

CALL FOR LEGISLATION ON INTER-COUNTRY ADOPTION

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Abstract: Adoption is 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. It creates a parent-child relationship between persons who are not so related by blood. Adoption is a universal process which has been in practice all over the world since ages. In India also, it has been existing from time immemorial. Even the concept of adoption was in existence at the time of Ramayana and Mahabharata but the idea of Inter-Country Adoption is comparatively a new one. Inter-country adoption is, now a day, emerging as the most common form of family enlargement. Inter-country adoption is an adoption of a child of one country by a person of another country. This kind of adoption requires more controlled supervision and management than domestic adoptions. Through this paper the author aims to discuss the various issues which need to be sorted out for the smooth inter- country adoption process, the judicial views and lack of specific legislation on inter-country adoption.

Keywords: Inter-Country Adoption, Legislation, Child, Parents, Legal Rights

“Adoption has the dimension of connection- not only to your own tribe, but beyond, widening the scope of what constitutes love, ties and family. It is a larger embrace. By adopting, we stretch past our immediate circles and, by reaching out, find an unexpected sense of belonging with others.”

Isabella Rossellini

1 Introduction

Adoption is 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. It creates a parent-child relationship between persons who are not so related by blood. For the orphan or the abandoned child, adoption facilitates a pragmatic physical and psychological household environment and for the persons who are yearning for child it furnishes them an opportunity to become parents and witness family growth. Adoption is a universal process which has been in practice all over the world since ages. In India also, it has been existing from time immemorial. Even the concept of adoption was in existence at the time of Ramayana and Mahabharata but the idea of Inter-Country Adoption is comparatively a new one.

Inter-country adoption is, now a day, emerging as the most common form of family enlargement. Inter-country adoption is an adoption of a child of one country by a person of another country. This kind of adoption requires more controlled supervision and management than domestic adoptions. Expecting parents must comply with the procedural requirements and the laws governing Inter- country adoption of both the countries. The prospective parents and the adopting children must also be eligible for the Immigration and Naturalization Service before the child is issued a visa.

2 Leading Concerns regarding Inter- Country Adoption

There are various issues which need to be sorted out for the smooth inter- country adoption process. Those are as follows:

2.1 Child Trafficking: It is said by the antagonists of Inter-country adoption that it promotes child trafficking i.e. illegal buying and selling of children. The children of developing countries are in high demand in the developed world and it creates a “black market in kidnapped babies.”

2.2 Exploitation: The inter-country adoption may lead to child exploitation. It is claimed that parents from developed countries may take advantage of children belong to developing countries and can exploit them.

2.3 Culture Differences: this is also one of the counter arguments that can be taken against inter-country adoption. Cultural differences between child and parents may cause adverse effect on the welfare of the child whereas child welfare is to be of the paramount consideration in adoption.

2.4 Procedural Complications: Since there is no explicit law dealing with Inter-country adoption, therefore, the parties to adoption have to face various procedural issues which need to be looked into.

3 Legislative Efforts

When it comes to inter-country adoption there is no specific law regarding it in India and at the time when the case *Laxmikant Pandey v. Union of India* came before the Supreme Court we did not even have any guidelines and recommendations in this regard. In this very case, the prerequisites for inter-country adoption were issued with the aid of various international specifications and at the same time keeping in mind the Indian culture and values. Though the legislature intends to legislate a law for regulating inter- country adoption has been there since a long time and, therefore, in this direction The adoption of Children Bill, 1972 was introduced before the Upper House in 1972 but it was later on relinquished due to the strong opposition showed by Muslim community in this behalf. After the failure of Bill of 1972 the Adoption of Children Bill, 1980 was introduced in the Lok Sabha on 16th December, 1980, with an explicit provision that Muslims shall be excluded from its application but the Bill has not yet transformed into law.

4 Legal framework and other authorities governing adoption in India:

The notion of Inter-Country adoption is comparatively new in India, therefore, we do not have a legislation which exclusively deals with Inter-Country adoption. Though, India has various domestic laws, authorities and guidelines dealing with this kind of adoption such as:

4.1 The Guardians and Wards Act, 1890

The concept of complete adoption is not recognized in Muslims, Christians, Parsis and Jews they do not have an enabling law to adopt a child, therefore, they can take the child in 'guardianship' under The Guardians and Wards Act, 1890. The Act mainly provides for guardianship and does not exclusively deals with the adoption. Through this process the child becomes a ward and not the adopted child of the parents and after completing the age of 21 years he/she no longer remain wards and accorded individual identity. They do not have an automatic right of inheritance.

The Act is silent about the orphan, abandoned and surrendered children. There was no codified law dealing with the adoption of these kind of deprived children and due to that various misapprehensions or irregularities arose regarding their custody, guardianship which were detrimental for the welfare of the children.

