

## **CONFISCATION OF INDIAN AND INDIAN-ORIGIN CHILDREN BY US CHILD PROTECTION AGENCIES**

Every year, Indian and Indian-origin children are confiscated from their parents by child protection authorities in the United States of America (USA) on wrong allegations of abuse. In nearly all cases, the parents are proving themselves innocent, but this takes time, during which the children are placed in foster homes. These children are not allowed to have contact with their parents for more than one or two hours, once or twice a week.

**The maximum number of cases we have seen involved newborns and toddlers of Information-Technology (IT) professionals who are Indian nationals, recently arrived in the USA, on work visas.**

The cases tend to follow a pattern, with the parents being accused by the hospital of abuse in the form of “**Shaken Baby Syndrome**” or “**Non-Accidental Trauma**” when they take their babies there with head injuries, seizures, fractured limbs, or acute discomfort. In all but one case, the abuse allegations were dropped or dismissed.

The deciding factor in proving the parents’ innocence is expert medical testimony that the injuries/symptoms shown by the baby were compatible with accidental falls; birth trauma; or caused by congenital conditions, such as weak bones or enlarged intercranial spaces. So obtaining a full record from the accusing hospital of the baby’s injuries/symptoms is crucial as the medical experts rely on this to establish the innocence of the parents. However, in most of the cases included in this Report, the hospitals resisted giving the full record to the parents, thus delaying the parents’ defence and resolution of the case. In some cases, the child protection authorities produced medical records in court, giving the parents little time to analyse them.

If the family have been able to set up a strong defence, on average, children have been returned to their parents in six months.

The children placed with non-relative foster carers are traumatised at being left with strangers. Families have reported their toddlers being unable to eat or sleep for days in the strange foster homes. The condition of infants, with no mother, or loved-ones to comfort them, can only be imagined. The cases where the child was injured or taken seriously ill in foster care, were cases of foster care with strangers. There are numerous reports in the press of children being sexually abused, physically abused and neglected, even dying, in US state foster care.

If the child is with a relative or friend, in the cases we have seen, the authorities have eventually returned the children. But so long as the child protection case is open, parents need to be aware of the risk of forced adoption; US laws permit forced adoption of children from foster care to third parties even if they have family other than the accused parents. In one case that we studied, the parents reported that adoption was repeatedly threatened by the child protection agency.

When parental custody is suspended, US law mandates placement of children with relatives in preference to strangers. But many of the accused parents had no relatives in the US when the authorities snatched their children. Most of these parents were newly arrived in the US.

Even where Indian relatives were present, or flew in from India to take over care of the children, the child protection agencies would resist, and in some cases, refuse placement, for frivolous reasons such as the grandparents did not know the “US lifestyle” or were unfamiliar with English, or the family could not set up the visiting relatives in a separate home as mandated under US regulations. Many young Indian parents arrive in the US with nothing but a few rupees in their pockets; they do not have the means to set up multiple homes in the US. So

repatriation to relatives in India can be a good option for children of such families. Under US and international law, children deprived of parental custody have the right to be repatriated to their relatives in their country of origin. This allows for them to be taken care of by the extended family, instead of languishing with strangers in foster care.

The repatriation of children to India can be initiated by the parents by making a formal request to the US child protection agency, the Indian Government and International Social Services (ISS), which is an international agency that facilitates inter-country custody transfers of children. ISS contacts their affiliate agencies in India to conduct a Home Study of the relatives to whom the child is proposed to be sent. It is advisable to propose more than one person/couple as the US agencies create issues such as age of the proposed custodian to deny repatriation - grandparents have sometimes been rejected on this ground. The Home Study is forwarded to the US child protection agency through ISS and the parents can apply to court for the baby to be repatriated.

