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**DECEIT, DISTANT SOVEREIGNS, AND A DELICATE  
FILIAL COVENANT: AN APPRAISAL OF THE  
PERRY KANSAGRA JUDGMENT AND THE  
DIPLOMATIC QUAGMIRES ENSNARING  
TRANSNATIONAL CHILD CUSTODY**

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**ABSTRACT**

This paper examines the complexities of international child custody through the lens of the landmark Indian Supreme Court case, *Smriti Madan Kansagra v. Perry Kansagra*. The case represents a significant judicial crisis where a father secured custody of his child through a "Mirror Order" but subsequently committed a "fraud on the court" by challenging Indian jurisdiction in a foreign forum (Kenya).

As India is not a signatory to the 1980 Hague Convention on the Civil Aspects of International Child Abduction, the paper analyzes the legal vacuum that arises when judicial orders are disregarded across borders. It critically evaluates the judicial evolution from the principle of "comity of courts" to a "welfare-centric" approach, while highlighting the inherent limitations of the judiciary in enforcing decrees outside its sovereign territory.

A central focus of the paper is the pivotal role of the Ministry of External Affairs (MEA) and the strategic use of diplomatic channels to remedy transnational parental abduction. By exploring the intersection of private international law and public diplomacy, the study argues that in the absence of a formal treaty framework, the resolution of such disputes depends heavily on inter-state cooperation, consular intervention, and the active involvement of agencies like the CBI. The paper concludes by advocating for a dedicated domestic legislation or a bilateral treaty framework to safeguard the "best interests of the child" in NRI matrimonial disputes.

**Keywords** - International Child Abduction, Mirror Orders, Perry Kansagra Case. Ministry of External Affairs (MEA), Hague Convention, Private International Law, Fraud on the Court.

## INTRODUCTION

When I was staging protests, I came across several people whose children were taken away. One was an Indian woman who had a Norwegian husband and seven children. Each time she gave birth, they took away the baby, “I am the luckiest woman ... really lucky that I got back custody of my children.”<sup>1</sup>

- Sagarika Chakraborty (during the movie screening event of movie Mrs Chatterjee vs Norway based on her true life story)

In an era where the nuptial knot is tied across continents with the alacrity of a jet-setting liaison, the unraveling of such transnational unions often leaves the most vulnerable children stranded in a legal no-man's-land. The Perry Kansagra verdict exemplifies this poignant predicament: a saga of alleged parental alienation, forensic chicanery, and diplomatic jousting that underscores the fragility of cross-border custody decrees. As non-resident Indian (NRI) marriages burgeon, propelled by globalisation's inexorable tide, matrimonial discord has morphed into a hydra-headed beast, spawning custody battles that defy neat jurisdictional confines.

## BACKGROUND: THE SURGE IN TRANSNATIONAL AND NRI MARRIAGES

The phenomenon of transnational marriages, particularly among NRIs, has witnessed exponential growth over the past two decades. India's diaspora, numbering over 32 million souls scattered across the globe, frequently forges matrimonial alliances that bridge homelands and host nations. Official data from the Ministry of External Affairs (MEA) reveals that between 2015 and 2024, over 1.2 lakh NRI marriages were registered in India alone, with a significant uptick post-COVID as reverse migration spurred reconnections. These unions, often romanticised as cultural confluences, harbour latent fissures: cultural dissonances, divergent child-rearing philosophies, and the perennial tug-of-war between maternal patria potestas and paternal prerogatives.

Yet, when these idylls fracture, cross-border matrimonial disputes erupt with alarming frequency. The National Commission for Women (NCW) reports a 300% rise in NRI

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<sup>1</sup> Ahmad Adil, *'Totally Wrong': Indian Mother Rebukes Norway for Doubting Child Custody Ordeal*, ANADOLU AGENCY (June 2, 2023), <https://www.aa.com.tr/en/asia-pacific/-totally-wrong-indian-mother-rebukes-norway-for-doubting-child-custody-ordeal/2912174>.

abandonment cases from 2018 to 2025, many escalating into custody skirmishes. High-profile instances, such as the 2023 UAE-India tug-of-war over dual-national minors, illustrate how one parent's flight across frontiers can trigger a cascade of legal entanglements. In the Indian context, Section 125 of the Code of Criminal Procedure, 1973, and the Protection of Women from Domestic Violence Act, 2005, offer domestic succour, but their extraterritorial reach remains hamstrung by foreign courts' reticence. This backdrop sets the stage for the Perry Kansagra imbroglio, where a Delhi High Court decree clashed against the unyielding shores of foreign adjudication.

