INTERNATIONAL LAW ON ADOPTION: INDIAN PRACTICE

Dissertation submitted to the Jawaharlal Nehru University
in partial fulfilment of the requirement
for the award of the degree of

MASTER OF PHILOSOPHY

Submitted by :

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CERTIFICATE

This is to certify that the dissertation entitled **"INTERNATIONAL LAW ON ADOPTION: INDIAN PRACTICE"** submitted by **MUKKAMALLA VISWA JYOTHI** is in partial fulfillment of the requirement for the degree of Master of Philosophy (M.Phil.) of this university. It is her original work and may be placed before the examiners for evaluation. This dissertation has not been submitted for the award of any other degree of this university or of any other university.

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Dedicated
to
My Late Parents
and
My Late Grandmother

ACKNOWLEDGEMENT

I express my heartfelt gratitude to my supervisor Prof. V.S Mani for his encouraging, inspirational and invaluable guidance. Itis his patience, generosity and excellent guidance that moulded my work in the present shape.

I owe sincere gratitude to Prof. Y.K. Tyagi for his priceless guidance that has greatly helped my work. His kind words of encouragement in distress inspired me to work hard at different intervals. Without his constant support, it would have been impossible for me to think even completion of my dissertation. Hisimmense concern throughout my M.Phil course is unforgettable.

I am extremely grateful to Prof. B.S. Chimni for his helpful instructions in resolving difficult subject matters and his generous understanding of my academic hardship.

I am very thankful to Dr. Bharat Desai for his valuable recommendations during my course work.

My honest thanks to Prof. R. P. Anand and Prof. Rehmatullah Khan for their encouragement.

I take this opportunity to warmly thank Dr. Najmul Arif for her timely encouragement and help in different capacities.

I am extremely thankful to Dr. N. Subba Rao, Center for Bio-Informatics, JNU and Prof. Rene Hokes Bergen, University of Utrecht.

I am highly grateful to Mr. Binod Kumar Sahoo, Dy. Director, CARA, New Delhi, for sharing his professional knowledge to improve the topic and his kind help in the collection of research material.

I am forever indebted to Dr. A. Sudhakar Reddy, Legal Officer, the Ministry of External Affairs, New Delhi, for his help and constant encouragement. Words alone cannot express my gratitude for sparing his expensive time and energy.

I am also thankful to Mr. L.K. Pandey, Advocate, Supreme Court of India, Ms Usha Franklin, Executive Officer, Ashran, Hope Orphanage, Mr. Madhusudan Rao, Principal, Mrss. Lakshmi and Glory, AMS Women's Law College, Hyderabad.

My sincere thanks to the librarian and staff of the of Jawaharlal Nehru University, New Delhi, Indian Society of International Law, New Delhi, CARA, New Delhi, Indian Law Institute, New Delhi, and Indian Council for Child Welfare, New Delhi.

My special thanks Mr. V. K, Singh, for his active interactions with the work at every stage that helped me to adopt a more balanced and structured approach in this dissertation.

I express sincere thanks to my seniors: Anwar Sadat, Sudhakar, Banarji, Kalpalatha Iyer, Archana, Liladhara, Raju, Robin, and classmates; Uday Ramakrishna, Puhazh, Asif, Pandya Raj, Sreejit and Siyad for their inspiration and encouragement.

Thanks to K, Geeta, Aparna and Selvi Ganesh, Jagadamba Prasad, Raghav and Manjeet for their timely assistance in this work.

I extend my warmly thanks to my friends; Swapna Reddy, Madhavi, Shusree, Sarala, Sunita, Vidya, Rushda, Vandana, Sanskriti, Siddoji, Basha and Sambasiva.

Heartfelt thanks to my best friend Ms. Kavitha Ramakrishna, for her love, care and consistent emotional support.

My sincere thanks to Chinnoo for his constant constructive criticism. He deserves special thanks not only for his gratitude, but also for his crucial support at a point when I was ready to give up on the whole work.

I am ever grateful to my Kranthi Prakash and Kiran Kumar Reddy for their constant inspiration and invaluable sacrifice through out my life.

Finally, I am grateful to all who helped me directly or indirectly in completing this dissertation.

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CHAPTER I

INTRODUCTION

In a civilized society, the importance of child welfare need not be overemphasised. Indeed, the welfare of the entire community, its growth and development depend on the well being of its children.[1] Every child has to be helped to grow to attain full emotional, intellectual and spiritual stability and maturity. In case a child is denied this basic right and is given up permanently by the biological family, alternative care has to be ensured. The options are: adoption, institutionalisation, foster care or sponsorship.[2]

Adoption is a welfare and protection measure. The adoption of an orphaned or definitively abandoned child may enable him/her to benefit from a permanent family.[3] The practice of adoption can be divided into three categories: domestic (or in-country or national) adoption, intercountry adoption, and international adoption.

A domestic adoption is an adoption that involves the adoptive parents and a child of the same nationality and same country of residence.

An intercountry adoption is seen as one that involves a change in the child's habitual country of residence, whatever the nationality of the adoptive parents.

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[1] *Study Report on the Procedure for Adoption of Children in India*, Department of Administrative Reforms and Public Grievances, Government of India, December 1998, p.1.

[2] Institutionalisation: the simplest response to a child in need of care and protection usually carried out because no viable alternatives have been set in place, because due account is not taken of existing alternatives or because ongoing specialised care is required. Fostering: an authorised placement with a foster family, supervised by the social services and usually involving financial compensation to cover the additional expenses incurred. Sponsorship: sponsorship is a pattern of child care under which external assistance in cash and kind is given with a view to ensuring that the children that the children are brought up n their own family or some other family or institution.

[3] *The Innocenti Digest 4 –Intercountry Adoption* (Florence, Italy: UNICEF International Child Development Centre, 1998), p. 2.

An international adoption applies to an adoption that involves the parents of a nationality other than that of the child, whether or not they reside and continue to reside in the child's habitual country of residence.[4] Thus, an Indian girl adopted by Indian citizens living in Italy is involved in an intercountry adoption but not an international adoption. If an Italian citizen residing in India adopted her, the form of adoption would be international. It would be both international and intercountry if Italian citizens in Italy adopted her.

Initially, concerns about intercountry adoption were linked mainly to problems arising from the different legal systems in receiving countries and countries of origin. Also of concerns were the perceived problems of adjustment of the child in his/her new environment and the ability of the adoptive parents to meet his/her special needs in this regard. Ethical issues as to whether it is desirable to remove a child from his or her country rather than to provide her with necessary assistance and protection on the spot have also been raised.

Consultations on such issues were already taking place at the international level in the mid-1950s. In 1960, a seminar on intercountry adoption organised in Leysin, Switzerland, under the auspices of the European office of the United Nations, formulated the first set of principles in the sphere of intercountry adoption. The Leysin principles underpinned all subsequent international instruments dealing with this subject.[5] A World Conference on Adoption and Foster Care, held in Milan, Italy, in 1971, again drew international attention to the inadequacy of international regulations to safeguard the adopted child's interests.[6]

It was in the 1970s, however, that serious concerns began to be expressed over the 'mass exportation' of children from developing nations. A full-fledged and clear 'demand' for adoptive

[4] Ibid.
[5] Ibid.
[6] Ibid.

children had become apparent in the West and was accompanied by an ever-larger throng of agencies and intermediaries using more or less acceptable means to satisfy it. This trend was partly the result of the coming of age of the 'baby boom' generation and the social pressure exerted on couples to have children. Adoption as a practice had also become more socially acceptable than in the past.

In 1982, an important step was taken towards promoting internationally recognised standards for services to ensure the protection of children. Professionals from different countries endorsed the so-called Brighton Guidelines for intercountry adoption, which were based on the draft United Nations Declaration on Foster Placement and Adoption and prepared by various non-Governmental Organisations (NGOs), notably the International Council of Social Welfare (ICSW) and the International Social Service (ISS), as well as the United Nations Centre for Social Development and Humanitarian Affairs. The Guidelines were subsequently revised and endorsed during an ICSW Conference in Hong Kong in 1996.[7]

While demand for children for adoption has continued to rise in the industrialised world, fertility has fallen there; reducing the number of children who can be considered eligible for domestic adoption.[8] This 'structural demand' for children for adoption in high-income countries has been met with the 'structural supply' of children 'available' for adoption abroad in low-income countries. Over the last several decades, increasing number of children have been abandoned and orphaned in the developing world in the wake of the following: socio-economic change, especially the rapid urbanisation in Latin America, Africa and certain Asian countries;

[7] Ibid.
[8] See TABLE 1.

the upheavals in the Central and Eastern Europe; and the wars, ethnic conflicts and natural disasters that affect populations in different parts of the world.[9]

Intercountry adoption, has come to represent in many ways the convergence of 'demand' and 'supply 'of children. One of the more recent expressions of this lies in the use of the Internet to promote adoption in ways that often involve the marketing of children as well as spawning private adoptions and offering 'shortcuts' to the legal adoption process.[10] The "language of economies" has, therefore, "made its appearance", transforming once purely humanitarian measures into a "more complex and controversial social phenomenon".[11] In other words, intercountry adoption, which is viewed as a child welfare measure as it was originally intended to be, has become a lucrative profit-making activity in certain cases, sometimes involving major financial interests and its own lobby in which children are treated as commodities.

1.1 Demography of Intercountry Adoption (ICA)

While earlier ICA was practice involving only a small number of children for relatively few countries, now it is a phenomenon involving over 30,000 children a year in over a hundred countries.[12] In 1990, S. Kane approached government offices in 21 such countries, but was able to obtain comprehensive data only from 12.[13] Peter Selman also faced the same problem even after ten years, despite the stress in the (Hague Convention on the Protection of Children and Co-

[9] Innocenti Digest – 4, n. 3, p. 2.
[10] Ibid., p. 3.
[11] Ibid.
[12] Peter Selman, "The Demographic History of Intercountry Adoption", in Peter Selman, ed., Intercountry Adoption: Development, Trends and Perspective (London: British Agencies for Adoption and Fostering, 2000), p. 16.
[13] Ibid., p. 17.

operation in Respect of Intercountry Adoption[14]) on the importance of gathering data systemically.[15]

Intercountry adoption in the period between 1980 and 1989 increased by 62 per cent; 90 per cent of all children were drawn from only ten countries.[16] Kane identified the major sending countries as South Korea (61,235), India (15,325) and Colombia (14,837) between 1980 and 1989.[17] However by 1995, China and Russia had emerged as the main sources of children for adoption.[18]

TABLE 1: Major sources of Intercountry adoption: 1980 -89, 1995 and 1998

Country of origin	No. of adoption 1980-89	Country of origin	No. of adoption 1995	Country of origin	No. of adoption 1998
South Korea	6,123	China	2,450	Russia	4,763
India	1,532	Korea	2,008	China	4,621
Colombia	1,484	Russia	1,998	Vietnam	2,240
Brazil	753	Vietnam	1,462	Korea	2,183
Sri Lanka	682	Colombia	1,102	Guatemala	1,087
Chile	524	India	641	Colombia	1,023
Philippines	517	Guatemala	539	India	747

[14] Hague Convention visit <http://www.hcch.net/adoshte.html>
[15] Ibid.
[16] See TABLE 1.
[17] Ibid, p.22
[18] Ibid, p.22 and See TABLE 1.

Guatemala	**224**	**Brazil**	**501**	**Romania**	**658**
Peru	**221**	**Romania**	**470**	**Ethiopia**	**356**
El Salvador	**218**	**Paraguay**	**351**	**Brazil**	**325**
Mexico	**160**	**Philippines**	**321**	**Bulgaria**	**319**
Haiti	**153**	**Ethiopia**	**266**	**Cambodia**	**302**
Poland	**148**	**Bulgaria**	**220**	**Haiti**	**238**
Honduras	**110**	**Thailand**	**132**	**Philippines**	**237**
Thailand	**86**	**Chile**	**131**	**Thailand**	**197**

For a short period in the early 1990s, Romania became the largest single source of children for international adoption.[19] TABLE 1 shows changes in the sources of children for adoption in the 1990s, with six of Kane's top fifteen countries (Sri Lanka, Peru, El Salvador, Mexico, Poland and Honduras) no longer featuring in the lists for 1995 and 1998.

TABLE 2 shows that the USA is the largest recipient of children for international adoption. Several small European countries receive numbers that are relatively greater in proportion to their population. It is clear that by the end of the 2000, the global number of intercountry adoptions must have risen to more than 32,000 a year.

[19] Selman, n. 12, p. 22.

TABLE 2: Major receiving States: number of adoptions 1980-1998

Country	Mean annual adoptions 1980-1989	1988	Mean annual adoptions 1993-1997	1998
USA	7,761	9,120	10,070	16,396
France	1,850	2,441	3,216	3,777
Italy	1,117	2,078	2,047	2,019
Canada	181	232	1,934	1,799
Sweden	1,579	1,074	906	928
Switzerland	616	492	761	733
Netherlands	1,153	577	640	825
Germany	947	875	1,642	1,819
Norway	464	566	531	643
Denmark	582	523	510	624
Australia	509	516	247	245
Belgium	605	662	183	254
Finland	80	78	134	181
Spain	94	93	NA	61
UK	-	-	180	258
Ireland	-	-	46	120

Iceland	-	-	**11**	**15**
Cyprus	-	-	**NA**	**12**
Total	**17,538**	**19,327**	**23,057**	**30,709**

1.2 Historical Background

In most Western countries, the phenomenon of adoption has existed for more than half a century. Freundlich estimates that between two to three per cent of the population of the USA has been adopted. In Scandinavian countries and the Netherlands, the numbers of domestic adoptions have dropped to the relatively low level of two to four children per one million inhabitants from 50 to 100 children three decades ago. The number of domestic adoptions in the USA has also decreased, but remains much higher than that in Europe.[20]

In the 1800s, following the Potato famine, Irish children were sent to North America.[21] These "orphan trains" continued until World War II. P. Bean and J. Melvil see the process of "child migration' starting as early as 1618 and continuing until 1967 and involving 150,000 children moving to Canada, Australia, New Zealand and other parts of the British Empire.[22]

In the USA, intercountry/trans-racial adoption developed as a consequence of World War II. Between 1948 and 1962, about 2,000 German and 3,000 Japanese children were adopted by

[20] Ibid.
[21] R. H. Kittson, *Orphan Voyage* (USA: Country Press Kittson, 1968) cited in Selman, "The Demographic History of Intercountry Adoption", in Selman, ed., *Intercountry Adoption: Development, Trends and Perspective* (London: British Agencies for Adoption Fostering, 2000), p. 22.
[22] P. Bean and J. Melville, *Lost Children of the Empire* (London: Unwin Hyman, 1989) cited in Selman, "The Demographic History of Intercountry Adoption", in Selman, ed., *Intercountry Adoption: Development, Trends and Perspective* (London: British Agencies for Adoption Fostering, 2000), p. 22.

American families.[23] In 1998 a total of 15,774 adoptive children arrived in the USA, most of them from the Russian Federation, China, South Korea and Guatemala. In Western European countries, intercountry adoption started in the 1960s and in some countries, it is now practically the only road to adoption there.

1.3 Abuses in Intercountry Adoption

The adoption policies of the countries of origin vary with the political and economic situations. Often a moratorium on intercountry adoption is called to allow for the investigation of abuses or for the establishment of adequate legal framework.[24] In Albania, faced with the buses of a small but unprecedented number of intercountry adoptions, the President took rapid action, prohibiting all foreign adoptions in mid-March 1992 and requesting international assistance in drafting new laws.[25] The situation was far more dramatic in Romania, a country that had registered fewer than 30 cases of intercountry adoption in 1989, suddenly witnessed the departure of more than 10,000 children from January 1990 until July 1991, when the President of Romania called a moratorium because of the abuses and trafficking that were taking place there.[26]

During the adoption process, violations of the most basic rights of the child can occur. These violations are often perpetrated under the cover of the supposedly humanitarian aim of the act and 'justified' by the simplistic view that a child will somehow always be 'better off' in a materially rich country. Illegal acts and malpractices can involve criminal networks, intermediaries of all kinds, and couples prepared to carry out, be accomplice to, tolerate, or

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[23] A. R. Silverman and D. E. Weitzman, "Nonrelative Adoption in the United States", in R. A. C. Hoksbergen and S.G. Gokhale, ed., *Adoption in Worldwide Perspective* (Lisse: Swets and Zeitlinger, 1986), pp. 1-21.
[24] The Innocenti Digest, n. 3, p. 4.
[25] Romania moratorium and suspension of all adoption from Guatemala announced in Dec. 1998.
[26] The Innocenti Digest, n. 3, p. 4.

simply ignore abuses in order to secure an adoption. The diversity of the methods used, and the wide range of actors (viz., placement agencies, State government, nodal agencies, scrutinising agency, nursing home, juvenile authorities, etc) that may play a role, demonstrate the vastness of the task of protecting the rights of the child in intercountry adoption.

Whenever illegal procedures are resorted to during the process of intercountry adoption, the child's identity is likely to be jeopardised. In case of child trafficking, for example, knowledge about the abducted children's families, their ethnic roots and their medical histories are forever lost. Often child traffickers try to cover their tracks by moving kidnapped children to other countries before arranging for their adoption abroad. One report describes a criminal ring that kidnapped Guatemalan children, obtained forged birth certificates and passports, transported the children to El Salvador and Honduras, and from there arranged for their adoption in third countries.[27]

Traditionally, human trafficking has involved the exploitation of girls and women in sex, domestic and labour markets. The definition however has recently expanded to provide kidneys, corneas, skin and liver for unscrupulous medical transplant programmes. Within the new context, India has become a safer place for traffickers. Recent media revelations on the unethical practices show that certain adoption placement agencies in Andhra Pradesh, India, have had wide repercussions.[28] In 2000 and 2001, Andhra Pradesh became the main trading place of children. The GRAMYA Resource Centre for Women was the NGO largely responsible for exposing Andhra Pradesh's adoption scam.[29]

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[27] Ibid., p. 7.
[28] Children as Commodities, *The Hindu,* Sunday, March 3, 2003, p. 16 and 17.
[29] Lynette J. Dumble, Female Imperilment in the Third Millennium, visit www.stoptraffic.org.

Andhra Pradesh's orphan traffickers, frequently themselves women, are well connected: Savitramma and her associate Savithri, from the Bethany Memorial, employ agents and midwives to scour the tandas in Mahbubnagar, Ranga Reddy, Medak and Nalgonda Districts looking for pregnant Lambada tribal women. Both maintain a close alliance with local politicians and foreign countries, with Savithri even holding a US Green Card.[30] Anita Sen, from Precious Moments, is the wife of a top police officer, and even as she awaits prosecution she has several US senators defending her.[31] She claimed that the Indian Government order was not applicable to those who functioned under the 'fit person' licence, issued by the Government, whereby they took care of children temporarily till they were transferred to recognised agencies. Therefore, they were unlike other unrecognised agencies where the children were seized.[32]

Recently, the Delhi Crime Branch exposed the alleged racket of "illegal adoption" of newborn babies. The racket was run from a nursing home at Uttam Nagar in West Delhi. One Dr. Ish Aggarwal and her accomplices were indulging in trafficking of newborn children, especially girls.[33]

An illegally adopted child's national identity is also at risk. Cases of the 'exports, of pregnant women to countries where procedures are lax have also been reported. In the early 1990s, a criminal ring that brought Romanian, Albanian, Yugoslav and other nationals to Budapest, Hungary, to give birth was uncovered. When the Hungarian Government dismantled

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[30] Gita Ramaswamy, Bhangya Bhhukya, *The Lambadas: A community Besieged*, (Hyderabad: UNICEF, 2001), p. 3 and 7.
[31] Ibid.
[32] S. Aarthi Anand, Prema Chandra, "Adoption laws: Need for Reform", *Economic and Political Weekly*, September 21, 2002, p. 3891.
[33] Adoption Racket Busted, *Hindu*, April 24, 2003; Agencies Want Adoption Rules Changed, *Hindustan Times*, April 25, 2003; Baby Seller's Canteen Fed Cops, *Indian Express*, April 26, 2003; Sutirtho Patranobis "Adopting Legal. Mean Makes Parents Vulnerable", *Hindustan Times*, April 27, 2003; Arohis Mohan, "How to Have a Baby in Two Months", *Hindustan Times*, April 27, 2003.

this particular operation, difficulties arose over the national identities of the children involved, who were born in Hungary but of foreign mothers.[34]

Being barred from knowledge about one's own past can have a negative effect on him/her. Research has shown that many adopted children need to know as much as possible about their real identities in order to build balanced personalities.[35] Greater awareness has led to more openness about the adoptive child's family background. This new practice of 'open' adoption, as opposed to 'exclusive' adoption, is especially viable in the cases of older adoptive children.

National identities may also be unclear in case of disruption of adoption, which is more likely when safeguards such as counselling for the prospective adoptive parents, home studies and careful matching of children with families are not respected.

The fate of children who are disabled or seriously ill (especially those affected by HIV/AIDS and other incurable disease) has often been tragic. In some cases, they were presented as healthy children to their prospective adoptive parents.

Both international and trans-racial adoptions raise issues of identity and claims to children in a context of racism, and cultural and class domination. How the identity of adoptive children who have been adopted from abroad develops and describe their attitude to their own ethnicity. What is their attitude to the culture and background they left behind when they were adopted. Do they feel they belong in the society in which they have grown up or do they find themselves in a mental and cultural vacuum? How the adopted children themselves feel they

[34] Innocenti Digest 4, n. 3, p. 2.
[35] Derek Kirton, "Intercountry Adoption in the UK Towards an Ethical Foreign Policy?", in Peter Selman, ed., *Intercountry Adoption: Developments, Trends and Perspectives* (London: British Agencies for Adoption Fostering, 2000), p. 69-70.

belong (external self-identification) and how those around them categorise them (external identification). The trend in international research into minorities and identity, which has mainly focused on the relationship between the majority and the minority, while less interest has been devoted to relationships between individuals and groups within particular ethnic minority communities is rarely analysed.

