

# Parens Patriae: Exercising Patriarchal Prerogative in Post-Partition India

**Ritu Menon**

Approximately 14 million people crossed over from one country to the other in 1947, in the brief period following India's division into India and Pakistan. A series of treaties, ordinances, agreements, resolutions, bills and acts were passed during the period 1947- 50, covering various aspects of refugee and evacuee transfer and re-settlement. Many of these were inter-dominion (between India and Pakistan), others were national, but with reciprocal legislation in either country.

With regards to abducted persons, the two Governments arrived at an agreement in November 1948 that set out the terms for recovery in each dominion. This was followed, in India, by the promulgation of the Abducted Persons (Recovery and Restoration) Act of 1949, which was renewed every year till 1956, when it was allowed to lapse. The Recovery Programme was marked by contentious disagreement and accusations on both sides, illustrating exactly how difficult and problematic such an exercise can be.

This paper will analyse the implications of this Act, not with the intention of discussing its legal merits, but rather, to indicate that in the exercise of providing protection, nurturance and compensation, the Government actually *withheld or abrogated certain fundamental rights of citizens*, and that the language of the acts and ordinances reiterated the penal culture of bounded refugee camps or settlements. Among other things, the Abducted Persons Act suspended the right to residence of women citizens, as well as their right to choose where and with whom they wished to live.

We would say that the responsibility of being both *mai* and *baap* with regard to abducted women displayed all the classic characteristics of single parenthood—when to be authoritarian, when to nurture—on the one hand, and on the other a profound disjunction between the ethics of caring and the exercise of power, as well as the contradictions inherent in the charity versus rights positions. As the experience of West Bengal has shown, the counter-discourse of Partition refugees there was a discourse of rights, claims, and demands, made against the Government's discourse of charity—dispensing favours rather than giving refugees what was due to them as a right. However, realising their claims as a matter of right would have required a legal regime and legislation that recognized the *civil rights* of citizens, including the right to shelter, livelihood, security and residence. Contrarily, what we see is that the acts and ordinances passed by the Government, and especially The Abducted Persons Act, *held their rights in suspension* in the interest of providing succour, protection and compensation, while simultaneously enhancing its own powers to regulate, police and penalise in the process.

Email: [womenunltd@vsnl.net](mailto:womenunltd@vsnl.net)