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## Two Sides to Inter-Country Adoption

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*Analysing the subject matter in the context of Public International Law, by virtue of which the procedure of child adoption can occur between citizens of various countries, and therefore the adoption has become international, transcending national borders. Adopting a child from another nation is known as inter-country adoption (ICA). The convention on the rights of the child (CRC) recognizes that how important it is for a child to know the concept of family in their life and highlights the responsibility of the state in protecting the child's rights if violated. This paper also discusses how the central adoption resource authority (CARA) plays an important role in any type of adoption in India and has few guidelines for inter-country adoption.*

*As we know the popularity of child trafficking around the world, the Convention on the Rights of the Child demands that ICA is given the lowest priority while looking for a foster home. It's crucial to understand inter-country adoption through gathering knowledge, visiting support groups, and speaking to the ones who have given or taken a child via adoption, In addition, improved procedures and laws are needed in India to cope with intra-country adoption as a whole. If these issues are addressed, inter-country adoption will provide joy and satisfaction to thousands of families, as it has already done for many.*

**Keywords:** *adoption, child's rights, Hague convention.*

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## INTRODUCTION

Each child benefits tremendously from a loving home, as well as to grow up in loving and affectionate surroundings, as well as a moral and a stable atmosphere, which can only be attained if the child is reared in a family. Of course, the preferred welcoming setting would be that of his actual parents' who gave him birth but if they or other close relatives are unable to provide for him, or if he is neglected and the parents are unable or unwilling to care for the child, So the other alternative for the kid would be adoption so that the child can grow up in a secure and a normal setting with the love, care, attention, and support of its adoptive parents.

Couples who want to adopt from another country should meet the legal conditions of both nations, namely where the prospective parents live and the nation where the child is born. Few developed countries have frameworks to facilitate ICA, whereas others outright prohibit this kind of adoption. As the Central Adoption Resource Authority (CARA) states, adoption is a legal process that establishes purely civil paternity and filiation relationships between two people. Adopting a child by someone from a different country is known as intercountry adoption<sup>1</sup> (hence ICA).

Inter-country adoption began as a compassionate project for the war orphans who lost or got abandoned by their biological parents during World War II, or other similar wars. Big nations like Canada, the US, and other wealthy countries are following the ICA. It has made a viable choice for childless couples in the receiving nations as most of the couples nowadays are suffering from low fertility which is also another reason that their marriage is delayed, not all couples can afford the expensive IVF treatments, and the ones who can suffer from its low success rate.

The ICA is governed by the Hague Convention on the Protection of Children and Cooperation, which was approved by over ninety countries the international legislators. Article 20 of the CRC says A child who is temporarily or permanently separated from his or her family, or who

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<sup>1</sup> CARA, Ministry of Women and Child Development, Government of India

cannot remain in that environment in the best interests of the child, is entitled to special protection and help from the state.

In a child's life, the role of real parents and to say a whole family is very crucial, and it's the state's responsibility to protect a child's right if they are having any sort of complication is recognized by CRC. Only when the child is suffering despite these attempts does the thought of alternative child care enters the picture. Parties involved must provide alternative care for such cases in accordance with their respective laws. Facilities for child's well-being like adoption agencies, foster care, Islamic law's Kafalah, are all the available options. When evaluating solutions, consistency in parenting must be maintained.

### **INDIAN PROVISIONS FOR ICA**

In India, the state of adoption remains established for a long time, and it serves an important social purpose. The law of adoption in the Smritis literature was centered on the parents, not the children. Only one son could be adopted, according to the Smritikaras, in order to preserve the family line and pay oblations to the deceased forefathers. The Dharmashastras go to great lengths about the qualities of adopting a male child. The son who is being considered for adoption is separated from his biological parents and is given to the other family as their own child. On the other hand, the Hindu adoption law is comprehensively governed by the HAMA.

