



Inter-Country Adoption-Myth and Reality

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ABSTRACT

Adoption is the legal act of permanently placing a child with a parent or parents other than the birth or "biological" mother or father. An adoption order has the effect of severing the parental responsibilities and rights of the birth parents and transferring those responsibilities and rights to the adoptive parents. Adoption can be defined as the statutory process of terminating a child's legal rights and duties towards the natural parents and substituting similar rights and duties towards adoptive parents. Thus after the finalization of an adoption, there is no legal difference between adopted children and those born to the parents. Adoptions can and have been arranged to allow ongoing contact between the parties involved. The arrangements are referred to in popular culture as either "open, semi-open, or closed adoption."

KEYWORDS : Biological, Abandoned, Orphanage, Domestic, Foster care, In-country, Inter-country, Adoption.

(1)Introduction: Adoption is the legal act of permanently placing a child with a parent or parents other than the birth or "biological" mother or father. An adoption order has the effect of severing the parental responsibilities and rights of the birth parents and transferring those responsibilities and rights to the adoptive parents. Adoption can be defined as the statutory process of terminating a child's legal rights and duties towards the natural parents and substituting similar rights and duties towards adoptive parents. Thus after the finalization of an adoption, there is no legal difference between adopted children and those born to the parents.

When the parents of a child want to give it away in adoption or the child is abandoned, it is considered necessary in the interest of the child to give it in adoption. Firstly, effort must be made to find adoptive parents for it within the country. If it is not possible to find suitable adoptive parents within the country, it may become necessary to give the child in adoption to foreign parents, or as it is called "inter-country adoption" rather than allow the child to grow up in an orphanage or an institution where it will have no family life. Quite often, in the socio economic conditions prevailing in the country, it might have to lead the life of a destitute, half-hungry and suffering from mal nutrition and illness.

Adoptions can and have been arranged to allow ongoing contact between the parties involved. The arrangements are referred to in popular culture as either "open, semi-open, or closed adoption."

(1.1)Open adoption: Open, or fully disclosed, adoptions allow adoptive parents, and often the adopted child, to interact with biological kin. Communication may include letters, emails, telephone calls, or visits: Direct access to the birth parents and history has advantages of answering identity questions.

(1.2)Semi-open adoption: In a Semi open adoption, the parents involved may meet one or several times and then have no more physical contact. Now Identifying letters and pictures may be exchanged directly or via a third party, Such as an adoption agency. Throughout the years. The relationship may remain Semi open or may evolve into open or closed.

(1.3)Closed Adoption: In some closed adoptions, non-identifying information is shared between the parties involved, such as medical history, up to the point of placement. After the adoption is legalized, no further information is shared between the parties involved.

(2)Types of adoption by location and origin

(2.1)Domestic adoption: A domestic adoption is the placement of a child for adoption within the country in which he or she was born and normally resides. A special case is an interstate adoption - where an adoption occurs across state lines in the U.S., or within different Canadian provinces. In such cases, additional regulations may apply.

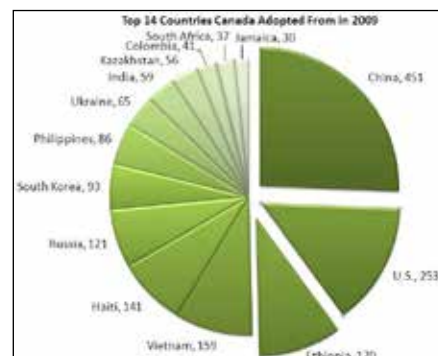
(2.2)Foster care adoption: Foster care adoption is a type of domestic adoption where the child is initially placed into a foster care system and is subsequently placed for adoption. Children may be placed into foster care for a variety of reasons, including removal from the home by a governmental agency because of maltreatment. Maltreatment can take the form of neglect or abuse. In most adoptions regarding foster children, the foster parents decide to adopt and become the legal par-

ents. In some jurisdictions, adoptive parents are licensed as and technically considered foster parents while the adoption is being finalized. Altogether, of the 127,500 adoptions in the U.S. in 2001, about 51,000 occurred through the foster care system.

(2.3)Intra-family adoption: Not all adoptions are from outside of the family. An intra-family adoption occurs when a child is adopted by an existing close family member and/or his or her partner. A common example is a "stepparent adoption", where the new partner of a parent may legally adopt a child from the parent's previous relationship. Intra-family adoption can also occur through surrender, as a result of parental death, or when the child cannot otherwise be cared for and a family member agrees to take over.

