



# The Indian Journal for Research in Law and Management

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## ANNEXURE

### ADOPTION RIGHTS OF FOREIGNERS IN INDIA ; AN OVERVIEW

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## **ABSTRACT**

In India, there are about 18 million underprivileged and orphan children being cared for in various orphanages. Due to the helplessness of their hapless parents and single parents, over 50,000 children become poor every year. Due to poor sanitation and access to clean water, hundreds of them perish from starvation and sickness. It is the responsibility of the state and society to take effective measures to secure and safeguard children's welfare and to give them opportunities to grow and develop their personalities in a wholesome environment because children are our nation's most valuable resource and are considered to be a national asset of the utmost importance. International adoption is one way to address the issues of abandoned children that the moral conscience of society urges us to look at.

The purpose of the study is to examine the idea of international adoption as it now exists. It has also been suggested how the current legal framework for Indian adoption regulations with regard to adoptions from other countries might be made more effective.

**Keyword:- inter-country, adoption,**

## **INTRODUCTION**

The legal placing of a child with a parent or parents who are not biologically related to them is known as adoption. By creating a parent-child link between those who aren't blood relatives, it is possible to replace a child's legal rights and duties to his or her biological parents with identical rights and obligations to adoptive parents. Inter-country adoption is the adoption of a child by a person from a different country. Many families may find that foreign adoption is preferable than domestic adoption, especially those who want to adopt a healthy infant. Social reform activists and child welfare organizations have influenced adoption laws in India over many years. This is demonstrated by the rules and policies adopted by the Indian government.

There are few international adoption regulations in India. The primary areas of law governing international adoption received power and credibility through judicial rulings and Central Adoption Resource Power (CARA) Guidelines. According to its constitutional mandate, the Indian government has created a National Policy for the Welfare of Children.

Since adoption is such a significant practice, the country has enacted a number of limitations and standards. In addition, there are a number of concerns that occur in international adoption. On a variety of issues, such as who can adopt or be adopted, and the impact of adoption on succession rights, for example, there are significant discrepancies in the laws of different nations. In general, prospective adoptive parents must fulfill the legal adoption criteria of both their home country and the country of the child's nationality.

## INDIA AND INTER -COUNRTY ADOPTION

Inter-country adoption, also known as transnational adoption, is a type of adoption in which a person or couple becomes the legal parents of a child from another country. Couples who want to adopt a child from another country must meet the legal requirements of both nations, namely the country in which the potential adopters live and the country in which the child is born. Some countries have a framework in place to facilitate inter-country adoption, while others outright prohibit it. Inter-country adoption, which involves the transfer of children for the purpose of parenting from one country to another, is an extreme version of what is commonly referred to as “stranger” adoption, as opposed to “relative” adoption. Relative adoption occurs when a stepparent adopts his or her spouse’s kid, or when a member of a child’s extended biological family adopts a kid whose parents have died or have become unable or unwilling to parent.

In international adoption, adoptive parents and children come together despite a variety of variables, such as socioeconomic status, race, ethnicity, and nationality. Typically, the adoptive parents are reasonably affluent white people from one of the world's wealthier nations, and they will be adopting a kid from one of the world's poorer countries born to a severely impoverished birth mother from one of the world's poorer racial and ethnic groups.

The well-being of children is given top priority in the Indian Constitution. Article 15(3) enables the state to make special provisions for children. Article 23 prohibits forced work and human trafficking. According to Article 24, no kid under the age of 14 may be hired to work in a factory or dangerous mine. Article 39 (e) & (f) provides that the state shall direct its policy towards securing that the tender age children are not abused, that children are not forced by economic necessity to enter avocations unsuited to their age and strength, and faculty to develop in a healthy manner. The legal system as a whole, including the court, attempted to rule in favor of protecting children. Inter-country adoption is the most delicate, divisive, and challenging. aspects of adoption. It encompasses a range of guidelines and practices regarding immigration, citizenship, the socioeconomic background of adoptive parents, connecting parents with children, and accepting children into various communities and cultures.

## 1.2 CASE STUDY

In the case of *Laxmikant Pandey v. Union of India* (AIR462, 1984), which was filed in 1984, the legitimacy of international adoption was contested before the Supreme Court based on a newspaper story highlighting the sale of infants in West Bengal. The Supreme Court looked into the norms and procedures that were followed for international adoption. The Adoption of Children Bill, 1972 and 1980 were both considered by the Supreme Court concerning the standards that the Central government must adhere to when making these sorts of adoptions.