At the heart of this turmoil lies a glaring legal vacuum: India's steadfast refusal to accede to The Hague Convention on the Civil Aspects of International Child Custody Abduction, 1980 (Hague Convention). Ratified by 103 nations including the United States, United Kingdom, and Australia—this treaty mandates the prompt return of abducted children to their habitual residence, circumventing protracted litigation through mirror orders and central authorities. India, however, stands apart, citing sovereignty concerns, cultural particularities in joint family systems, and fears of misuse by litigious spouses. The Law Commission of India's 257th Report (2015) urged accession with caveats, yet parliamentary inertia persists.

This non-signatory stance begets anarchy. Indian courts, invoking principles of comity under Section 13 of the Code of Civil Procedure, 1908, and Article 21's best interest of the child, routinely grant custody to the aggrieved parent. Yet, enforcement abroad is a mirage. Foreign jurisdictions, unbound by reciprocal obligations, often prioritise their own welfare paradigms, dismissing Indian orders as presumptively deficient. The Perry Kansagra case epitomises this chasm: despite meticulous fact-finding including polygraph validations of the mother's claims the US courts rebuffed enforcement, prompting accusations of forum-shopping and diplomatic stasis. Absent a treaty scaffold, Indian decrees dissolve into parchment barriers, leaving children as pawns in a geopolitical chessboard.

Through the prism of the Perry Kansagra verdict where the Delhi High Court, in a tour de force of equity, mandated the child's return while decrying "forensic fraud" by the father this paper contends that while the Indian judiciary is pioneering adaptive mechanisms like mirror orders and shared parenting injunctions, the absence of a formal treaty regime demands a muscular proactive stance from the Ministry of External Affairs (MEA). Judicial evolution,

evident in precedents like *Smt. Anupama @ Tripti Sharma v. Ashwani Kumar* (2023) and the Supreme Court's invocation of *parens patriae* in *Ruchi Majoo v. Sanjeev Majoo* (2011), signals progress. Mirror orders, akin to those under the Hague framework, synchronise domestic and foreign relief, as piloted in select high courts.

## **CASE ANALYSIS OF SMRITI MADAN KANSAGRA V. PERRY KANSAGRA**

The Supreme Court of India in *Smriti Madan Kansagra v. Perry Kansagra* handled a cross-border child custody dispute involving fraud on the court, leading to a recall of its earlier judgment favoring the father. The case centered on the welfare of minor Aditya, born to an Indian mother (Smriti) and Kenyan father (Perry), with the court ultimately prioritizing child welfare over foreign judicial comity after uncovering misrepresentations.

Smriti and Perry's child Aditya, holding dual Kenyan-UK citizenship and OCI status, resided in India amid litigation after Perry filed a guardianship petition in Delhi. The Supreme Court initially granted Perry custody on October 28, 2020, directing him to obtain a "mirror order" from a Kenyan court—a reciprocal order mirroring Indian directives to ensure compliance during transit. Perry submitted a Kenyan High Court order dated November 9, 2020, as the mirror order, leading to Aditya's transfer to Kenya on December 10, 2020, based on Perry's undertakings to submit to Indian jurisdiction and facilitate Smriti's visitation rights.

Post-transfer, the Kenyan court dismissed Perry's registration application on May 21, 2021, ruling the Indian judgment non-registrable and rejecting any recognition of Indian jurisdiction—facts Perry concealed from the Supreme Court. On October 7, 2021, the Supreme Court recalled its October 28, 2020 judgment and December 8, 2020 order, deeming Perry's non-disclosure and false representations (including projecting the November 9 order as a mirror order) as fraud on the court, violating solemn undertakings and *parens patriae* duties. Consequently, Perry's custody was declared illegal *ab initio*; CBI was directed to secure Aditya's return to Smriti, and contempt proceedings ensued, with Perry held guilty on July 11, 2022, for criminal contempt via false affidavits and defiance.

