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INTERCOUNTRY ADOPTIONS IN INDIA: AN OVERVIEW- Prof. Mahantesh G.S¹**ABSTRACT**

Adoption is one of only a handful of concepts that have experienced an extreme change throughout travel from crude to the present-day age. Like most other social establishments, adoption results from the authentic and developmental process. The Old Hindu Law saw changes post-freedom period, and one of them was in the appearance of a systematized law on adoption called as Hindu Adoptions and Maintenance Act, 1956 (hereinafter alluded as HAMA). It permitted any individual who comes exceptionally close to the word 'Hindu' as characterized under Section 2 of HAMA to be qualified to take a child for adoption. Versatile selection is generally a phenomenon of the last half of the 20th century. The numbers and examples of universal adoptions have changed throughout the years because of the evolving political perspectives of sending and getting nations and the global network overall. The poor countries of the world had since quite a while ago had an access experience childhood in terribly insufficient shelters or the city. The rich nations had consistently had access to fruitless grown-ups who needed to parent and a moderately limited number of homeless children. Thus, this paper attempts to pinpoint the gap or the existing legal problem that needs to be resolved for an efficient process of inter-country adoption.

Keywords: Inter-country adoption, Hindu Adoptions and Maintenance Act, 1956, Convention on the Rights of the Child (CRC), Central Adoption Resource Authority (CARA)

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1.1 INTRODUCTION

Adoption is a legal practice that establishes a child's rights and duties to their natural parents and the child's adopted parents. Adoption gives the parentless or abandoned child a healthy physical and psychological family environment and an opportunity for interested parents to become parents and experience family growth. Adoption has been practiced for generations in India. Adoption is mentioned in several epics, including the Ramayana and the Mahabharata. Inter-country adoption began as a thoughtful approach to the hardship of orphaned children and neglected children of soldiers during World War II. The United States, Canada, and the developed nations of Western Europe are the principal contributors now. Factors such as declining fertility due to delayed marriage, the low success rate and high expense of infertility treatment, and a lack of domestic adoption options have made inter-country adoption a viable choice for childless couples in the receiving nations. Extreme poverty, a lack of contraception, and society's attitudes toward the birth of illegitimate children are three fundamental causes that lead to children being abandoned to institutions in their home countries or sending countries.

Even though adoption has been practiced for centuries, inter-country adoption is relatively new, but countries are moving towards making it an everyday norm. There are no tight regulations in India, which govern choices between countries; there were no rules for this before the collapse of the Laxmikant Pandey case. The Bombay and Delhi High Courts have circled some criteria that needed to be revised. However, at the international level, attempts have been made to legalize international adoption through the Convention on the Rights of the Child (CRC). On a global level, however, attempts have been made to legalize inter-country adoption through the United Nations Convention on the Rights of the Child (UNCRC), specifically Article 20² of the UNCRC, which states that children and teenagers have the right to extraordinary security and assistance if they are unable to live with their families and article 21³ of the United Nations Convention on the Rights of the Child.

The Hague Convention on Protection of Children and Cooperation in respect of Inter-Country Adoption or the Hague Adoption Convention, 1993, provides that inter-country adoptions will be made to the most significant advantage of the child and with deference for their principal rights and to forestall the

² Article 20 of UNCRC 1989 - 1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary, placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

³ <https://archive.crin.org/en/home/rights/convention/articles/article-21-adoption.html>

abduction, the sale, or traffic in children and each State should take, as an issue of need, suitable measures to empower the children to remain in the care of their family of origin. The main objectives of the Convention are set out in Article 1,⁴ which are: -

- to establish safeguards to ensure that inter-country adoptions take place in the best interests of the child and with respect for their fundamental rights as recognized in international law,
- to establish a system of cooperation amongst the Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children,
- to secure the recognition in the Contracting States of adoptions made following the Convention.

The Indian constitution, for example, contains specific articles that set out the legal viewpoint of inter-country adoption, such as Article 24⁵. The Hindu Adoptions and Maintenance Act of 1956 and the Guardians and Wards Act of 1890 outline the requirements and procedures for adopting children inside one's nation. Despite the lack of formal legislation in India governing inter-country adoptions, the country has been at the forefront of the practice, validating such adoptions in the child's best interests.