The present study is an attempt to explore some important issues relating to infertility, 'orphan' myth, relationship between 'public' and 'private' aspects of intercountry adoption, ethical dilemmas in intercountry adoption and the associated policy dilemmas. It seeks to analyse the development of attempts to impose some sort of international control over the practice of adoption. It looks at the background of the Hague Convention. The study outlines the Convention's main principle, linking this to the 1989 UN Convention on the Rights of the Child. The study further discusses some "operational" issues that have emerged since 1993 including issues about payments required by the governments of some sending countries and the problems of adoptees' right to information about their backgrounds.

Furthermore, the backdrop of adoption scams gives an opportunity to make a critical examination of the laws of different countries and their implementation. Adoption professionals and prospective intercountry adopters have keenly felt the absence of an effective legal framework for intercountry adoption alike. The lack of clarity that follows from a reliance on domestic adoption law, regulations and guidelines also undermines the confidence that children's interests are being protected.

In addition to this introduction, the present study has been divided into five chapters. The second chapter deals with international laws concerning adoptions. The third chapter analyses the laws of different jurisdictions and makes an attempt to provide legal inputs to streamline the

adoption process. The fourth chapter presents an analytical study of the Indian practices. The fifth chapter looks at major issues related to intercountry adoption. The final chapter offers the concluding remarks on the basis of the study made in the previous chapters. It also makes recommendations to support a better institutional framework in which the practice of adoption can operate more efficiently.

CHAPTER II

THE INTERNATIONAL LAW STRUCTURE

2.1 The International Normative Framework

The development of international law on intercountry adoption reflects the rapidly increasing level of preoccupation with the large-scale abuses of the spirit and procedures of intercountry adoption. In addition to the many agreements and conventions that exist at the regional level, particularly in Latin America and in Europe, a number of international declarations (which may not always be legally binding) and conventions (which are binding) set out principles and standards regarding intercountry adoption.[36] The principal instruments are: the 1986 United Nations Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption, Nationally and Internationally; the 1989 United Nations Convention on the Right of the Child (CRC); and the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

This chapter makes an attempt to examine the provisions of these instruments appreciating the complexity of the issues involved when considering the best interests and the rights of the child in intercountry adoption. It also analyses the background to the Hague Convention, linking this to the earlier UN Convention on the Rights of the Child, and outlines its main principles. The chapter also discusses some "operational" issues of war which have

[36] European Convention on the Adoption of Children, Council of Europe, Strasbourg, 24 April 1967; European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children, Council of Europe, Luxembourg, 20 May 1980; Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants, Commission Internaitonale de l'Etat Civil, The Hague, 5 October 1961.

emerged since 1993 and which had been reviewed by a special commission in November 2000. These include issues about payments required by the governments of some sending countries and the problems of adoptees access to information about the backgrounds of children.

There has been a great concern for the welfare of children at the international level culminating in the Declaration of the Rights of the Child which was adopted by the General Assembly of the United Nations on 20 November 1959. The Declaration in its preamble points out that "the child by reason of his physical and mental immaturity, need special safeguards and care, including appropriate legal protection, before as well as after birth", and that "mankind owes to the child the best it has to give" and proceeds to articulate several principles of which the following are critical for this study:

Principle 2 states that "the child shall enjoy special protection and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose the best interests of the child shall be the paramount consideration."

Principle 3 lays down that, "the child shall be entitled from his birth to a name and a nationality."

Principle 6 puts forth that "the child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and in any case in an atmosphere of affection and of moral and material security, a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support."

Principle 9 states that "the child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form".

Principle 10 lays down that, "the child shall be protected from practices which may foster racial, religious and any other form of discrimination."

Intercountry adoption involves trans-racial, trans-cultural and trans-national aspects. So the abovesaid principles need to be reinforced through some sort of international effort. The draft guidelines of procedures concerning intercountry adoption were formulated at the International Council of Social Welfare Regional Conference of Asia and Western Pacific held in Bombay, India, in 1981 and approved at the Workshop on Intercountry Adoption held in Brighton, UK, on 4 September 1982. The guideline recognises the validity of the abovesaid principles.

While supporting intercountry adoption, it is necessary to bear in mind that the primary object of giving the child in adoption being the welfare of the child, great care has to be exercised in permitting the child to be given in adoption to foreign parents. The child should be protected from moral or sexual abuse, forced labour or experimentation for medical or other research. Keeping these in mind, the Economic and Social Council has tried to evolve social and legal principles for the protection and welfare of children given in intercountry adoption. By its Resolution 1925, (LVIII) Economic and Social Council requested the Secretary-General of the UN to convene a group of experts with relevant experience of family and child welfare to prepare a draft declaration of social and legal principles relating to adoption and foster placement of children nationally and internationally. Pursuant to this mandate the Expert Group meeting was convened at Geneva, Switzerland in December 1978. The group adopted a "Draft Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children With Special Reference of Foster Placement and Adoption, Nationally and Internationally". The

Commission for Social Development considered the Draft. ECOSOC approved the Draft and requested the General Assembly to consider it. And the Assembly adopted the Declaration in 1986.

2.1.1 The United Nations Declaration

The 1986 United Nations Declaration on Social and Legal Principles Relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption, Nationally and Internationally (the United Nations Declaration) states inter alia:

If a child cannot be placed in a foster or an adoptive family or cannot in a suitable manner be cared for in the country of origin, intercountry adoption may be considered as an alternative means of providing the child with a family (Article 17).

The declaration sets out the main concerns in order to ensure adequate counselling of all directly involved and professional observation of the relationship between the child and the prospective adoptive parents before the adoption takes place. The Declaration, moreover, stresses upon the prevention of abduction and improper financial gain, as well as protection of the child's legal and social interests. Interestingly, it contains no references to such phenomenon in relation to domestic adoption.

2.1.2 The Convention on the Rights of the Child

The Convention on the Rights of the Child (CRC) was adopted by the UN General Assembly on 20 November 1989, exactly 30 years after the adoption of the Declaration of the Rights of the Child. This anchored the moral obligation enshrined in the 1959 Declaration on the Right of the Child, in so-called hard law. The CRC came into force on 2 September 1990. As of 21 July 2003, 187 states (including India) have ratified or acceded to it. The CRC can be

regarded as a milestone. On the one hand, it is the culmination of a difficult struggle over a decade, aiming at improving the situation of children in a society. It is the beginning of a new way of dealing with children. It declares that children are to be regarded as individuals with fundamental human rights.[37] The CRC has three key components: right to self-determination, right to protection, and specific rights. The third objective (specific rights) are rights which apply specifically or even exclusively to children. These include the right of children not to be separated from their parents (Articles 9, 10 and 11).

The provision of the CRC specifically dealing with adoption is Article 21. The article sets out the basic principles to be followed when considering domestic and intercountry adoption for a child. The original draft of this article began with the obligation of State Parties to 'facilitate' adoption. By the time the text of the article came up for a second reading, however, the United Nations Declaration had been approved and the 1980s had provided an unprecedented number of examples of gross abuses of intercountry adoption practice.[38] The result was that in its final version, although Article 21 recognises "that intercountry adoption may be considered as an alternative means of child's care", its original wordings were completely changed to stress the State Party's duty to ensure that the best interests of the child are "the paramount consideration" in any adoption and that safeguards and procedures are fully respected. It is important to note that this is the only place in the CRC where the best interests of the child are 'the', and not just 'a', primary consideration.[39]

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[37] Eugeen Verhellen, "The Convention on the Rights of the Child", in Eugeen Verhellen, ed., *Understanding Children's Rights*, Collected Papers Presented at the First International Interdisciplinary Course on Children's Rights (Dunanthan: Children Right Centre, University of Ghent, 1996), p. 27.
[38] The Innocenti Digest, n.3, p. 5.
[39] Ibid.

Article 21 is by no means the only provision in the CRC with direct relevance to intercountry adoption. Article 35 specifically provides that there must be adequate protection from sale, trafficking and abduction of children.[40] More broadly, Article 8 recognises the child's right from birth to an identity (name, nationality and family relations) and to protection from being unlawfully deprived of that identity.[41] Article 7 establishes "as far as possible, the right to know and be cared for by his or her parents".[42] Article 12 stipulates the child's right to have his or her views respected and to be heard in any judicial or administrative proceeding affecting the child.[43] Article 20(3) stresses that when decisions are made about alternative care "due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background".

The provision of Article 25 on the need for periodic review of placement is also relevant since many children potentially eligible for adoption live in orphanages or other institutions, where they very often languish or are 'forgotten' until adulthood.[44] A periodic review of the

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[40] Article 35 says, "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

[41] Article 8 provides:

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognised by law without unlawful interference.
2. where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

[42] Article 7 says:

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

[43] Article 12 emphasizes:

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

[44] Article 25 says that State parties recognise the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

child's placement will ensure that, at the earliest possible time, decisions are taken by parents, guardians or the competent authorities relative to the child's reunification with his or her birth family or extended family or permanent care by an adoptive family.

The CRC envisages intercountry adoption only when it has been established that no substitute family or other suitable caring environment is available in the child's country of origin. This 'subsidiarity' principle corresponds to the right of the child "deprived of his or her family environment to special protection and assistance provided by the State" (i.e. the State in which the child has been living) under Article 20(1).

2.1.3 The Hague Convention on Intercountry Adoption

There are 53 Contracting States parties to the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption.[45] India has ratified it on June 6, 2003, thus bringing the total number of Contracting States to 53. The inclusion within the negotiating process of many States of origin, which do not have a tradition of participation in the work of the Hague Conference, secured the necessary balance of interest.[46]

Despite the potentially sensitive nature of the subject matter, the early acceptance by the States involved that the starting point for all discussion should be the best interests of the child enabled bridges to be built between those states. The Hague Convention was designed principally to set up a mechanism for international co-operation to give practical effect to the CRC provisions relating to intercountry adoption. It provides for responsibilities and tasks to be shared between the States of origin and the receiving States while respecting organisational

[45] See <http:www.hech.net>

[46] The Explanatory Report by Parra-Aranguren G, *Hague Conference on Private International Law-Proceedings of the Seventeenth Session*, (Tome II: 1994), p. 538; More than 70 States, five Intergovernmental Organisation and 12 Non-Governmental Organisations took part in the negotiations in three special Commission meetings and a final Diplomatic Session. The Convention was adopted unanimously by 66 States represented in May 1993 at the Hague.

diversities and notional legislation. One of its basic premises is that adoption is not an individual affair that can be left exclusively to the child's birth parents or legal guardians, or to the prospective adoptive parents or other intermediaries, but rather a social and legal measure for the protection of children. Consequently, procedures for intercountry adoption should ultimately be the responsibility of the Contracting States involved, which must guarantee that adoption corresponds to the child's best interests and respects his/her fundamental rights.

The Hague Convention is based on four expectations:[47]

(i) that the Convention would contribute to the elimination of various abuses which had been associated with intercountry adoption, such as profiteering and bribery, the falsification of birth documents, the coercion of biological parents, the intervention of unqualified intermediaries and the sale and abduction of children;

(ii) that the Convention would bring about a more "child-centred" approach within intercountry adoption. The process of adoption would become less that of a suitable child for a childless couple and more that of a finding a suitable family for a child;

(iii) that the Convention would improve the situation from the point of view of the prospective adopters, for whom lack of regulation and the absence of clear procedures were leading to delays, complications and often considerable costs;

(iv) that the Convention would bring about the automatic recognition in all Contracting States of adoptions made in accordance with the Convention.

[47] William Duncan, "The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption", in Peter Selman, ed., *Intercountry Adoption: Developments, Trends and Perspectives* (London: British Agencies for Adoption, 2000), p. 46.

Article 42 of the Hague Convention authorises the Secretary General of the Hague Conference on Private International Law to convene at regular intervals a Special Commission to review the practical operation of the Convention. One such Special Commission was held in 1994. Implementation issues were considered by it. A second special commission was also held in November 2000.

(a) Institutional Framework (the co-operation structure)

The Hague Convention in chapter III provides for a system of Central Authorities in all Contracting States whose functions include co-operation with one another through the exchange of general information concerning intercountry adoption, and duties in respect of particular adoptions. Several Central Authorities may be established within federal states.[48]The Central Authority may act through another public authority or "accredited bodies".[49] In the case of accredited bodies, the State has an obligation to supervise their composition, operation and applicable financial conditions.[50]

In practice, Central Authorities are usually located in government ministries. One pre-requisite for the successful operation of the Hague Convention is that Central Authorities should be clearly identified so that communication among them may be swift and simple. The Permanent Bureau of the Hague Conference has experienced some difficulties in obtaining basic contact information in respect of a small ministry of State mainly situated in South America.[51]

[48] Article 6, para 1 of Hague Convention, 1993.
[49] Article 8 and 9 of Hague Convention, 1993.
[50] Article 11, para 1© of Hague Convention, 1993..
[51] Duncan, n. 46, p. 48.

(b) The Accreditation Process

Article 10 of the Hague Convention states that 'accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which may be entrusted'. Accreditation systems vary from one country to another, as well as the number of bodies accredited. For example, in Romania, about one hundred associations and foundations have been designated as accredited bodies by the Romanian Committee for Adoptions in accordance with Article 13 of the Convention, while Norway has designated only three.[52] What constitute adequate accreditation criteria and a workable system for supervising accredited bodies require further examination and elaboration. The process of accreditation itself, the range of services available, matters of financing, management and accountability and the provision of an effective system of review are some of the elements that need to be considered. It is not easy to reach common standards on all these issues among States with diverse administrative and legal systems. It is realised by most of the States that the effort needs to be made in order to maintain the mutual confidence that is necessary for the successful operation of the Convention.[53]

(c) Improper Financial or Other Gains

Under Article 8 of the Hague Convention, Central Authorities are required to take directly or through public authorities, all appropriate measures to prevent improper financial or other gain in connection with an adoption and to deter all practices contrary to the objects of the Convention.

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[52] Visit <http:www.adoption.org>

[53] An important recent contribution to dialogue relating to practices in intercountry adoption is International Social Service, International Resource Center for the Protection of Children in Adoption, Brochure no. 1, "The Rights of the Child in Internal and Intercountry Adoption: Ethics and Principles-Guidelines for Practice" (Geneva, 1999); and also available on <http//www.iss.ssi.org>

Article 32 of the Convention provides:

No one shall derive improper financial or other gain from an activity related to an intercountry adoption.

Only costs and expenses, including reasonable professional fees of person involved in the adoption, may be charged or paid.

The directors, administrators and employees of bodies involved in an adoption shall not receive remuneration that which is unreasonably high in relation to services rendered.

One thorny issue is the practice adopted in many countries of origin of employing the intercountry adoption process as a means of securing certain contributions to the operation or developments of child protection services within such States. For example, Romanian procedures introduced in March 1999 make a direct link between assignment of children for placement abroad with contribution to the development of child protection services within Romania.[54] In various other States of origin, some of which are not parties to the Hague Convention (for example, China), a charge is made that goes beyond the costs that are directly related to the specific adoption process.[55] These practices raise difficult questions of interpretation in respect of Article 32 and particularly the rule that only costs and expenses may be charged or paid. It may be difficult to obtain at the international level, full agreement on what constitutes an 'improper financial or other gain', but if intercountry adoption is not to become the privilege of the rich and if adopters are to be allowed some certainty with regard to the charges, which they may face, some agreed parameters are necessary.

(d) Simple Adoptions

[54] Duncan, n.46, p. 49.
[55] See Chapter III of this study.

According to its Article 2(2), the Hague Convention 'covers only adoptions which create a permanent parent-child relationship'. Excluded, therefore, are long-term trans-frontier fostering arrangements,[56] as well as the Islamic institution of *Kafala,*[57] which in the absence of adoption is an alternative method of providing long-term alternative family care. However, the Convention does not exclude so-called "simple" adoptions. A simple adoption is the adoption that does not involve a complete severing of legal ties between the adopted child and the birth family. For those States which are familiar only with the idea of full adoption, the treatment of simple adoptions in implementing legislation has posed serious difficulties.[58] Where such a State is the receiving State, the problem may be overcome by providing that the adoption should be converted into a full adoption under the procedure provided for in Article 27 of the Convention.[59] However, the problem becomes more complex where a simple adoption is made in the country of origin and is recognised as such in the receiving State, but where subsequently the adoptive family move to another Contracting State in which simple adoption is an unknown institution. In this case, there is an obligation on the latter State under Article 26 to recognise the adoption, but it is not easy to decide what effects are to be given to the adoption. Varying solutions have been proposed in different States.[60]

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[56] Fostering is the child welfare measure which can be define as an authorised placement with a 'foster' family, supervised by the social services and usually involving financial compensation to cover the additional expenses incurred.

[57] *Kafala* is a form of care under Islamic Law, recognised by the legal act and considered definitive. Under Kafala, the child does not take the name of the host family, nor does he or she acquire inheritance rights, reflecting the precept of Islamic Law whereby blood ties cannot be modified.

[58] Law Reform Commission (Ireland), *Report on the Implementation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-county Adoption*, visit <http// www.adoption.org>

[59] Article 27 para 1 says where an adoption granted in the state of origin does not have the effect of terminating a pre-existing legal parent-child relationship, it may, in the receiving state which recognises the adoption under the Convention, be converted into an adoption having such an effect-(a)if the law of the receiving states so permits; and (b) if the consents referred to in Article 4, sub para c and d, have been or are given for the purpose of such an adoption.

[60] Duncan, n. 46, p. 51.

(e) Preservation of and Access to Identifying and Other Information

Under Article 16 of the Hague Convention, the Central Authority of the State of origin is obliged to prepare a child report. Article 16(2) reminds the Central Authority that in transmitting a child report to the Central Authority of the receiving State, it should take care not to reveal the identity of the mother and the father if, in the State of origin, these identities may not be disclosed. Article 30 provides that the "competent authorities" of a Contracting Sate shall ensure that information held by them concerning the child's origin, information concerning the identity of his/her parents, as well as the medical history, is preserved. Some problems have already been experienced in interpreting these provisions. The identity of the "competent authorities" is not obvious. One view is that it is any authority that is authorised to hold records. The issue of access to identifying information is also a very sensitive one. Although Article 16 allows the State of the child's origin to withhold identifying information where its law forbids disclosure, it is possible that authorities in the receiving State may come into possession of identifying information through other channels.[61]

(e) Miscellaneous Questions

Who are the appropriate persons or bodies to give the consent under Article 17(c) of the Hague Convention? How can delays be avoided especially where they are associated with the Convention's procedural requirements? What difficulties have arisen in respect of the requirement that information be obtained concerning the medical history of the child and his/her family? Is the system of issuing by competent authorities of certificates of compliance under Article 23 always working smoothly? How well are the provisions relating to consent and

[61] Ibid.

counselling operating in practice? What is being done in practice about post-adoption reporting, a matter which remains of concern to many countries of origin?

(g) Adoptability of the Child

The Central Authority of the Country of origin must ensure that competent authorities establish the child's 'adoptability', i.e. legal eligibility and psychological, medical and social suitability for adoption and that a report is completed before the prospective adoptive parents have contact with the child's birth parents or other legal representatives and before consideration is given to matching the child with any given prospective adoptive family. The report should certify that:

- Birth parents have been clearly informed of the consequences of adoption and have been helped with necessary counselling;[62]
- The birth parents, and particularly the birth mother, have given their consent to adoption only after the birth of the child;[63]
- The consent of persons, institutions and authorities responsible for the child has been freely given before adoption and has not been induced by payment or compensation of any kind;[64]
- The child, according to age and degree of maturity, has received counselling and is informed of the consequences of adoption, and his or her opinions and wishes have been taken into consideration.[65]

[62] Article 4, para c (1) of Hague Convention 1993.
[63] Article 4, para c (2) of Hague Convention 1993.
[64] Article 4, para c (3) of Hague Convention 1993.
[65] Article 7, para d (1) of Hague Convention 1993.

(h) Eligibility and suitability of the prospective adoptive parents

The Central Authority of the receiving country must ensure, through a home study, that the prospective adoptive parents are recognised as qualified and eligible to adopt.[66] Again, suitability is not just a legal or economic concept, but also has psychological, social and medical dimensions.

Several receiving countries have made it mandatory for prospective adoptive parents to complete a specific training course before a home study can be carried out.[67] Preparation is aimed at helping prospective adoptive parents to face squarely their own motivations for wishing to adopt a child and to explore their expectations about an eventual adopted child.[68]

2.1.4 Comparison between the CRC and the Hague Convention

The fundamental principles of the Hague Convention are based on the best interests of the child and are drawn from the CRC, especially Article 21. It is the Preamble to the CRC that provides the fundamental justification for intercountry adoption by recognising that 'the child, for the full and harmonious development of his/her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding...' Where the child's existing family no longer functions to meet the child's needs, Article 20 of the CRC requires the State to provide special protection and assistance to a child and 'to ensure alternative care for such a child'. That alternative care may include adoption.

Article 21 of the CRC requires those States which recognise adoption to ensure that 'the best interests of the child shall be the paramount consideration'. Article 21(b) of the CRC

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[66] Article 15, para 1 of Hague Convention 1993.
[67] See Chapter III, UK Law of this study.
[68] The Innocenti Digest – 4, n. 3, p. 14.

contains the principle that intercountry adoption may only be considered if there is no suitable alternative for the child in his/her country of origin. The Hague Convention, in its Preamble, slightly modifies this principle by recognising that intercountry adoption 'may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his/her state of origin.' Within the Convention this principle finds expression in the requirement, contained in Article 4(b), that the competent authorities of the State of origin must 'have determined, after possibilities for placement of the child within the State of origin have been given due consideration, that an intercountry adoption is in the child's best interests....'[69]

Under Article 21(c) of the CRC, State Parties are required to 'ensure that the child concerned by intercountry adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption'. The 'safeguards and standards' may be interpreted as applying both to procedures before an adoption order is made, and to the status of the child following the making of an order. The principle particularises the more general rule against discrimination set out in Article 2(1) of the CRC. One outcome of the negotiation at the Hague was the realisation that the differing and complex nature of intercountry adoption sometimes requires differences in techniques of protection. For example, the requirement of a probation period in the receiving State could not be insisted upon within the intercountry context.[70] Also the difference between full and simple adoptions required the formulation of special rules in Article 26 governing the effects of the recognition of a Convention adoption. [71]

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[69] Duncan, n. 46, p. 41-42.
[70] Ibid.
[71] Article 26
1. The recognition of an adoption includes recognition of
   (a) Legal parent-child relationship between the child and his/her adoptive parents;
   (b) Parental responsibility of the adoptive parents for the child;
   (c) The termination of a pre-existing legal relationship between the child and his/her mother and father, if the adoption has this effect in the contracting state where it was mode.