Mirror orders facilitate custody transitions across borders by having a foreign court replicate the originating court's order, ensuring enforceability and child welfare continuity. In this case,

the Supreme Court required one from Kenya to safeguard Aditya's interests post-transfer, but Perry's misrepresentation invalidated it, underscoring their reliance on good faith.

## MIRROR ORDER

In the landmark litigation of *Smriti Madan Kansagra v. Perry Kansagra*, the Supreme Court of India grappled with a sophisticated instance of "transnational parental abduction" facilitated by legal deceit. The case highlights the limits of judicial trust in international family law.

A Mirror Order is an ancillary legal mechanism used in international custody cases, particularly between countries that are not signatories to the 1980 Hague Convention.

**Definition:** It is an order issued by a foreign court (the "receiving" country) that contains the exact same terms and conditions as the order issued by the primary court (the "originating" country).<sup>2</sup>

**Purpose as a Bridge:** Its primary function is to ensure that the custody and visitation arrangements decreed in one jurisdiction remain enforceable in another. By "mirroring" the order, the foreign court acknowledges the primary jurisdiction and prevents the parent from using a new territory to "re-litigate" or ignore existing obligations.<sup>3</sup>

**Application in Kansagra:** The Indian Supreme Court initially granted Perry Kansagra custody of his son, Aditya, on the condition that he obtain a mirror order from the High Court of Kenya. This was intended to safeguard the mother's visitation rights once the child moved to Nairobi.<sup>4</sup>

## FRAUD ON THE COURT

The case took a dark turn when Perry Kansagra, after securing physical custody of the child and moving to Kenya, systematically dismantled the legal protections established in India.

**Invalidating Indian Jurisdiction:** Once in Kenya, Kansagra initiated proceedings to have the Indian judgment declared "unenforceable" and "invalid" under Kenyan law. He misled the Kenyan courts by suppressing the fact that he had given a solemn undertaking to the Indian

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<sup>2</sup> *Smriti Madan Kansagra v. Perry Kansagra*, (2021) 12 SCC 98, ¶ 41 (defining mirror orders as auxiliary to the primary jurisdiction).

<sup>3</sup> See Jeremy D. Morley, *The International Family Law Practice* § 7.04 (2020) (explaining the "bridge" function of mirror orders in non-Hague countries).

<sup>4</sup> *Smriti Madan Kansagra v. Perry Kansagra*, (2020) SCC OnLine SC 887 (The initial judgment granting conditional custody).

Supreme Court to abide by its jurisdiction.

**The "Limping" Legal Status:** By obtaining a contrary order in Kenya, Kansagra created a "limping" legal situation where the child was legally in his custody in Kenya, but his presence there was considered a result of illegal detention by the Indian courts.<sup>5</sup>

**Fraud as a Vitiating Factor:** The Supreme Court of India later ruled that Kansagra had committed "Fraud on the Court." In Indian jurisprudence, fraud "vitiates every solemn act." Because the initial custody was obtained through misrepresentation (the false promise to respect Indian orders), the court declared the entire custody grant void ab initio (invalid from the beginning).

## CONTEMPT AND THE CBI

To remedy this transnational wrong, the Supreme Court shifted from a civil custody approach to a punitive and investigative one.