The Supreme Court established the guidelines and procedures that must be followed when placing a child for adoption with foreign parents so that the abuses to which international adoptions if permitted without any protections, could be much reduced if not completely eliminated, and the child's welfare would be guarded.

The new guidelines for foreign adoption feature a thorough plan of organizational setup created to promote and govern foreign adoption with different checks and balances. Concerning welfare agencies, those working with adoptions must be recognized by the appropriate state government. A placement agency is a child welfare organization that provides placements of children for foreign adoption and is recognized by the Central Adoption Resource Authority (CARA)

Where there is reciprocity of recognition, an adoption that occurred in one country is recognised in the other by virtue of an international agreement. Such an international adoption takes place in any Hague Convention signatory nation. India signed the final Hague Conference Act on adoption-related private international law in 1993 as a non-member nation. Since India is a signatory to the final Act, it is under an international obligation to give effect to the international convention.

**D. ADOPTION PROCEDURE FOR NON-RESIDENT INDIAN, OVERSEAS CITIZEN OF INDIA AND FOREIGN PROSPECTIVE ADOPTIVE PARENTS**

Section 57 of the JJ Act, 2015 and Regulation 5 of the AR, 2017 provide examples of the roles that men and women may play under the JJ Act, 2015. These roles are collectively referred to as "Prospective Adoptive Parent(s)" (hereafter PAP) and are as follows:

1. The prospective adoptive parents shall be physically fit, financially sound, mentally alert and highly motivated to adopt a child for providing a good upbringing to him
2. In case of a couple, the consent of both the spouses for the adoption shall be required.
3. A single or divorced person can also adopt, subject to fulfillment of the criteria and in accordance with the provisions of adoption regulations framed by the Authority.
4. A single male is not eligible to adopt a girl child.
5. No child shall be given in adoption to a couple unless they have at least two years of stable marital relationship.
6. . The age of prospective adoptive parents, as on the date of registration, shall be counted for deciding the eligibility and the eligibility of prospective adoptive parents to apply for children of different age groups shall be as under:-

<b>AGE OF THE CHILD</b>	<b>MAX. COMPOSITE AGE OF PAPS[COUPLE]</b>	<b>MAX. AGE OF SINGLE PAPS</b>
<b>UP TO 4 YEARS</b>	<b>90 YEARS</b>	<b>45 YEARS</b>
<b>ABOVE 4 YEARS AND BELOW 8 YEARS</b>	<b>100 YEARS</b>	<b>50 YEARS</b>
<b>ABOVE 8 YEARS AND UPTO 18 YEARS</b>	<b>110 YEARS</b>	<b>55 YEARS</b>

- Any Non-Resident Indian, Overseas Citizen of India or foreign prospective adoptive parents, living in a country which is a signatory to the Hague Adoption Convention and wishing to adopt an Indian child, can approach the Authorised Foreign Adoption Agency or the Central Authority concerned, as the case may be, for preparation of their Home Study Report and for their registration in Child Adoption Resource Information and Guidance System.
- No Objection Certificate of Authority and pre-adoption foster care.-(1) The Authority shall issue No Objection Certificate in favour of the proposed adoption in the format at Schedule X, within ten days from the date of receipt of the acceptance of the child by the prospective adoptive parents and letter of approval or permission of the receiving country as per Article 5 and Article 17 of the Hague Adoption Convention.
- Starting from the date the adopted child arrived in the receiving country, the authorised foreign adoption agency, the central authority, the Indian diplomatic mission, or the relevant government department, as applicable, must report the progress of the adopted child every six months during the second year and every three months during the first year.
- If it is found that the adoptee is unable to adjust in the adoptive family or that the continuance of the child in the adoptive family is not in the interest of the child, the Authorised Foreign Adoption Agency or Central Authority or the Government department in the receiving country or Indian diplomatic mission concerned, as the case may be, shall withdraw the child and provide necessary counseling and shall arrange for suitable alternate adoption or foster placement of the child in that country, in consultation with the Indian diplomatic mission and the Authority.
- Adoption procedure for Indian citizens residing abroad or foreigners from nations that have accepted the Hague Adoption Convention. Such a case should be considered equally with Indians residing in India if one of the potential adoptive parents is a foreigner and the other is an Indian.