1.2 LITERATURE REVIEW

- Published in Manu Patra, "*AN OVERVIEW OF INTERCOUNTRY ADOPTION WITH SPECIAL FOCUS ON INDIA*" by Dr. Achina Kundu and Ms. Ayushi Kundu,

In this article, the author talks about how adoption fills the need left by a parentless child, but there are certain drawbacks to consider. When inter-country adoptions occur, the adoptive parents are strangers to the kid; it is not a distant relative who has taken on the obligation to raise the child following their parent's death or inability to parent. As a result, there is a scarcity of conventional biological family networks. Not only has the author mentioned that socioeconomic status, color, ethnicity, and cultural heritage all have a part in adopting a child. Typically, the adoptive parents are relatively fortunate white individuals from one of the world's wealthier countries, and they will be adopting a child born to a severely impoverished birth mother from one of the world's poorer countries' less privileged racial and ethnic groupings. Adoption across countries is filled with controversy.⁶

⁴ Hague Adoption Convention, 1993

⁵ <https://indiankanoon.org/doc/1540780/>

⁶ <http://docs.manupatra.in/newslines/articles/Upload/AAE0786F-285D-424E-B557-16F742371D48.pdf>

- Prमित Bhattacharya, a DamodaramSanjivayya National Law University student, writes about “*The Legal Framework of Inter-Country Adoption.*”

The practice of inter-country adoption gained momentum around the mid-1940s to protect those children who became orphans in World War II. It was in response to the plight of these children that the practice started. The point to be noted here is that usually, in the country of origin (or the giving country), an increase in population, extreme poverty, and poor economic system lead to the abandonment of children. In the case of *In Re Rasiklal Chhaganlal Mehta*, the issue of transnational adoption was first discussed by the court, which held that adoption under Section 9 (4) of the Hindu Adoption and Maintenance Act, 1956, inter-country adoption is legally valid. In the case of *Laxmi Kant Pandey v. Union of India*, the Apex Court formed some guidelines to govern international adoption. Setting up of a Central Regulatory Body was suggested, and in pursuance of the suggestion, Central Adoption Resource Agency (CARA) was set up in 1989. The agency plays a pivotal role in laying down substantive and procedural laws on intra-country and inter-country adoption.⁷

- In the article, “*The Paradox of Inter-Country Adoption*” by Mohit Aggarwal, a student of M.S Law College, Cuttack.

Over the last ten years, the number of children who are adopted by families who live outside of the child's birth country has more than tripled. Our increasingly globalized world is blurring the edges of racial, ethnic, or national identity. Nowhere is this phenomenon more actualized than in the act of building a family through inter-country adoption. In the United States alone, more than 20,000 children a year are being adopted from China, Russia, and other Asian, Eastern European, and Latin American countries. The increase in the number of children being adopted by families from other countries has also been the cause of an enormous rise in Public Policy Controversy, leading to The Hague Convention and Treaty on International Adoption and numerous countries changing their internal laws and policies, to regulate inter-country adoption practices. It has also led to an actual decrease in opportunity for hundreds of thousands of children who need families ever to have this opportunity or to benefit from it early enough to escape the ravages of lack of nurture, institutionalization, malnutrition, and lack of educational opportunity.⁸

⁷ <https://blog.ipleaders.in/legal-framework-inter-country-adoption/>

⁸ <https://www.legalserviceindia.com/articles/pard.htm>

- Bhaskar, Saras & Hoksbergen, R.A.C. & van Baar, Anneloes & Mothiram, Subasini & Laak, Jan. (2012). Adoption in India - the Past, Present and the Future Trends. Journal of Psychosocial. Volume 7. 321-327.

According to the authors of this article, adoption as a family construction has sparked international interest for the past three decades. India, one of the oldest countries on the Asian continent, has seen significant developments in the realm of adoption. India has progressed from unofficially adopting a male kid to conducting final rites following the adoptive parents' death. During the 1950s, social reform, India concentrated on finding homes for abandoned, poor, illegitimate, and surrendered children. These children were institutionalized before being placed for domestic and international adoption. Domestic adoption in India only gained traction in the late 1980s. Adoption has seen significant modifications since that time.⁹

- Misca, G. (2014) The "Quiet Migration": Is Intercountry Adoption a Successful Intervention In the Lives of Vulnerable Children