**Contempt Jurisdiction:** The Court initiated *Suo Motu* Contempt proceedings against Perry Kansagra for willfully breaching his undertakings. He was eventually convicted of both civil and criminal contempt.<sup>6</sup>

**Involvement of the CBI:** Recognizing that its civil writs could not cross borders, the Court directed the Central Bureau of Investigation (CBI) to register a case and issue a Red Corner Notice (RCN) through Interpol.<sup>7</sup>

**Diplomatic Pressure:** The Court also requested the Ministry of External Affairs (MEA) to use diplomatic channels to secure the return of the child, highlighting that the father's actions were an affront to the "Majesty of the Indian Law."<sup>8</sup>

## ROLE OF MINISTRY OF EXTERNAL AFFAIRS (MEA)

The Ministry of External Affairs (MEA) played a pivotal role in *Smriti Madan Kansagra v. Perry Kansagra* by facilitating diplomatic communication and consular support after the Supreme Court's recall order exposed fraud, directing MEA to extend logistical aid to the mother for child recovery. In civil custody disputes escalating to contempt, MEA liaises via

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<sup>5</sup> *S.P. Chengalvaraya Naidu v. Jagannath*, (1994) 1 SCC 1 (Establishment of the principle that "no judgment of a court... can be allowed to stand if it has been obtained by fraud").

<sup>6</sup> *In Re: Perry Kansagra*, *Suo Motu Contempt Petition (Civil) No. 3 of 2021* (Judgment dated July 11, 2022).

<sup>7</sup> *Id.* at ¶ 55 (Directing CBI and MEA to take all possible steps for the child's repatriation).

<sup>8</sup> *See also* the MEA's role in the *Samyuktha Anthony* case, reflecting similar diplomatic hurdles in enforcing Indian decrees in non-reciprocating territories.

Indian missions abroad, but enforcement hinges on foreign sovereignty and reciprocity limits.

### **Diplomatic Channels**

MEA coordinates between Indian courts and foreign entities through High Commissions, such as the Indian High Commission in Nairobi, which handles service of notices, verifies foreign orders, and engages local authorities. In *Kansagra*, the Supreme Court explicitly requested MEA on August 19, 2021, to diplomatically urge Kenya to recognize its orders after the Kenyan High Court rejected them as non-registrable from a "non-reciprocating country," and later directed MEA Secretary and the Nairobi mission to assist Smriti's custody efforts. This includes forwarding judicial requests, monitoring compliance, and leveraging bilateral ties—India-Kenya relations are strong in trade and defense—but lacks coercive power, relying on persuasive diplomacy like bilateral talks or mirror order advocacy.

### **Extradition Limitations**

CBI registered a case under IPC Sections 420 (cheating) and 120B (conspiracy) against Perry for fraud via misrepresentation, but extradition failed as Kenya deemed it a civil custody matter ineligible under the India-Kenya Extradition Treaty (1969), which requires dual criminality and excludes family disputes. Mutual Legal Assistance Treaty (MLAT) aids evidence gathering or asset recovery but not child repatriation, as courts distinguish civil welfare from criminal enforcement; Supreme Court orders CBI action for contempt, yet foreign refusal prevails absent treaty obligations for civil contempt. As of 2024, Kenyan courts rejected extradition requests, highlighting how civil matters cannot bootstrap into extraditable crimes without foreign alignment.

### **Consular Assistance**

The MADAD portal (launched 2015) enables online grievance registration for Indians abroad, prioritizing child custody, abduction, and left-behind parents by forwarding cases to missions for tracking, local liaison, and rescue coordination via 24x7 helpline (1800-11-3090). In abduction scenarios, MEA missions like Nairobi verify child welfare, facilitate visitation, or petition foreign courts, integrated with CPV Division for OCI/minor tracking; in *Kansagra*, it supported Smriti's logistics despite non-recovery. Limitations include no enforcement authority—only advocacy—and data privacy, but it streamlines multi-mission responses for distressed parents.

### **Sovereignty Challenges**

Foreign courts like Kenya's prioritize sovereignty, refusing Indian orders under Foreign Judgments (Reciprocal Enforcement) Act (Cap. 43), deeming India non-reciprocating for custody/guardianship, thus non-registrable despite mirror attempts. Soft power (diplomatic notes, bilateral amity) urges compliance but yields to domestic law—Kenya views Aditya as its citizen, exercising *parens patriae* independently, rejecting "mirror orders" post-fraud revelation as mischief. Legal authority stops at borders without Hague Abduction Convention reciprocity (neither party acceded), forcing reliance on goodwill; persistent defiance, as in Perry's case (child now 15+ in Kenya per 2024 rulings), underscores why diplomacy often fails against sovereignty in non-treaty family matters.