Article 21(a) of the CRC requires State Parties to ensure that any required consent to adoption has been given, that the consent is informed and that it has been given on the basis of such counselling as may be necessary. These principles have been given effect in Article 4(c) of the Hague Convention.[72] Article 12(1) of the CRC contains the principle that 'State Parties shall assure to the child who is capable of forming his/her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child'. This principle finds expression in Article 4(d) of the Hague Convention.[73] Article 21(a) of CRC requires States Parties to ensure that the adoption of a child is authorised only by 'competent authorities'. The Hague Convention is neutral on the question of whether this should be an administrative or a judicial body. Indeed, it is a general feature of the Hague Convention that, subject to a set of common fundamental principles, it does not attempt to lay down a uniform law of adoption, but rather seeks to accommodate the many different systems of adoption operating around the world. The Hague

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2. In the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship, the child shall enjoy in the receiving State, and in any other Contracting State where the adoption is recognised, rights equivalent to those resulting from adoption having this effects in each such state.
3. The proceeding paragraph shall not prejudice the application of any provision more favourable for the child, in force in the contracting state which recognises the adoption.

[72] Article 4
An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin-
c) have ensured that
(1) the person, institution and authorities whose to consent is necessary for adoption, have been counseled as may be necessary and duly informed of the effects of their consent, in particular whether or not an adoption will result in the termination of the legal relationship between the child and his or her family of origin,
(2) such persons, institutions and authorities have given their consent freely, in the required legal form, and expressed or evidenced in writing,
(4) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and
d) have ensured, having regard to the age and degree of maturity of the child, that
(1) he or she has been counseled and duly informed of the effects of the adoption and of his or her consent to the adoption, where such consent is required,
(2) consideration had been given to the child's wishes and opinions,
(3) the child's consent to the adoption, where such consent is required, has been given freely, in the required legal form, and expressed or evidenced in writing, and
(4) such consent has not been induced by payment or compensation of any kind.

[73] Ibid.

Convention is also neutral on the question of jurisdiction (whether the authorities of the child's State of origin or the authorities of the country in which the child is received should have the right to determine whether the adoption may be made). It provides for a division of responsibilities between the authorities in the two States concerned. The State of origin must ensure that the child is adoptable, that due consideration has been given to the possibilities for placement of the child in that State, that an intercountry adoption is in the child's best interest, and that the relevant consents have been freely given.[74] The authorities in the receiving State must determine that the prospective adopters are eligible and suitable to adopt, that they have been appropriately counselled, and that the child will be authorised to enter and reside permanently in that State.[75] Provided this division of responsibilities is respected, the Convention does not insist on the adoption being made in one or other State.[76]

Article 22(e) of the CRC requires State Parties to ensure 'that the placement of the child in another country is carried out by competent authorities or organs'. One of the most difficult questions to resolve during the negotiations leading to the Hague Convention was as to the role of independent persons, such as lawyers or doctors, within the adoption process. Should they be allowed to become involved in the making of arrangements for intercountry adoption other than in a capacity directly related to their professional competence? This is permitted in some States such as the USA but is prohibited or strictly limited in certain other State which take the view that only non-profit authorised agencies can provide the range of expertise and the necessary objectivity to protect the interests of children within the adoption process (such as India). The compromise which appears in Article 22 of the Hague Convention is that a Contracting State may permit the involvement of non-accredited persons or bodies in making arrangements for

[74] Article 4 of the Hague Convention, 1993.
[75] Article 5 of the Hague Convention, 1993.
[76] See Article 28 of Hague Convention, 1993.

intercountry adoption within its territory, subject to supervision and provided such persons or bodies 'meet the requirements of integrity, professional competence, experience and accountability of that State; and are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption'.[77]

The shortcoming of the international law structure relating to intercountry adoption may be summarized as follows: what constitute the adequate accreditation criteria, what effects are to be given to the adoption, issue of access to identifying information, less emphasis on the ingredients of the home study report and child report study and not properly address the issue of race, ethnicity and identity.

The next chapter will help find out the manner in which the question of the intercountry adoption has been dealt with under the domestic laws of selected countries.

[77] Duncan, n. 46, p. 44-45.

CHAPTER III

ADOPTION UNDER FOREIGN LEGAL SYSTEMS

Intercountry adoption is not a simple matter. Its complexity stems from the various legislation involved in the process: social welfare laws, immigration laws and, not the least, laws of the child's country.

The responsibility of social welfare matters, including the fact that the responsibility to govern adoption rests with the provincial or territorial authorities. The ministry responsible for governing adoption varies depending on the province where the parents reside. Each province or territory manages its own adoption legislation.

The present study takes into consideration some of the domestic laws relating to intercountry adoption particularly the laws of some of the leading receiving countries (UK and USA) and some leading sending countries (Russia and China). As for India, also a leading sending country, the study has a separate chapter.

3.1 English Law

Until 1927 English law had no provision concerning adoption. De facto adoptions had of course always taken place but they could have no effect on the status of adopted child. A demand for reform arose during the period of the First World War due to a large number of war orphans.[78] In response to this demand, England passed its first adoption law, the Adoption of Children Act in 1926, which came into force on 1 January 1927. The Act was to some extent experimental and was subsequently amended in the light of experience and criticisms. All earlier

[78] D.C. Manooja, *Adoption Law and Practice* (New Delhi: Deep and Deep Publication, 1993), p. 95.

legislation were repealed and replaced by the Adoption Act, 1958. Dissatisfaction and criticisms further led to the enactment of the Children Act, 1975.[79] All the statutory provisions concerning adoption have been consolidated in the new Adoption Act, 1976. But the Adoption Act, 1976 had not been brought into force. The activities of adoption agencies were governed by regulations and the court proceedings are governed by Adoption Court Rules relating to the magistrate's and county courts as also the High Court.[80]

It was against the background of child trafficking that the Hague Conference began its work in 1990 to prepare a convention that would protect children from such abuses, inviting all member States to consider the issues and prepare a framework for intercountry adoption to take place. The completion of the work in May 1993 led to the adoption of the Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption.

In the backdrop of the Hague Convention, the Government of the UK passed an Adoption (Intercountry Aspects) Act, 1999, which enables the UK to ratify the Convention; it amends the Adoption Act, 1976, and the Adoption (Scotland) Act, 1978, in respect of intercountry adoption.[81]

3.1.1 Sanctions

The 1999 Act inserted a new section into the Adoption Act 1976 making it a criminal offence for a person habitually resident in the British Island to bring to the UK for the purpose of adoption a child who was outside of the Island, unless they comply with requirements prescribed in regulations. The offence does not apply to a parent, guardian or relative of the child.

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[79] Ibid.
[80] Ibid.
[81] Michael Brennan, "Creating a Framework - A View from the Centre" ed. in Peter Selman, *Intercountry Adoption: Development, Trends and Perspective* (London: British Agencies for Adoption and Fostering, 2000), p. 187

Following the nactment, the Government took the opportunity to make a commencement order with effect from 31 January 2000, which puts beyond all doubt that a privately commissioned home study report for the purpose of adopting a child resident abroad is an offence. Such reports are already unlawful under Section 11 of the 1976 Act.

The effect is to make clear that in intercountry adoption cases, a home study assessment report for the purpose of facilitating a child adoption must be prepared by or on behalf of an adoption agency. The amendment should be read with Sections 11 and 56 of the 1976 Act, which deals with restrictions on arranging adoption and prohibition on making certain payments in connection with the adoption.[82] The amendment is in conformity of Article 4 of the Hague Convention.

3.1.2 Regulation and Inspection of Social Care and Health Care Services

The Care Standard Act, 2000, is concerned with the regulation of private and voluntary health care in England and for the regulation and inspection of social care and health care services in Wales. The Act establishes a new, independent regulatory body for social care in England, known as the National Care Standards Commission (NCSC). The regulatory body will be required to inspect the relevant functions of the various bodies that are concerned with making arrangements for the adoption of children. Regulations and sanctions governing adoption procedures will continue to be under the 1976 and 1999 Acts as amended by the 2000 Act. Voluntary adoption agencies are required to register with the Commission.

3.1.3 Central Authorities: Role and Responsibility

The identification of a Central Authority and accredited bodies is the necessary foundation within each State for creating a new or improving an existing intercountry adoption

[82] Ibid., p. 188.

structure to make the Hague Convention work. This has to apply equally to both the State of origin and the receiving State.[83]

A Central Authority must review its procedures to satisfy itself that they comply fully with the Hague Convention. The Central Authority is the first point of contact with other Contracting States. International liaison is an important feature of it the authority's work.[84]

Each Central Authority will maintain a register of adoption application made under the Hague Convention and introduce a system for monitoring the progress of these applications. Where there is evidence of non-compliance by another Contracting State, a Central Authority is expected to take appropriate action under Article 33 to try and resolve the difficulty. [85] A Central Authority is also an important link with the Permanent Bureau of the Hague Conference, keeping other States informed of changes to accredited bodies, adoption legislation and any cases where matters of non-compliance cannot be resolved.

As a government department, each Central Authority is responsible to the Secretary of State of the State concerned and will act in concert with other government departments, particularly the Home Office, which will continue to have responsibility for immigration, and also the Foreign and Commonwealth Office.[86]

3.1.4 Accredited Bodies

Section 2 of the 1999 Act provides for an approved adoption society to act as an accredited body for the purpose of the Hague Convention. The relationship between a Central

[83] Ibid., p. 190.
[84] Ibid.
[85] Ibid., p. 191.
[86] Ibid., p. 191-192.

Authority and accredited bodies is essentially one of partnership- two important halves of the intercountry adoption structure working together to make the Convention work effective.[87]

Article 10 of the 1999 Act states about the principle to be applied to accredited bodies: 'Accredition shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.' By operation of the 1999 Act, each local authority will have the statutory responsibility to provide intercountry adoption services. Local authorities therefore do not require accredition under the Hague Convention. A voluntary adoption body, which is successful in its application to the Secretary of State for approval to provide an intercountry service, will be given automatic accredition under the Convention.

To date, four voluntary adoption agencies have been approved to provide an intercountry adoption service: Childlike, Parents and Children together (PACT--Family Welfare Society and Norwood Jewish Adoption Society.[88] These agencies are approved for domestic and intercountry adoption. Section 104 of the 2000 Act amends Section 155 of the Police Act, 1997, by providing for enhanced criminal recard checks to be carried out in relation to persons being considered as suitable to become adoptive parents. Part V of the Police Act enables an approved adoption agency to apply directly to the Criminal Records Bureau to obtain information which could indicate that a person has been convicted of, or received a police caution for, certain prescribed offences. This facility extends the availability of criminal record checks to all childcare organisations, including the voluntary and private sectors. In order for these organisations to be able to use this facility, they will be required to register with the Criminal Records Agency and

[87] Ibid., p. 192.
[88] Ibid., p. 192.

to abide by a Code of Practice (not yet finalised).[89] Article 11 of the 1999 Act fixes certain qualifications for accredition of voluntary bodies, necessary implying that a body must be non-profit making, directed and staffed and be subject to supervision by competent authorities of the State as to its composition, operation and financial situation. Each body must be registered as a charity.

Article 22(2) of the 1999 Act permits certain functions to be carried out by individuals who meet the requirements of integrity, professional competence, experience and accountability of the UK and are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

3.1.5 Procedure

A person who wishes to be approved to adopt a child living abroad must apply either to a local authority or to an accredited body, which will provide counselling about the nature and implications of adopting a child from a particular country.[90] Where the authority or body decides that a person may be eligible to be an adoptive parent, it may carry out a thorough assessment on that person's background, lifestyle, motives for the adoption, social environment and ability to undertake the intercountry adoption, the age of child, etc.[91] The authority or body must also obtain written reports from personal referees, a report on the health of the applicant from a registered medical practitioner and a report from the police authority.[92]

If the authority or body is satisfied that a person is suitable to adopt a child from abroad, it will send the application and relevant papers to the Central Authority in compliance with

[89] Ibid., p. 193.
[90] Ibid., p. 194.
[91] Ibid.
[92] Ibid.

Article 15 of the 1999 Act.[93] Before sending the adoption application and other papers to the Sate of origin, the Central Authority must add an important document to the application papers in compliance with Article 5, namely, a Certificate of Approval.[94] The certificate provides assurance to the competent authorities in the State of origin, including courts that the applicant is eligible and suitable to adopt a child from the particular country of choice; that he/she has received appropriate counselling; and that the child to be adopted will be permitted to enter and reside permanently in the UK.

Information on the child sent to the Central Authority from the State of origin under Article 16(2) is forwarded to the authority or accredited body that made the assessment. The authority or body will consider the information on the child and if satisfied that the adoption should proceed will send it to the prospective adopters and arrange to discuss its content with them. If the prospective adopters have agreed, they inform the Central Authority in the child's State of origin of their wish to adopt the child. At this stage, the UK insists that the prospective adopters must visit the child before giving their final consent to adopt the child.[95]

Under recently revised arrangement concerning entry clearance for adopted children agreed between the Department of Health and the Home Office, the Department can now link directly with the entry clearance officer in the child's State of origin.[96] Entry clearance can therefore be given without delay, provided that the application has been made and the necessary information and documents, including the adoption order, are presented to the officer at the appropriate British Embassy or Consulate in the child's State of origin.[97]

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[93] Ibid, p. 195.
[94] Ibid., p. 185.
[95] Ibid., p. 196.
[96] Ibid., p. 196.
[97] Ibid.

The Adoption of Children from Overseas Regulations, 2001, aims to deter people from bringing children into the UK for the purpose of adoption unless they have first been assessed and approved by a local council or a voluntary adoption agency (VAA) and had their suitability endorsed by the Secretary of State.

Within 14 days of arrival of the adoptive parents with children in the UK, the adoptive parents must notify their local council of their intention to adopt. Once this notification has been received, the child will be a protected child under Section 22 of the Adoption Act, 1976, and his/her placement will be monitored by the council under Sections 32 to 37.

3.1.6 Immigration Requirements

The immigration requirements are set out fully in the Immigration Rules (Paragraphs 310-316 of HC 395 and Paragraphs 316A-316c of HC 395 as amended by Cm 4851). In sum, where a child is coming to the UK for the purpose of adoption, the adoptive parents must be able to show that:

- they are present and settled in UK;

- they are able to maintain and accommodate the child adequately without recourse to additional public funds for the child;

- child is under 18;

- child is not leading an independent life, is unmarried and has not formed an independent family unit;

- child was adopted or is to be adopted due to the inability of the natural parents to care for him;

- child has broken his/her ties with his/her family of origin;

- child holds a valid UK entry clearance for entry in this capacity; and

- child is not being adopted solely to facilitate his/her entry into the UK.

3.1.7 An Assessment

The amendment in UK adoption law is welcome development and this study shows clearly that there is no shortage of good laws. The Adoption (Intercountry Aspects) Act, 1999 has been the main determinant of current practices. An attempt is made to lessen the lengthy and cumbersome process of adoption. Moreover, the Act prohibits privately commissioned home report. The role of the Central Authority will be crucial and it is good that all parts of the UK will be fully incorporated with the new legislation. In the UK, the Department of Health is the Central Authority and is responsible for the intercountry adoption. However, the assessment of the process depends on the discretion of the implementing agents. The Act certainly ensures a co-ordination among these agents to carry out the basic functions.

3.2 American Law

Non-relative adoption emerged in the United States in the mid-nineteenth century as part of the response to the disruption of family life created by immigration and industrialisation. The first statute permitting non-relative adoption was enacted in Massachusetts in 1851.[98] During the nineteenth century, adoption laws spread from state to state, but non-relative adoption itself did not become widespread.[99] Contemporary non-relative adoption in the United States commenced with the creation of private placement agencies in the first two decades of the twentieth century.[100] American adoption services have always been fragmented by state legislation and local practice. Adoption standards are created by the individual states rather than the national

[98] Manooja, n. 77, p. 96.
[99] Silverman and Weitzman, n. 22, p. 1.
[100] Ibid., p. 2.

Government. Adoption services are supervised by the states, but services are provided by cities and counties, by private agencies and individuals.[101]

The Uniform Adoption Act (UAA) of 1994 was promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL) as an attempt to codify and uniformise current legal practice regarding adoption, which up to now has been highly varied from state to state.[102] Unfortunately for the goal of uniformity, the UAA has met with considerable criticism from a number of adoption-related and child welfare organisations. Even as the NCCUSL voted to approve the proposal in the summer of 1994, these groups issued a joint statement opposing it. So far it has not been accepted as a whole by any state legislature, although some of its provisions have been passed in some states.[103]

Other uniform adoption laws, like the Uniform Adoption Act of 1969, was successful only in a handful of states, which led to consideration of a new draft by NCCUSL in 1978. The Uniform Adoption Act, 1994, seals adoption records for 99 years, criminalises searching, shortens revocable consent periods that many states have already enacted, to a dismal 8 days from the birth of the child (not relinquishment, birth), does not define non-identifying information, and creates a muddled mutual consent registry that virtually ensures that no exchange of information, even between willing parties, will be made. This allows a birth parent to relinquish a child without the consent of a birth father if she states that his whereabouts are unknown or that she does not know the birth father's identity.[104] The sections on pre-placement evaluations of prospective adoptive parents are clearly intended to make it easier for couples to adopt rather than ensure that the best interests of the child are being served. In fact, the entire

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[101] Ibid.
[102] **Adoption** Law and Reforms, visit http://www.webcom.com/kmc/adoption/adoption.html>
[103] Ibid.
[104] **Adoption** Law and Reforms, n. 101.

UAA, as claimed by its supporters and detractors, is clearly meant to make it easier to adopt by increasing the number of babies available through shorter consent periods, lack of adequate birth father notification controls, removing barriers to trans-racial adoption, terminating former contact agreements between original families and their children, and making it easier and more attractive to adopt with easier home studies that are effective for 18 months rather than the 30 day's period that is now standard practice, sealing records and making it difficult for adoptees to search, and in general altering the system so that it works in favour of the prospective adoptive parent, against the adoptee, against the birth father, and against the birth family in general.[105] Perhaps the climate in which the UAA was enacted can best be summed up with a story from one of the drafting sessions. Originally in the drafting process, records were to be sealed for 70 years, until an adoptive parent in attendance expressed concern that under that scenario, conceivably a 70-year old adoptee could still locate a living 88 year old birth mother. The Uniform Adoption Act, 1994, is supported by very few, namely the National Council for Adoption and a handful of their supporting agencies, including the NCFA's parent agency, the Edna Gladney Home.[106] The UAA, like all model legislation, can be introduced and passed in whole or in part by the state legislatures. To date, the UAA has been roundly rejected by the states. Indeed it would be preferable to see the progressive adoption reform movement launch their own model adoption legislation instead of playing this game permanently on the defensive.

In the United States, the national law on adoption is the Indian Child Welfare Act, 1978, U.S.C. Title 25. There are a number of proposed amendments to the ICWA.[107] Except for one bill (S. 1962), none of the proposals seem to contain anything that would garner the support or acknowledge the interest of Native American groups, who thus adamantly oppose them. Instead,

[105] **Adoption** Law and Reforms, visit http://www.law.cornell.edu/topics/adoption.html>.
[106] **Adoption** Law and Reforms, n. 101.
[107] Ibid.

the bills would either repeal some existing provisions, or establish as law a controversial judicial interpretation of the ICWA that would significantly reduce its scope of application. To understand the motivation for many of these moves is the recent California Appellate Court decision in the case of the Rost twins. The decision gives the tangled story of the Rost twins, a precis of the Indian Child Welfare Act, and affirms the so-called "existing Indian family" doctrine in California.[108]

3.2.1 Various New Laws and Regulations

3.2.1.1 HR 3286 Adoption Promotion and Stability Act of 1996[109]

There are a number of proposed amendments to the India Child Welfare Act of 1978. This proposal contains the following items:

(i) A federal tax credit to offset adoption expenses of up to $5,000.

(ii) Removal of Barriers to Interethnic Adoption: No entity receiving Federal Funds could deny someone to be an adoptive or foster parent on the basis of race, colour, or national origin, or delay or deny placement of a child for adoption or into foster care on the basis of race, colour, or

[108] Richard and Cindy was living together with their two sons, Anthony, age two, and Richard Andrew, age one, in the city of whiter in Los Angles County, California. Richard is of American Indian descent, while Cindy is descended from the Yaqui tribe of Mexico. In mid-1993, Richard and Cindy discovered that Cindy was pregnant. By August 1993, Cindy and the children were living in shelter. Richard and Cindy realized they would not be able care for the expected twins and so determined to relinquish them for adoption. They signed documents relinquishing the twins to Vista Del Mar omitting the information that he was Indian. Twin girls were born on November 9, 1993 in Los Angles County, California to Cindy. Meanwhile, the relinquishment were filed with the State Department of Social Services on November 23, 1993. On May 4, 1999, the R's filed a petition in Franklin County, Ohio to adopt twins. In December 3, 1999, Richard told his mother Karen, about adoption. Karan contacted attorney Cook and also contacted the Tribe. The Tribal Chairperson wrote to the Los Angles county children's county, stating that the twins were potential member of the tribe and requesting intervention in any proceedings concerning them. During these weeks and months, the relationship between Richard and Cindy was deteriorated. On April 27, 1994, Cindy obtained a restraining order which required Richard to remain at least 100 yards from Cindy and the two sons Anthony and Richard. On April 22, 1994 Richard sent to Vista De Mar a letter which stated that Richard wished to rescind his relinquishment of the twins and to have them raised. Vista denied Richard request to withdraw the relinquishments. The trial court simply declared the relinquishment invalid as violative of Indian Child Welfare Act (ICWA), 1978 and ordered the twins placed in the custody of their parental grand parents. The request of Vista to apply the "existing Indian Family doctrine" was rejected. On appeal it was contended that trial court erred in failing to recongnise the "existing Indian family" doctrine.