Without intervention of the Government of India, it is difficult to have the repatriation process initiated. Even with the support of the Indian Government, the US child protection agencies drag their feet at every stage in the process. Even after the US Courts permit repatriation, child protection authorities make excuses for delays. In one case, after repatriation was ordered, the child protection services announced that the baby was not safe to fly without surgery for an air bubble said to be found in his brain. The parents asked for a medical opinion on this. When the doctor opined that the baby was safe to fly, the child protection agency said they wanted an opinion of a doctor from another state (even though the earlier doctor had been of their choosing). It was only after this doctor too opined that the child was safe to fly that the baby was handed over. A consular official was sent to the parents' home to ensure that the baby was duly handed over. This is the degree of resistance faced for Indian children to be flown to their own relatives back to India in accordance with US and international laws.

In many cases, the child protection agency, or District Attorney, offers the parents a plea bargain where if they admit to a minor abuse and negligence charge (typically, failing to seek medical help in time or having an environment in the home that was "injurious" to the children, or co-sleeping, or a misdemeanour of child endangerment), they will not file for permanent termination of parental custody, or pursue a criminal case. Whether or not parents accept the plea bargain will depend on the case, lawyers' advice, how the child is doing in foster care, and so on. But it is reasonable to surmise from the fact that the children are eventually returned and parents are not prosecuted criminally, for what at the outset were very serious allegations, that the entire process from the point of view of the child protection agency is about being able to justify the unfair intrusion in the family by lowering the rates of dismissed or dropped cases, rather than "protecting" children.

In cases where the plea has been taken, the parents may be made to go through 'parenting skills sessions' and therapies. The child protection agencies may insist on continuing foster care till the parental skills and therapy sessions are concluded. Child protection agencies will continue visiting and monitoring the family for several months or years. This also occurs in cases that go to trial where serious abuse claims are dismissed but there is a finding of a minor misdemeanour or neglect. Eventually in these compromised or partially dismissed cases, the children have been returned, though sometimes it required going back to court.

The legal aid lawyers given to the parents tend to be weak and uninterested. The *Guardian Ad Litem* (lawyer appointed for the children) tends to follow the child protection agency's position on the case. So parents need to have atleast one private lawyer with specific expertise in child abuse allegations. This comes at huge expense, with USD 50,000 being the minimum parents

can expect to have to pay in conducting their legal defence. Many young families who arrived with nothing in the US, literally waiting for their first paycheck to set up house and buy their furniture, find themselves in debt within weeks of arriving in the US. These debts take years to pay off. So **it is urgently required that companies sending their employees to the US, arrange for some form of insurance cover or other funding for parents in this situation.**

Based on cases observed till date, listed below are some pointers on how child protection agencies think:

- the social workers sent to evaluate the family by child protection agencies are typically predisposed to suspect the parents of abuse. This is their training. With a qualified entity such as a hospital making the abuse allegation, the social workers are usually convinced that the parents have abused their children even before they have met them. Racial prejudice, ignorance about Indian culture and miscommunication owing to language hurdles only add to the social worker's negative ideas about the family.
- the system is set up to prefer retaining children in foster care. Parents find themselves dealing with a bureaucratic machinery where no one wants to get blamed for leaving a child with an abusive family. The only way they will regain their children is if a third party (such as the court) orders the child protection agency to release the children, or if their lawyers are convinced that the parents have a strong defence.
- In many cases the hospitals may accuse the parents of abuse to pre-empt a claim against them when they might be at fault. For instance, botched deliveries leading to injuries or infections in child birth that later show up as intercranial bleeding, injured bones or seizures; or failing to diagnose the baby properly until it has seizures in the hospital; or sending parents back home repeatedly when they come to the hospital with sick or hurt babies, until it is discovered that the baby was in a serious condition all along.
- The system tends to single out parents. Parents are blamed even if others were around the baby. There are cases where the child has presented injuries after being collected from day care, or being alone with the baby sitter or grandparent or other person, but it is only the parents who are accused, and no investigation is carried out into the day care facility, or others with access to the baby.
- There are many stereotypes at play, which tend to prejudice social workers sent by child protection agencies to evaluate the parent. As part of their training, social workers are taught that:
  - mothers with infants feel overwhelmed or depressed, and this makes them abusive. So mothers who say they are “feeling low”; or have bouts of crying; or are taking medication for depression are seen as high risk for abuse. The issue of medication for depression is a double-edged sword, because if a doctor diagnoses the mother as depressed, and they refuse anti-depressants, then they are considered high risk for abuse owing to untreated depression
  - “Co-sleeping” (a technical term in the US for sleeping in the same bed as your baby) is considered dangerous. Injuries and even deaths are blamed on “co-sleeping” because of a (contested) theory that the baby suffocates in the bed clothes or gets crushed under the sleeping parents.
  - Child care workers are taught that marital discord leads to violent incidents against children. Any complaint, talk of a quarrel or negativity about the spouse will be noted as an indicator of an abusive home environment. Care workers will try to “dig