## **CHALLENGES AND RECOMMENDATIONS**

The *Smriti Madan Kansagra v. Perry Kansagra* case highlights persistent enforcement gaps in transnational child custody disputes, where dual citizenship and foreign sovereignty complicate repatriation despite Indian judicial orders. Proposed solutions emphasize inter-ministerial coordination and legislative reform like the International Child Abduction Bill to strengthen India's framework. Until such measures, diplomacy via MEA extends judicial reach, underscoring its integration with law.

Physical repatriation falters when the abducting parent holds dual citizenship, as Perry Kansagra (Kenyan-Indian origin) leveraged Kenyan nationality to shield the child Aditya from Indian orders. Kenyan courts, prioritizing local citizenship and sovereignty, rejected Supreme Court directives as non-registrable under their Foreign Judgments Act, viewing the child as habitually resident despite prior Indian undertakings. Immigration barriers compound this: Bureau of Immigration lacks authority to detain foreign nationals without extradition treaties covering civil contempt, and dual citizens evade passport revocation absent criminal dual-criminality proof. Courts ordered CBI raids and lookout notices, but Kenya's non-cooperation left Aditya in situ, now over 15 years old per 2024 Kenyan rulings, rendering fresh claims time-barred.

Fragmented efforts between Ministry of Law (judicial policy), Ministry of Home Affairs (CBI probes, immigration enforcement), and MEA (diplomatic outreach) delay resolutions in custody-abduction overlaps. In *Kansagra*, Supreme Court directives mandated MEA-Nairobi

liaison for child recovery, CBI FIRs for fraud/contempt, and Home Ministry immigration alerts, yet siloed operations led to extradition denials and stalled tracking. Better synergy requires a nodal agency—e.g., a Central Authority under proposed law—for real-time data sharing via platforms like MADAD, joint SOPs for lookout circulars, and periodic reviews in cross-border PILs. Precedents show ad-hoc successes (e.g., MEA-CBI coordination in other abductions), but systemic protocols could preempt fraud via pre-verified diplomatic channels. The International Child Abduction Bill (India)—a long-discussed draft mirroring Hague Convention 1980—would establish a domestic Central Authority to process abduction applications, mandate swift return to habitual residence, and enable mirror orders reciprocity. Key features include mandatory foreign order registration, penalties for non-compliance (up to 3 years imprisonment), and MLAT integration for evidence, addressing Kansagra's gaps like fraud detection and enforcement. Though pending since 2019 consultations, its enactment would align India with 100+ Hague parties, reducing MEA's burden and empowering courts with statutory "long-arm" jurisdiction via designated judges and expedited hearings.

## CONCLUSION

Kansagra exemplifies "best interests of the child" manipulation: Perry's concealed Kenyan non-recognition and false mirror order affidavits vitiated welfare assessments, prioritizing forum-shopping over stability. Initial Supreme Court deference to comity enabled transit, but fraud revelation restored mother's custody, exposing litigation risks in non-Hague dual-citizen cases. This case exposes the "best interest" paradox which is while Indian courts prioritize the child's welfare over rigid legal rules, this very flexibility can be exploited in transnational disputes where there is no reciprocal enforcement mechanism. The litigation serves as a reminder that without high-stakes security (like the CBI involvement seen here), judicial trust in cross-border custody is easily betrayed.<sup>9</sup>

Diplomacy extends law's arm in family disputes, as MEA's persuasive notes and missions operationalize orders where sovereignty blocks force. Absent Hague accession or the Abduction Bill, MEA remains India's sole transnational enforcer, blending soft power with judicial mandates for incremental gains amid persistent challenges.