However, in India, ICA is a relatively new concept that has yet to find traction. In *Laxmikant Pandey v. Union of India*<sup>2</sup>, the Supreme Court of India, while endorsing ICA, established certain guiding principles to be followed in ICA cases. the main goal of placing a child for adoption is to benefit the people, awareness must be practiced in allowing the child to be placed for adoption with the prospective foreign parents, or the child may face abuse, bonded labor, or worse. As stated by the Supreme Court few conditions must be met before a child's adoption. A government recognized social or child welfare agency must sponsor the application for adoption by the prospective foreign parent. Any agency associated with ICA,

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<sup>2</sup> *Laxmikant Pandey v Union of India* AIR 1987 SC 23

institution, centre in India, should not accept a direct application from a foreigner for the adoption of a child committed by the juvenile court.

The emphasis on age was also given in the ruling of the supreme court that a child should be adopted before he reaches 3 years of age. The Supreme Court made this decision as it is believed that young minds can adapt to newer surroundings easily and also as we don't have any statutes or guidelines for the foreign parents, the provisions of the guardian and wards act should be looked into to acknowledge such adoption.

However, on June 6, 2003, India ratified the Hague Convention on Intercountry Adoption, 1993, with the goal to improve international cooperation and protect children of Indian origin added into ICA. The Hague Convention<sup>3</sup> establishes two principles, both aimed at protecting children under ICA:

- attempting to implement measures to guarantee that cross-border adoption is in the best interests of the child
- To ensure that the measures are adhered to, a collaboration among the contracting states should be implemented.

The system of cooperation is to be managed by the Central Authority which is responsible for the adoption and posing as the main organisation for ICA matters, in accordance with the Hague Convention. Transnational adoption can only be considered with the risk to a child's well-being in the country of origin, thus the Hague Convention follows the secondary principle, the first and foremost, the child's placement in the country of origin must be prioritized. The Hague Convention also stipulates that the applicants/adoptive parents be examined for fitness, that private adoption be prohibited, and the interaction between the parties be prohibited until deemed adoptable.

### **CRITERIA FOR FOREIGNER PROSPECTIVE ADOPTIVE PARENTS (FPAP)**

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<sup>3</sup> Hague Conference on Private International Law, 'Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption' (HCCH, 29 May 1993) 33  
<<https://assets.hcch.net/docs/77e12f23-d3dc-4851-8f0b-050f71a16947.pdf>> accessed 27 June 2021

- A married couple who have been together for five years, their age, financial and health state, and a reasonable income to raise the child.
- Infants and small children can be adopted by prospective adoptive parents who are under the age of 90 years. For reasons that are explicitly explained in the Home Study Report, these provisions may be appropriately modified in rare instances, such as older children and children with special needs. However, none of the potential adoptive parents should be older than 55 years old.
- Single people up to 45 years old who have never married, widowed, or divorced can adopt.
- The age gap between the single adoptive parent and the child should be at least 21 years.
- In no situation may an FPAP be younger than 30 years old or older than 55 years old.
- Only after the first child's official adoption has been completed can a second adoption from India be considered.
- Adoption is not possible for same-sex couples.

The Supreme Court of India held in *In Rasiklal Chhaganlal Mehta v. Unknown*<sup>4</sup> that when dealing with intercountry adoptions, a court must consider the principles outlined in the report of the European Expert Group on ICA, which was organized jointly by the European Office of the Technical Assistant Administration, the United Nations, and International Social Service.

In such proceedings, the Court must ensure that the adoption is legally valid under the laws of both countries, that the adoptive parents meet the requirements of their country's adoption law, that they have the necessary permission to adopt from the appropriate authorities in their country, and that the child will be able to immigrate to the adoptive parents' country. If these facts are not proven, either an "abortive adoption" will occur, which has no legal standing in either nation or a "limping adoption," which is defined as an adoption recognized in one

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<sup>4</sup> *Rasiklal Chhaganlal Mehta v Unknown* AIR 1982 Guj 193

country but not in another, leaving the adopted kid helpless. In any case, such an awful situation must be avoided.