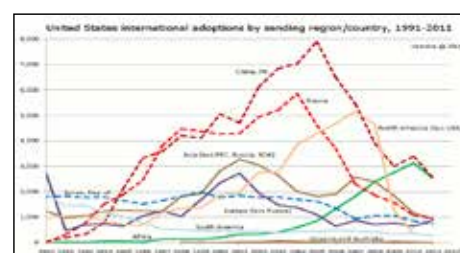
(2.4)International adoption or Inter-country Adoption:

International adoption is the placing of a child for adoption outside that child's country of birth. The laws of different countries vary in their willingness to allow international adoptions. Some countries, such as China and Vietnam, have relatively well-established rules and



procedures for foreign adopters to follow, while others, the United Arab Emirates (UAE) for example, expressly forbid it. Some countries, notably many African nations, have extended residency requirements that in effect rule out most international adoptions. And some countries such as Romania are closed to international adoption altogether, with the exception of adoptions by close relatives (such as grandparents).

Recognizing some of the difficulties and challenges associated with international adoption, and in an effort to protect those involved from



the corruption and exploitation which sometimes accompanies it, the Hague Conference on Private International Law developed the Convention on protection of Children and Co-operation in Respect of Inter-country Adoption which may come into force on May 1st, 1995. To date it has been ratified by Seventy Five countries, including India.

India is a party to the Hague connection on protection of children and co-operation in Respect of Inter Country Adoption.

(3) Basic Indian Policy

At the International level, India has ratified the convention on the Rights of Child and the Hague Convention on inter-country adoption of children. At national level, India has prepared a National Policy for children in 1974 under which Ministry of Social Justice and Empowerment (now known as Ministry of Women and Child Development) has got the mandate to enact laws regarding welfare of children. The Juvenile Justice (Care and Protection of Children) Act 2000 is a landmark in this regard. This Act has incorporated the provision of adoption and Inter-country, Adoption of child as an alternative to institutional care.

Central Adoption Resource Authority - CARA Ministry of Women & Child Development Govt. of India

Year	In Country	Inter Country Adoption by NRI/PIO/ Foreigners NOCs issued by CARA	TOTAL
2006	2409	853	3262
2007	2494	770	3264
2008	2169	821	2990
2009	1852	666	2518
2010	5693	593	6286
2011	5905	589	6494

A-foreign national adopts an Indian child under the provisions of the Guardian and Wards Act, 1890. The Indian court will appoint the foreigner as the child's guardian. The foreign national will take the child to his own country and adopt him or her as per the laws of his country.

There is no express provision regarding adoption by foreigners. The rules and procedure for inter-country adoption are summarized with latest decisions of Supreme Court.

Laxmi Kant Pandey v/s Union of India¹ : In this case Supreme Court of India decided Inter Country Adoption - normative and procedural safeguards to be followed by Constitution of India under Articles 15, 39, 24).

(4) The Adoption of Children Bill, 1980 is an excellent legislative step for Inter Country Adoption.

Clause 17th of the Adoption of Children Bill, 1980 lays down that no institution or organization can make any arrangement for the adoption of an Indian child by foreign parents unless such institution or organization is licensed as social welfare institution and clause 21st, it would be unlawful to make or to give to any person any payment or reward for or in consideration of the grant by that person of any arrangement for such adoption.

The Adoption of children Bill 1980 has unfortunately not yet been enacted into Law but it would be useful to notice some of the relevant provisions of the Bill in so far as they indicate what principles and norms the Central Government regarded as necessary to be observed for securing the welfare of children sought to be given in adoption to foreign parents and what procedural safeguards the Central Government thought, were essential for securing this end. Clauses 23rd & 24th of Adoption of children Bill 1980 dealt with the problems of adoption of Indian children by parents domicile abroad.

(5) U.N.O. & Child Welfare:

Great concern for the welfare of children at the international level culminating in the declaration of the Rights of Child adopted by the General Assembly of United Nations on 2nd of November, 1959. The declaration in its preamble points out that "a child, by reasons of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection before as well as after birth" and that mankind owes to the child the best it has to give and proceeds to formulate several principles of which the following are material for our present purpose. The relevant provisions are contained in Principles 2nd, 3rd, 6th, 9th and 10th. These run as under:

Principle 2nd: The child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interests of the child shall be the paramount consideration.

Principle 3rd: The child shall be entitled from his birth to a name and a nationality.

Principle 6th: The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and in any case in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Principle 9th: The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

Principle 10th: The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance friendship among peoples, peace and universal brotherhood and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

(6) Implementation of Policy-Central Agency: To strengthen adoption rules and facilitate adoption without any hassles, Government of India under advice of Supreme Court constituted a Central Agency- Central Adoption Resource Agency [CARA] with New Delhi as base to set up guidelines for adoption time to time safeguarding welfare and rights of children while granting adoption or guardianship under Hindu Adoption and Maintenance Act 1956, Guardians and Wards Act 1890 or Juvenile Justice Act of 2000.

