different part of the country.

If your child has been abducted from England or Wales

If your child has been abducted from England or Wales any court hearings in the UK must be in front of a High Court judge who has sufficient powers to hear international cases and issue **Wardship orders**. The majority of child abduction cases are heard by the High Court at the Royal Courts of Justice in London, but occasionally High Court judges go out 'on circuit' to other courts around the country, and so some cases can be heard in other major cities.

Orders in child abduction cases can be sought from the High Court on an emergency basis as such cases are given priority.

The key orders that you will be looking to have issued by the High Court are a Wardship Order and a **Return Order**.

Other orders may be possible and helpful but this very much depends on the facts of your situation. For further advice tailored to your case please speak with a specialist solicitor and the **reunite** advice line.

In the majority of cases any orders will be served on the other parent, regardless of whether they are in the UK or in India. This service can be carried out by court **Tipstaff**, a **process server** in India, or by other means that the judge feels is appropriate, including email. In certain circumstances the judge will allow for the order not to be served on the other parent straight away. An example of this would be when it is thought that the other parent is planning to come back to the UK for whatever reason and it is feared that the court orders will deter them from doing so.

If the other parent is in the UK you should also ask the court for an appropriate **Tipstaff Order** so that any passports or travel documents belonging to the other parent can be removed when they are served with the court papers. If the other parent is outside of the UK you should also ensure that the court issues an incoming port alert for your child and the other parent. This will mean that they will be flagged up when they enter the UK so that court papers can be served and travel documents removed. These measures may prevent the other parent from leaving the UK again.

A **Wardship Order** makes your child a 'Ward of the Court', which means that the court holds a degree of legal responsibility for your child. This makes it very clear that the High Court feels it has jurisdiction to decide on matters relating to your child.

A **Return Order** is an order that states that your child is to be returned to England or Wales. This is not necessarily a return back to the family home or a specific part of the country, unless stated within the order. Depending on what the judge feels is appropriate in your case a date may be given by which your child must be returned, or it is stated that the return is to happen as soon as possible. A **Penal Notice** may be attached to the order, which means that if the other parent does not comply with the order they risk punishment, which can include a prison sentence, for being in contempt of the court.

The **Tipstaff** is the enforcement officer of the High Court and has the power to enforce court orders issued by the High Court if ordered to do so. He has two deputies and can delegate his power to police officers to carry out enforcement work on his behalf.

A **Process Server** is a private company that officially serves court orders on the other parent.

A **Tipstaff Order** is the name given to a number of court orders issued by the High Court that order the Tipstaff to take certain actions, such as removing the passport or a alleged abductor.

If the other parent is in the UK or returns to the UK without your child they will have the opportunity to contest the orders you have applied for. If the judge does not feel there is a good reason for your child to remain in India they will issue a date by which they want your child to be returned. It is best if the other parent is not allowed to go and collect your child as they may not return. Instead ask if they can organise for a family member or trusted friend to bring your child back to the UK or if you can go and collect them.

If the other parent does not do as the court has ordered they will be in contempt of the court and may be liable to prosecution and imprisonment.

If your child has been abducted from Scotland

Scotland is a separate jurisdiction from England & Wales and Northern Ireland. As a result you will need to seek the appropriate orders from the Scottish courts. Scotland does not issue Wardship Orders but the court can issue similar orders that show your child was habitually resident in Scotland and should be returned.

If your child has been abducted from Northern Ireland

Northern Ireland is also a separate legal jurisdiction from England & Wales and Scotland. Northern Ireland does issue Wardship Orders in a similar style to the High Court of England & Wales but you will have to apply to the relevant court in Northern Ireland.

If your child has been abducted from a country outside of the UK

If your child does not live in the UK you will need to speak with a specialist lawyer in the country you are living in to see what court orders are available in that jurisdiction. These orders need to demonstrate that your child was habitually resident in that country and preferably that your child needs to be returned.

There are a number of specialist lawyers detailed on [reunite's lawyers listing](#) which can be found on the [reunite](#) website. Similarly the Foreign and Commonwealth Office keep details of English speaking lawyers in other countries.

Into the Indian Courts

Once you have court orders from the UK you will probably need to start court proceedings in India to ask for the return of your child. In some instances the removing parent will return a child once they have been served with the UK orders, but in other cases you will have to use the Indian court process.

As there are no bilateral treaties in place between India and the UK, a UK court order is not directly enforceable in India. However, it is recognised in Indian law that the court that makes decisions about a child should be the court that has had the 'most intimate contact' with the life of the child involved. As a result, UK court orders can support your argument that the most appropriate court is a court in the UK, and so your child should be returned to the UK.

As the first step in the process a complaint should be lodged at the local police station in India, if possible, along with a copy of any the UK court orders. Subsequently, one of the options most successfully used to pursue a return in the courts of India is making an application for a **writ of habeas corpus**.

