



FAMILY LAW

Born Abroad, Raised in India: Legal Protection for Children of Indian Citizens in Transnational Families

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Introduction

In an increasingly globalised world, cross-border mobility has given rise to complex legal questions especially for children born abroad to Indian parents. One such compelling case came before the Rajasthan High Court in *Seher Gogia v. FRRO & Ors.* (CW-14338/2024). At the heart of the dispute was a five-year-old Australian citizen born on 1 June 2020, to Indian parents, who had returned to India and found herself caught in the web of legal, bureaucratic, and personal complexities of citizenship and visa law.

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Factual Background of the case

The Petitioner, Seher Gogia, a five-year-old girl was born in Australia to Indian citizens who had moved there after marriage. She acquired Australian citizenship by birth. After returning to India with her parents, Seher was staying on a visa that was extended until 24 January 2024. Amidst matrimonial disputes, her mother refused to give a No Objection Certificate (NOC) for a further extension of Seher's visa. This posed the risk of Seher being declared an illegal migrant and possibly deported, despite both her parents being Indian citizens. The Court noted that the mother had earlier filed for custody under Section 7 of the Guardianship and Wards Act, 1890, but later withdrew it, and had also initiated proceedings under Section 125 CrPC, the Domestic Violence Act, 2005, and lodged an FIR against the father.

Key Legal Issues

1. Can a minor child, born abroad to Indian citizens, be deported if her visa expires?
2. Is the mother's consent (NOC) mandatory for the extension of the child's visa?
3. Does the child have a right to apply for Overseas Citizenship of India (OCI)?
4. Do principles of international law, especially child welfare standards, override strict immigration formalities in such cases?

Court's Observations

1. Best Interest of the Child

The Court held that the child's best interest is the paramount consideration for all Nations. The Court relied upon the UNCRC (United Nations Convention on the Rights of the Child, 1989) adopted by the United Nations, which prescribed a set of standards to be adhered to by all State parties to secure the best interest of the child. Articles 3, 5, and 9 of the Convention, particularly the prohibition on separation of a child from their parents, were central to the decision.

The Court firmly held that a five-year-old cannot be deported just because her mother refuses to give an NOC, especially when the child has been residing in India with her father and no custody order exists in favour of the mother.

2. Visa Extension

Rejecting a bureaucratic approach, the Court directed the Foreigners Regional Registration Officer (FRRO) to extend the child's visa without requiring the mother's NOC, noting that the insistence on the NOC was causing harm to the child and unjustly raising formal consent over welfare.

3. OCI Application to Be Considered Sympathetically

While the petitioner had not yet applied for an Overseas Citizenship of India Card (OCI), the Court observed that under Section 4 of the Citizenship Act, 1955, children born abroad to Indian citizens could acquire Indian citizenship by descent, subject to registration. . It further noted that registration must be done at the Indian consulate in the country of birth, accompanied by a declaration that the child does not hold the passport/citizenship of any other country, and that the Ministry of Home Affairs has made online registration of such births mandatory within the prescribed time. The FRRO was directed to consider any future OCI application sympathetically and expeditiously.

4. Need for Legal Reform

The Court, in an important obiter, called upon the Ministry of Home Affairs to revisit Indian laws and policies to address transnational child citizenship issues. It recommended harmonization with international child rights norms and suggested that rigid visa and citizenship rules should not be applied mechanically in cases involving minor children of Indian citizens. It also emphasized that such cases present “unique and peculiar” situations requiring flexible, welfare-oriented responses.

Relevant Precedent Cited

- **Louis De Raedt v. Union of India**, (1991) 3 SCC 554 – Clarifies that while the state has discretion over foreign nationals, deportation must still comply with Article 21's guarantee of life and liberty.
- **Union of India v. Agricas LLP**, (2021) 14 SCC 341 – Reaffirms that international obligations must be followed unless in conflict with domestic law.
- **Apparel Export Promotion Council v. A.K. Chopra**, (1999) 1 SCC 759 – Highlights India's commitment to uphold international rights-based standards when interpreting domestic law.

Significance of the Judgment

This judgment is a progressive reaffirmation of child-centric justice in immigration matters. It protects children from becoming collateral damage in marital disputes or victims of administrative rigidity. Importantly, it bridges the gap between citizenship law, immigration regulation, and constitutional rights, applying a humanitarian and rights-based approach.

Conclusion

Seher Gogia is not just a case about visa extension; it's about what it means to belong. The Court's ruling ensures that citizenship and legality do not become instruments of exclusion, especially for children caught between nations. By explicitly directing the MHA to revisit laws and policy to align with international child rights standards, the judgment sets a precedent for flexible, welfare-first solutions in “unique and peculiar” cross-border family situations. It sets a powerful precedent on how international conventions, domestic law, and judicial sensitivity must work together to protect the most vulnerable.

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