

## INTER-STATE ADOPTION AND INDIAN OBLIGATIONS

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### **ABSTRACT**

‘Adopting one child won’t change the world; but for that child, the world will change.’

– Anonymous

Children are seen as a pack of happiness, and the destiny of the country relies upon them. While in India, on another side, children are treated and treated through all their growing needs, on either side of the table, more than 60,000 children are abandoned in India each year. These children are victims of human trafficking and sexual abuse in some circumstances. Fortunately, abandoned children are taken to any adoption agency and may expect a better life to await adoption

Adoption is the legislative process to end the legal rights and responsibilities of a child towards parents and replace similar duties and responsibilities for adopted families. Adoption establishes a parent-child connection between those never genetically associated with the child. Adoption offers the parentless or abandoned child a healthy physical and emotional family environment and chances for parents to become a parent and develop their family.

It is one technique of meeting the needs of the poor and orphaned. It is also a method of satisfying a childless person's yearning. It may be found all over the world. Adoption has been practised for millennia in India. Adoption is depicted in great epics including the Ramayana and the Mahabharata. Although adoption has been practised for millennia, the concept of inter-country adoption is relatively new. A legal framework was established to protect the rights of adopted children. Adoption in India is governed by personal law, and two laws are typically in effect due to the prevalence of the many faiths practised in our country. The Guardians and Wards Act 1890, which prohibits formal adoption in certain religions, governs Muslims, Christians, Parsis, and Jews. The Hindu Adoption and Maintenance Act 1956, on the other hand, followed Hindus, Sikhs, Buddhists, and Jains.

This study on adoption laws traces the practices of adoption under English law. The history and evolution thereof in the contemporary adoption legislation, as we know now, will be briefly described. In addition, the regions under many other jurisdictions where adoption is

being explored are covered. The paper discusses interstate adoption concerning Indian obligations.

## **INTRODUCTION**

Adoption can be defined as the process of legal interaction off transferring the Child's lawful rights and obligations towards the common guardians and stabbing compatible rights and obligations towards new parents<sup>1</sup>. It is a lifetime responsibility once an adoption order is made it can't be disavowed<sup>2</sup>. There are more than 60,000 children has been abandoned every year in India. In some unfortunate cases, these kids become casualties of illegal exploitation and sexual viciousness. In fortunate cases, the forsaken children are taken to any appropriation office and may expect a superior life while waiting to get adopted. It is additionally a method of fulfilling the interest of an individual who is childless. Search cases of youngsters being given an opportunity at a second life through selection are on the ascent<sup>3</sup>.

## **HISTORICAL PERSPECTIVE OF ADOPTION**

Adoption has been practised for millennia in India. Hinduism being a significant religion practised in India, stories and epics has records of Saints and royal who were adopted. Ramayana and Mahabharata are two such great epics of Hinduism which bear reference to adoption. As per Hindu custom, male Children are vital and a date parents' spirit can accomplish paradise if that individual has a child to light the burial service fire, and salvation can be accomplished through children who offer ancestral worship<sup>4</sup>. Do the practice of adoption has been practised for ages, the idea of inter-country adoption is moderately a new concept<sup>5</sup>.

The custom and practice of selection in India trace back to prehistoric. Albeit the demonstration of adoption stays as before, the target with which this demonstration is completed. It generally went from the compassionate intention of being mindful and raising

<sup>1</sup> Legal service india.com/articles/adopt/htm. (Last viewed on 22-08-2021)

<sup>2</sup> <https://familiesforchildren.org.uk/what-is-adoption/>(Last viewed on 22-08-2021)

<sup>3</sup> <https://www.lawoctopus.com/academike/legal-framework-governing-adoption-laws-india/>(Last viewed on 22-08-2021)

<sup>4</sup> [https://researchgate.net/publication/236005514\\_adoption-in-india-the-past-present-and-the-future-trends](https://researchgate.net/publication/236005514_adoption-in-india-the-past-present-and-the-future-trends). (Last viewed on 22-08-2021)

<sup>5</sup> Legalservicesindia.com/articles/adopt.html. (Last viewed on 22-08-2021)

disregarded or penniless youngsters, to wear characteristics longing for a youngster as an object of warmth, an overseer in mature age, and a beneficiary in the afterlife.