[109] Ibid.

national origin of the parent or child. This provision would repeal the parts of the Metzenbaum Multi-Ethnic Placement Act, which allowed race, colour, or national origin to be considered as a factor in making a placement decision (albeit not the sole factor) if relevant to the best interest of the child. The text of HR 3275 is included verbatim as Title III of this bill; thus making the "Existing Indian Family" doctrine a matter of Federal law, and prohibiting retroactive membership determinations.

3.2.1.2 Recent action

The Senate Committee on Indian Affairs amended the Indian Child Welfare Act 1978 and Title III.[110] Alternative language to Title III was proposed by the National Congress of American Indians. Instead of replacing Title III, the proposal appeared as a separate bill, Section 1962, Indian Child Welfare Act Amendments of 1996, which was introduced by Senator McCain on16, July 1996. This bill incorporates some detailed proposals from the National Congress of American Indians. Among its highlights, the Bill:

Asserts exclusive jurisdiction of tribal courts over wards of a tribal court (Section 2);

Requires advisement of Indian parents by attorneys and agencies of applicable provisions of the ICWA (Section 4);

Shortens time periods for withdrawal of consents to adoption or voluntary termination of rights to six months after notification of the tribe (Section 5);

Requires notice to Indian tribes within certain time limits of a placement or commencement of an adoption or termination proceeding (Section 6);

Prescribes the content of the required notice (Section 7);

[110] Ibid.

Sets time limits on the right of Indian tribes to intervene in a placement if they are properly notified, and requires tribes to file with the notice of intent to intervene, a certification documenting the membership or eligibility for membership of the Indian child (Section 8);

Authorises state courts to approve enforceable agreements for visitation or contact with the child as a part of the adoption decree (Section 8);

Makes it a crime to attempt evasion of the ICWA by trickery, deception or fraud (Section 9).

The House version of Section 1962 HR 3275 is to amend the ICWA to exempt from coverage of the Act child custody proceedings involving a child whose parents do not maintain significant social, cultural, or political affiliation with the tribe of which the parents are members.[111] To amend the Act to establish in Federal law the controversial "Existing Indian Family" doctrine, would add an additional test for the application of the ICWA to child custody cases. At least one of the child's parents must maintain "significant" social, cultural or political affiliation with the tribe if they are not residing within a reservation, in order for the tribe to have an interest. Membership in an Indian tribe would not be given with retroactive effect. This would mean that membership in an Indian tribe is viewed as a result of a specific political determination by a tribe, namely, explicit registration or enrolment, rather than a state of affairs that obtains by virtue of being a descendant of an Indian tribe. This is intended to prevent intervention of Indian tribes on behalf of, and/or revocation under the ICWA of consent to adoption of children who are eligible for membership. Would (Doctrine) become effective upon passage and would apply to all currently pending custody hearings and court cases in particular, the case of the Rost twins.[112]

[111] Ibid.
[112] Ibid.

3.2.1.3 HR 3156 Voluntary Adoption Protection Act[113]

The report from the Agency for Children and Families of the US Department of Health and Human Services, titled "Policy Guidance on the Use of Race, Colour, National Origin as Considerations in Adoption and Foster Care Placements", issued in compliance with the Voluntary Adoption Protection Act by publication in the Federal Register.

3. S 457 Amendment to the Immigration and Nationality Act[114]

To amend the Immigration and Nationality Act so as to substitute references to "children born out of wedlock" for references to "illegitimate children" in the definition of child, President Bill Clinton signed into law the Intercountry Adoption Act, 2000(IAA), which makes a number of changes to intercountry adoptions.[115] The IAA adds a third process by which foreign adopted children can immigrate to the United States. The IAA will execute a portion of the Hague Convention that was signed by the United States on 31 March 1994.[116]

Prior to the enactment of the IAA, there were two methods for a US citizen or permanent resident parent to bring a foreign adopted child to the United States.[117] The first one requires the foreign born child to be adopted prior to his or her 16th birthday. In addition, the US citizen or permanent resident parent must have two years of legal custody and two years of residence with the child before a family petition can be filed with the Immigration Naturalisation Service (INS) on his or her behalf. The second method requires the child to be under 16 when the family petition is filed for his/her adoption. In addition, the law requires the adopted child's biological parents to have died, disappeared, or abandoned him or her. If the child still has one parent, the

[113] Ibid.
[114] Ibid.
[115] The **Intercountry Adoption Act** of 2000, visit <http://www.immigration.gov/graphics/publicaffairs/factsheets/adoption.htm>
[116] **Intercountry Adoption Act**, visit http://www.gnb.ca/acts/acts/i-12-01.htm>
[117] The **Intercountry Adoption Act** of 2000, n. 114.

law requires that the biological parent be incapable of providing proper care for the child. This method does not require the adopted parent(s) to have resided with the child prior to filing the petition for alien relative. The IAA requires that:

(i) the U.S. adoptive parents be either an unmarried US citizen who is at least 25 years old, or a married couple, one of whom is a US citizen;

(ii) the child must be under 16 when a visa petition is filed on his or her behalf;

(iii) if the child has two living biological parents, the biological parents must be incapable of providing proper care for the child; and

(iv) the biological parents must give irrevocable consent to the adoption.

It is important to note that the INS must publish its regulations implementing this new law.

However, the United States has not yet implemented the Hague Convention provisions. Implementation will occur only after the Immigration and Naturalisation Service (INS) and the Department of State publish implementing regulations in the Federal Register. That is expected within the next two years.[118]

3.2.2 Changes in Current US Immigration Law

The new law (IAA) adds two new sections to the Immigration and Nationality Act (INA): Sections 101(b)(1)(G) and 204(d)(2).[119] These sections apply only when the child to be adopted resides in a Hague Convention country. A child adopted from a country that has not implemented the Hague Convention will still need to qualify as an orphan or adopted child under Section 101(b)(1)(E) or (F) of the INA. The new Section 101(b)(1)(G) permits the adoption of some of those children who do not qualify as "orphans" under existing immigration law [Section

[118] Ibid.
[119] Adoption Law and Reforms, n. 101.

101(b)(1)(F) of the INA]. Under this law, the adopted child's two living natural parents must be incapable of providing proper care for the child. In addition, they must freely give their written irrevocable consent to terminate their legal relationship with the child, and to allow the child to be adopted and to emigrate. The written irrevocable consent also may be given by a single parent when the child has one sole or surviving parent because of the death, disappearance, abandonment or desertion by the other parent, by previous adoptive parents, or by other persons or institutions that retain legal custody of the child. Also, under the new Section 101(b)(1)(G), the Attorney General must be satisfied that the purpose of the adoption is to form a bona fide parent-child relationship, and that the parent-child relationship of the child and the biological or previous adoptive parents has been terminated.[120]

The other new section of the INA, Section 204(d)(2), requires, for children adopted from Hague countries, an adoption or custody certificate to be issued by the central authority. The certificate will be conclusive evidence of the relationship between the child being adopted and the adoptive parent(s) and will help streamline documentary requirements for Hague country adoptions.[121]

As previously noted, these changes in immigration law will not be effective until the INS and the Department of State publish implementing regulations in the Federal Register.[122] The INS will inform the public when regulations and procedures are finalised. In the meantime, the adoption procedures under Section 101(b)(1)(E) and (F) continue to govern intercountry adoptions.

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[120] The **Intercountry Adoption Act** of 2000, n. 114.
[121] Ibid.
[122] Ibid.

3.2.2.1 Filing with Immigration

Once an agency has approved the application of adoptive parents for a foreign programme, it is necessary to file a petition for approval to adopt a foreign orphan. The petition, called the I-600A, "Application for Advance Processing of an Orphan Petition," should be filed with the nearest INS office situated in local area. If the adoptive parents are residents in the United States, the petition must be approved before an adopted child can immigrate to the United States. The INS publishes a helpful booklet that explains more about the I-600A. The booklet is entitled "*The Immigration of Adopted and Prospective Adoptive Children*," publication M-249Y, which the adoptive parents can request either from concerned adoption agency or from the local INS office.[123]

The concerned adoption agency may either file an I-600A petition on behalf of the adoptive parents or assist the adoptive parents to file it. To file an I-600A petition, the adoptive parents are required to provide their fingerprints on form FD-258 and their approved home study. Married couples must submit proof that at least one applicant is a US citizen, at least one partner is 25 years of age, proof of their marriage, and documentation of termination (through divorce or death) of any prior marriage(s). Single adopters must also submit proof of their US citizenship, proof of being at least 25 years of age, and documentation of termination (through divorce or death) of any prior marriages. The INS will determine that the adoptive parents can properly care for an adopted child. Upon approval from the INS, the adoptive parents will be sent Form I-71H, "Notice of Favourable Determination Concerning Application for Advance Processing of an Orphan Petition." The adoptive parents also should request that notice of this approval be sent to the US embassy or consulate in the country in which they plan to adopt the child. An I-600A

[123] Ibid.

petition approval will remain valid for 18 months from the date of approval. The adoptive parents will be required to file again their I-600A petition if it expires, but an expedited re-filing procedure is available.[124]

When an I-600A petition is approved, there is no guarantee that the petition for a particular child will be approved. Approval for a particular child depends upon the child's status as an orphan according to the definition in the Immigration and Nationality Act (INA) and, to some extent, upon the child's medical status. The INS publication M-249Y, as mentioned above, explains the INA orphan qualifications in detail. The adoptive parents must present acceptable proof of the child's identity, such as a birth certificate, national identity card, or passport. After that the applicant must present proof of the child's orphan status. In general, such proof can consist of (1) evidence that both parents have died (such as their death certificates); (2) evidence that a court of competent authority declared the child abandoned or severed the biological parent(s) ties by declaring the child a ward of the State; or (3) evidence that the child has been irrevocably relinquished to an orphanage by biological parent(s). The applicant must also present proof that a court of competent authority has granted his/her guardianship of the child.[125]

Finally, the adoptive parents must present Form I-864, the Affidavit of Support signed before a notary public or immigration or consular officer, and certified copies of tax returns from the three most recent taxable years that were filed with the IRS. Form I-864 is a legally enforceable contract that applies to all immigrants. It certifies that the prospective parents can demonstrate "adequate means of financial support" and that the applicants agree to reimburse any

[124] Ibid.
[125] Ibid.

government or private agency that provides their child with any means-tested public benefit, such as food stamps or welfare.[126]

Copies of Federal tax schedules should bear a simple signed declaration that the copies are true and unchanged from the originals; this statement is then notarised. Tax returns must verify that the parents' income is 125 per cent above the Federal poverty guidelines set by the Department of Health and Human Services. Form I-864 and the tax returns must be filed at the time of the visa interview by either the parents or the child's escort.[127]

The Department of State Consular Officer who adjudicates the child's immigrant visa application is required to conduct an investigation, called "I-604 Orphan Investigation," prior to issuing an immigrant visa for the child. The purpose of this investigation is twofold: to verify the orphan status of the child, and to ensure that the child does not suffer from a medical condition of which the adoptive parents are not already aware and willing to accept. As a part of the immigrant visa application process and the I-604 Orphan Investigation, the child will be examined by a US approved foreign physician.[128]

There are two immigrant visa categories for foreign orphans: IR-3 and IR-4. The IR-3 (IR stands for "immediate relative") denotes a child adopted overseas under the following two conditions: (1) the adoptive parent (if a single parent) or both parents (if a married couple) saw and observed the child prior to the adoption and (2) the foreign adoption bestows upon both adoptive parents and child the same rights, responsibilities, and privileges as would an adoption

[126] Ibid.
[127] Ibid.
[128] Ibid.

in the United States. Children who are issued IR-3 immigrant visas do not, under Federal laws, require re-adoption in the United States.[129]

The other orphan immigrant visa category is the IR-4 category, which denotes a child coming to the United States for adoption. An IR-4 visa is issued to a child under the following circumstances: (1) the foreign country's laws permit only the adoptive parents to obtain guardianship of the child, rather than to fully adopt the child in that country and (2) the prospective adoptive parent(s) did not see and observe the child prior to the adoption process. With the IR-4 visa, the foreign adoption does not meet the US equivalent requirements of severing biological parent(s) ties and/or ensuring that both the adoptive parents and child have the same rights, responsibilities, and privileges. Children who have been issued IR-4 immigrant visas must be adopted or readopted after they enter the United States. If a child entered the United States in the IR-4 visa category, Federal regulations require the adoptive parents to adopt the child in the State of his/her residence, regardless of occurred overseas.[130]

After a successful post-placement period during which agency staff (Central Authority and registered adoption societies together) will monitor the child's adjustment in his/her home, the agency will write a recommendation for adoption to be filed with the local family court. The recommendation, along with the child's documents, proof of at least one parent's US citizenship, proof that the child was under 16 when adopted, and a petition to finalise adoption must be filed in his/her local juvenile or family court. An amendment to the Immigration and Nationality Act provides that a foreign child up to the age of 16 or 17 qualifies as a child for purposes of adoption if adopted by US parents with or after a sibling who younger than 16.) [131]

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[129] Ibid.
[130] Ibid.
[131] Ibid.

3.2.3 Securing US Citizenship for the Adopted Child

With the implementation of the Child Citizenship Act of 2000 (P.L. 106-395), the adoptive parents are no longer required to apply to the INS to naturalise their adopted child as a US citizen. Since 27 February 2001, US citizenship is conferred automatically when a child is adopted from abroad by a US citizen. The precise time that is needed for granting citizenship depends on the child's immigration status upon entering the United States.[132]If the adoption has been finalised in the foreign country, and the child has been issued an IR-3 visa, citizenship is conferred as soon as the child legally enters the United States. If the child has been issued an IR-4 visa, which requires parents to adopt or readopt the child in the United States, citizenship may be conferred on the day the adoption is finalised in the United States.[133]

Parents wishing to obtain documentation of their child's citizenship may apply for a US passport from the Department of State or may obtain a Certificate of Citizenship from the INS. To apply for the Certificate of Citizenship for the child, parents must file THE INS Form N-643 along with a filing fee and required supporting documentation.[134]

3.2.4 An Assessment

The Intercountry Adoption Act, 2000 will be an attempt to make the United States a Hague Convention country. Besides this, the US has introduced changes in the Indian Child Welfare Act, 1978, the Immigration and Nationality Act, Child Adoption Act, 2000 and Voluntary Adoption Protection Act to strengthen and regulate the inter country adoption process. As these legislation suggest, US citizens wishing to adopt a child from other countries have two

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[132] Child Welfare League of America: Programs: **Adoption**: **Intercountry**, visit http://www.cwla.org/programs/adoption/intercountryact.htm>
[133] Ibid.
[134] Ibid.

options : to work through specialist private agencies, or to work through lawyers whose practices focus on intercountry adoption and who are associated with particular orphanages and lawyers in specific countries. It is submitted that privately arranged intercountry adoptions should be stopped. There is need to strictly regulate the adoption agencies arranging intercountry adoptions in terms of content and duration of the home study, and to provide the pre-adoptive training to intercountry adopters. These should be comparable to home studies and training executed by public agency adopters. The training component for international adopters should include awareness of the social and economic conditions of the communities from which the children would be coming. Wherever possible, open adoptions should be encouraged in the interests of the child. There is need to make the process simple, fair and unambiguous.

3.3 Russian Law

3.3.1 Procedures for applicants wishing to adopt a child from Russia

The adoptive parents should contact their local authority social services department and discuss with them their plan to adopt a child from Russia. Once the Department of Health of the applicant's State is content with the local authority's recommendation, a Certificate of Eligibility to adopt may be issued and signed by a Department of Health official. The Russian authorities do not accept an adoption application without the Certificate. The prospective parents will be asked to send to the Department of Health the name and address of his Notary Public; the applicant lawyer/agency in Russia, and the appropriate fee for the legalisation of his/her documents. The adoptive parents will need to arrange for the additional supporting documents that are listed in Appendix A (of Russian Adoption Law including the list of required documents into be

individually notarised by the Notary Public, before forwarding them to the Department of Health.[135]

The Department of Health will arrange for the Certificate of Eligibility and home study report to be individually notarised and then for all their documents to be legalised by the Foreign and Commonwealth Office (FCO). The prospective adoptive parent's State Notary Public will invoice this direct for notarising the documents. The fee for legalisation by the FCO will depend on the number of documents that need to be individually legalised. Once the papers have been legalised, the Department of Health will forward the documents to the agency/lawyer in Russia who will arrange for the documents to be translated.[136]

The prospective adoptive parents will need to travel to Russia to identify a child and make a personal application to adopt him/her. Once the adoption process is complete, the adoptive parents should apply for entry clearance through their Embassy in Russia.[137]

Single persons and married couples can adopt a child from Russia; if single, they should be at least 16 years older than the child concerned. At least one applicant (preferably the adoptive mother) must be no more than 45 years older than the child being adopted. Applications will not be accepted from those persons who have previously been deprived of their parental rights or who have been found to have 'limited capabilities'. Also applications will not be accepted from those who have a criminal record 'for intended crime against the life or health of people'.[138]

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[135] Adoption Board Press Release, visit <http://www.adoption board.ie/whatsnew_hanafin.htm - 15k >.
[136] Russia, visit <http://www.doh.gov.uk/adoption/inercountry/russia.pdf >.
[137] Recommended Russian Adoption Resources, See <http://www.russianadoption.org/favorite.htm -16k>.
[138] Ibid.

Children eligible for adoption must be on regional and then national databases for a total of five months before they can be made available to foreign adoptive families. The databases are maintained by the Department of Health.

If an applicant is unable to find a child for adoption in two constituent members of the Russian Federation, he or she may refer directly to the Ministry of Education of the Russian Federation to be registered and obtain information about the children available for adoption.

Applicants must give a written assurance that the adopted child will be registered at the consular office of the Russian Federation in the prospective adoptive parents.

Documents for Russia have a validity period of one year from the date of issue except for the medical, which is valid up to three to six months depending on the region that one applies to adopt from. The prospective adoptive parents should therefore check the validity period with their agency.[139]

3.3.2 List of Required Documents

The adoptees are required to supply the following documents :

1. a copy of the applicant's birth certificate (required for single applicants only);

2. a copy of the applicants' marriage certificate (if married),

3. a copy of the applicant(s) passport (or other identification document);

4. a statement of income provided by the applicant'(s) employer, verifying their position and income, or if self-employed, from the applicant's accountant;

5. documents certifying that the applicant(s) has permanent housing or proof of home ownership;

[139] Adoption Board Press Release, n. 134.

6. letter from the local authority or approved adoption agency giving a commitment to ensure post-placement supervision and provide post-placement reports to the Russian authorities;

7. additional medical letter from the applicants GP drafted in the format prescribed by the Russian Ministry of Health which includes the need for a HIV test (the applicant's agency is expected to inform the applicant of the requirements);

8. letter giving power of attorney to the agency/lawyer in Russia;

9. written statement that the adoptive parents will register the adopted child at the consular office of the Russian Federation in his/her national States;

10. Photograph of the applicants.

11. Documents provided by the prospective adoptive parents, national social services department/approved adoption agency and the Department of Health.

12. Department of Health's Certificate of Eligibility;

13. Home study assessment report;

14. Police report on each applicant. Additional police checks will be required if the prospective adoptive parents have lived/worked overseas for over a year, during the last five years. If his/her SSD (Social Service Department) is unable to obtain an overseas police check, the applicant will need to provide an affidavit confirming that he/she has not committed any crimes during his/her stay in that country;

15. Medical report on each applicant.

16. Letter confirming that the application complies with both the applicant's national law and Russian adoption laws.

All the above documents, 16 in total except the photographs, will need to be individually notarised and legalised. The adoptive parents need not have their supporting documents notarised until they have been asked to do so by the Department of Health.

Adoption Authority: The Government office responsible for adoptions in Russia is the Ministry of Education of the Russian Federation.

Age and Civil Status Requirements: Single parents can adopt a child from Russia but there must be at least 16 years difference between the parent and the adoptive child.

Residential Requirements: There are no residency requirements for the adoptive parents.

Adoption Agencies and Attorneys: Prospective adoptive parents are advised to fully research any adoption agency or facilitator they plan to use for adoption services. For US based agencies, it is suggested that the prospective adoptive parents contact the Better Business Bureau and licensing office of the Department of Health and Family Services in the state where the agency is located. The U S Embassy in Russia has a list of the agencies accredited by the Russian authorities to provide adoption services. Neither the US Embassy nor the Department of State can vouch for the efficacy or professionalism of any agent or facilitator.[140]

3.3.3 Current Adoption Procedures in Russia

The Russian Federation approved latest regulations concerning intercountry adoptions on 29 March 2000. The regulations require that the Ministry of Education accredits adoption agencies and organisations operating in the Russian Federation.[141]

The adoptive parents first apply to a regional Ministry of Education, which directs them to an orphanage. They are required to travel to Russia to meet prospective adoptive children.

[140] Recommended Russian Adoption Resources, n. 136.
[141] Adoption Board Press Release, n. 134.

There, they select a child and apply to the court to get a court date. The adoptive parents may return to their States after applying for a court date. However, the prospective adoptive child must remain in Russia during this period. The adoptive parents travel a second time to Russia to attend the court hearing.[142]

After identify in the adoptive child, the prospective parents should fill out the adoption application, which can be obtained at the Russian court where the adoption hearings will take place. The adoptive parents are required to make the following additional statements for the court hearings and the statements should be signed in front of a Russian notary:[143]

1. Prospective adoptive parents have been informed about the health conditions of the child and they accept them;

2. They will register their adopted child with the MFA; and

3. They will provide the Department of Education with periodic post-placement reports on time.

After the court hearing, the adoptive parents obtain the adoption certificate and a new birth certificate (showing the child's new name, and the adoptive parents as his/her parents) from the ZAGS (civil registration office), after which they can obtain the passport for the child from the OVIR (visa and registration department). The adoptive parents then can contact their Embassy and apply for the immigrant visa.

3.3.4 Registration of Russian Orphans with the MFA

Adopted Russian children must be registered with the Ministry of Foreign Affairs before they leave the country. The fee for the registration is $65 (the equivalent in rubles) The following documents are needed for the registration: original of the child's passport; copies of the parents'

[142] Ibid.
[143] Russia, n. 135.

passports; letter from the orphanage (orphanage release); letter from the Ministry of Education of Russia; court decision; adoption certificate; immigrant visa of the child (original).[144]

3.3.4.1 Documentary Requirements

The following documents are required by the Russian court for deciding on an application for adoption: Home Study; BCIS approval notice (I-171H or I-797); copies of the prospective adoptive parents' passports; marriage certificate/divorce certificate (if applicable) of the adoptive parents; Police certificate; medical examination report; financial documents (employment verification letter, bank statements, tax forms, evidence of place of residence).

