

CHANGE THE PLAYBOOK, REPATRIATE INDIAN CHILDREN

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'A return to safe placement in the home country is inarguably a more humane and compassionate solution for such children' | Photo Credit: Getty Images

Priyadarshini Patil, Dhara Shah and Sagarika Chakraborty are among several expatriate Indian mothers who have been/were separated from their children by their host states, in a gross violation of human rights that affect the well-being of the mothers, their children and their families.

After her children were confiscated by Australian child services authorities, and the family's pleas to have the children repatriated to India fell on deaf ears, a distraught Patil, a mother of two, working in the IT industry, was driven to despair. She ended her life. According to news reports, the Australian child protection authorities had been called in by doctors in Australia against whom the mother had filed a complaint of mistreatment when her elder child was admitted in a hospital for treatment.

In Germany, Shah, along with her software engineer-husband, have been separated from their baby girl, now 2.5 years old, who was sent to permanent foster care by Germany's child welfare agency in 2021, after the parents were accused of having injured the child. Despite evidence to the contrary supported by expert medical reports, neither the parents nor the doctors accusing them of injury were cross examined. The police investigation was also closed without charges over a year ago, and the court's own appointed psychological expert recommended that the child be placed under supervision at a parent-and-child centre. But the court ignored all this in its decision. The Indian government has intervened, asking for the baby's return to Indian child protection authorities, but Germany is yet to relent.

These cases, across different jurisdictions, have increased in frequency over the years, and follow a similar playbook.

A young family moves to work in a high-income country. The parents are accused of abusing their children, either by the school where the child is struggling to adjust to foreign ways, or a hospital when they take their injured or sick child for treatment. They are subjected to a trial that is very one-sided, with assessments by social workers who are culturally prejudiced. Parental custody is terminated. The child and its siblings are then placed in foster care for the entirety of

their childhood. Contact with parents is either completely barred or limited to one hour every few weeks in a dingy contact centre. Very soon the child is completely alienated from its parents.

Typically, these children are placed with local foster carers, without ethnic or cultural links with the child's origins. Consequently, these children lose their identity and are unable to develop any bonds with their country of origin or their extended families. They emerge from foster care doubly alienated — they are not citizens of the country of residence, and also have no substantial ties with their country of origin. With some exceptions, the family, including the children, are Indian citizens.

In ordinary circumstances, when removed from parental custody, children are entitled to care from extended family. But since there are none in the country of residence, these children do not have that option. This is precisely where the playbook needs to change.

A return to safe placement in the home country is inarguably a more humane and compassionate solution for such children, instead of leaving them in the custody of a foreign state.

Sagarika Chakraborty, who inspired the characterisation in the film, *Mrs Chatterjee vs Norway* — a case of a Bengali family whose children were taken away in Norway, and repatriated after strong intervention by India — managed to raise her children well since their return. There are many other examples of children repatriated under similar circumstances who have grown up happy and well-adjusted in India.

Foreign nations should shed their sanctimonious views and engage in a sincere inquiry of the parents' claims of cultural prejudice and unfair trials in their child protection system. Moreover, regardless of parental behaviour, the fate of these children must be considered on broader grounds than on a mere technical consideration of the place of residence. Persisting with a moralising stance while ignoring cultural sensitivities and separating children from their (even extended) families is an abuse of child's rights in itself.

Decision-makers and governments must, in each case, determine the benefits of returning such children to their home country, where they can live with extended family, and grow up in familiar cultures.

Justice Ajit Prakash Shah is a former Chief Justice of the Madras and Delhi High Courts, and a former Chairperson of the Law Commission of India

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