Indian residents who are Hindus, chance, sick or Buddhist are permitted to officially embrace a youngster. The appropriation is under the Hindu adoption and maintenance act of 1956 that was established in India as a piece of the Hindu code bill. It achieves a couple of changes that change the foundation of appropriation. Adoption isn't allowed in the individual laws of Muslims, Christians, Parsi and Jew in India. Consequently, they for the most part decided on guardianship offer youngsters through the Guardians and Wards Act 1890.

### **HINDU ADOPTION AND MAINTENANCE ACT 1956**

This allows for the adoption of Hindu children by new parents who have a connection to Hinduism. This doesn't suit various communities such as Muslims, Christians and Parsi. They must comply with the Guardians and Ward Act 1890. In which they became the child's parents. However, the child does not have the same status that it would have had if it had been born to its new parents. One of the features of this software is that no Hindu individual may embrace a youngster or girl if they already have a child of that sex.

The HAMA gives that there ought to be an age distinction of 21 years between the new parents and the adopted kids at whatever point they are of another gender. This is expected to forestall sexual maltreatment.

### **Capacity to adopt**

It is said in this Demonstration that any grown-up Hindu guy of sane mind may take on a child. If the aforementioned male is married, the spouse's consent is required. Furthermore, a mature woman Hindu of sound mind might embrace a child whether she is

- Unmarried
- Divorced
- She is either widowed or her husband has a disability.
- Stopped being a Hindu
- Has forsaken the world and been proclaimed insane by the court.

**Capacity to give in Adoption**

According to Section 9 of this Act, only the father, mother, or guardian can choose to place a child for adoption. Unless the mother has stopped being a Hindu, has abandoned the world, or is mentally ill, the father can only place the child for adoption with the mother's permission. If the child's father is deceased or has completely abandoned the child, the mother may place the child for adoption.

**Effect of Adoption**

When a kid is adopted, he or she loses all contact with his or her biological family. He inherits all of the rights and responsibilities of natural-born children.

The wife of a Hindu man who adopts is termed the adoptive mother. If more than one woman is willing to an adoption, the adoptive mother is the eldest in the relationship and others are known as stepmothers. All requirements concerning adoptive and/or step-parents are included in Sections 12, 13, and 14 of the Hindu Maintenance and Adoption Act 1956.

In *Sawan Ram v. Kalavati*, the court addressed whether, in the instance of a widow's adoption, the adopted child would be deemed the late husband's child as well, and therefore his heir. The adoption, according to the Supreme Court, would be made not just by the lady but also by her deceased husband. The language in Section 5(1) of the Act was utilised to support this allegation.

It's also worth mentioning that parental adoptions cannot be reversed, and an adopted child cannot reject his or her adoptive family and re-join his or her birth parents. Adoption is usually seen as permanent, with neither side breaking their vows. This is expressly stated in Section 15 of the Act. However, it is critical to confirm that the adoption mentioned in this section is legal<sup>6</sup>.

**THE GUARDIAN AND WARDS ACT OF 1890**

According to Hindu Adoption and Maintenance Act, as the name indicates, was essentially a collection of Hindu cultural values. It was essential to establish new legislation that took into

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<sup>6</sup> [https://www.lawctopus.com/academike/legal-framework-governing-adoption-laws-india/#\\_edn9](https://www.lawctopus.com/academike/legal-framework-governing-adoption-laws-india/#_edn9)

account the personal laws of other religions that were not included by the Hindu Adoption and Maintenance Act,1956. As a result of this, the Guardians and Wards Act,1890 was passed<sup>7</sup>.