India established new protocols in January 2011 to facilitate more centralized ICA processing. Prospective adoptive parents should be aware of all Indian laws that apply to ICA in addition to the new standards. Under the Hindu Adoption and Maintenance Act of 1956<sup>5</sup>, the Guardians and Wards Act of 1890, or the Juvenile Justice (Care and Protection of Children) Act of 2000, a child can be lawfully placed with prospective adoptive parents.

### **POST ADOPTION**

Follow-up visits and post adoption therapy co-operating with the professional caseworker, mandated by some courts until the child is accustomed to the new atmosphere. Follow-up appointments are scheduled for a specific period of time or as ordered by the Judge. Copies of reports of the adoptive children, given to the District Social Welfare Officer, or any other state government department in charge. The parents must send in follow-up reports of the child to CARA and the licensed Placement Agencies through their adoption service provider.

### **ISSUES CONCERNING ICA**

In the absence of solid legislation, it has been commonly argued that ICAs should be prohibited. In this case, Justice Aftab Alam issued a notice to ban ICA as there is no law regulating it. The government was also asked to respond to the apex court's request for a comprehensive investigation into the country's alleged ongoing adoption racket. International adoptions have a prestigious reputation, creating pictures of happy couples saving a hungry, orphaned child. While it is repulsive to think of international adoptions as a crooked industry, links to child trafficking have recently surfaced. As a result, the state department estimates that, while Americans adopted 22,991 overseas children in 2004, the Convention's implementation resulted in a sharp reduction to 9,319 adoptions in 2011.

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<sup>5</sup> Hindu Adoptions and Maintenance Act 1956

The term "child laundering" refers to the notion that the existing ICA system frequently takes children illegally from their birth parents and then "launders" them as "legally" adopted children via official adoption and legal processes. As a result, the adoption system treats children similarly to a money laundering criminal enterprise that acquires funds unlawfully but then "launders" them through a legitimate business. There is no trustworthy source on how much adoption corruption occurs due to both incorrect bookkeeping and deliberate manipulation. As a result, it's impossible to say whether activities lessen corruption because the only figure available is the number of children adopted abroad. The majority of the problem with international adoption, according to Michael Thorner, Director of the International Centre for Judicial Studies and Technical Assistance at the Hague Conference, is that people often view the decrease in international adoptions as a negative effect of the ICA convention.

Furthermore, adopting a kid from a country in the midst of a significant conflict or an emergency comes with a slew of problems that could jeopardize the child's well-being. Children separated from their parents and communities as a result of conflict or natural catastrophes should not be considered for ICA, according to UNICEF, and family tracing should take precedence. Children are especially vulnerable to separation from their families, exploitation, and the possibility of trafficking during or after a natural disaster or civil disturbance. Children can be kidnapped or illegally seized from their parents in these extreme instances, or sold to agencies that handle ICA for personal gain.

## **CONCLUSION**

As a result, it is important to stress that the ICA system is rife with fraud. International adoption law is completely centered on the negative consequences of inter-country adoption instead of the basic positive conclusion that they could provide a safe home for abandoned children. Additionally, they contribute to the pessimism around raising unique challenges in international adoption. As a result, ICA is frequently prohibited by law.

Transnational adoption may be the best option for those abandoned children who are comfortable in settling into a whole new space. However, if the country of origin for these children lacks adequate legislation to show them their fate, violations of their rights are almost certain to occur. Better regulations and guidelines for inter-country adoption are sorely needed in the country. The authorities must conduct rigorous checks making sure that a child's life is going well. Everyone has a basic right to healthy and secure life, and so do the children. The role of the authorities must include everything from passing rules to make transnational adoption safer to assuring the child's safety while overseas. It's a typical occurrence in India for judges to be unfamiliar with ICA guidelines in rural and some parts of urban regions. As a result, a standard yet severe system must be devised in this regard, One that is enforceable and simple to follow while protecting the human spirit.