## **PROCESS OF ADOPTION UNDER CARA FOR INTER COUNTRY ADOPTION**

### **STEP 1**

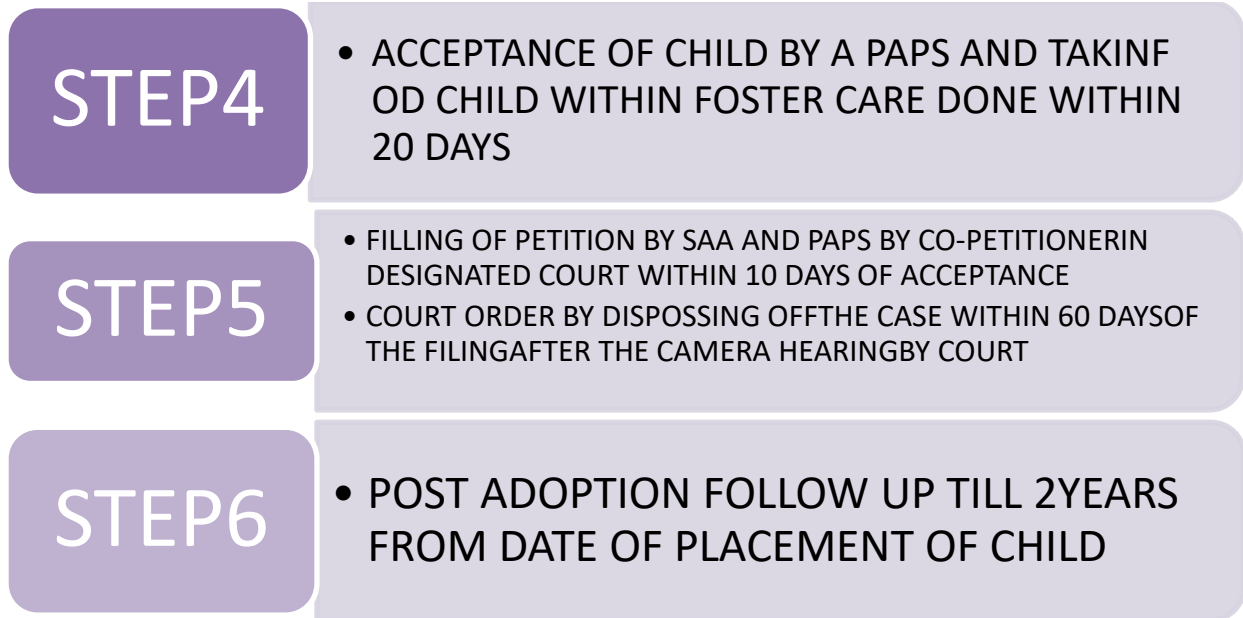
- PAPSREGISTER ON LINEFOR ADOPTING A CHILD AND UPLOAD THEIR DOCUMENTS IN CARING

### **STEP 2**

- HOME STUDY CONDUCTED BY A SOCIAL WORKERBY SAA AND UPLOADED ON THE CARING

### **STEP 3**

- PAPS RECIVED A CHILD WITHIN 48 HOURS



## CONCLUSION

Inter-country or transnational adoption may be the greatest option for orphan children who desire to begin a new life abroad. However, if the nation of origin for these children has enough legislation to show them their fate, violations of their rights are very certain to occur. Better regulations and guidelines for inter-country adoption are sorely needed in the country. The authorities must conduct rigorous inspections on every adoption agency to guarantee that they are upholding the constitutional and other legislation that safeguards the child's rights. It is a typical occurrence in India for judges handling adoption cases, particularly in small towns and cities, to be unfamiliar with the interpretation of the intercountry adoption standards. As a result, a standard yet severe system must be devised in this respect, one that can be readily followed and enforced while keeping the human spirit in mind.

Courts are systematically and patiently looking into every facet of this situation and drafting guidelines to protect the child and his birth and adoptive parents from any emotional or legal turbulence. Because of this, each group or individual participating in the adoption process has a distinct responsibility, and to maximize the impact of their efforts, they all must cooperate.

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