Taking into consideration all the above mentioned aspects a praiseworthy step was taken by the legislature in the form of "Chapter IV" of the Juvenile Justice (Care and Protection of Children) Act, 2000. This Act is a progressive law and shows that legislature has accepted the concept of secular adoption irrespective of any community or religious conviction of the parents and the child concerned. The Act provides the right to all citizens to adopt and all children to be adopted.

4.2 The Hindu Adoptions and Maintenance Act:

The Hindu Adoptions and Maintenance Act, 1956, is dealing with the adoption of Hindu children by the Hindu parents.

4.3 The Hague Convention on Inter Country Adoption

"The Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-Country Adoption (Hague Adoption Convention)" provides for protection of children and their families from illegal, inconsistent or impulsive adoptions abroad. This Convention operates through National Central Authorities of respective countries and assures that Inter-country adoptions are to be made keeping in mind the paramount welfare of the child and his other legal and fundamental rights. It also intends to prohibit the illegal activities associated in the pretext of adoption such as the abduction, sale and traffic of children. India was also one of the signatories to this convention in the year 2003

4.4 The Juvenile Justice (Care and Protection of Children) Act, 2000

The prime objective of adoption is to bestow a child with a permanent alternative family who does not have biological parents and family to provide proper care and protection. Under this Act Orphan, abandoned or surrendered children can be rehabilitated through the prescribed procedure. The adoption of such children

under the Act is regulated by a Court coupled with several guidelines regarding adoption issued by the State Govt. or Central Adoption Resource Authority and notified by the Central Govt.

4.5 The Juvenile Justice (Care and Protection of Children) Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 repealed the Act of 2000. To regularize, in-country and inter-country, adoption procedure for orphan, abandoned and surrendered children, the Central Adoption Resource Authority (CARA) is given the status of a statutory body to entitle it to conduct its function more smoothly and efficiently. A chapter (VIII) on Adoption is dealing in detail regarding provisions of adoption and punishments for not complying with the procedure prescribed.

4.6 Juvenile Justice (Care and Protection of Children) Model Rules, 2016

In pursuance of the power conferred by sub-sections of Section 110 of the Juvenile Justice (Care and Protection of Children) Act, 2015, the Central Government makes the model rules, 2016. Rules are based on the philosophy of reformation, rehabilitation and social integration, rather than retribution. It lays down the procedures and the functioning for the in-country and inter-country adoption as well.

4.7 Central Adoption Resource Authority:

The Central Adoption Resource Authority (CARA) is an autonomous body of the Ministry of Women and Child Development, Government of India. CARA is the Central Authority to deal with inter-country adoptions in accordance with the provisions of The Hague Convention on Inter-Country Adoption, 1993, ratified by Government of India in 2003. It works as the nodal body for adoption of Indian children and is responsible to regulate and supervise in-country as well as inter-country adoptions. The CARA has been established to facilitate its assistance to rehabilitate the orphaned, deprived, destitute and the abandoned children.

Adoption Statistics of CARA

Year	In-country Adoption	Inter-country Adoption
2010	5693	628
2011 (Jan'11 to March'12)	5964	629
2012-2013(April'12toMarch'13)	4694	308
2013-2014(April'13 to March'14)	3924	430
2014-2015(April'14 to March'15)	3988	374
2015-2016(April'15 to March'16)	3011	666
2016-2017(April'16 to March'17)	3210	578
2017-2018(April'17 to March'18)	3276	651

4.8 Adoption Regulations framed by CARA, 2017

In pursuance of its power CARA had notified certain regulations on 4th January 2017 in supersession to the guidelines issued in 2015 saving the things done or omitted prior to the supersession. To meet the issues and challenges faced by CARA the Adoption Regulations have been framed keeping in mind the other stake

holders including the Adoption Agencies and Prospective Adoptive Parents (PAPs). The objective behind the regulations is to strengthen the adoption process to be followed in India.

5 Main Features of the Adoption Regulations

1. Child's interest has been given the paramount importance in the guidelines.
2. Regulations are dealing with the procedures related to adoption by relatives both within the country and outside the country.
3. The validity of home study report is increased from two to three years.
4. The time duration available to the domestic PAPs for matching and acceptance has been increased to twenty days from the existing fifteen days, after reserving the child referred.
5. A panel of professionally qualified or trained social workers has to be maintained by District Child protection Unit (DCPU).
6. All adoptions under the Juvenile Justice (Care and Protection of Children) Act, 2015 will be facilitated by CARA through Child Adoption Resource Information & Guidance System (CARINGS) and all adoptions, including adoptions by relatives shall also be reported to CARA. It would enable protection to all adopted children by maintaining their record and ensure post adoption inquiry.
7. 32 Schedules have been annexed to the Regulations which includes model adoption applications to be filed in the Court. This would considerably mark delays prevalent in obtaining the Court order.
8. Some other important aspects of the Adoption Regulations are transparency, untimely deinstitutionalization of children, informed possibilities for the parents, ethical practices and strictly defined timelines in the adoption procedure.