All these documents should be translated into Russian and duly certified.[145]

3.3.4.2 Authentication Process

All documents submitted by the foreign adoptive parents to the Russian Government must be authenticated. Russia is a party to the Hague Legalisation Convention. Generally, the prospective adoptive parent's civil records, such as birth, death, and marriage certificates, must bear the seal of the issuing office and an apostille must be affixed by the Secretary of State of the country where the document was issued. Copies of tax returns, medical reports and police clearances should likewise be authenticated. Prospective adoptive parents should contact the Secretary of State for the State where documents originate for instructions and fees for authenticating documents. The child's original birth certificate, i.e. the one with the birth parents listed, should be certified by ZAGS.[146]

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[144] Ibid.
[145] Ibid.
[146] Ibid.

Information on the resolution of the birth parents' rights:

Death certificates, certificates certifying that the listed parents were not legally registered, letters of relinquishment, court decrees removing parental rights, etc. If the child was a foundling and/or the orphanage has been unable to locate the child's parents, there should be certified copies of any official documents such as records of the orphanage's attempts to locate the parents.

The letter from the Ministry of Education which indicates that the child has spent the required amount of time on the Federal Data Bank and has been released for adoption by foreigners. This letter should include the dates of the child's stay in the institution, any information as to whether the child was visited and a statement of no objection to the adoption by the orphanage, the amended birth certificate, i.e. the one that indicates the names of the adoptive parents, the child's passport and a photocopy of the information page, the medical form in a sealed envelope from the clinic etc.

3.3.5 An Assessment

In the backdrop of several international adoption scams and the amendments to the adoption laws in different jurisdictions, the Russian Federation has made efforts to provide for stronger adoption laws. These laws require the prospective adopters to get clearance from several ministries and departments of the Russian Federation. However, the Russian Federation has not yet ratified the Hague Convention despite being one of the leading the States of origin. There is no prohibition on the national private adoption agencies as well as foreign private adoption agencies in a foreign country engaged in the process of intercountry adoption. The Russian

Federation inadequately addresses the assessment of prospective adoptive parents (in preparation of Home Study Report) as well as the issues of race, culture and identity of the adopted child.

3.4 Chinese Law

On 4 November 1998 the National People's Congress of the People's Republic of China passed amendments to the Adoption Law of the People's Republic of China, 1992. The amended Adoption Law came into force on 1 April 1999 as a title "China Adoption Law of April 1, 1999". Only children processed by the Chinese Centre for Adoption Affairs (CCAA), China's central authority for international adoptions, are available for international adoption. The CCAA matches individual children with prospective adoptive parent(s) whose completed applications are submitted to the CCAA by a licensed foreign recognised adoption agency whose credentials are on file at the CCAA.[147]The government office responsible for adoptions in China is the Ministry of Civil Affairs, specifically the CCAA.

3.4.1 China Adoption Procedures

An agency may submit an adoption application directly to the CCAA for consideration. The application should include all the required documents with authentications and translations. In addition, each application should indicate any preference for a healthy or handicapped child, preferred age and sex of the child, and, if desired, a specific welfare institute or geographic area of China in which the prospective adoptive parents are interested. The CCAA will review the documents and advise the prospective adoptive parent(s) directly or through their national licensed adoption agency, whether additional documents or authentication required. Once the application for adoption is approved, the CCAA will then match the application with a child

[147] China's Adoption Law (as amended, 1999), visit <http://www.chinaconnectiononline.com/amendlaw.htm -9k>

whose paperwork has been forwarded to the CCAA by a provincial Civil Affairs Bureau. Once a child is identified, the CCAA will send a letter of introduction about the child, photographs and a health record of the child through the national recognised adoption agency to the prospective adoptive parent(s). Those questions about the child which were not answered in the material provided by the Chinese authorities may be relayed through the applicant's national licensed adoption agency or by him/her directly to the CCAA. To finalise the adoption, the prospective adoptive parent(s) need to travel to China to complete the process.[148]

After the CCAA has advised the prospective adoptive parents or their national adoption agency in writing that their application is initially accepted for the adoption of a specified child, they may then respond through their adoption agency that they are interested in finalising the adoption of the child. After indicating their acceptance of the child, they will then receive a formal notice from the CCAA to proceed to China.[149]

When the CCAA issues an approval notice ("Notice of Coming to China for Adoption"), this notice will bear the "chops," or red-inked seals of the CCAA. Prospective parents should have this approval notice in hand before departing for China. With the approval notice in hand, the prospective parents may then proceed directly to the city in China where the Civil Affairs Bureau with jurisdiction over the appropriate Children's Welfare Institute is located. Thereafter, a series of interviews of the prospective adoptive parent(s) will occur; a contract will be signed with the Children's Welfare Institute; the contract will be registered with the Civil Affairs Bureau; and a notarised adoption decree will be issued.[150]

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[148] Ibid.
[149] Ibid.
[150] Ibid.

Parents are not required to travel to Beijing for approval. The CCAA may forward a copy of the adoption approval notice to the locality where the child resides. Local Chinese Child Welfare Institutes, Provincial Chinese Civil Affairs officials and Chinese notarial offices will not process the case of adoption unless they have seen the notice. Thus any parent already in China without the approval notice will be required to obtain one from the CCAA in Beijing before the adoption process can be completed.[151]

Foreign applicants adopting children in China commonly meet with a notary in the provincial capital for an informal interview. A Chinese notary is not comparable to a notary public in the foreign national States, but rather is an official with broad responsibilities. A translator arranged by the Child Welfare Institute is usually present. Meetings are held in the notary's office in a non courtroom-like setting. Common questions asked of the prospective adoptive parent(s) include: Why are you adopting a Chinese child? Do you have any children now (either adopted or birth)? What is your family background? Why do you not have children? How can you assure us that the adopted child will be well treated?[152]

In some cases a second interview at a registry office is conducted. Sometimes prospective adoptive parent(s) are asked to write a paragraph or a page on the reasons for the adoption and their plans for the child. Sometimes the local notary in the city where the Children's Welfare Institute is located meets with the parents and conducts a final interview in which questions similar to those posed at the provincial level are asked. Parents recently going through the process were told that Beijing's approval had been sought and obtained for their adoptions, in accordance with the procedures of the CCAA.[153]

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[151] Ibid.
[152] Amendment of China's Adoption Law, visit, < http://www.chinaseasadopt.org/chinaslaw.html - 11k>
[153] China's Adoption Law (as amended, 1999), n. 146.

Prospective adoptive parents may request to see the child before completing the process of adoption. Any remaining questions and concerning the child's state of health or personal background after seeing the child should be addressed before completing the process. Prospective adoptive parents may wish to have the child examined by a physician on the national Embassy or Consulate's list of physicians before finalising the adoption. It will probably not be possible under Chinese procedures for the prospective adoptive parents to take the child to a hospital in a city distant from the child's location for examination. Before the adoption is finalised, the prospective adoptive parents have no legal custody or guardianship of the child, and may not be allowed by Chinese authorities to take the child anywhere.[154]

After all interviews are completed, the actual adoption and completion of the contract, which includes making a fixed "donation" of around US $3000-$4000 to the Children's Welfare Institute, take place. The "donation" is NOT a bribe, but is required for the adoption and completion of contract for the Children's Welfare Institute. Prospective adoptive parents will be requested to sign an adoption agreement/contract with the Children's Welfare Institute, then register the adoption at the provincial Civil Affairs Bureau, pay requisite Chinese fees and obtain a Chinese passport and exit permit for the child. The adoption process also includes signing an agreement with the person or institution putting up the child for adoption, registering in person with the Chinese Civil Affairs Bureau and carrying out the notarised procedures at the designated Chinese notarial office.[155]

When the notarial office in the child's place of residence approves the adoption, that office issues a notarised certificate of adoption, a notarised birth certificate and either notarised death certificate(s) for the child's biological parent(s) or a statement of abandonment from the

[154] Ibid.
[155] Ibid.

children's Welfare Institute. The adoptive relationship comes into effect on the day of the notarisation.

Once the adoption is final, the adoptive parents are responsible for the well being of the child. If the adoptive parents change their minds about the adoption after it is final, but before removing the child from China, the child may no longer be considered an orphan by Chinese authorities. As such, the child may not be eligible for medical service or educational benefits in China unless the adoptive parents formally notify the CCAA that they are relinquishing the child. For this, they must make a statement, which is notarised by the appropriate local Chinese authorities. It should be noted that such action might impede future adoption in China by the particular adoptive parents. Under no circumstances is it appropriate for the adoptive parent(s) who have returned to the national countries with a child, who enters the home nation as a permanent resident alien, to simply return the child to China if they cannot keep the child. Rather, the adoptive parents should contact their adoption agency or their state social services office for assistance.[156]

3.4.2 Age and Civil Status Requirements

Chinese law differentiates between an abandoned child (with one or both parents living) and an orphan (both parents deceased). The law restricts adoption of healthy abandoned children with one or both parents living to childless person 35 years old or older, and permits the adoption of only one healthy child. There are exceptions if one wants to adopt a relative's child. Persons who are under 35 years and/or who already have child (ren) are permitted to adopt only orphans (requiring proof that both biological parents are deceased) or handicapped children. Persons seeking to adopt orphans or handicapped children are permitted by Chinese law to adopt more

[156] Ibid.

than one such child. Chinese law permits adoption by married couples and single persons. The CCAA also has notified that "adoption applications from homosexual families are not acceptable."

The Adoption Law of the People's Republic of China adopted at the 23rd meeting of the seventh National People's Congress Standing Committee on 29 December 1991 (effective 1 April 1992) provides that, with certain exceptions, children under the age of 14 may be adopted in the following categories:[157]

(a) Orphans who lost their parents

(b) Abandoned children whose birth parents cannot be found

(c) Children whose birth parents are incapable of providing care for them because of unusual hardship.

Chinese law imposes certain restriction on the age of adoptive parent(s). The restriction on adopting more than one child may be waived when: (1) the children being adopted are blood relatives of the adoptive parent(s), (2) the children being adopted are orphans, or (3) the children are handicapped. All requests to adopt more than one child are given special consideration by Chinese authorities and processed on a case-by-case basis. In cases involving the adoption of more than one child, the authorities look carefully at the age of other child(ren) in the home, nature of handicap involved (if any), age and health of the adoptive parent(s), adoptive parent(s)' physical and emotional ability to care for two or more children, and financial ability to raise more than one child.

[157] Ibid.

3.4.3 Residency Requirement

The adoptive parent(s) must come to China to execute the required documents in person before the appropriate Chinese authorities to finalise the adoption. If the adoptive parent is married, he or she should adopt the child together with the spouse. In case of married couples, if only one adopting parent comes to China, Chinese law requires that the spouse traveling to China bring a power of attorney from his or her spouse which has been notarised and properly authenticated by the Chinese Embassy or one of the Chinese Consulates General in the foreign national states. In addition to documents required by the Chinese Government, the foreign national state Consulate in Guangzhou advises that if only one parent is coming to China to adopt a child with a physical or mental disability, a notarised statement from the absent parent indicating that he/she is aware of the child's disability and intends to finalise the adoption in the national jurisdiction, is required under national law.[158]

The Chinese Ministry of Civil Affairs, through provincial Civil Affairs Bureaus administers the Children's Welfare Institutes. These institutes are Government-operated homes for orphaned or abandoned children. Children can only be placed in a Welfare Institute if their parents have died or abandoned them. In cases of abandoned children, the authorities attempt to locate the children's biological parents before allowing them to be adopted from the Institutes. Notarial offices are administered by the Ministry of Justice, and the Department of Notarisation Division (No. 10 Chaoyangmen Nandajie, Beijing 100020, China) issues the final adoption certificate. The adoption process terminates parental rights of the birth parent(s). Each adoption certificate is accompanied by a notarial birth certificate for the child and either a statement explaining the circumstances of abandonment for abandoned children or notarial death

[158] Ibid.

certificates of the orphaned child's parents. The Public Security Bureau in the locality where the adoption takes place is responsible for issuing Chinese passports and exit permits to children adopted by foreigners.[159]

3.4.4 Documentary Requirement

A foreigner interested in adopting a Chinese child must submit a number of documents to the China Centre of Adoption Affairs. It is advisable to the adoptive parents to bring several copies of the authenticated documentation to China.[160] The most important documents are the following:

Adoption application, (b) Birth certificate, (c) Marital status certificate, (d) Certificates of profession, income and property, (e) Health examination certificate, (f) Certificate of criminal or no-criminal record, (g) Home study report, (h) Certificate of child adoption approval by the competent department of the adopter's country of residence, (i) Copy of applicant's passport. Each adoption applicant should also submit two full-faced photos and several other photos reflecting his/her family's life.

In addition to the package of documents forwarded by his/her adoption agency to the CCAA for approval, the adoptive parent is also required to have a chain of certificates and approval:

· Certified and authenticated copies of the adoptive parent(s)' birth certificate(s)

· Certified and authenticated copy of the adoptive parents' marriage certificate and proof of termination of any previous marriage (certified copy of spouse's death certificate or divorce decree)

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[159] Ibid.
[160] Ibid.

· Medical certificate(s) for the adoptive parent(s) executed by a physician before a notary public and authenticated

· Statement that the adoptive parent(s) is/are childless and has/have not adopted other children (notarised and authenticated)

· A medical certificate of infertility if that condition exists (executed by a physician before a notary public and authenticated), but infertility is no longer a requirement for adoption in China

· A certificate of good conduct for the adoptive parent(s) from a local police department notarised or bearing the police department-seal and authenticated

· Verification of employment and salary notarised and authenticated

· Two letters of reference notarised and authenticated

· A certified and authenticated copy of the applicant's property trust deeds, if applicable

· A home study prepared by an authorised and licensed social agency certified and authenticated

· Bank statements certified/certified and authenticated

· Power of attorney certified and authenticated (if only one spouse can travel to China)

· Family letter of intent to adopt, describing the child the adoptive parent(s) is/are willing to adopt, certified and authenticated

· A copy of the I-171H form (approval notice from BCIS) certified and authenticated

3.4.5 An Assessment

Being a socialist State, China assumes responsibility towards the welfare of its children, which reflects in the adoption laws of China. It permits the adoption of only one healthy child, but allows the persons seeking orphans or handicapped children to adopt more than one child.

Chinese law requires that the prospective parents seeking a child from China have to pay to the Children's Welfare Institute a fixed amount as 'donation,' which can be considered as a violation of Article 8 of the Hague Convention. Nevertheless, China has not yet ratified the Hague Convention. Furthermore Chinese laws do not require the assessment of trans-racial issues in the home study report prepared by the prospective adoptive parents' country.

This chapter examined the provisions of the laws relating to intercountry adoption in different jurisdictions, particularly the UK, the US, Russia, and China, appreciating the complexity of the issues involved in the steps while considering the rights of the child in intercountry adoption. The receiving States mainly regulate intercountry adoption by the laws relating to intercountry adoption and immigration laws. By and large, the requirements under the said laws are more or less same with only exception that immigration laws also deal with the clearance from the concerned ministry for the said immigration. While the sending States regulate intercountry adoption by resorting to laws relating to intercountry adoption which mainly concentrate on Home Study Report prepared by the adoptive parents' States, and Child Study Report prepared by the adoptive child States. In Home Study Report, UK laws require to assess the trans-racial issues. On the other hand, the US has repealed the Metzenbaum Multi-Ethnic Placement Act, which allowed race, colour, or national origin to be considered as a factor in making a placement decision. The changes brought forth by the UK and the US in their laws relating to intercountry adoption in respect of various issues are on the whole positive, though in some areas require a refinement. Unfortunately, the sending States, on the other hand, do not require form the receiving States to make as assessment of tran-racial issues in the home study report. Over and above, neither the laws relating to intercountry adoption of the receiving States nor the laws relating to intercountry adoption of the sending States deal properly with the

question of "*identity*" of the adoptive children. This issue and several other important issues are going to be dealt with in Chapter V.

In the UK, the Department of Health is the Central Authority that is responsible for the regulation of intercountry adoption. Recently revised amendment concerning entry clearance for adopted children was agreed between the Department of Health and Health Office. Now the Department can directly link with the entry clearance officer of the child's State of origin. Entry clearance can be given without delay, provided that the adoptive parents have submitted the required documents. The adoption laws of the UK are clear, less bureaucratic and adoption friendly.

In the US the process is complex, paperwork-intensive and expensive. The waiting time for intercountry adoption, including the home study and immigration and naturalization services (INS) approval process, can take from one to three years. Since the adoption agencies are regulated by state governments, service quality can vary. Non-agency intercountry adoption is rarely regulated and poses many risks. There are three processes by which foreign adopted children can immigrate to the United State. There is need to get clearance from the US Department of Health and Human Services, and for immigration the Department of State Consular Officer adjudicates the child immigrant visa application. Though less bureaucratic, the process is cumbersome. Social workers have been given discretion in the assessment process. It can not be inferred that the adoption laws and practices in the US are not adoption friendly.

In Russia, the Ministry of Education of the Russian Federation is empowered to deal with the matters relating to intercountry adoption and to safeguard the interest of children of the Russian Federation. The Department of Health under the Ministry of Health, a nodal agency, arranges the Certificate of Eligibility to adopt a child. The home study report is required to be

legally notarized and legalized by the Foreign and Commonwealth Office (FCO). The laws and practices of the Russian Federation being bureaucratic are simple and clear and it takes less time in disposal of adoption cases. Hence the system can be regarded as adoption friendly.

In the case of China, one remarkable fact is that domestic law treats intercountry adoption in exactly the same way as domestic adoption. While the Chinese Centre for Adoption Affairs (CCAA) is available for facilitating international adoption in China, the Government office responsible for adoption is the Ministry of Civil Affairs. Local Chinese Child Welfare Institute, Provincial Chinese Civil Affairs officials and Chinese Notarial offices are involved in the assessment process. Unlike the US, the Chinese social workers have less discretionary power in the assessment process. The process is cumbersome but in the interest of adoptive children.

CHAPTER IV

INDIAN PRACTICE

4.1 Applicable Law

India is a secular country with a majority of Hindu population. A Hindu has legal and social capacity to take a child in adoption under the provisions of the Hindu Adoption and Maintenance Act, 1956. Non-Hindu communities have no right to take a child in adoption as there is no universal adoption law enacted for all communities. The alternative left for members of non-Hindu communities are that they can take a child under the provisions of the Guardians and Wards Act, 1890.[161]

Indian non-Hindu parents are given only the guardianship of a child. Therefore, such children without legal adoption are left high and dry in as much as they do not become the beneficiary of legal rights of children in a family in which they are placed.[162]

In the case of foreign nationals, the children are placed under the guardianship of the foreign nationals who adopt the children. Thereafter the children are supposed to be adopted by the foreign nationals in their country in accordance with the provisions of law on adoption in that country.[163]

The Adoption of Children Bill, a common law on adoption, was tabled in the Parliament of India three times from 1972 to 2003[164] without success. While India was lagging behind in

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[161] D. Paul Chowdhry, *Intercountry Adoption* (New Delhi: ICCW, 1988), p. 68
[162] Ibid.
[163] Ibid.
[164] The Adoption of Children Bill, 1972, was dropped because of the opposition of the Muslims and stemming from the fact that it was intended to provide for a uniform law of adoption applicable to all communities including the Muslims. Later, the Adoption of Children Bill, 1980, contained an express provision that it shall not be applicable to

legislation, international adoptions started gaining momentum, and India witnessed a number of Indian children being adopted by foreigners.[165] During this period, the Supreme Court and the Central Adoption Resource Agency (CARA)[166] issued certain guidelines for the regulation of intercountry adoptions.

The century-old Guardians and Wards Act, 1890, forms the basis for any adoption work. The Juvenile Justice (Care and Protection of Children) Act, 2000, deals with the abandoned and delinquent children. In the case of *Lakskmi Kant Pandey v. Union of India* the Supreme Court delivered the judgment that is[167]commonly known as the Supreme Court Guidelines. The judgement has been the mainstay and has helped to create procedures and systems, which are comparable to some of the best legislation around the world. This has been further streamlined with the notification of the Guidelines of the Government of India, commonly called the CARA Guidelines.[168]

The provisions of the Guardians and Wards Act have been used for getting the foreigner appointed as a guardian and obtaining the permission of an Indian court to take the child out of jurisdiction. Section 7 of the Guardians and Wards Act, provides that the District Court may

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Muslims. It met the same fate when introduced in 1980, as it came under fire from a section of the Parasi community who believes that a person not born a Parasi can never become a "full Parasi". The Adoption of Children Bill, 1994, was met with the same fate.

[165] See TABLE 1.

[166] As per the direction of the Supreme Court in Writ Petition (CLL) No. 117/82 and on the basis of cabinet decision dated May 9 1990, the Government of India, through the Ministry of Welfare Resolution No. 1-10/88-CH (AC) of 28 June 1990 published in the Gazette of India No. 166 dated 3 July 1990, set up a Central Adoption Resource Agency (CARA) to act as a clearing house of information in regard to intercountry and in-country adoptions. Its headquarter is in New Delhi.

[167] The historic judgment of the Supreme Court came in the wake of a writ petition initiated on the basis of a letter addressed by one Laxmi Kant Pandey, a practitioner advocate in the Supreme Court, complaining of malpractices indulged in by social organisations and voluntary agencies engaged in the placement of Indian children in adoption with foreign families. The practitioner sought relief restraining India-based private agencies from carrying out further activity of routing children for adoption abroad and directing the Government of India, the Indian Council of Child Welfare (ICCW) and the Indian Council of Social Welfare (ICSW) to carry out their obligations in the matter of adoption of Indian children by foreign parents.

[168] Revised Guidelines of the Government of India on Adoption, vide Ministry of Welfare Resolution No. 13-33/85-CHI (AC) dated 4 July 1989.

appoint a guardian when it is satisfied that the appointment of the guardian will be for the welfare of the minor.[169] An order under Section 7 can be made only on the application of any one of the four categories of persons provided in Section 8 of the Guardians and Wards Act.

