

INTER – COUNTRY ADOPTIONS IN INDIA – AN APPRAISAL

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Every child is an uncut diamond, an unopened bud, a dormant uniqueness, a national asset, with an inherent capacity to sparkle, to bloom, to awaken and realise its potential when provided with the right environment.

Mankind owes to the child the best it is capable of, specially in terms of providing a family, where the loving care, affection and attention of the parents help the child to grow and develop to the fullest. "Adoption" the act of affiliation by which the relation of parentage is legally and permanently established between persons not so related by nature, has emerged as the best alternative in absence of the natural family. It fulfils not only the needs of the adopted child but also of the adopting parents, it is a way of conferring the privileges of parents upon the childless and advantages of parents upon the parentless¹.

The institution of adoption, originally oriented towards transfer of dominion over the child from the natural father to the adoptive father, has refocused itself on providing parental relationships for children deprived of their natural parents. The concept of adoption has thus come a long way from *patria potestas* to child's welfare paramountcy. This attitudinal change is a global phenomenon and Inter - Country Adoption is probably the most advanced form of this concept.

The term, "Inter-Country Adoption," as defined at the European Seminar on Inter-Country Adoptions, May 1960, "represents an adoption in which the adopters and the child do not have the same nationality as well as in which the habitual residence of adopters and the child is in different countries."

Inter-Country Adoption generally take place in two forms. One where reciprocity of recognition exists, that is to say, an adoption having taken place in one country is, by virtue of an international treaty, recognised in the other

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1. Encyclopedia Britannica

country/countries. In the second form such reciprocity of recognition does not exist. An adoption in any member country of the Hague convention² represents the first form of Inter-country adoption. In the second form, two different methods are used to effect an Inter-Country Adoption. The first method requires that the child must be adopted in the country of origin as a prerequisite for his or her leaving the country. In the second method, special permission is required for child to leave the country of origin, following which the child is adopted in the receiving country. India comes in the group of countries which follow the second method for effecting an Inter-Country Adoption.

The object of this paper is to appraise certain procedural aspects of Inter-Country Adoptions in India, with a view of determining whether there are any grey areas therein, the changes and improvements called for, if any.

Indian Scenario

In India, the basic law of adoption is The Hindu Adoption and Maintenance Act, 1956 which contains no provision pertaining to Inter-Country Adoptions. The Juvenile Justice Act, 2000 containing some provisions relating to adoptions of delinquent ^{and} abandoned children, also has no bearing on Inter-Country Adoptions. Such adoptions in India have been taking place by resorting to provisions of The Guardians and Wards Act, 1890, wherein a prospective foreign adoptive parent is required to submit an application for being appointed as a guardian of the child³ before a District Court⁴ which will pass the order prayed for only if it is satisfied that it (order) is for the welfare of the minor⁵.

2 The Hague convention on Jurisdiction, Applicable Law and Recognition of Decrees relating to Adoptions, 1965.

3. Section 9 Guardians and wards Act 1890

4. Section 4 Guardians and wards Act 1890

Section 7 Guardians and wards Act 1890

In 1984 the genuineness and validity of such Inter – Country Adoptions was challenged by Sri Laxmikant Pandey before the Hon'ble Supreme Court through a Public Interest Litigation petition which was based on a news item published in "The Mail" a British newspaper highlighting the sale of babies from West Bengal. In that case, the procedure in vogue was followed but for exchange of money. The Supreme Court examined the procedure then being followed for Inter – Country Adoptions alongwith the rules and orders with regard to such procedure as laid down by the High courts of Bombay, Delhi and Gujarat and found it to be in order. It however directed that the agency taking care of the child can only receive that amount from the foreign applicant which the District Court may think fit, on account of recovery of costs, incurred by the agency.

Additionally the Supreme Court examined the Adoption of Children Bills 1972 and 1980 (which had some provisions relating to Inter – Country Adoptions but could not be passed and were allowed to lapse) with reference to the provisions therein indicating 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 considered essential for securing this end. Keeping in view the provisions of Indian Constitution and Indian National Policy on children (1974), the Apex Court also referred to the then existing different important International Conventions, Declarations and Draft Guidelines.

Having given a careful consideration to all the above material the Hon'ble Supreme Court laid down the principles and norms which must be observed and the procedure which must be followed in giving a child in adoption to foreign parents so that the abuses to which Inter-Country adoptions if allowed without any safeguards could be considerably reduced if not eliminated and the welfare of the

Whether one calls it excessive judicial legislation or
judicial legislation — the fact remains that ~~at least~~
the need was strongly felt.

child would be protected. The Supreme court also directed the Central Government to lay down detailed Guidelines in this regard as soon as possible. Government of India issued the Guidelines vide Ministry of Welfare Resolution in 1989. Subsequently, in the light of experience gained the Government of India issued Revised Guidelines for Adoption of Indian Children in 1995, which are in force as of now. These Guidelines incorporated the Supreme Court judgement with minor modifications. Thus the law applicable to Inter – Country Adoptions in India came into existence through the judgement of the Hon'ble Supreme Court in 1984. Till today there is no enactment to support it.