In this article, the author examines how international adoption has evolved into a worldwide phenomenon involving the cross-border transfer of vulnerable children, primarily from poor, developing nations to wealthier ones, during the last few decades. Debates over foreign adoptions frequently generate solid arguments for and against them. International adoptions are often referred to as "the ultimate form of imperialism," yet they are also recognized as successful interventions in the lives of the world's most needy children. This article focuses on research results on the consequences of international adoption and its influence on many elements of adopted children's development, and it highlights gaps in evidence-based interventions best suited to these children's post-international adoption requirements.¹⁰

1.3 RESEARCH PROBLEM

Adoption is a time-consuming procedure in and of itself. When the kid leaves the geographical authority of their birth location, it becomes difficult to monitor or regulate the type of care provided by the child's new adoptive family. There is no assurance that the child will not be mistreated, or, worse, that they will be transported to despicable enterprises such as prostitution or slavery. Because there is no good regulation in India, such techniques to watch after the child in their new home require manpower. However, because this issue has not been empathized enough, people are unaware of the horrors it holds if sufficient monitoring is not carried out.

⁹ <https://www.proquest.com/docview/1346900599>

¹⁰ https://www.researchgate.net/publication/262828937_The_Quiet_Migration_Is_Intercountry_Adoption_a_Successful_Intervention_In_the_Lives_of_Vulnerable_Children

1.4 RESEARCH QUESTION

- Whether the adoption agency's responsibility done once the adopted child has moved to another country?
- Is there any need for universal law among the nation regarding inter-country adoption?

1.5 HYPOTHESIS

Adoption agency responsibility is still ongoing after the post-adoption. There is a need for proper unification of law to govern post-inter-country adoption.

1.6 SCOPE

This research paper duly deals with inter-country adoption concerning India and the legislations/ that make it possible to carry on such adoptions in India possible. It also covers the area of the well-being of the child past such adoptions.

1.7 OBJECTIVES

The objectives are:

- To create awareness among the people regarding inter-country adoption
- To provide proper surveillance post-adoption to ensure the adopted child's well-being.
- To build a non-racial harmonious network with various races and ethnicities mixing.
- To give a better lifestyle to the children as socio-economic levels rise because mostly the receiving countries are Western developed countries.

1.8 RESEARCH METHODOLOGY

The paper has adopted a doctrinal research methodology consisting of primary and secondary data. The preliminary data consists of legislations, statutes, and international agreements, whereas the secondary sources are online journals, articles, and other published data and precedents.

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ESTABLISHMENT OF CARA AND THE PROCESS OF INTER-COUNTRY ADOPTION

The Central Adoption Resource Authority (CARA) is an independent organization responsible for both in-country and inter-country adoptions in India. It is part of the Ministry of Women and Child Development of the Government of India. Its goals are to match every orphan, impoverished, or abandoned kid in the country with a loving and caring home. It assures, first and foremost, that no Indian kid is placed for inter-country adoption without first being considered by Indian families in India. It also gives financial aid to non-governmental organizations (NGOs) and government-run welfare institutions to encourage excellent childcare and domestic adoption for such youngsters. CARA¹¹ was established in 1990 under the Ministry of Welfare's aegis; however, on July 2, 1998, the then Ministry of Social Justice and Empowerment conferred autonomous status on CARA by Union Cabinet Decision. On 17.07.2003, the Ministry of Social Justice and Empowerment recognized it as the Central Authority for implementing the Hague Convention on the Protection of Children and Co-operation in Respect of Inter-country Adoption.

The Inter-country Guidelines – 2004 govern inter-country adoptions in India. These instructions follow the Supreme Court of India's directives in *L.K v Union of India*¹². Every application from a foreigner seeking to adopt a child must be sponsored by a social or child welfare organization recognized or licensed by the government of the nation where the foreigner resides, according to the Cara criteria.

The effects of such guidelines will be that they will help to reduce profiteering and child trafficking, that a proper Home Study Report can become reliable for the court in the proceedings, and, most importantly, that there will be an authority or agency in the foreigner's country that can be made responsible for supervising the child's progress and ensuring that the child is adopted as soon as possible following the law and grows up in a warm and loving environment. Suppose the kid is chosen without the help of an agency or authority. In that case, there is a risk of profit-driven inclusion, loss of confidentiality, and infringements on the child's right to security and permanence. As a result, placing the kid for adoption through a reputed selection agency is always appealing.

PROCEDURE FOR INTER-COUNTRY ADOPTION

- i. **Enlisted Foreign Adoption Agency (EFAA/Central Authority/Government Deptt):** At this stage, the interested party must contact a reputable agency and enroll to adopt a child from another country in line with local legislation. This agency might be a central entity or government body that guarantees the entire process is adequately supervised.