An application can be made by (a) any person desirous of being guardian of the minor and (b) any relative or friend of the minor. The application can be made only to the District Court within whose jurisdiction the minor ordinarily resides.[170] Section 11(1) of the Guardians and Wards Act lays down that if the Court is satisfied that there is ground for proceeding on the application for adoption of a child, it will fix a date for the hearing thereof and cause notice of the application[171] and of the date of hearing to be served (a) on the parents of the child if they are residing in the State where the Act extends, (b) on the person, if any, named in the application as having the custody or possession of the person of the child, (c) on the person proposed in the application to be appointed guardians and on any other person to whom, in the opinion of the Court, special notice of the application should be given. Section 17 of the Guardians and Wards Act provides that in appointing guardian of a minor, the Court shall be guided by what consist with the law to which the minor is subject, appears in the circumstances to be for the welfare of the minor. In considering what will be for the welfare of the minor, the Court shall have regard to age, sex, and the religion of the minor, the character and capacity of the proposed guardian, his/her nearness of kin to the minor, the wishes, if any, of a deceased parent and any existing or previous relations of the proposed guardian with the minor or his property. Section 26 provides that a guardian of the person of a minor appointed by the Court shall not, without the leave of the Court by which he/she was appointed, remove the ward from the limits of its jurisdiction, except

[169] Jayantilal v. Asha, AIR 1989 Guj 152
[170] Section 9 (1) of the Guardian and Wards Act, 1890.
[171] But in the case of intercountry adoptions no such notice need be given to biological parents as it is likely to create complications. This was emphasized in Laxmi Kant Pandey v. Union of India, AIR 1986 SC 272.

for such purposes as may be prescribed. The leave to be granted by the Court may be special or general.

The proceedings on the application for guardianship should be held by the court in camera and they should be regarded as confidential and as soon as an order is made on the application the entire proceedings including the papers and documents should be sealed.[172] When an order appointing guardian of a child is made by the court, immediate intimation of the same shall be given to the Ministry of Social Welfare, Government of India, and also to the Ministry of Social Welfare of the Government of the State in which the court is situated.[173] The Ministry of Social Welfare, Government of India, maintains a register containing names and other particulars of the children and also names, addresses and other particulars of the prospective adoptive parents.[174] The Government of India also sends to the Indian Embassy or High Commission in the country of the prospective adoptive parents from time to time the names, addresses and other particulars of such prospective adoptive parents together with the particulars of the children taken by them and requesting the Embassy or High Commission to maintain an obtrusive watch over the welfare and progress of such children.[175]

In the second case, *Laxmi Kant Pandey v. Union of India*,[176] the Supreme Court tried to impress upon the District Courts that proceedings for the appointment of a guardian of the child with a view to his/her eventual adoption, must be disposed of at the earliest and in any event not later than two months from the date of filing of the application. The Supreme Court also made a request to the High Courts to call for returns from the District Courts within their respective

[172] L.K. Pandey v. Union of India, AIR 1984 SC. 493.
[173] Ibid.
[174] Ibid.
[175] Ibid.
[176] AIR 1986 SC 277; This writ petition was initiated on the basis of a letter addressed by the petitioner complaining of mal-practices indulged in by social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents.

jurisdiction showing every two months as to how many applications are pending, when they were filled, and if more than two months have elapsed, when they have not been disposed of.

4.1.1 Various Agencies Involved in Adoption

Till the 1980s, there was hardly any government mechanism to regulate adoptions in India. Adoption agencies were free to decide on adoptions and sometimes even indulged in malpractices. It was to check such acts that the Government mechanisms were put in place, thereby regulating the adoption process. As a result, several agencies are engaged in the process of adoption.

4.1.1.1 Directorate of Social Welfare (DSW)

A DSW in each State is expected to conduct regular inspections and grant licenses to only those agencies that pass muster, i.e. provide shelter, protection and rehabilitation facilities to abandoned or relinquished children as per certain minimum standards. Such a license is renewable annually. It is on the recommendation of the State Government that the CARA sanctions or renews the recognition of agencies for intercountry adoption.

4.1.1.2 Central Adoption Resource Agency (CARA)

The CARA functions under the overall policy guidelines of a Steering Committee consisting of the following:[177]

(i) Chairman (Non-Official)

(ii) Secretary – Member Secretary – cum - Executive Officer

(iii) One representative from the Indian Council for Child Welfare (ICCW) and one representative from the Indian Council for Social Welfare (ICSW)

[177] CARA Revised Guidelines, n. 167.

(iv) Four representatives of the recognised Placement Agencies,

(v) One representative from the Voluntary Co-ordinating Agenceis (VCAs), and

(vi) One representative from the Department of Women and Child Development of the Ministry of Human Resource Development,

(vii) One representative from the Ministry of External Affairs, and

(viii) One representative from the Ministry of Information and Broadcasting.

The tenure of the members representing recognised placement agencies and VCAs is two years on the rotational basis. On the expiry of the tenure, the members are not eligible for re-nomination for the succeeding period of two years.[178] The Chairman holds office in an honorary capacity. The Member Secretary of the CARA is an official of the rank of Deputy Secretary in the Government of India, whose tenure is five years.

4.1.1.3 Functions of CARA

The functions of the CARA are laid down in the Chapter II, Section 2.13, of CARA Guidelines, 1994. Accordingly the CARA is expected to discharge the following functions:

1) To act as a clearing house of information in regard to intercountry and in-country adoption;

2) To receive applications or copies of applications along with requisite documents of foreigners desirous of taking Indian children in adoption through a recognised social welfare agency in the foreign country;

[178] Ibid.

3) Whenever such applications are received directly by the CARA, to forward such applications to one of the Indian social or child welfare agencies recognised by the CARA for processing application in the competent court;

4) To receive names and particulars of children available for adoption who are under the care of Indian social or child welfare agencies recognised by the CARA and to maintain a register containing the names and other particulars of such children;

5) To receive periodical data from all Indian social or children welfare agencies recognised by the CARA about the children admitted to their Children's Home and the children adoption in-country adoption as well as in intercountry adoption;

6) To monitor and regulate the working of Indian social or child welfare agencies recognised by the CARA consistently with their independent and voluntary functioning;

7) To inspect Indian social or child welfare agencies recognised by the CARA and to report to the Government of India on the working of such agencies;

8) To organise and arrange periodic meetings of VCAs;

9) To call for annual audited accounts from social child welfare agencies recognised by the CARA;

10) To obtain periodic progress reports of children from foreign adoptive parents etc.

4.1.1.4 Juvenile Welfare Board (JWB)

Children, who are lost or found, abandoned in hospital or streets are registered under the category of medico-legal cases. An adoption agency applies to the JWB for certifying the child as an orphan, available for adoption. The Board conducts inquiries. If the child's family remains

untraceable even after a month, the agency is given an abandonment certificate declaring the child an orphan, available for adoption within the country or abroad.

4.1.1.5 Voluntary Co-ordinating Agencies (VCAs)

Section 7, Chapter VII of CARA Guidelines, deals with the Voluntary Co-ordinating Agencies. There is a centralized agency, VCA, in the State or even in a large city where there are several recognised placement agencies. The principal functions of a VCA are as follows:

(a) It maintains a register of all prospective adoptive parents;

(b) It maintains a register of all available children who are legally free for adoption;

(c) It co-ordinates the work of all its member agencies and other child welfare institutions;

(d) It calls a meeting of member agencies at least once every quarter;

(e) Where Indian placement is not materialised, it may issue a no-objection certificate as to enable the child to be placed in intercountry adoption.

A VCA is registered under the Societies Registration Act, 1860. Every VCA has at least two professionally trained social workers.

An executive committee manages the day-to-day affairs of the VCA. The recognised placement agencies would have the right to vote for electing the Executive Committee of the VCA. The Executive Committee consists of not less than three members and not more than one third the numbers of members of the VCA. The Executive Committee comprises (a) the chairman of VCA, (b) a representative of the State Government of the level of Deputy Director (Welfare), (c) one senior representative of each scrutinising agency working in that area, (d) one representative from the agencies exclusively doing Indian adoption, (e) three representative of

the recognised placement agencies. The Government of India, through its Ministry of Welfare gives grant- in-aid to the VCA up to 90 per cent of the cost.

4.1.1.6 Scrutinising Agency

Section 8, Chapter VIII, of CARA Guidelines deals with the Scrutinising Agency. The District Court is authorised under Section 11 of the Guardians and Wards Act, to appoint any independent, reputed social or child welfare agency, as an agency for scrutinising an application from the prospective adoptive parents.[179] At present there are only two scrutinising agencies, namely, the Indian Council for Social Welfare and the Indian Council for Child Welfare.[180] Whenever a petition is filed in the District Court by a foreigner, for the adoption of an Indian child, the Court must send all the papers to the scrutinising agency for its report. It is the job of the scrutinising body to verify that all the norms and guidelines laid down are adhered to and that the child is legally free for adoption and the agencies involved are duly licensed to do the job.

The functions of the scrutinising agencies are as follows:[181]

(1) To scrutinize the following documents:

(i) Application of the prospective adoptive foreign parents.

(ii) Home Study Report

(iii) Child Study Report

(iv) Any other documents attached with the application.

(2) To ensure that the application has been duly forwarded by a foreign agency to the CARA.

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[179] Section 8.1 of CARA Guidelines.
[180] Ibid.
[181] Section 8.5 of CARA Guidelines.

(3) To ensure that before a child is placed in guardianship, a no-objection certificate (NOC) has been obtained from the concerned VCA.

(4) To satisfy itself that the child is legally free for adoption.

(5) To satisfy itself that the prospective adoptive parents are fit persons for adopting the child.

(6) To ensure that the adoption would be in the best interest of the child.

(7) To assist the District Court in ascertaining whether the child has been voluntarily surrendered by the biological parents.

(8) To ensure that no one concerned is making any profit out of the adoption in question.

(9) To ensure that all the precautionary measures are taken before the handicapped, sibling, older age and other special needs children are placed to a family who are really interested in such children.

The scrutinising agency submits a report to the CARA once every six months of all cases it has scrutinized.[182] The scrutinising agency appointed be the court for the purpose of assisting it in reaching the conclusion whether it would by in the interest of the child to be given in adoption must not in any manner be involved in the placement of children in adoption.[183] The scrutinising agency must be an expert body having experience in the area of child welfare and it should have nothing to do with the placement of children in adoption.[184] Clearly, a scrutinising agency must be distinct from a placement agency. The primary responsibility for ensuring that the child is

[182] Section 8.6 of CARA Guidelines.
[183] L.K. Pandey, n. 175, p.273.
[184] Ibid.

legally free for adoption must be that of the social or child welfare agency processing the application of the foreigner for guardianship of the child.[185]

4.1.1.7 Foreign Sponsoring Agency

There are several foreign adoption agencies that have received recognition to co-ordinate adoption of Indian children in their respective countries. Section 6, Chapter VI, of CARA Guidelines, deals with the role of the enlisted foreign agencies for adoption. The main functions of the foreign sponsoring agencies is to identify those prospective adoptive parents in their country who are willing to adopt Indian children;[186] social workers of those agencies are expected to do a careful evaluation of the prospective adoptive parents and prepare home study reports and send the same to the Indian agency.[187]

The foreign sponsoring agency acts as a co-ordinator between the foreign parents and the recognised Indian placement agency. It also gives the following undertaking to the District Court: that law in the receiving country would enable the parents to adopt the child;

-that it would do the adoption follow-up and send periodic reports to the court,

-that in the event of any disruption in the adoption, it will take charge of the minor, place the child with another suitable family, or arrange for timely safe return of the child to India.[188]

4.1.1.8 Recognised Indian Agencies for Adoption

Every institution and child welfare agency engaged in care and custody of children or in adoption work or any other activity related to orphan, abandoned, destitute, neglected or

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[185] Ibid.
[186] L.K. Pandey, n. 171, p. 482-83.
[187] Ibid.
[188] Section 6.3 (iv) of CARA Guidelines.

relinquished children is immediately listed by the concerned State Government and such list is forwarded to the CARA.[189]

No agency is allowed to engage in placement of or promotion of in-country adoption unless it is recognised by the State Government and in case of agency engaged in placement work, it should be a child welfare agency.[190] Any Indian agency desirous of undertaking intercountry adoption work has to apply for recognition to the CARA and the State concerned. Only such agencies as are recognised by the CARA are entitled to undertake intercountry adoption work.[191] Such agencies are termed "recognised placement agencies" for the purpose of adoption. Every social child welfare organisation recognised for placement work in adoption is expected to regularly maintain a list of all prospective adoptive parents containing their details.[192] When a recognised Indian agency receives a child, its first responsibility is to trace the biological parents.[193] It would be desirable that the agency should place annually more than 50 per cent of the total number of children given in adoption with Indian families.[194] The placement agencies are required to adhere the following order in preference during the case of adoption of Indian children: (1) Indian families in India, 2) Indian families abroad, (3) one parent of Indian origin abroad, (4) totally foreign.[195]

Every recognised placement agency is obligated to give full details of the child to the prospective parents except the names and addresses of the biological parents. These efforts should include contracting the VCA for finding suitable Indian parents within the area of

[189] Section 4.1, Chapter IV of CARA Guidelines.
[190] Section 4.2, Chapter IV of CARA Guidelines.
[191] Ibid.
[192] Section 4.4, Chapter IV of CARA Guidelines.
[193] Section 4.5, Chapter IV of CARA Guidelines.
[194] Ibid
[195] Ibid

operation.[196] Adoption of Indian children placed with Indians living abroad will be treated as in-country placement. However, such Indian adoptive parents would have to follow the same procedure as in the case of intercountry adoption.[197] In the case of an abandoned child not received through the Juvenile Welfare Board/Juvenile Court as the case may be or through direct relinquishment by biological parents, the concerned agency has an obligation to notify the local police station within 24 hours of arrival of the child.[198]

In the case of surrender of a child, the biological parents should be counseled and duly informed by the agency about the effect of their consent for adoption.[199] The surrender document should be executed at the free will of the biological parents with no compulsion, payment or compensation.[200] If a child is found abandoned or is picked up as a destitute, the procedure of going through the Juvenile Welfare Board/Juvenile Court or the Social Welfare Department or the Collector of the district concerned would have to be adopted. As soon as an abandoned or destitute child is found by a social or child welfare agency, he/she should immediately be lodged with the local police station. Meanwhile, the social or child welfare agency may make an application to the Juvenile Board for a release order that the child is legally free for adoption.[201]

Section 4.38, Chapter IV, of CARA Guidelines deals with the recoverable costs by the agency from the foreign adoption. Chapter V of CARA Guidelines deals with the recognition of Indian agencies for adoption.

By and large, it is the duty of the placement agency to ensure that the adoption is legalized and also to do follow-up for a period to ensure that the adoption is successful.

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[196] Ibid
[197] Section 4.6, Chapter IV of CARA Guidelines.
[198] Section 4.11, Chapter IV, CARA Guidelines.
[199] Section 4.13, Chapter IV, CARA Guidelines.
[200] Section 4.14, Chapter IV, CARA Guidelines.
[201] Section 4.17, Chapter IV of CARA Guidelines.

4.1.2 Requirements for a Foreigner Wishing to Take a Child in Adoption

In the first place, every application to the District Court from a foreigner desiring to adopt an Indian child must be sponsored by a social or child welfare agency recognised or licensed by the Government of the country in which the foreigner is resident and enlisted by the CARA, a.[202] No application by a foreigner for taking a child in adoption should by entertained directly by a social child welfare agency in India.[203]This is essentially for three reasons:

(i) it will help to reduce the possibility of profiteering and trafficking in children;

(ii) it will help the court to get the home study report prepared by social or child welfare agencies in the country of the foreigner on which the court can rely;

(iii) it will help the court to find out an authority or agency in the country of the foreigner who could be made responsible for supervising the progress of the child.[204]

Every application of a foreigner for taking a child in adoption must be accompanied by (i) a home study report, (ii) a recent photograph of the family, (iii) a marriage certificate of the foreigner and his or her spouse, (iv) a declaration concerning the health of the adoptive parents together with a certificate regarding their medical fitness, (v) a declaration regarding their financial status along with supporting documents, including their employer's certificate where applicable, income-tax assessment orders, bank references and particulars concerning the properties owned by them, and (vi) a declaration stating that they are willing to be appointed guardian of the child.[205]

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[202] Section 2.14 of CARA Guidelines.
[203] Ibid.
[204] L. K. Pandey, n. 171, p. 484.
[205] L. K. Pandey, n. 171, p. 485.

These certificates, declarations and documents which must accompany the application should be duly certified by a Notary Public whose signature should be duly attested either by an officer of the Ministry of External Affairs or Justice or Social Welfare of the country of the foreigner or by an officer of the Indian Embassy or High Commission or Consulate in that country.[206]

The original application along with original documents as prescribed by the Supreme Court of India would be forwarded by the foreign enlisted agency to a recognised placement agency in India.[207] The recognised placement agencies should provide to the CARA a list of the enlisted foreign agencies with which they are working or proposing to work.[208] Where any application is originally received by the CARA from a recognised foreign agency, the CARA would on the basis of information available to it, send the application to any placement agency for processing it, bearing in mind the operational relationship, if any, between the foreign agency and any particular agency.[209]

The foreign enlisted agency is also obligated to send a copy each of the application as well as all the attached documents along with the Home Study Report to the CARA. The Home Study Report consists of the following information:

Social status and family background of the applicant;

Description of home, standard of living, current relationship between husband and wife and also between the parents and the children;

Development of already adopted children if any;

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[206] Ibid.
[207] Section 2.14 of CARA Guidelines.
[208] Section 2.16, Chapter II of CARA Guidelines.
[209] Ibid.

Employment status of the couple;

Health details;

Economic status of the couple;

Schooling facilities;

Reasons for wanting to adopt an Indian child;

Legal status of the prospective adoptive parents.[210]

The receipt of the original application as well as original documents would not entitle the placement agency to proceed with the case. The agency can proceed only after getting 'NOC' from the CARA.[211] The CARA, however, shall ensures that such certificate should be issued within a reasonable period of time, i.e., five weeks from the date of receipt of the certified copies of the application.[212] After the receipt of the original application along with documents from the enlisted foreign agency by the recognised Indian placement agency, the concerned agency will register the name of the prospective foreign parents in the register meant for them.[213] The recognised placement agency shall carefully examine the Home Study Report and start the exercise in matching the Home Study Report with the Child Study Report prepared by the recognised social or child welfare agency.[214] The social or child welfare agencies which prepared the Child Study Report must maintain a register in which the names and particulars of all children proposed to be given in intercountry adoption through it must be entered and, in regard to each such child, the recognised social or child welfare agency must prepare a Child Study

[210] Section 2.14, Chapter II of CARA Guidelines.
[211] Ibid.
[212] Ibid.
[213] Ibid.
[214] Ibid.

Report through a professional social worker giving all relevant information about the child so as to help the foreigner who seeks to adopt an Indian child.[215]

The Child Study Report should contain the following information: information about the original parents, including their health and details of the mother's pregnancy and birth, physical, intellectual and emotional development of the adoptive child; health report prepared by a registered medical practitioner, preferably by a paediatrician; recent photograph of the child; present environment in which the child is living; social worker's assessment and reasons for suggesting intercountry adoption.[216]

At the completion of the process of matching when the recognised Indian placement agency arrives at the conclusion that a child can be placed with a particular family, the agency will have to ensure that the concerned child is cleared by the VCA for intercountry adoption.[217] Thereafter the recognised placement agency will send the Child Study Report, the photograph of the child and the medical report to the sponsoring foreign agency for the approval of the prospective adoptive parents.[218] After obtaining the approval, the recognised placement agency will apply to the CARA for getting a clearance of the child.[219] At this stage, the CARA shall have to ensure that the recognised placement agency has put in adequate efforts for finding an Indian family for the said child, and the clearance by the VCA to that effect is also enclosed.[220] After going through the information furnished by the recognised placement agency and the VCA, the CARA will immediately give the clearance to the agency.[221] The recognised placement agency thereafter will process the case with the District Court for awarding the guardianship of

[215] L. K. Pandey, n. 171, p. 488.
[216] Ibid.
[217] Section 2.14, Chapter II of CARA Guidelines.
[218] Ibid.
[219] Ibid.
[220] Ibid.
[221] Ibid.

the child to the foreign prospective adoptive parents.[222] At this stage the scrutinising agency has to scrutinize all the documents and advise the District Court that the said intercountry adoption is in the best interest of the child.[223] The District Court within the stipulated time, as laid down by the Supreme Court of India, awards the guardianship of the child to the foreign parents.[224] The District Court while making an order for appointment of a foreigner as guardian should ask for deposit being made by way of security for enabling the child to be repatriated to India.[225] The bond may be executed by the concerned foreign social or child welfare agency in India or the court may insist on the bond being executed by the foreigner in favour of the Indian Diplomatic Mission in the receiving country.[226] This point is further clarified by the Supreme Court in Para 13 of *Pandey v. Union of India* (third case),[227] observing that the execution of bond would ordinarily be sufficient. The District Court should not insist on security or cash deposit or bank guarantee and it should be enough if a bond is taken from the recognised placement agency and such agency may in its turn take a corresponding bond from the sponsoring social or child welfare agency in the foreign country. On the basis of the guardianship order of the Court the recognised placement agency is to apply in the Regional Passport Office for obtaining an Indian passport in favour of the child.[228] Thereafter the visa has to be issued by the concerned Embassy/High Commission of the concerned country for the child. The child leaves the country along with the prospective adoptive parents or with the escort, whatever the case may be, to the country of prospective adoptive parents, i.e., the child's future country of residence.[229]

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[222] Ibid.
[223] Ibid.
[224] Ibid.
[225] L.K.Pandey, n. 175, p. 277.
[226] Ibid.
[227] AIR 1987 SC 240.
[228] L. K. Pandey v. Union of India, AIR 1987 SC 240.
[229] Ibid.

Since there was no legislation laying down the principles and norms that must be observed in the process of intercountry adoption, some of the social or child welfare agencies engaged in placement of children in intercountry adoption felt that there were certain difficulties in implementing the principles and norms laid down by the Supreme Court in the Pandey judgment. That is why the agencies made various applications for seeking clarification and alteration in the principles and the procedure laid down and the procedure laid down by the courting in the first case Laxmi Kant Pandey.