Revised Guidelines

The basic principles underlying the Revised Guidelines are :

- a) Adoption is the best non-institutional support for rehabilitation of children.
- b) The child develops best in his/her cultural and social milieu.
- c) In matters concerning adoption whether within the country or abroad the welfare and the interest of the child shall be paramount.

These Guidelines contain a detailed scheme of the organisational set up established to promote and regulate Inter – Country Adoptions with various checks and balances.

The Inter – Country Adoption or for that matter any other adoption depends on the availability of the prospective adoptee. Only abandoned and surrendered children can be given in an Inter – Country Adoption. They can be found only in Homes, Institutions and Child Welfare Agencies. Homes and Institutions are the organisations exclusively dealing with providing care and custody to such children and have no role to play in adoptions. All such Homes or Institutions in a State are

to be listed with the concerned State Government. All Child Welfare Agencies dealing in in-country adoptions are to be recognised by the concerned State Government (Union Territory Administration where applicable). All Child Welfare Agencies providing placements of children for Inter – Country Adoptions are to be recognised by Central Adoption Resource Agency (CARA) also. In every State there has to be minimum one Voluntary Co – ordinating Agency (more if so required) for promoting and co-ordinating in - country adoptions. When in-country adoption of a child does not materialise within the specified time it is also responsible for giving “ No objection certificate” for Inter-Country adoption process of that child to commence. All Voluntary Co-ordinating Agencies in different States are to be recognised by CARA, such applications being processed through the concerned State Governments. CARA , as the name suggests is the centralised Agency in the Ministry of Welfare, Government of India looking after all aspects of adoptions. The agencies that are responsible for examining all important procedural aspects of an Inter – Country Adoption case in a court of law by scrutinising the documents therein and report there on to the court are called Scrutinising Agencies. These agencies are also to be recognised by CARA. The Guidelines lay down criteria for recognition of such agencies, and also their composition and duties. Adoption by a foreign parent can only take place on an application of such parent being processed and forwarded by a Foreign Sponsoring Social and Child Welfare Agency recognised as such in its own country and listed by CARA in India for the purpose of Inter – Country Adoptions. Criteria for listing or delisting such agencies is also laid down. The procedure to be followed in an Inter – Country Adoption is represented schematically in the diagram below.

PROCEDURE FOR REGULATING INTER-COUNTRY ADOPTION

Non-Resident Indian	Prospective Foreign Adoptive Parents
1	2
To contact	
Foreign Enlisted Agency	
	<ul style="list-style-type: none"> - To prepare the Home Study Report. - To complete all the documents. - To submit the documents - Certified Copies
Original application and documents	CARA
<ul style="list-style-type: none"> - Indian Recognised Placement Agency - To register the parents with the Agency 	<ul style="list-style-type: none"> - To see whether the foreign agency is enlisted - To see whether the Indian Placement Agency is recognised - To examine all the document and ensure that all are in order. - Issue of No objection Certificate to the placement agency - Ensure the efforts made by the recognised placing the child with Indian family and to that effect VCA clearance is there.
<ul style="list-style-type: none"> - To Contact concerned VCA for clearance certificate V.C.A. - To explore the possibilities for the placement of the child within the country - Issuance of clearance certificate to placement agency 	<ul style="list-style-type: none"> - Processing the case in the competent court - To get the documents scrutinised by the Scrutinising agency. - To award of the guardianship of the child in favour of the foreign prospective adoptive parents
Indian Court	Indian Recognised Placement Agency
<ul style="list-style-type: none"> - To match of the child with the foreign prospective adoptive parents - To obtain the approval of the foreign adoptive parents on the proposed child 	<ul style="list-style-type: none"> - To submit a copy of the court order to CARA - To arrange passport of the child - To hand over the child to prospective foreign parents or the escorts or to the representative of foreign enlisted agency.
Foreign Enlisted Agency	Enlisted
<ul style="list-style-type: none"> - Communicate the approval of the foreign adopting parents to the placement agency. 	<ul style="list-style-type: none"> - To take the child to their country. - To hand over the child to the concerned adoptive parents - To take up the case of the child for legal adoption. - To watch the progress of the child - To submit a copy of the order of the legal adoption & progress report to CARA, concerned Indian Recognised agency and concerned Indian Court.
Indian Recognised Placement Agency	Child
	<p style="text-align: center;">Finally gets integrated with the adoptive family</p>

Ground Realities

Despite the present Guidelines being the end product of the joint efforts of the judiciary and the executive at the highest level, they have not been able to eliminate the abuses in adoption process as the various cases that came to light in recent past bring out. The incidents in Andhra Pradesh highlighted the sale and purchase of babies with accompanied malpractices of falsification of records, inadequate monitoring and underhand charging of extra money from adoptive parents. Incidents in Delhi brought out collusion between Police and other authorities in issue of “free for adoption “ certificates in respect of abandoned children without efforts of tracing their biological parents. All these malpractices relate to procedure in regard to surrendering of children, abandoned children’s availability for adoption, record keeping, lack of monitoring and receiving unauthorised payment from the prospective adoptive parent are discussed below separately.