(6.1) Agencies approved for adoption

Top Countries in 2011		
*Countries where EAC has programs		
**Countries where EAC is licensed		
*Countries Coming Soon		
China - 2589**	Nigeria - 148	Morocco - 46
Ethiopia - 1727	Congo - 133	Thailand - 46
Russia - 970**	Ghana - 100**	Guyana - 45
S. Korea - 736	Jamaica - 100	Haiti - 33*
Ukraine - 632*	Kazakhstan - 86*	Guatemala - 32
Philippines - 230	Bulgaria - 75*	Liberia - 29
India - 228**	Nepal - 65	Japan - 27
Colombia - 216**	Rwanda - 58	Cameroon - 23
Uganda - 207*	Latvia - 56	Mexico - 22

For safe guarding interest and welfare of child, India Government has recognized following agencies.

1. Indian Placement Agencies
2. Foreign Placement Agencies Enlisted
3. Voluntary Coordinating Agency in India
4. Scrutiny Agencies

When a recognized Indian agency receives a child its first responsibility is to trace the biological parents and restore the child to them failing which as far as possible to place the child in adoption with Indian families. It would be desirable that an Indian recognized placement agency should place annually more than 50 per cent of the total number of children given in adoption with Indian families. However, the handicapped children, children above six years age and siblings will be excluded from this calculation. The placement

(6.2) agencies are required to add here the following order of priority while considering the adoption of Indian children;

- (1) Indian families in India.
- (2) Indian families abroad.

- (3) One parent of Indian origin abroad.
- (4) Totally foreign.

The following supporting documents will be required for inter country adoption:

1. Birth Certificates
2. Marriage Certificate
3. Financial Statement
4. Employment Letter
5. Medical Certification
6. Police Reports
7. Divorce Decree
8. Approval Notice from Immigration

For processing in India, in addition to the documents accompanying the request for adoption, the following are required:

- (i) Birth and Abandonment letter (this is a letter issued by the agency affirming that the child has been given up/ abandoned, and is free for adoption)
- (ii) Passport and photographs of the child with a recent family Photograph.
- (iii) Valid visa
- (iv) Escort letter (in case the child is escorted by persons other than the adoptive parents).

(7) Procedure for Inter-Country Adoption



1. The application of should be made to the Child Welfare Agency recognized by the Government of India in the Country of the applicant.

2. Once applicant applies to the Social Welfare Agency our Country, they will require certain important details of his/her family. The Agency will appoint a Social Worker to visit their home and meet the family members. This will be done to ensure that the family adopting a child will be able to provide all the emotional and financial support to the adopted child. The Social Worker will prepare a report after visiting their family which will be called as Home Study Report. The Home Study Report would have details like family background, relationship between the family members, employment status of the couple, health details of the family, economic status, reasons for wanting to adopt an Indian child etc.,

After review of the completed application, a home study will have to complete. This is done by the agency social worker. The home study is an interview process where applicant learns about adoption and a social worker helps them determine their ability to parent an adopted child.

Home Study Report

It is crucial documents prepare by the social worker, of a placement agency to evaluate a prospective adoptive parent and must include information on the following:-

- (i) Social status and family background
- (ii) Description of home
- (iii) Standard of living
- (iv) Current relationship between husband and wife
- (v) Relationship of couple and members of their extended families.

3. Once the Home Study report is prepared, the Home Study Report along with the original application will be sent to a recognized Indian Placement Agency from the Social Welfare Agency of their country

directly. After receiving applicants application, the recognized Indian Agency will examine the Home Study Report and match .the Home Study Report with, child study report Child Study Report is nothing but the detail; about the child like age, sex, Name how the child was brought etc.

4. Once the Indian Agency is able to match the home study report and child study report, they will send the details of the child with the photograph and the medical report to the agency of their country. The photograph and other details will be shown to them and once they give their approval to adopt the child, the Indian Placement Agency after getting clearance from Government of India, will process the case with the competent court for awarding the guardianship of the child to them. The competent court within the stipulated time will award the guardianship of the child to them.

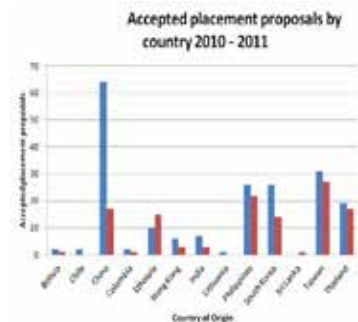
5. After getting the court order, the Indian Agency will obtain the Indian passport and Visa for the child and the child will leave the country either with the prospective adoptive parent or with an escort to his or her new home.