One of the points raised in those applications was related to transfer of children from one State to another for the purpose of being given in adoption. It had been urged by various social welfare agencies that it may not be desirable to permit a child to be taken from one State to another for the purpose of adoption because that would encourage representatives of foreign agencies as also unscrupulous persons to go scouting for children to different States and taking advantage of the poverty of the large masses of people, persuade indigent parents, by offering monetary inducement to part with children. The Supreme Court in *Pandey v. Union of India and Other* (second case) observed that the apprehension of the social agencies was justified. But on that account alone it would not be right to prevent a child from being taken from one State to another by a social welfare agencies for the purpose of adoption, because at the place where a child is found destitute or abandoned or where the biological parents, who not being in a position to support the child are prepared to relinquish him/her, there may be no social or child welfare agency which can take the child for placing him/her in adoption. There may be a social welfare agency in another State which is in a position to take care of such a child and find suitable parents and if that be so, there is no reason why such social or child welfare agencies should not be permitted to take the child from one State to another. The Supreme Court laid down

considerable safeguards in Paragraph 13 of *Pandey v. Union of India* (first case) judgment in order to prevent any abuse of this practice. Also the Supreme Court would direct by way of the additional safeguard that no court in a State will entertain an application for appointment of a foreigner as guardian of a child who had been brought from another State, if there is a social or child welfare agency in the other home State.

The Supreme Court in Para 7 of *Pandey v. Union of India,* (third case) further observed that where an abandoned or destitute child is found by a recognised placement agency, it should be open to such agency to transfer the child to its branch in another State after the completion of the inquiry by the Juvenile Court or the Social Welfare Department or the Collector, as the case may be. It is also required that the associate social or child welfare agency should be notified by the recognised placement agency as its associate to the Government of the State concerned.

Another point raised in the *Pandey v. Union of India* (second case) was in regard to the role which representatives of foreign agencies should be allowed to play in intercountry adoption. It is a well-established rule that a foreign child or social welfare agency should have its representative in India. The Supreme Court observed that it is necessary to lay down certain parameters within which such a representative can be allowed to operate. In the first place the representative should be an Indian citizen with a degree or diploma in social work coupled with experience in child welfare. Secondly, the representative should not work fulltime/freelance basis for more than one foreign social or child welfare agency. It would also be desirable to limit the sphere of operation of the representative to a particular geographical area so that he/she is able to attend his/her functions and duties properly. The representative should have a general power of attorney to act in India on behalf of the foreign social or child welfare agency and

he/she should also have the authority to operate baking accounts in the name of the foreign social or child welfare agency with the permission of the Reserve Bank of India.

It is not very easy to go through the procedure for adoption within two years. There may be instances where the procedure may take longer and in that event, unless there is a provision for relaxing power, the failure to complete the adoption within time would result in a breach of the condition of the bond. The Supreme Court in *Pandey v. Union of India and other* (second case) appreciated that the procedural difficulty may arise in some exceptional cases and therefore directed that where it is not possible for the foreigner to complete the adoption process within two years, an application should be made to the court for extension of time for making the adoption and the court may grant appropriate extension of time.

The other point raised was that there were instances where the courts required the foreign parents wish to take a child in an adoption to come down to India for the purpose of meeting the child before approving the child for adoption. The Supreme Court in Para 17 of *Pandey v. Union of India* (second case) observed that as for as possible the foreign parents or even one of them need not be required to come down to India for the purpose of approving the child. The Supreme Court felt that a complete dossier of the child consisting of photographs, detailed medical report, child study report and other relevant particulars are always forwarded to the sponsoring social and child welfare agencies in the foreign country and it is sufficient to arrive at a decision regarding approval of the child in an adoption.

Another point raised by the ICCW that a certain amount should be directed to pay for the scrutinising services rendered by it since the services would require staff and other necessary expenditure. The Supreme Court in Para 1 of *Pandey v. Union of India and Other* (third case) directed that when the a District Court makes an order appointing a foreign parent as the

guardian of the child, the court will provide that such amount shall be paid to the scrutinising agency for its services as the court thinks reasonable. This amount shall be paid to the scrutinising agency by the placement agency, which has processed the application of a foreign parent for being appointed guardian of the child, and such placement agency has the right to recover such amount from the foreign parents.

The Supreme Court in Para of *Pandey v. Union of India and other AIR 1987 SC 239, 249* observed that it would be impossible for any foreign social or child welfare agency to sponsor the case of such foreigner who is living in India and it would equally be impossible for any such social or child welfare agency to prepare a Home Study Report and other connected documents. The District Court should not insist on sponsoring of such foreigner by the foreign social or child welfare agencies; nor should it demand a Home Study Report in this respect. The Home Study Report and other connected documents prepared by the recognised placement agency should be regarded as sufficient.

4.2 Assessment of CARA Function

Some Controversial Cases: There are some cases in which certain adoption agencies flouted processes and paper work completely in their haste to collect babies. In a particular case, an NRI from California, USA, was promised a baby by Tender Loving Care, a social welfare society based in Hyderabad. The baby, born at a hospital in Hyderabad, was handed over immediately after delivery to the NRI's in-laws, based in Hyderabad, in March 2001.[230] The baby was not registered as abandoned or relinquished. The baby was simply handed over without papers. All through March and April till the April GO was passed, no papers were made out.

[230] Gita Ramswamy, n.29, p. 3.

Now the adoptive family holds the baby in practically illegal custody. There is no way that the baby can be sent out of the country.

It has been found that the adoption agencies manage the paperwork and foreign bank accounts, manage the Indian bureaucracy, police and courts, and the middlemen 'handle' the people.[231]

Also disturbing have been serial kidnap incidents about which the adoption agencies cannot have been unaware of. As far back as in 1999,[232] Bhanupriya and her brother, Ravi Prasad, who had been studying at the MV Foundation Training Centre at Chevella, had been 'sold' by their grandmother to Savitramma of Bethany Home, Tandur, when they went home for the holidays. The children escaped from the Home and returned to Chevella on their own. Police, though informed, took no action at that time.

Eleven-year-old Suresh, belonging to a family of six brothers and sisters with both parents dead, was taken by Precious Moments, an NGO based in Hyderabad, on the understanding that the would educate him.[233] Instead, his name was changed to Benjamin Ravi, and he was offered for adoption to Duane and Donna Byrd of Idana, USA, who already have four biological children. No relinquishment deed was signed for Benjamin, but the papers were already being processed. The boy says he does not wish to be adopted. Instead he wants to study and live with his brother and sisters.

In, Vigneswar Reddy and Nagalakshmi, children of Kavita, were picked up by the Precious Moments.[234] Kavita was offered the job as a maid in Anita Sen's[235] brother's house in

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[231] Ibid.
[232] Report of fact-finding committee team headed by Gramya.
[233] Gita Ramswamy, n 29, p. 3.
[234] Ibid.

New Delhi, and was told she could not take her children with her, as education was costly in Delhi. On her return from Delhi, Kavitha found that her children had been taken to Shishu Vihar in April 2001. Now knowing that Precious Moments dealt only with adoption, she was apprehensive of the several blank pieces of paper she had signed for the organisation.

In, Hari Babu, a ten year old and only child of his parents, was kidnapped by one Samuel from his home and taken to Nampally Police Station, where Precious Moments picked him up, again.[236] The parents following the trail of the boy, but they were not allowed to see him at the Precious Moments. Knowing his antecedents fully well, Precious Moments had Hari Babu declared as relinquishment by Rukmini of Gudur, Kurnool district. This was a clear case of forgery. Hari Babu was being processed for adoption when he was taken to Shishu Vihar in April 2001.

Traditionally, human trafficking has involved the exploitation of girls and women within sex, domestic and labour markets. Recently, however, it has expanded to provide kidneys, corneas, skin, bone marrow, and livers for unscrupulous medical transplant programmes and female babies for international adoption rackets. Within the new twist, girls born to poor families, particularly those of indigenous and religious minorities, are at high risk; newborn girls are first bought for a handful of rupees, usually between US $30 and 50, chiefly from their tribal mothers in Andhra Pradesh, India; and may be robbed of their sight or other vital body fluids and organs while in the care of orphan traders.

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[235] Anita Sen from Precious Moments, a NGO, is the wife of a top level, police office and even as she awaits prosecution. She has several US senators defending her honour with the Government of Andhra.Pradesh.
[236] Ibid.

In April 2001, for the second time in three years, some orphanages in Hyderabad, were found to be buying infants, habitually girls, and accepting kidnapped children.[237] The infants and children were passed on to the Indian Council of Social Welfare, a lawful adoption agency, for local and intercountry placement. Turning out to be graveyards for already malnourished infants the orphan trafficking adoption agencies bear perfectly respectable names; for example the once humble Kokila Home rechristened the John Abraham Bethany Memorial Home and others operating under the sensitive banners like "Precious Moments" and "Tender Loving Care".

The law relating to intercountry adoption in India gives rise to several issues and concerns. Despite the establishment of the CARA, there have been several adoption scams and irregularities. India witnessed major child trafficking seam throughout the 1990s. Intercountry adoption is being increasingly identified with baby trafficking. UNICEF estimates that, currently, the child trafficking trade is worth $25 million a year.

The CARA has suspended the license of the John Abraham Bethany Memorial. But as pointed out by the GRAMYA Resource Centre for Women, the NGO largely responsible for exposing the of Andhra Pradesh's adoption scam, the CARA has no teeth.

Time and again, adoption traffickers have been found guilty of suppressing reports of child's death and then fabricating records to replace the dead infant with another. In May 2001, the CARA also revoked the licenses of the Voluntary Adoption Coordinating Agency (VACA) and the Indian Council of Social Welfare, and issued notices to Tender Loving Care, an agency attached to St. Teresa Hospital in Hyderabad, for resorting to unlawful practices in child adoptions.[238] But, like the VACA, the CARA has been unable to prevent adoption traffickers

[237] Dumble, n. 28.
[238] Ibid.

from either directly entertaining representatives of the foreign adoption agencies or from routing children through the CARA -licensed placement agency.[239]

At different stages, the processes have been easily flouted. The VCA, which is supposed to be a self-monitoring agency; has performed no such role. Not surprisingly, the VCA for giving NOC, charges a hefty fee per case Rs. 1500-2500 in Andhra Pradesh, and Rs. 250 elsewhere.[240] Moreover, the NOC that the VCA has to issue is obtained only if the baby has been repeatedly refused for adoption by parents in India. That is, there must be some record of evidence which shows the parent's rejection. This is easily done by the office staff and hangers-on sign papers to say that they do not want the baby.

Clearance from the CARA has often proved to be just a formality. Influential Andhra agencies were known to have taken the morning flight to Delhi along with their papers, cleared the files with the CARA, obtained the NOC and fly back the same evening. The sealed courier was evidently dispensed with here. The CARA has been supposed to monitor adoptions. It that the monitoring body found nothing wrong, till everybody else did so.

After the CARA gives its NOC, the adoption agency can file papers in court for adoption. The court again sends the papers for scrutiny to the ICCW (a privately run publicly funded body). The ICCW in Andhra Pradesh is headed by Thakuri Hari Prasad who is functioning from Dilsuknagar. The clearance from the court where everyone is paid from the court clerk to the typist to expedite the process, is another formality. Unfortunately, in most of the instances, the response of the regulatory agencies has been reactive rather than proactive. Because of these reasons, there is a growing feeling that the regulatory authorities, particularly the CARA, tend to

[239] Ibid.
[240] Ibid.

protect the elite class interest rather than poor families. Why has the CARA not taken any action against such agencies in the past? What about kidnapping, which is so rampant in the Indian adoption system? What about child trafficking so prevalent in some States?

Various instances of fraud and manipulation reveal the weak regulatory and supervisory framework in India. It also points out the lax attitude of the regulatory authorities to prevent such irregularities. The monitoring system of regulatory authorities is in such a bad state that they had no clue while the frauds and scams were being committed.

These questions not only expose the functioning of the CARA, Central Government and State Government, but also the lack of political will among the policy makers. India has signed and ratified the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. The party to ratify the Convention should establish one or more Central Authority within the State (Article 6 of the 1993 of Hague Convention). The CARA is a clearing house and works under the Ministry of Welfare, Government of India. It acts as a Central Authority with regard to information about adoption, and every intercountry adoption, placement is routed through this body. So India is already satisfying the requirement of Article 6 of the Hague Convention. The function of CARA is similar to the functions required under the Articles 8, 9, 10 and 11 of the Hague Convention. The CARA is supervising the voluntary adoption agencies, Scrutinising agencies and registered foreign enlisted adoption agencies. In India these accredited bodies should pursue only non-profit objectives as also required under Article 11 of the Hague Convention. As already discussed in chapter 2 of this study ,while some countries allow the profit motivated organisations to be registered as voluntary adoption agencies (for instance, Unites States, China) and some countries consider even donation legal valid (for example, China), India prohibits this kind of practice.

The major obstacle in India is that there is no uniform law of adoption applicable to all Indians, irrespective of their religious affiliations. India also needs to evolve a practice and policy on the adoptee's search for "roots" and the right to information about his/her background. Child adoption in India clearly needs a paradigm shift, from "parent-centred" adoption to "child-centred" adoption.

CHAPTER V

MAJOR ISSUES

A child is a human being who exists by virtue of relationships. The satisfaction of his/her material needs is not sufficient to secure his/her development. For human development, the child needs to be able to look to a small number of adults who care for him/her permanently and on a long - term basis; to be loved, stroked and stimulated; to be personally recognised; and to be integrated into society. Very few institutions are able to meet such needs.

For a proportion of children, intercountry adoption is an option that ought to be implemented because they are in need of a permanent family environment. In the last two decades, intercountry adoption has progressively changed. From its initial purpose of providing a family environment for children, it has become more demand-driven. Increasingly in industrialised countries, intercountry adoption is viewed as a way for childless couples to satisfy their desire for a child. Growing numbers of intercountry adoptions, in fact, involve countries where children can be found and who can correspond to criteria set by the prospective adoptive parents. This trend has contributed to the development in the West of a pernicious philosophy of "a right to a child", which often goes so far as to violate the rights of the child.[241]

To meet the demand for children, abuses and trafficking flourish. Those abuses are apparent in the form of absence of support to the birth families at risk, psychological pressure on vulnerable mothers, negotiations with birth families, adoptions organised before birth, false maternity and paternity certificates, and even abduction of children for maternity hospitals or even from the street.

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[241] Chantal Saclier, "In the Best Interest of the Child', in Peter Selman, ed., *Intercountry Adoption: Developments, Trends and Perspectives* (London: British Agencies for Adoption and Fostering, 2000), p. 57.

Indeed, a booming trade has grown in sale and purchase of children in connection with intercountry adoption. It originates with the continuous pressure exerted by couples in economically advanced countries. All too often in these cases, adoption becomes an act of selfishness, an expression of an inability to accept being thwarted, a way of resolving a frustration by putting the burden on others who are less economically privileged.[242] This trade also depends on the bribery of officials, professionals and intermediaries who see adoption as a way of getting rich quickly. It has been found that a growing number of children who have been adopted were not in need of a substitute family. All these reasons make to contend that intercountry adoption, per se, should not be encouraged and promoted as being the solution for many children suffering in institutions in developing countries.

5.1 Intercountry Adoption and Competing Value Systems

Support for intercountry adoption is seen as an ideal solution by many, bringing together parents with homes, love and care to offer and children who need families. This 'liberal individualism' theory has a tendency to play down the salience of "race" and ethnicity.

In contrast, opposition to intercountry adoption is characterized by a "collective" view of children's best interests. It is mainly based on the following conditions:

Intercountry adoption is offering an immediate idealised life for a very small number of children instead of addressing the need to build a bright global future for all children.

Where poverty is pervasive, intercountry adoption can be seen as an inappropriate response. At the individual level, poverty is often a reason for relinquishment, including situations where payments are used to help a birth parent look after his/her other children.

[242] Ibid.

Sometimes, at the wider societal level, substantial resources provided through intercountry adoption do little to alleviate poverty, and often simply rewarding the intermediaries who promote it. This leads to the existence of a market in intercountry adoption and its effects, especially in relation to the wide-ranging abuses, which have long been associated with intercountry adoption.

Responsible supporters and pragmatists believe that intercountry adoption cannot be prevented and so need is that it should be closely regulated. Conversely, opponents are sceptical of the potential for effective regulation, and see the very existence of intercountry adoption as an encouragement to abuses, through pressures to match supply and demand and the vested interests of intermediaries.

In the case of surrogacy, the boundaries of improper financial inducement are extremely difficult to draw and equally difficult to enforce. In intercountry adoption the gross disparities between adopters and birth relatives in terms of money create a situation where payments modest by Western standards may appear as a "fortune' in a poor society. It is on this basis that intercountry adoption has been attacked as neo-colonialist, especially in Africa.[243]

What then are the implications of these challenges for policy and practice on intercountry adoption in the world? How far intercountry adoption should be promoted and if so on what basis?

This chapter seeks to explore some of the ethical issues surrounding intercountry adoption. It is mainly based on some of the writings which analyse the experiences of adoptees and their families, with the principal concern being that of whether intercountry adoption

[243] Ibid., p. 76.

"works".[244] The most important issues can be discussed under two headings: ethnicity and identity, and preparation of Home Study Report.

Ethnicity and Identity

The emerging picture is that, while a majority of adoptions are "successful" in terms of family relationships and the psychological well-being of adoptees, many of them experience difficulties related to the questions of ethnicity and identity. Sometimes, the adoptees feel isolated and unsupported within their families. It has also been found in some cases that despite a tendency towards assimilation of an adopted child after his/her intercountry adoption, adult adoptees tend to take a renewed interest in their country of origin. For instance, a recent survey of Korean adoptees in the USA found that, while as children only 28 per cent had identified themselves as South Korean (-American), this figure had risen to 64 per cent when they were adults.[245] This would seem to reflect first a curiosity in identity and origins and, second, absorption of a social reality within which minority ethnic identification by others renders a "white" self-identification untenable. Dalen found that many Vietnamese adoptees in Norway

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[244] Derek Kirton, "Intercountry Adoption in the UK", in Peter Selman, ed., *Intercountry Adoption: Developments, Trends and Perspectives* (London: British Agencies for Adoption and Fostering, 2000), p. 66-85; Rene Hosksbergen, "Changes in Attitude in Three Generations of Adoptive Parents", in Peter Selman, ed., *Intercountry Adoption: Developments, Trends and Perspectives* (London: British Agencies for Adoption and Fostering, 2000), p. 86-101; Amalia Carli, "Latin American Children Adopted in Norway; A Therapist's Account", in Peter Selman, ed., *Intercountry Adoption: Developments, Trends and Perspectives* (London: British Agencies for Adoption and Fostering, 2000), p. 439-457. Eva Giberti, "Excluded Mothers, Birth Mothers Relinquishing their children", ed. in Peter Selman, ed., *Intercountry Adoption: Developments, Trends and Perspectives* (London: British Agencies for Adoption and Fostering, 2000), p. 458-465; Roger Shed, "Experiences of Adopting from Child", in Peter Selman, ed., *Intercountry Adoption: Developments, Trends and Perspectives* (London: British Agencies for Adoption and Fostering, 2000), p. 467-483; Sua Jardien, "In whose Interests?: Reflection on Openness, Cultural Roots and Loss", in Peter Selman, ed., *Intercountry Adoption: Developments, Trends and Perspectives* (London: British Agencies for Adoption and Fostering, 2000), p. 484-491; Katherine Sam Well-Smith, "Meeting Own Needs: Some Proposals for Change", in Peter Selman, ed., *Intercountry Adoption: Developments, Trends and Perspectives* (London: British Agencies for Adoption and Fostering, 2000), p. 492-498; Anna Von Melen, "Strength to Survive and Courage to Live", in Peter Selman, ed., *Intercountry Adoption: Developments, Trends and Perspectives* (London: British Agencies for Adoption and Fostering, 2000), p p. 499-512.

[245] Derek Kirton, *Race, Ethnicity and Adoption* (Buckingham: Open University Press, 2000), p.68, cited in Peter Selman, *Intercountry Adoption: Developments, Trends and Perspectives* (London: British Agencies for Adoption and Fostering, 2000).

not only felt marginalized within Norwegian society but also estranged from other Vietnamese people within the country.[246]

Another important issue is whether intercountry adoption is the only route of migration between "sending" and "receiving" countries and hence whether the latter have communities of similar ethnic origins to intercountry adoptees. The existence of such communities will influence the ethnic politics of the country and the likelihood of intercountry adoptees interacting with those from their "community of origin'. If such interaction can be difficult and even threatening, it also offers opportunities for the development of ethnic identity and a potential source of support in the face of discrimination.[247]

Claims that most adopters are able to meet the identity needs of their children appear sustainable only if a very low benchmark is set. All empirical studies show the prevalence of limited parental input on issues of "race" and culture. There seems to be a number of reasons for this.

First, adopters already have connections with the child's country of origin. Second, adopters live in predominantly "white" areas, offering adoptees a limited opportunity for interaction with others from minority ethnic backgrounds. Third, a significant number of intercountry adopters see question of "race" and culture as largely irrelevant.

There are several irregularities in the procedure of adoption. These are related to the quality of information and counselling offered to birth relatives, preparation for the child to move, and handling of the move itself. Contact between adopters and birth relatives is

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[246] M. Dalen, *The Status of Knowledge of Foreign Adoptions* (Oslo: Department of Special Needs, University of Oslo, 1999a) cited in Peter Selman, *Intercountry Adoption: Developments, Trends and Perspectives*(London: British Agencies for Adoption and Fostering, 2000).
[247] Kirton, n. 34, p. 68.

comparatively unusual and information on the later often lacking. In these circumstances, forms of "openness" are relatively rare. Collectively, such practices may reflect one or more of several factors: lack of resources, norms of childcare practice, social stigma, threats to birth parents, or legal proscription of contact. These features often found in intercountry adoption have a significant influence upon it. They include the difficulties faced by adopted children in understanding their background or tracing their birth relatives.