As part of a writ of habeas corpus, if a complaint has already been filed at the local police station, the police can be made party to the writ petition so that the court can keep track of efforts being made by the police on your complaint, or direct them to take certain steps.

The court can order for the other parent to present your child to the court, so the judge can make a decision as to where your child should live. There is usually more than one hearing, so the court can also order for the surrender of your child's passport to stop them from being moved to another country, and order for an interim contact arrangement to be put into place so that you can maintain a relationship with your child.

To apply for a writ of habeas corpus you will need to make an application to the High Court of the Indian State your child is currently in. In theory you do not necessarily need a British order relating to your child or a Wardship and Return order, but they can be persuasive as they prove your child was not living in India. If you live outside of the UK similar orders from the country you live in should have the same effect.

Traditionally **habeas corpus** is a process used to release individuals who have been illegally detained by the State, but in the Indian system this principle has been extended to parents who have been keeping their children in a place they shouldn't be.

The **writ** is a petition seeking the production of a person before the court.

The wishes of the child

If your child is deemed to be old enough then their thoughts and wishes will be taken into account by the Indian court. It appears that a judge would ascertain a child's wishes by speaking with the child directly rather than through any social worker or psychologist.

In **reunite's** experience there is a huge inconsistency in the amount of time it has taken the court in India to decide whether or not to order a return. We have experienced cases where a decision has been made in four months, while other cases are still ongoing after three and a half years.

The senior courts in India tend to have a vacation over the summer and do not sit on various religious holidays. In 2017 the High Courts were closed in May, while the Supreme Court was closed from mid-May to the end of June. These breaks may cause unavoidable delays to your case.

There are multiple levels of appeal in the Indian court system and so this also increases the length of time your case will take to be resolved. There can be long waiting lists for court dates in the appeal courts, and the highest court you can appeal to is the Supreme Court.

If a return IS ordered by the Indian Court

If an order for return is granted there will usually be a date by which your child is to be returned to the UK. The court may stipulate whether you have to go and collect your child or whether the other parent is to return them. You may be asked to help facilitate the return by paying for flight tickets or by providing other such support.

If a return is ordered the other parent may be able to appeal. This may add expense and will add time on to the process. How long a parent will have to submit an appeal will be stipulated in the order, but the Schedule to the Limitation Act limits the time allowed to between 30 days and 90 days from when an order has been given. After this time if an appeal has not been lodged and the return has not happened you can ask the court for help in enforcing the order for return.

If a return order IS NOT ordered by the Indian Court

If a return is not ordered you may have the opportunity to appeal this decision. Appealing will add time and expense to the proceedings, but may result in a more favourable decision. There will be a time frame in which you will need to submit an appeal.

If you do not wish to appeal the order it may be that you are able to have a contact arrangement put into place. This can be done through the court or through agreement with the other parent.

It is worth noting that mediation can be considered at any point in the legal process as a way of avoiding further litigation and coming to an arrangement that potentially both parents are satisfied with. There is further information about mediation towards the end of the guide.

Lawyers and other professionals

It is advisable to use a lawyer who has experience of international children's cases, particularly in child abduction cases as child abduction is a niche area of family law. **Reunite** maintains a list of specialist lawyers based in the UK and overseas which can be found on the reunite website at <http://www.reunite.org/lawyers>.

The Foreign and Commonwealth Office also has a list of English speaking lawyers in India but these may not have experience of child abduction cases. The list can be found at <http://www.gov.uk/government/publications/india-list-of-lawyers>.

UK

In the UK legal aid is available for child abduction cases, which is granted on a means and merits basis. This means that the Legal Aid Agency will take into account your income, outgoings, assets and the merits of your case when deciding whether or not to issue legal aid. Legal aid applications are usually filed through the lawyers you wish to instruct, so for further information speak with a specialist lawyer. A legal aid application will usually take around 4 weeks to be decided.

If you have to pay privately for UK orders the price will vary depending on the lawyers you use, the orders you apply for and the complexity of your case. The average price quoted is around £3,000, but costs can be much more or much less than this figure.

You can make an application to the High Court and represent yourself if necessary. If you are considering self-representing it is worth speaking with **reunite** and other organisations for advice and support.

India

In theory there is also legal aid available in India through the National Legal Services Authority (NALSA), which aims to provide legal advice and support to weak, poor and marginalised sections of society. However, **reunite** has not experienced a child abduction case where a parent has been awarded legal aid in India. In all of the cases **reunite** has known about, the parents have had to pay privately or secure the support of a lawyer on a **pro bono** basis. It may be that this legal aid is only granted to those who live in India, as well as fulfilling the necessary criteria.