out” marital discord by asking leading questions about a parent’s feelings toward the spouse, and any disagreements between them. Innocent comments of children will also be interpreted in this way. For example, in one case, much was made of a child’s remark about their father’s “dirty habit” which was what the mother would call his smoking habit.

- There is an assumption that parents will cover up abuse by the other. So care workers often tell a parent that the children will be returned to them if they testify against the other parent.
- A home without a separate bedroom for each child (even newborns) is considered potentially abusive.
- A home from which certain baby-care items are missing is considered potentially abusive. For example:
  - No baby crib/cot
  - No bouncy chair
  - No feeding chair
  - Lack of toys
  - Toys not appropriate to the age of the baby
  - Absence of bottles, steriliser and other equipment for bottle-feeding babies (even if the baby is exclusively breast-fed)
  - Any door, table, staircase is not child-proofed

In India, there is always a relative or maid around the baby. Where the baby is never left alone, these items are considered superfluous. But in Western countries, typically there is only the mother at home with the baby, and the baby is perforce left unsupervised from time to time, as the mother goes about her household chores, or visits the bathroom. So child-proofing, cots with railings and other items listed above become not just a luxury, but a safety requirement for babies and small children. This is something that Indian parents are often unaware of, and leads to responsible and caring parents being negatively evaluated by case workers.

### **Cultural stereotypes**

- If parents don’t speak English with an American accent, using colloquial American English, it creates a conscious or unconscious barrier between them and the case worker. This applies to dress as well.
- The typical mischievousness and noisiness of Indian toddlers is seen as a failure of parenting in the West. We have seen cases where child protection agencies have alleged parental incompetence for this reason alone.
- Toddlers are often familiar only with their native tongue. This causes miscommunication between case workers and toddlers, leading to negative reports. For example, in one case, the mother observed that her toddlers, who only spoke their native tongue at home, were not understanding what the case worker was saying to them, and the case worker was repeatedly reporting them as being hyperactive and badly behaved (and thus having incompetent parents – note the perversity of a system meant to “protect” children that uses them in this way to seal their fates, sometimes forever). So the mother gave the children a week’s crash course in American English, making them watch You Tube videos teaching basic American English. From the next home visit,

the toddlers were better able to understand the case worker, and her reports of them began to improve.

- There is an assumption that Indian parents hit their children and are unduly strict with them
- There is a stereotype that Indian men are repressive and may be violent toward their wives and children
- There is a stereotype that Indian women are repressed
- There is a stereotype that arranged marriages are unhappy. Parents trying to prove their respectability by telling case workers that they had an arranged marriage and “never met” or “only spoke over the phone” before marrying are at risk of being classified as being unhappy in a “forced” marriage, which is in turn an abuse indicator for their children.
- Western women tend to marry and have children at a later age than most Indian women; there is a stereotype that mothers in their early twenties are irresponsible or reluctant mothers.
- Using home remedies instead of going to the hospital can be seen as negligence in some situations; or evidence of trying to conceal and injury deliberately caused.

Based on the information gathered for this Report, we have proposed that the Government of India issue a travel advisory, the suggested text of which is attached.