With regard to the receiving countries in relation to the promotion of intercountry adoption, there are broadly two alternatives. One would be based on a liberal individualist approach, which would prefer legal and professional reform within the existing value framework. This would serve to leave intercountry adoption primarily for childless adults, placing less emphasis on the issues of identity. In the second model, intercountry adoption could better reflect the receiving countries as multiracial societies and is part of a more strategic response to child welfare.[248]

Thus, for the receiving countries, the starting point lies with the recognition of the importance of racial and cultural identities for intercountry adoptees. This means that the assessment of adopters must give due weight to their awareness and commitment in these areas where the adoption is trans-racial and has a significant degree of ethnic diversity.[249]

In so far as the concern is of the sending countries, in relation to the promotion of intercountry adoption, there are also two alternatives. One would be liberal mode, that is, responsibilities are essentially individual, case-specific and activated when a child becomes linked to prospective adopters. The alternative, the collective model would entail adoption

[248] Kirton, n. 34, p. 80.
[249] Ibid.

agencies and Government taking a wider responsibility for children's welfare in sending countries. Agencies involved in intercountry adoption should be required to contribute to wider childcare provision in the "sending" countries as part of any terms of approval.[250]

Home Study Report

Social workers have diverse responsibilities when undertaking a home study assessment in a case of intercountry adoption. The task of undertaking a home study assessment involves a number of functions. It is a part of a legal process both in relation to the 'receiving' country as well as the 'sending' county. This involves interaction between the domestic law of the sending country, the domestic law of the receiving country and international law. These laws set out various and detailed procedures which the social worker is required to complete. But the primary requirement is to ensure that the child's needs are of paramount consideration.

Social workers are required to balance the power of each participant in a case of intercountry adoption. The stakes are here: the birth parents will lose a child, the sending country will lose a citizen, and the child will lose his/her birth parents and his/her culture, language, nationality and religion.

The applicants (prospective adopting parents) may not have had the power to create their own children. The risk of being turned down as adopters may create a feeling of humiliation and shame. The applicants' relationship with their social worker is a key part of the process in Home Study Report. Social workers have the power to grant or deny the application of adoption. However, social workers are also part of a system of social services with limited resources and

[250] Ibid, p.81.

competing priorities. They have marginal power to change this and are dependent on the decisions and actions of others.[251]

One of the real difficulties in the home study assessment is how can the social worker predict about the applicant's capacity and competence to parent not just in the future but also to parent as the child grows and circumstances change.

The professional task for the social worker is not just about making a prediction about the future parenting capacity of the applicants but also about realistically appraising what is possible to know on the basis of soft information. Hard information may be collected from police record checks, bank statements, birth or marriage certificates or educational or professional qualifications. In so far as soft information is concerned, it is derived from the construction that an individual places on it. This will be derived from the context within which the information is generated, and over the course of time, its meaning may change.

Thus, the dynamics of power, the nature of the information involved, and the difficulty of making accurate predictions have a significant impact on both the nature and process of the home study assessment. In order to address these issues, there needs to be a clear and explicit set of criteria for the preparation course and the home study process. The applicants need to be empowered by having access to full and proper information provided through a thorough preparation course prior to the home study assessment.[252] The preparation course is primarily focused on helping applicants to gather the information they need, educate themselves in some of the issues that they might be faced with and explore what this might mean to them.[253]

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[251] John Simmonds Gill Haworth, "The Dynamics of Power and Loss in Home Study Assessments", in Peter Selman, ed., *Intercountry Adoption: Developments, Trends and Perspectives* (London: British Agencies for Adoption and Fostering, 2000), p p. 263-264.
[252] Ibid., p.269.
[253] Ibid.

Thus, the assessing agencies are required to examine:[254]

(i) The applicant's capacity to safeguard the child throughout his or her childhood.

(ii) The applicant's capacity to provide the child with family life that will promote his or her development and pay due regard to the child's physical, emotional, social, health, educational, cultural and spiritual well being;

(iii) The applicant's capacity to provide an environment where the child's original nationality, race, culture, language and religion will be valued and appropriately promoted throughout childhood.

(iv) The applicant's capacity to recognise and understand the impact of the child as an adopted child from an overseas country on the development of the child's identity throughout both their childhood and adulthood.

(v) The applicant's capacity to recognise the need for and to arrange for appropriate support and intervention from health social services, educational and other services throughout the adoptee childhood.

[254] Ibid., pp. 271-72.

CHAPTER VI

CONCLUSION

The 20th century is known as the century of human rights. In general, the rights of women, minorities, and persons with disabilities have been given credence during the century. The rights of the child have also been given serious attention in that century. Children need to be brought up in an atmosphere of love and affection under the tender care of parents to enable them to attain optimum emotional, intellectual and spiritual stability and maturity. In a civilized society, the importance of child welfare and development need not be over-emphasised. But in cases where the natural parents are not able to fulfil this responsibility, efforts are required to provide the child an alternate caring family. The options are institutionalisation, foster care, or adoption.[255] Of these, adoption is considered the best alternative as it provides the child individual love, care, security and identity on a permanent basis equivalent to the biological family.

The present study looks at intercountry adoption as one of the series of possible solutions for children unable to live with their families. The society is changing fast and so must do the institution of adoption and the related laws and procedure in order to achieve the objective of substituting parent-based law with a child-based law, a need for consideration of the laws related to child adoption being acknowledged world-widely.[256] The present study addresses various issues related to intercountry adoption, but issues like "identity" and "trans-racial" adoption have considerable importance in the process of intercountry adoption and therefore received major attention.

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[255] See chapter I.
[256] See chapter III.

There have been major attempts by the international community to find certain agreed guidelines for intercountry adoption and to introduce controls which would help to ensure that intercountry adoption is practiced only in the best interests of child. Some kind of ethical guidelines were first introduced in the 1989 UN Convention on the Rights of Child, but detailed implementation of these was left to the 1993 Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. The Hague Convention has been signed and ratified by 53 States and only signed and not ratified by a further nine, including the Russian Federation and China. UK and India have ratified the Hague Convention. USA is now moving towards ratification. Still the situation remains problematic as only five out of the fifteen countries sending the most children to the USA, France, Sweden, and Norway have ratified the Hague Convention. Russia, China, South Korea, Cambodia and Vietnam are the five main sources of children for adoption; of these only Russia has signed the Convention.

Although substantial efforts are being made to implement the standards and procedures set applicable to inter country adoption, current practices are often in violation of Hague norms.[257] During the adoption process, violations of the most basic rights of the child can occur. Whenever illegal procedures are resorted to during the process of intercountry adoption, the child's identity is likely to be jeopardised. For instance, in case of child trafficking, knowledge about the abducted children's families, their ethnic roots and their medical histories are lost forever.

The child's right to an identity implicitly includes the right to the truth about his or her own history. Article 30 of the Hague Convention requires Contracting States to preserve

[257] See chapter I, II, III, IV.

"information concerning the child's origin" and to permit access to this information "in so far as is permitted by the law of that State".

The Hague Convention is principally a framework of minimum standards for regulating intercountry adoption, placing responsibilities on both the State of origin and the receiving State to ensure that an effective range of measures are in place for the protection of the child throughout the adoption process. Since substantive adoption laws differ from country to country, the intercountry adoption framework cannot be uniform in all Contracting States. The receiving States in their intercountry adoption laws have placed much emphasis on Child Study Report carried by the sending states while the sending States in their intercountry adoption laws have given much importance to on Home Study Report carried by receiving States. Moreover, the Receiving States have framed their laws as receiver of the child and the Sending States have framed their intercountry adoption laws as senders of the child. Several issues are found unresolved due to vested interests of a wide range of actors involved in adoption and different adoption laws prevailing in the world.[258] What constitute the adequate accreditation criteria and a workable system for supervising accredited bodies the period for which accreditation is given, the qualification of staff, the range of services available, matters of financing, management and accountability,[259] employing the intercountry adoption process as a means of securing certain contributions in many countries if origin ,[260] what effects are to be given to the adoption,[261] issue of access to identifying information,[262] etc., have been analysed in the present study. All these issues have posed a problem in finding an accepted formula for the adoption process.

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[258] See chapter V.
[259] See chapter III.
[260] See chapter IV.
[261] See chapter II.
[262] See chapter V.

The Hague Convention essentially turns the 'principle' of subsidiary into a rule, recognising that "intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family can not be found in his or her State of origin". The Convention reflects an internationally recommended policy concerning different child care measures. It recognises that each child is special and that decisions affecting the child's life must be based on a full respect for his or her uniqueness. It sets out the following hierarchy of options, generally held to safeguard the long-term "best interests" of the child:

- Family solution should generally be preferred to institutional placement.
- Permanent solution (return to birth family adoption) should be preferred to provisional ones (institutional placement, foster care).
- National solutions (return to birth family, national adoption) should be preferred to international ones (intercountry adoption).

Chapter I of the present study discussed the rapid growth of intercountry adoption during the last decade of the 20th century. This has been the result of a number of factors, including the opening up of new "markets" (China and Russia). Other factors include a growing demand for children from the receiving States and a greater awareness of the availability of children for international adoption. Amongst the receiving States, the increase has been the most remarkable in the US and the UK.

So keeping in mind the obligation put forth by the Hague Convention on States involved in adoption, this study has examined the domestic law related to intercountry adoption in different jurisdictions; particularly the US and the UK, as the receiving countries of most children, and Russia and China as the sending countries of most children. The study reveals that the adoption laws of different countries were formulated with a view to have a wider choice of

guidelines and policy alternatives for future direction and reform in the adoption institutions. This study made available a wider ranging spectrum of guidelines about some basic qualifications including the issues of "identity" and "trans-racial".

In the UK, the implementation of the Adoption (Intercountry Aspects) Act, 1999, makes it a criminal offence for a person to bring to the UK for the purpose of adoption a child without complying with the requirements prescribed in regulations.[263] Besides this, the UK establishes a new, independent regulatory body for social care, known as the National Care Standard Commission (NCSC) by passing the Care Standard Act, 2000.[264] When a child is coming to the UK, for the purpose of adoption, the he/she is required to fulfill the Immigration Rules.

Earlier in the US there were two adoption laws and both consisted of the process of institutionalisation. In pursuance of a permanent solution suggested by the Hague Convention 1993, the US adopted the Intercountry Adoption Act 2000, by which foreign adopted children can immigrate to the United States. Besides this, two new sections have been added to the Immigration and Nationality Act (INA). Under these, even children who do not qualify as "orphan" under the existing immigration law, can be permitted for adoption on fulfilling certain requirements. Further, the INA requires for children adopted from Hague countries, an adoption or custody certificate to be issued by the Central Authority. Thus the receiving States are usually regulating the intercountry adoption through two laws - the intercountry adoption laws and immigration laws.

Chapter III has shown that although is no dearth of examples of good laws in practice, certain provisions remain patchy and there is need for increased emphasis on the training of the practitioners or actors who will be involved in intercountry adoption, as well as in preparing

[263] See chapter III.
[264] See chapter III.

prospective adoptive parents. In the UK, preparation groups are usually seen as part of the assessment process. Chapters III and V highlight that the parents who have already adopted a child from abroad have a crucial role in such training. More delegation of tasks to accredited bodies will be needed and some radical thinking about the role of these in post-adoption support is required. Chapters II and IV also stress the need for reliable and easy-to-access information for those contemplating overseas adoption.

Although Home Study Reports are required by all States of origin and assessment is the responsibility of the receiving States, as laid down by the Hague Convention, there exists much variation amongst the receiving States in the manner in which they are provided. In the US, home study reports are typically provided by private agencies and the charges are determined by those agencies. In the UK, assessment is now possible only through Local Authority Social Services Department (LASSD) or voluntary agency approved for intercountry adoption work, but there are major variations in the level of services provided and the level of charges imposed. It is submitted that assessment in the intercountry adoption process should be free of charge.

The issue of intermediation remains central to the future of intercountry adoption in the UK and the US. The responsibility for exchanging information about the child and the prospective adoptive parents and taking appropriate measures 'to facilitate, follow and expedite proceedings' (Article 9(b) of the Hague Convention) would of course remain with the central authority, but would be delegated to accredited bodies, just as home studies are delegated to local authorities and other approved adoption agencies. The Hague Convention [Article 22(2)] allows for individuals (e.g. lawyers) to mediate in intercountry adoption, provided the central authority has approved them. Here Article 9 of the Convention needs further clarification in order to avoid

a situation where the prospective adopters can opt to negotiate directly with the sending countries.

The theme of "identity" runs throughout the chapters of this study. The need and right of adopted persons to know about their origins is now firmly established in domestic in-country adoption. But questions were raised about the extension of such right to foreign-born adopted persons, as their births have taken place far away. Chapter V explored some of the ethical issues surrounding intercountry adoption. It is well established that a significant number of intercountry adopters see question of "race" and culture as largely relevant. This in turn means that assessment of adopters must give due weight to their awareness and commitment in these areas, and crucially to their location and networks. Where the adoption is trans-racial it is important that the adopters live in a multiracial area and have a significant degree of ethnic diversity within their close relationship.[265] Thus, the home study report should incorporate this requirement to be fulfilled by the prospective adopters in the intercountry adoption.

It is submitted that the ethical policy for intercountry adoption is not just about improving regulations and professional practice; it also requires underpinning certain values within wider contexts. This would require a move from a "liberal individualist" approach to a "collective" approach which better reflects the receiving country as multiracial society and recognises a wider responsibility for children's welfare on the part of the sending countries.[266] Similarly, the sending countries will be required to move form a "liberal" model to "collective" model, which would entail the adoption agencies and governments of the sending countries to take a wider responsibility for children's welfare.

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[265] See chapter V.
[266] See chapter V.

Though better regulation can eliminate many of the abuses in intercountry adoption described in this study, even a well-regulated intercountry adoption would need constant review on the face of recurring ethical issues such as race, culture and class domination and their social implications in the long run.

Chapter IV discussed the Indian practice with regard to intercountry adoption. Under the Guardians and Wards Act, 1890, the foreign parents are first appointed as the guardian of the person of the minor Indian baby and allowed to remove the child outside the territorial jurisdiction of the court with the stipulation that the applicants shall adopt the child according to the local laws of the country of their domicile.

The intercountry adoption practice of Indian children was challenged in the Supreme Court of India, following a newspaper disclosure, describing the adoption of Indian babies by foreign nationals as sale or trade in babies. The Supreme Court banned intercountry adoption by individuals and private agencies and directed the involvement of the recognised placement agencies both in India and abroad and also discussed the role of scrutinising agencies in assisting the courts in adjudication of intercountry adoption cases. The judgment empowered the Government of India to intervene in in-country and intercountry adoptions and led to the formation of the Central Adoption Resource Agency (CARA) in 1988, under the Ministry of Welfare, Government of India. With the increasing cases of adoption over the years, guidelines issued by the CARA have defined roles and responsibilities for the various functionaries and agencies involved in adoption. The thrust of Chapter IV of this study is on the CARA guidelines of 1994 and the responsibilities of the Central Government, the State Government and various agencies involved in the process of adoption. The study has observed that neither the Supreme

Court decision and nor CARA guidelines have touched the issue of "identity" and "trans-racial" till date, and there is a need for review of intercountry adoption in the light of such issues.

Despite the establishment of the CARA, several adoption scams and irregularities are recurring almost regularly. On an average, India has witnessed major child trafficking scams throughout the 1990s. Several adoption agencies also seem to have flouted processes and paperwork completely in their haste to collect babies. Though the Government of India is pursuing the cases against certain NGOs with gusto, there has been an eerie quiet when it comes to pursuing those responsible within the administration for the criminal negligence that resulted in the death of the hapless children. In this tug-of-war between the Government and the agencies, the ones who really suffer are children.

The instances of scam, fraud and manipulations reveal the weak regulatory and supervisory framework in India. It also points out the lax attitude of the regulatory authorities to prevent such irregularities. Unfortunately, in most of the instances, the response of the regulatory agencies has been reactive rather than proactive. In this background, more measures are required to prevent adoption scams and to strengthen intercountry adoptions laws dealing with the "identity" and "trans-racial" issues. To attain that objective, one must focus on the following points:

(1) Congenital Environment

In order that the adopted child was assured harmonious and congenital social environment, there was a need for the detailed study of the background of the child to be adopted and also for the Home Study Report consisting of the background of the prospective adoptive parents. The task of undertaking a child study report and a home study report involves a number functions, including interaction between the domestic law of the sending countries, the domestic

law of the receiving countries and international law and conventions. These set out various detailed procedures which social workers are required to complete. Social workers have diverse responsibilities when undertaking home study assessment and child study report in intercountry adoption. Social workers should be required to balance the power of each participant in the intercountry adoption. The professional task for social workers should be not just about making a prediction about the future parenting capacity of the applicants but also of realistically appraising. So, the assessing agencies should examine the following capacity of applicants and prepare a home study report on that basis:

(i) The applicant's capacity to provide an environment where the child's original nationality, race, culture, language and religion will be valued and appropriately promoted throughout childhood.

(ii) The applicant's capacity to recognise and understand the impact of the child as an adopted child from an overseas country on the development of the child's identity throughout both childhood and adulthood.

(iii) The applicant's capacity to recognise the need for and to arrange for appropriate support and intervention from health, social, educational and other services throughout the childhood.

(2) Minimum Standards

The recognised placement agencies should also maintain a healthy standard of services in their institutions. There should be a proper supervision of these institutions under the provisions of domestic laws. The children's institution of licensing laws have not been implemented in many states, and wherever these have been implemented on paper there is no machinery of

sufficient trained and qualified staffs. For this purpose, it is required from each placement agency to have a code of conduct, which should be in conformity with the State's rules on the subject.

(3) Division of Responsibilities under the Hague Convention

Each Contracting State under the Hague Convention should provide a description of the manner in which the various responsibilities and tasks under the Convention are divided between Central Authorities, public authorities and accredited bodies, so that the entities responsible to act under particular articles of the Convention are clearly identified, as well as the mechanisms by which they interact with one another. The Permanent Bureau should develop a model chart, which would assist States in providing this information. The information should be furnished to the Permanent Bureau and published.

(4) Information Concerning the Operation of the Hague Convention

The following recommendations are designed to improve communication under the Hague Convention, as well as understanding of how the Convention operates in different Contracting States:

a) The designation of the Central Authorities, required by Article 13, as well as their contact details, should be communicated to the Permanent Bureau not later than the date of the entry into force of the Convention in that State.

b) The extent of the functions of the Central Authorities and any such public authorities should be explained.

c) The designation of accredited bodies, required by Article 13, as well as their contact details, should be communicated to the Permanent Bureau at the time of their accreditation.

f) The extent of the functions of accredited bodies should also be explained.

(5) Central Authorities

There should be adequate resources and appropriately trained staff in Central Authorities, as well as the importance of ensuring a reasonable level of continuity in their operation.

(6) Accreditation

The following principles should apply to the process by which accreditation is granted under Article 10 of the Hague Convention, to the supervision of accredited bodies provided for in Article 11 (c), and to the process of authorization provided for in Article 12.

a) The authority or authorities competent to grant accreditation, to supervise accredited bodies or to give authorizations should be designated pursuant to clear legal authority and should have the legal powers and the personal and material resources necessary to carry out their responsibilities effectively.

b) The legal power should include the power to conduct any necessary enquiries and, in the case of a supervising authority, the power to withdraw, or recommend the withdrawal of, an accreditation or authorization in accordance with law.

(7) Donations and Contributions

a) Accreditation requirements for agencies providing interlocutory adoption services should include evidence of a sound financial basis and an effective internal system of financial control, as well as external auditing. Accredited bodies should be required to maintain accounts, to be submitted to the supervising authority, including an itemized statement of the average costs and charges associated with different categories of adoptions.

b) Prospective adopters should be provided in advance with an itemized list of the costs and expenses likely to arise from the adoption process itself. Authorities and agencies in the

receiving State and the State of origin should co-operate in ensuring that this information is made available.

c) Information concerning the costs and expenses and fees charged for the provision of intercountry adoption services by different agencies should be made available to the public.

d) Donations by prospective adopters to bodies concerned in the adoption process must not be sought, offered or made.

e) Receiving countries are encouraged to support efforts in the countries of origin to improve national child protection services, including programmes for the prevention of abandonment. However, this support should not be offered or sought in a manner which compromises the integrity of the intercountry adoption process, or creates a dependency on income deriving from intercountry adoption.

(8) The Report of the Child

From the point of view of the process of matching, and for the information of the adoptive parents and later the child himself/herself, of obtaining a full and accurate medical report on the child, the importance of maintaining confidentially with respect to the medical report on the child, bearing in mind the right to respect for private life, should be emphasised.

(9) The Applicant

Emphasis has been placed on the need for thoroughness and objectivity by authorities in the receiving country in the assessment and preparation of the prospective adopters, and in drawing up the report on the applicants in accordance with Article 15 of the Hague Convention.

(10) Uniform Law

There has been a very strong recommendation and also a need for a uniform adoption law for India as a whole. There are certain countries where there are different adoption laws for

different Contracting States, and in some States there may be multiplicity of the agencies concerned with adoption. Therefore, on the one hand, there is a need for a uniform national adoption code; there is also a need for avoiding the multiplicity of agencies by issuing specific guidelines for bringing about much needed co-ordination.

(11) Strengthen Juvenile Courts

The juvenile courts in many parts of the country like India do not have the necessary expertise and the manpower; i.e. trained social workers with expertise in socio-legal aspects of adoption to deal with adoption cases expeditiously.

(12) Child and Family Welfare Policy

There should be an official policy that actively promotes the policy of maintaining the child in his or her birth family, including support to the family where necessary.

(13) Training

Appointment of competent and qualified persons by scrutinising agencies is very important. There is a need for training and orientation of social workers/child welfare workers with some legal background to sort out the problems of adoption between the adoptive parents and the children.

Indeed, a more viable option would be to locate a "generic" preparation and assessment function within local authorities and those voluntary agencies wishing to undertake such work, and to develop a network of separate mediation agencies each specializing in one or a small number of the sending Countries. The benefits of such a model would include well-informed, origin liaison with agencies in the overseas countries, increased support and assistance for adopters, and a source of country specific advice and assistance for adoption. Statutory responsibility for post-placement supervision, when required, and the provision of post-adoption

services could either revert to the approving agencies or be allocated to the mediation agencies, depending upon Central Government regulations and guidance. It is hoped that an improvement in respect of all these points will help improve the process and practice of intercountry adoption.

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