The cost of legal proceedings in India can vary greatly depending on the length and complexity of your case, including the number of appeals, and the experience of your lawyer. Parents **reunite** have spoken with have spent around £10,000 on their Indian Court proceedings, including appealing to the Supreme Court. The costs in your case could be much less or much more than this.

It appears that if you are granted legal aid in India you are appointed a solicitor, so there is no guarantee that you will be given a lawyer with child abduction experience.

Legal work that is completed without charge to the client is described as being done '**pro bono**'.

The British High Commission - Passports and Emergency Travel Documents

There have been cases where a child has been returned to the left-behind parent for the purposes of a return to their country of habitual residence, but the child's passport has been lost, stolen, destroyed or the other parent has refused to hand it over.

The British High Commission, or any of the British Deputy High Commissions, are only able to issue Emergency Travel Documents (ETDs) with the consent everyone with PR, or if there is an order from a court requesting the creation of such travel documents without the consent of every with PR. If you think this could be an issue in your case, it is worth speaking with the FCO and a specialist lawyer in the UK for further advice and to possibly start the process of asking the court for the necessary order.

Mediation

Mediation is a process by which one or two trained mediators would meet with yourself and the other parent to discuss the long-term arrangements for your child. Such meetings can take place over Skype, so there is no need for both parents to be in the same country. Any agreement reached through mediation can be made into a formalised, legally binding court order. Mediation can run alongside court proceedings so you do not have to choose one route or the other.

When selecting a mediator please ensure that you use qualified mediators, and make sure that they have experience of international children's cases.

reunite has its own mediation service that specialises in cases of international parental child abduction and international cases involving children. If you would like more information on the **reunite** mediation service, please contact the mediation team on +44 (0)116 255 5345.

It appears that over the last few years the Indian courts have been encouraging mediation, especially in cases involving children. Each of the 24 High Courts of India has their own mediation service, as does the Supreme Court. Many cases are referred directly to these services by judges.

Other sources of support

Reunite advice line

The **reunite** advice line provides ongoing practical advice, information and support on child abduction and the international movement of children. The advice line is a confidential service and advice line co-ordinators will stay in touch with you until a resolution is reached in your case.

Foreign and Commonwealth Office (FCO)

As mentioned above, if you or your child is a British National you are able to report their abduction to the consular division of the Foreign and Commonwealth Office. The FCO will then liaise with the embassies overseas to see what support can be provided for you.

If you live outside of the UK you can report the abduction of your child directly to your local British Embassy, High Commission or Consulate, who can again liaise with other organisations and the High Commission in India and provide support.

Child Welfare Committees in India

If you have welfare concerns about your child who has been abducted to or retained in India, you may be able to approach the Child Welfare Committee that is local to where your child is in India. These are committees set up by State Governments in many Indian states and have an important role in dealing with child welfare issues. They may be able to conduct health and welfare visits on your behalf and highlight concerns to the police and local authorities.

Childline India

Childline India provides a 24 hour emergency telephone service for children in need of aid or assistance in India and are at risk of harm. Childline India's focus is on the welfare of children and they will take reports from concerned adults. As well as providing emergency information and support, Childline India can help signpost children and their carers to longer-term sources of support.

Calls to Childline India are free within India, but there may be charges for calls from outside the country.

Travelling to India

You may be asked or advised to travel to India to participate in court proceedings.

If you are not an Indian passport holder you will need to apply for a visa to travel to India. Further information about visas can be found in the FCO's Travel Advice website at <http://www.gov.uk/foreign-travel-advice/india/entry-requirements>.

It is also worth checking the FCO's Travel Advice for any security concerns or other possible issues relating to the part of India you will be travelling to.

Should you need assistance from the British High Commission while in India, their contact information can be found at <http://www.gov.uk/government/world/organisations/british-high-commission-new-delhi>. This website also includes information of the British Deputy High Commissions throughout India.

Useful Contacts

- reunite Advice Line: 0044 (0)116 255 6234 www.reunite.org

- Foreign and Commonwealth Office Consular Team: 0044 (0)207 008 1500

British High Commission in New Dehli: 0091 (11) 2419 2100
<https://www.gov.uk/government/world/organisations/british-high-commission-new-delhi>

Links to contact details of the British Deputy High Commissions across India can be found at the above website.

- British Passport Office Advice Line: 0044 (0)300 222 0000

- Childline India: 0091 (22) 2495 2611 www.childlineindia.org.in

What you can do now

- Start collecting information about your child and the abducting/retaining parent that may be useful at a later date such as name, date of birth, nationality, physical description etc.
- Make sure you have copies of important documents such as birth certificates and marriage certificates.
- Keep copies of any communication between yourself and the other parent that is conducted through email, text message or any sort of instant messenger. These conversations could be used as evidence if needed.
- If possible keep open channels of communication with the other parent and with members of their family.
- If you have not already done so, contact the **reunite** Advice Line for ongoing advice, information and support.