The personal law of Muslims, Christian, Parsi and Jews do not per view total Adoption. As non-Hindu don't have an empowering law of embrace a child lawfully, those who belong to this religion who are envious of receiving a child can just take the kid in guardianship under the arrangement of the guardians and wards act,1890<sup>8</sup>.

It was specified that any kid under the age of 18 was to be considered a minor. The court or another designated body would assign guardians for this kid. They would determine who would take over as the guardian of the stated kid or who would be removed as a guardian.

All of these procedures took place only once a person ready to take a kid under his care and function as his guardian applied. The guardianship applications should include all of the necessary information, including information on the guardian and any reasons for the guardianship. This was only the beginning.

After the court accepts the application, a hearing date will be scheduled. Before rendering a ruling, the court will hear evidence. Unlike the Hindu Adoption and Maintenance Act of 1956, which stipulates that a person adopted has only one set of parents, a minor and his property may have several guardians. In these guardianship cases, the court was expected to exercise its discretion and evaluate the minor's best interests. His/her age, sex, religion, compatibility quotient with the guardian, parent's death, and other factors must all be considered. The minor's preferences may also be considered<sup>9</sup>.

### **THE INTER-STATE ADOPTION**

This adoptive institution has spread around the world. Inter-country adoption refers to the adoption of a child by a person from another country. Many families, particularly those wanting to adopt a healthy baby, may find that overseas adoption is a better alternative than domestic adoption. Even though inter-country adoption is becoming more widespread across the world, it is nevertheless tragic that it usually leads to the maltreatment or exploitation of

<sup>7</sup> [https://www.lawctopus.com/academike/legal-framework-governing-adoption-laws-india/#\\_edn7](https://www.lawctopus.com/academike/legal-framework-governing-adoption-laws-india/#_edn7)

<sup>8</sup> <https://www.legalserviceindia.com/article/1327-Adoption-under-Juvenile-Justice-Act.html>

<sup>9</sup> [https://www.lawctopus.com/academike/legal-framework-governing-adoption-laws-india/#\\_edn14](https://www.lawctopus.com/academike/legal-framework-governing-adoption-laws-india/#_edn14)

children. It is occasionally used as a cover for child trafficking. These types of adoption are trans-racial, trans-cultural, and trans-national, and it must be taken care not to cause further difficulties as a result of maladjustment in the new setting throughout the process of resolving these children's problems<sup>10</sup>.

The 1993 Hague Convention Working via a public authority agreement, the (UNCRC) was established up under article 21. This presentation was beneficial in terms of enacting global legislation to protect children and families from the dangers of unlawful, unexpected, or poorly organised receptions overseas. India signed this Haque Convention on Interstate adoption in 2003 and approved something very similar with the end good off reinforcing international cooperation and protection of Indian children put in intercountry adoption.

The smooth out of the interaction of between country selection, the centre adoption resource agency CARA was shaped in India in 1986, the essential part of CARA is to screen and manage the whole adoption process.

The rules created via CARA for interstate adoption had prompted more straightforwardness. An investigating body recognised each area to help the court in verifying the 'sufficient opportunity was given to every child to track down a home inside India This must result in a partnership between agencies located in each district known as the Voluntary Coordinating Agency (VCA), the name of which has been changed to Adoption Coordinating Agency in the future (ACA). In the previous two decades, there has been a considerable increase in domestic adoption and a decrease in intercountry adoption<sup>11</sup>.

### **INDIAN JUDICIARY AND PROVISION FOR INTERSTATE ADOPTION IN INDIA**

Interstate adoption is a relatively new notion in India. It did not find a position in the legislators' top priority list. There still seems to be no enactment that fundamentally accommodates the ideas of Interstate adoption.