¹¹Central adoption resources authority

¹² *Lakshmi Kant Pandey v Union of India* AIR 469, 1984 SCR (2) 795, 1984

- ii. **Indian Placement Agency with a Recognized Name:** This is a well-known agency that CARA has approved to place children for international adoption.
- iii. **Approval by the ACA:** The medical examination aims to ensure that the kid is healthy and safe and that there are no hidden health concerns that would have gone unnoticed, therefore scamming the system on the adopting party.
- iv. **Correlating the child's study report with the parent's study report¹³:** In addition to this report, the agency must give a picture of the parents and a declaration declaring that the parents are prepared to adopt the kid in line with local legislation. If the child's biological parents exist, the child welfare agency to whom the kid is surrendered for arranging adoption arrangements should appropriately help them decide to give the child up for adoption to foreign parents.
- v. **NOC from CARA:** CARA's NOC Committee will review the relevant papers presented by RIPA and ensure that the processes outlined in these Rules have been followed. It will also determine if the child's matching and placement with PAPs is in the child's best interests.
- vi. **Court Petition:** when the adoption matter is heard in court (the court must resolve the adoption case within two months).
- vii. **Court Decree:** The adoption is complete after the court issues the decree.

COMPARATIVE ANALYSIS OF THE LEGAL PROVISIONS

A comparison of the provisions of the legislation in different nations has been attempted. The study of ICA has been reduced to comparing European, American, and Indian laws.

INDIA

ICA law is scarce in India. Judicial Pronouncements and CARA Guidelines provide authority and legitimacy to the significant legislation governing ICA. The Government of India has developed a National Policy for the Welfare of Children following its constitutional mission. The policy's essence is: "The Nation's children are a highly essential asset." We must care for and nurture them. Children's programs should play an essential role in our national goals for human resource development so that our children grow up to be

¹³<http://cara.nic.in/Parents/Guidelines_living_Abroad.html> accessed on 23rd March 2020.

strong citizens who are physically fit, cognitively aware, and morally sound, with the skills and drive that society requires. Our goal should be to provide all children with equal development opportunities during their developmental years since this would help us achieve our broader goal of eliminating inequality and achieving social justice." The National Policy for the Welfare of Children also emphasizes the importance of volunteer organizations in education, health, recreation, and social welfare services for children and says that the state would work to foster and strengthen such organizations.

There is no explicit provision for ICA, and India is currently a party to the 1993 Hague Convention. The pact was signed by India in 2003. The Government of India issued the "Revised Guidelines for the Adoption of Indian Children-1995" on May 21, 1995, and it has now been decided to further revise these Guidelines in light of recent developments such as India's ratification of the Hague Convention on Inter-country Adoption-1993 on June 6, 2003¹⁴, and so on.

UK

The Children and Adoption Act of 2006 governs the provisions of the ICA in the United Kingdom. Part 2 of the Act authorizes the Secretary of State to halt ICA's operations in a nation if he has worries about the country's child adoption policies.

Section 13 of the legislation contains provisions for the following ICA-related matters: granting the Secretary of State and the National Assembly for Wales the authority to charge adopters or potential adopters a fee for services rendered with ICA. Preventing local authorities from duplicating tasks when a kid is transferred into the nation for ICA purposes, and Amending section 83 of the Adoption and Children Act 2002 to make it more difficult for intercountry adopters to avoid UK immigration rules.

Precedents and cases

Inter-country adoptions were first debated in the well-known case of *In Re Rasiklal Chhaganlal Mehta*, in which the Court concluded that inter-country adoptions under Sec 9(4) of the Hindu Adoptions and Maintenance Act, 1956 should be legally recognized under both nations' laws. The adoptive parents must comply with their country's adoption laws and receive permission from the proper government, guaranteeing that the kid will not have difficulties in immigration and attaining nationality in the adoptive parent's country.