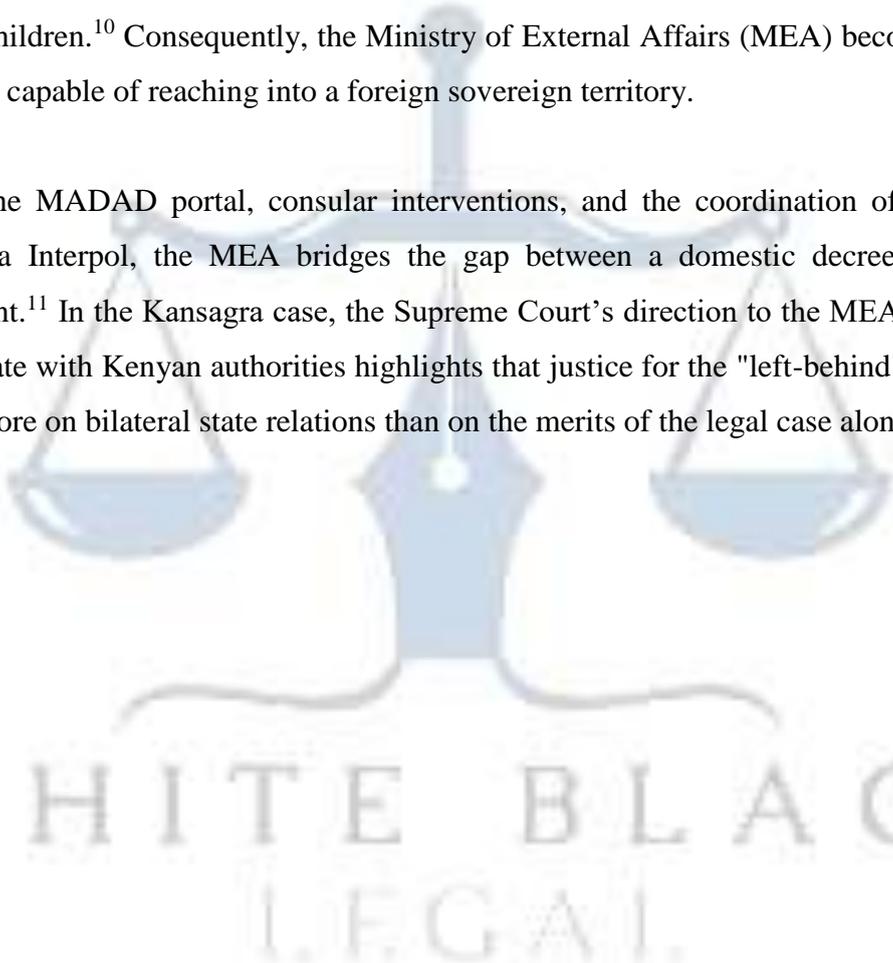
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<sup>9</sup> Ahmad Adil, *'Totally Wrong': Indian Mother Rebukes Norway for Doubting Child Custody Ordeal*, ANADOLU AGENCY (June 2, 2023) (highlighting the diplomatic friction caused by the absence of a treaty framework).

The resolution of the Kansagra dispute reaffirms that in the realm of transnational family law, diplomacy is not just an alternative to law; it is its necessary extension. When a parent commits "fraud on the court" and flees the jurisdiction, the domestic power of a judge ends at the national border. At this juncture, the legal battle transitions into a diplomatic one.

Since India is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction, it lacks access to the treaty's "Central Authority" mechanism for the swift return of children.<sup>10</sup> Consequently, the Ministry of External Affairs (MEA) becomes the only "long arm" capable of reaching into a foreign sovereign territory.

Through the MADAD portal, consular interventions, and the coordination of Red Corner Notices via Interpol, the MEA bridges the gap between a domestic decree and foreign enforcement.<sup>11</sup> In the Kansagra case, the Supreme Court's direction to the MEA and the CBI to coordinate with Kenyan authorities highlights that justice for the "left-behind" parent often depends more on bilateral state relations than on the merits of the legal case alone.



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<sup>10</sup> Law Commission of India, *Report No. 218: Need to Accede to the Hague Convention on the Civil Aspects of International Child Abduction* (2009).

<sup>11</sup> Ministry of External Affairs, *Guide to Consular Services*, <https://www.mea.gov.in/guide-to-consular-services-menu.htm> (detailing the limits and possibilities of consular assistance in family law matters).