6. No money will be charged by the adoption agency for giving the baby to applicant in adoption except the maintenance charges which the agency might have incurred in keeping the child in the agency. These charges also will be fixed by the court, on the basis of the representations made by the recognized agency.

7. Once the child reaches the family of the adoptive parents, the child will be adopted by the parents under the prevailing laws of that country.

(8) Few Facts, about Inter-country Adoption Procedure:

• A single parent has equal legal status to adopt a child and to deny his/her adoption, only on the ground of her single status, is not only a



violation of her legal right but also her constitutional right, guaranteed under Article 14 and 15 of Constitution of India. Whosoever is deprived of the right to adopt only on the ground of single status may bring the matter to the attention of CARA in writing.

- A prospective adoptive parent (PAP) has the right to get a medical check up done to their satisfaction even if the child has had one done by the agency earlier.
- One can adopt even if one has a biological child/children. There is no bar.
- The Supreme Court has directed that the child should be given in adoption before it completes the age of three years. The reason is that if a child is adopted before it attains the age of understanding; it is always easier for it get assimilated and integrated in the new environment in which it may find itself on being adopted by a foreign parent.
- The Supreme Court has added that there can be no hard and fast rule on this matter and children of higher age too can be given in adoption. Even the children between the ages of three and seven year can be given in adoption.
- Even children above the age of Seven years may be given in inter - country adoption but, in such cases, their wishes may be ascertained if they are in position to indicate any preference.
- In the order appointing the foreign parent as guardian of the child and granting him leave to remove the child to his country, the guardian court should ask him to deposit a sum of money or to execute a bond to enable the child to be repatriated to India should it became necessary for any reason.

- The Supreme Court also directed that the adoption should take place in the country of the foreign parent within a period of two years, otherwise the bond or security should be forfeited. In some cases when the adoption process might not be completed within two years, some relaxation should be made. The application seeking the extension of the time by making application to the guardian court.

(9) Status of the Child - Family: It is essential that in inter country adoption child is given the same legal status and rights of inheritance, as if she/he had been born to the adoptive parents in marriage.

Name- When the legal adoption process is concluded the child shall have the equivalent birth registration certificate.



Nationality- When the legal adoption is concluded, the child shall be granted appropriate Citizenship.

Immigration- Since there is no statutory enactment in our country providing for adoption of a child by foreign parents or laying down the procedure which must be followed in such a case, resort is had to the provisions of the Guardians and Wards Act, 1890, for the purpose of facilitating such adoption.

There is no concrete legislation in India, which deals with Inter-Country adoption. In fact, before the Laxmi Kant Pandey's case, it did not have any guidelines either. The High Court of Bombay and Delhi framed some rules, which were found to be quite insufficient. At the interna-

tional level though, attempts had been made to legalize Inter-Country adoption through the Rights of Child Resolution, adopted by the United Nations General Assembly on November 20th, 1959 and Guidelines, formulated by an expert group and adopted by the Economic and Social Council of the United Nations in its 20th session and also through the Adoption of Children Bill, 1980, relating to Inter-Country adoption legislation. Under the Adoption of Children Bill, 1980 giving in and taking in child for adoption was made unlawful. Clauses 23 and 24 of the said bill were most relevant in this respect.

Since the end of the 20th century, infertile couples and single people have increasingly turned to transracial and international adoptions, as well as new medical techniques for treating infertility and providing alternative methods of reproduction. Meanwhile, the number of older special-needs children awaiting adoption has skyrocketed. These children often come from backgrounds of abuse and neglect, and finding appropriate placements for them is one of the most pressing concerns in child welfare today. More than 250 cases in the Delhi High Court over 160 domestic and 80 inter-country Adoption cases are waiting to be cleared. In a country with an estimated 12.4 million orphans and only 5,000 adoptions per year the inevitable question seems to be- must India's adoption laws be so intimidating and so tough?

(10) Conclusion:

To conclude the trust of national policy of India for welfare of children is: To protect abandoned and destitute children, goal is to find a family for as many orphan children as possible and to safeguard their interest as visualized in the UN Convention on child rights and Hague Convention - on Inter country adoption ratified by India government. The 'Best Interest of the Child' is the guiding principle behind all adoption laws in India and social awareness programmes have helped to change the attitude of society and people towards adoption in India.

The nation's children are supreme important asset. Their nurture and solitude are responsibilities of nation. Children's programmes should find a prominent part in national plans for the development of human resources so that children grow up to become robust citizens; physically fit, mentally alert and morally healthy endowed with the skills and motivation needed by the society. Equal opportunities for development to all children during the period of growth are the aim, as this will serve larger purposes of reducing inequality and increasing social justice.

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