1. Surrendering of Children

Surrender of a child is recorded in a document executed by the biological parents voluntarily without any compulsion, compensation or payment on the part of the agency. The agency should also inform the parents the effect of their consent for adoption of the alternative available for its care and maintenance and of their right to reclaim the child within 90 days from the date of surrender. In the Andhra Pradesh Case the parents executed the surrender certificate while infact selling their babies for payment.

2. Abandoned children’s Availability for adoption

Within 24 hours of an abandoned child being received at any Child Welfare Agency or Home, an FIR is to be lodged with the local police station and the photograph of the child. The competent authority like the Collector of the

District or the Juvenile Welfare Board is also to be informed within 24 hours. The Police is expected to complete the enquiry about tracing the parents of the child within a period of one month. And therefore it should be possible for the competent authority (collector, Juvenile Welfare Board etc.) to make a release order declaring the child legally free for adoption. In the case at Delhi the laid down time schedule was not adhered to. The applications for the abandonment certificate were usually made 60-90 days after the child was received. This time gap is enough to brain wash the child by way of ensuring that it is unable to recollect critical details that could lead to tracing out of his/her parents. Between March 2000 and April 2001 Delhi Juvenile Welfare Board referred cases of 40 children where Agencies had so applied for abandonment certificate, to the officers of Delhi's Social welfare Department. Thanks to the diligence of these Probationary officers parents of all the 40 children were traced out and there was a happy reunion. Whereas, but for the extra-ordinary method of investigation adopted by Delhi Juvenile Welfare Board the issue of certificate for availability for adoption of all these children was forgone conclusion.

3. Record Keeping

The Andhra Pradesh incidents brought out various instances of falsification of records, non - information to VCA when it was required and improper transfer of children in between agencies. All these instances basically pertain to incorrect maintenance or forwarding of records.

4. Lack of Monitoring

In view of the fact that the Guidelines generally provide for indirect monitoring through records/ returns, it is not always possible to spot the abuses and malpractices indulged in by the agencies, though it is not always impossible either.

Thus, cases of surrender of children in appreciable number from a specific region, if monitored well, can be spotted as a not normal feature leading to physical verification and discovery of malpractice if any. Similarly, non reporting in time of arrival of abandoned children at the Agencies/Home can as well be ascertained from the periodical records/return received leading to investigation in the conduct of agency involved and discovery of malpractice, if any.

5. Unauthorised Payment by Prospective Adoptive Parent

Foreign Sponsoring Child and Social Welfare Agencies are expected to be well aware of the amount payable to Indian Placement Agency under different heads and maximum ceiling thereof as laid down in the Guidelines. It is therefore, prudent to presume that Foreign Prospective Adoptive Parent will also be aware of the contents of such provisions. Under these circumstances when a Foreign Prospective Adoptive Parent or Foreign Sponsoring Agency on his/her behalf pays to the Indian Placement Agency amount over and above what is authorised, it might be termed reprehensible but can hardly be called a procedural flaw.

In view of the foregoing, the following **suggestions** are made :-

1. With a view to obtain more effective monitoring let CARA establish regional branches where adoption load is adequate.
2. Let CARA specify the periodicity of various monitoring devices like meetings, returns and visits and call for a report thereafter.
3. Checks on behalf of the State Government may be made mandatory.
4. Agencies involved in violation of the Guidelines should be derecognised.
5. Indian Penal Code may be amended to include simple buying or selling of children punishable and agency officials involved in such acts to be criminally prosecuted.

6. It should be made compulsory for all Nursing Homes and Hospitals to record dates of births and deaths and transfer of children to specified Homes/Agencies
7. All the information regarding a child in Homes or Agencies should be available at the specified web site of the state Government and CARA, making the tracing of parents easier.
8. Every abandoned child should be interviewed (if of understanding) by the counselor in the Home or the Agency within 24 hours as well as by a Juvenile Welfare Board and record of such interviews be retained in the child's file and a gist thereof in the website.
9. Additionally, there is an almost universal complaint of Indian Inter – Country Adoptions's process being too lengthy. The one area where it should be possible to reduce the time involved is the issue of passport. There can be no reason where a passport office should take more than one week (or the maximum time to be laid down in this regard) to issue passport to a child who has already been found fit by a court, to be taken out of India for the purpose of adoption.
10. Last but not the least it is high time that provisions pertaining to Inter – Country Adoption be enacted. Among other things it will ensure presence of legally sustainable punishments for various violations of its provisions.

Conclusion

Examination of the malpractices brought out by the incidents in the recent past as plaguing the Indian Inter - Country Adoption scenario reveals that the problem lies not with the procedures established or the system in force but primarily with the men who man the system. While a number of suggestions have been put forward above, which if implemented will certainly discourage men intent upon abusing the system, the real solution lies only in men mending themselves.

Dehumanised bureaucracy and people in authority need to re imbibe human values.

It should very well be remembered always that :

“The child cannot wait,

Right now is the time his bones are being formed,

His blood is being made and

His senses are being developed.

To him we cannot answer tomorrow

His name is **Today**”.⁶

Children’s needs are to be met here and now.