In the year 1984, the honourable Supreme Court of India in a milestone case of Laxmikant Pandey Vs Association of India [AIR 1984 SC 469] set down a couple of principles governing the rule of for Inter-Country adoption. The lawsuit was started after a lawyer, Laxmikant Pandey, wrote a letter to the court stating that social organisations and volunteer

<sup>10</sup> <http://www.legalservicesindia.com/articles/adopt.htm>

<sup>11</sup> <https://www.cfo.org.nz/the-hague-convention>.

agencies that try to match Indian children with foreign parents are participating in malpractices. It was reported that those same adopted youngsters were not only forced to perilous travels to far-flung other countries but also ended up as prostitutes and beggars. In this case, the Supreme Court expressed its opinion and set specific rules for inter-country adoption. "While supporting inter-country adoption," the Judiciary said in paragraph 8 of its decision. The fundamental goal of providing the child for adoption, which is the welfare of the people, must be carefully considered before allowing the child to be adopted into foreign parents unless the child is left behind by the adoptive parents in another country or the adoptive parents are unable to provide the child with a moral and substantial existence. "It then went on to lay out the conditions for foreign adoption. It was said "To begin with, every application for adoption by foreigners must be sponsored by a social or child welfare agency recognised or licenced by the government of the country in which the foreigner resides. Any social welfare organisation in India that works in the field of inter-country adoption, as well as any institution, centre, or home to which children are committed by the juvenile court, should not accept a direct application for the adoption of a youngster from a foreign person. "The Supreme Court's decision did not end there." It also specified the age at which a child should be adopted in the case of inter-country adoption." When a child is to be put for inter-country adoption, it must be done before the child reaches the age of three." The Supreme Court reached this judgement because it thought that if a child is adopted by a foreign parent before the age of three, he or she has a greater chance of adjusting to the new environment and culture. "Because there is no legislative law in our country that provides for the adoption of a child by foreign parents or lays out the processes that must be followed in a very circumstance, the clauses of Guardian and Wards Act, 1890, had to be invoked to commemorate such adoption," the Court stated throughout the decision.

"At which custody of a kid is with an institution and the child is maintained in a private nursing home or with a private party for better individual care of the child," the Bombay High Court held in *Re Jay Kevin Salerno*. As a result, it might be claimed that, in the absence of explicit legislation, the Highest Court has played a significant role in regulating the adoption of children by foreign parents. It relied on a range of foreign concepts and built the rules under Indian cultural standards.

According to the Supreme Court of India, every application from a foreigner/NRI/PIO (as applicable) desiring to adopt a child must be sponsored by a social or child welfare agency

recognised or licenced by the Government or an office of the International Government to sponsor such cases in the country in which the foreigner is domiciled. The foreign agency needs also be certified by CARA, the Government of India's Ministry of Social Justice and Empowerment. Any humanitarian or child welfare organisation in India should not accept a direct application for adoption from a foreigner, NRI, or PIO<sup>12</sup>.

### **CONCLUSION**

Adoption is a beautiful endeavour that brings joy to abandoned or orphaned children. This enables the cultured side of society to shine through. It's a good programme in which the child is treated as if he or she were a natural-born child, complete with love, care, and attention. At the very same moment, it fills the void left by parents who desire for their children's laughter and mischief to reverberate off the walls of their home. However, a few changes may be made to make all adoption laws more uniform.

Children and youth are protected against material and moral exploitation by Articles 39 and 44 of the Indian Constitution. The government of India adopted the Adoption of Children's Bill, 1972, to develop a Uniform Civil Code. The Muslim community, on the other hand, was against it. Given the widespread prevalence of child trafficking across the world, UNCRC mandates that inter-country adoption be given only the utmost priority in the search for a foster home. Inter-country adoption, like any other kind of adoption, may be costly, time-consuming, and unpredictable. Reading books, attending parent support groups, and interacting with others who have given or accepted a child for adoption are all excellent methods to learn more about international adoption. If these difficulties are resolved, inter-country adoption will provide joy and fulfilment to thousands of families, as it has for many others. If these issues are addressed, inter-country adoption will provide pleasure and fulfilment to thousands of families, as it has already done for many.

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<sup>12</sup> <http://www.legalservicesindia.com/articles/adopt.htm>