¹⁴ <https://www.lawteacher.net/free-law-essays/family-law/an-analysis-of-inter-country-law-essays.php>

In the case of *L.K. Pandey v. Union of India*¹⁵, the complaint was founded on a letter sent to the court by a legal adviser, Laxmikant Pandey, alleging that social associations and willful organizations engaged in the job of selling Indian children to foreign parents are indulging in malpractices. It was said that these youngsters were subjected to long dreadful journeys to far-off isolated lands in perilous circumstances and eventually became prostitutes and beggars. In this case, the Supreme Court voiced its view and established specific regulations for inter-country adoption. In paragraph 8 of the judgment, the Hon'ble Court stated, "While supporting inter-country adoption, it is important to keep in mind that the main objective of giving the child in adoption being the welfare of the people, great care must be exercised in allowing the child to be given in adoption to foreign parents, unless the child be neglected or abandoned by the adoptive parents in the foreign country, or the adoptive parents may be unable to provide for the child." Following this decision, Indian courts gradually broadened the scope of accepting children of different nationalities. The Supreme Court of India established specific standards that must be followed in the case of international adoption to protect children's interests. The Guardian and Wards Act of 1890 allows foreign nationals to adopt an Indian kid. The foreigner will be appointed as the child's guardian by an Indian court. The infant will be taken to the foreign national's country and adopted according to the regulations of that country.

In *Re Jay Kevin Salerno*¹⁶, the Bombay High Court stated that "where the authority of a kid is with an institution, the child is kept in a private care home or with a private grouping for great individual consideration of the child, it does not imply that the foundation ceases to have guardianship of the child." As a result, in the absence of clear legislation, the Supreme Court has played an essential role in regulating the adoption of minors to foreign parents. It has surrounded the guidelines of many global principles with the help of Indian culture.

In another case, *Mr. Craig Allen Coates v. State through Indian Council for Child Welfare and Welfare Home for Children*¹⁷, if the adoptive parents fail to properly show the motivation for adopting a child from a foreign nation, the adoption procedure is prohibited and ruled malafide. According to the case of *Maria Chaya Schupp v Director General of Police and Ors*, it is critical to review all adoption paperwork and get the required authorization from biological parents before proceeding with inter-country adoptions.

Based on the above cases, it is clear that strict procedures must be observed to avoid mistakes and to avoid causing any difficulty to the children. Another area for improvement of the CARA guidelines that must be

¹⁵ Lakshmi Kant Pandey v Union of India AIR 469, 1984 SCR (2) 795, 1984

¹⁶ Re Jay Kevin Salerno AIR 1988 BOM 139

¹⁷ Mr. Craig Allen Coates v. State through Indian Council for Child Welfare and Welfare Home for Children 162 DLT 605,2002

addressed is the delay in the adoption process. Adoption has recently been the most excellent way to restore family life to a kid who has been separated from their biological family. Still, it is not a cure-all for the many difficulties that lead children to be orphaned or abandoned. We must also comprehend the issue of overpopulation.

CONCLUSION

While international adoption may help make a family happy, it should be remembered that after the kid is shipped off to a foreign country, it becomes much more difficult to oversee if adequate maintenance and care are done to ensure the child is in a safe environment. It is difficult for third-world countries to offer workforce in distant locations. While the respectable agency involved in the adopted country may make efforts to safeguard the child's well-being, it is easier. As a result of financial difficulties and a lack of education among the workers, the gap is formed, making further monitoring of the children sent away to other places impossible.

The Indian Constitution, under Articles 39 and 44, provides for the welfare of children and young against material and ethical exploitation. The Indian legislature introduced the Adoption of Children's Bill, 1972 to advance a consistent standard code. In any event, the Muslim community refuted it. Given the global breadth of child trafficking, The Rights of the Child, 1989 treaty stipulates that inter-country adoption be the final resort when searching for a loving home. Like other types of adoption, inter-country adoption may be costly, time-consuming, and uncertain.

Learning about inter-country adoption through reading books, attending parent support groups, and chatting with people who have given or taken a child via adoption is critical. If these issues are addressed, inter-country adoption will provide joy and fulfillment to many families, as it has already fulfilled the hopes of many. The research so validates the idea that an adequate workforce is necessary to conduct effective supervision, which assures the well-being of the adopted kid.

SUGGESTIONS

- Adoption agencies' licensing procedures should be tightened. Penalties must be imposed if the agencies fail to follow the rules and regulations.
- Awareness programs should be organized for poor, vulnerable women and parents who wish to give up their kids for adoption to ensure they follow the proper legal processes rather than becoming victims of scammers.

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- Before an adoption case is filed, the recipient country's bilateral connection with India should be investigated.
- CARA guidelines should include two chapters that deal with in-country and inter-country adoptions separately.

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