6 Indian Judiciary on inter- country adoption

The validity of inter-country adoption has always been in issue since its commencement and the matter was first debated before the Supreme Court of India in the celebrated case of

“Re Rasiklal Chhaganlal Mehta in which the Court held that inter-country adoptions under Section 9(4) of the Hindu Adoptions and Maintenance Act, 1956 should be legally valid under the laws of both the countries. The adoptive parents must fulfill the requirement of law of adoptions in their country and must have the requisite permission to adopt from the appropriate authority thereby ensuring that the child would not suffer in immigration and obtaining nationality in the adoptive parents' country.”

The issue came again before the Supreme Court of India in the case of

Laxmi Kant Pandey v. Union of India the S.C. had issued certain guidelines for regulating and supervising inter-country adoptions. The Supreme Court recommended to establish a supervisory body and in pursuance of this recommendation Central Adoption Resource Agency (CARA) was accordingly set up by the Government of India in 1989.

Since the passing of the judgment the CARA has been successfully playing a significant role by laying down substantive and procedural norms regarding inter as well as in country adoptions. The above-mentioned norms have been conferred statutory acknowledgment by being notified by the Central Govt.

Then in the case of *Mr. Craig Allen Coates v. State through Indian Council for Child Welfare and Welfare Home for Children* the Supreme Court reiterated that if the adoptive parents are not able to manifest their motive of adopting a child who belongs to another country then they would be prohibited and be declared as mala fide. The Supreme Court further stated that CARA should ensure strict and absolute guidelines regarding this.

Another important issue in inter-country adoption is to find out aspiring parents, ideally of Indian origin. The Supreme Court showed its concern on this issue in the case of *Karnataka State Council for Child Welfare v Society of Sisters of Charity St Gerosa Convent* and had held that the hypothesis behind finding out Indian parents or parents of Indian origin is to secure and confirm the welfare of the adopted child so that they can have an opportunity to flourish in Indian environment and ambience and can preserve Indian traditions, values and heritage. Welfare of the child should be given paramount consideration.

In the suo moto writ petition under Article 32 of the Constitution of India of *Court on its own motion v Union of India* the Apex Court of the Country showed its concern for the Indian children who are adopted by foreign parents and issued directions regarding the procedure and the required precautions to be taken in this kind of adoption since there is no law to regulate inter-country adoptions.

Guruvayur Devaswom Managing Commit. and Ors. v C.K. Rajan and Ors. the Supreme Court in this case reiterated the need of having Inter-Country adoption laws in the country and held that in case of vacuum judicial law making is necessary to avoid exploitation of children given in inter country adoption.

In this recent case of *Union of India (UOI) and Ors. v Ankur Gupta and Ors.* the Supreme Court relied the procedure and provisions, regarding inter-country adoption, laid down in the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoption Regulations framed by CARA, 2017

7 Conclusion and Recommendations

“Adoption is not about finding children for families, it’s about finding families for children.”

Joyce Maguire Pavao

Adoption may be proved to be the boon not only for childless couples and single persons but also for abandoned and deprived children. It validates a parent-child association between persons who are not biologically related to each other. It is a process which enables a childless couple to take a child not born to them and make him/her a member of their family. Every child should be given a chance to love and be loved and to have an atmosphere of love, affection and protection and this can be happened only if a child is brought up in a family atmosphere.

Every country has its own social, cultural, legal and political background and environment and that makes an international adoption a highly complex process in which parties vary in their interests including

emotional and psychological element. The inter-country adoption is highly challenging for parents of one country to adopt a child of another country and is equally challenging for the Governments responsible for protecting the interests and welfare of both the parties to the adoption. It has been unlikely that the Adoption of Children's Bills, dealing with the inter-country adoption was to be turned down because of opposition. A specific and exclusive law on inter-country adoption is a demand of the time so that the welfare and interests of children shall be protected at the time and even after their adoption by the foreign parents.

Though the efforts have been made to fill the vacuum by the judiciary from issuing guidelines time and again in this regard and by the procedure and provisions laid down in Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoption Regulations framed by CARA, 2017 but still a uniform law on inter-country adoption is essentially needed to safeguard the interests of the children irrespective of their religions and for their legal and safe rehabilitation. The absence of explicit law in this regard prompts the commercialization and touts which is harmful for the parties to the adoption.

There is an immediate requirement that a specific secular law for inter-country adoption should be enacted by the legislature and the law should contain provisions regarding rights of the adopted children and specific conditions, criteria and procedure for adoption by the foreign parents and the role and responsibility of adoptive country are to be defined so that the activities and credibility of the adoptive parents can be assured and maintained and the child is not subjected to exploitation and malpractice. As far as the guidelines of 2017 are concerned, though they provide legal procedure for inter country adoption and encourage the role and responsibilities of CARA but these guidelines do not provide for a well-organized adoptive system and the provisions of the Juvenile Justice Act are insufficient for inter-country adoptions owing to the obligations of our country to international treaties made the need for a separate legislation for such adoptions necessary.

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