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EXPLORING THE LEGAL AND ETHICAL DIMENSIONS OF INTERNATIONAL ADOPTION: A CASE STUDY OF INDIAN CHILDREN AND FOREIGN FAMILIES

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I. ABSTRACT

This legal study paper investigates the complex and numerous concerns involved in the cross-border adoption of Indian children by foreign families. Its goal is to examine the legal framework, challenges, conflicts, and protective measures associated with this activity. The article goes into the historical context of foreign adoption in India and summarises the relevant legislation and regulations that regulate the process. It digs into cultural, sociological, and ethical issues surrounding intercountry adoption, focusing on the child's care and best interests. The responsibilities of Indian courts and government officials in facilitating these adoptions are examined, with emphasis on their obligations, steps, and oversight.

Additionally, the research looks at the legal measures in place to protect the rights and interests of Indian children involved in foreign adoption. It investigates post-adoption monitoring and assistance techniques, emphasising the necessity of maintaining cultural identity and legacy. Through case studies and comparative analysis, the study provides a thorough knowledge of the intricacies of intercountry adoption in India. Based on this study, the article proposes legislative and policy reforms aimed at improving the welfare and protection of Indian children in intercountry adoption processes. This study contributes to the current literature on international adoption law and policy, offering beneficial findings for policymakers, legal practitioners, and researchers in child welfare and protection.

II. KEYWORDS

Adoption, intercountry, judicial, intercountry, Hague Convention, CARA Guidelines

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III. INTRODUCTION

The study will look into the roles of Indian courts and government agencies in enabling intercountry adoptions. This involves examining their tasks, processes, and supervision systems to ensure openness, accountability, and the welfare of the kid. The document will also emphasise the need to preserve Indian children's rights and interests in overseas adoption, such as post-adoption monitoring and support services.

This research article aims to focus on the current knowledge of international adoption law and policies related to undertaking a detailed examination of intercountry adoption in India. Its findings will be useful for policymakers, legal professionals, and scholars working in childcare and protection. Last but not least is to do a comparative analysis along with the pros and cons regarding such adoption processes and their legal matters. In the subsequent parts, we will look closely at the legal structure, obstacles, controversies, and safeguards related to the intercountry adoption of Indian children by foreign families. Through this investigation, we hope to shed light on the many facets of this practice and provide ideas for future discussion and policy development.

IV. RESEARCH OBJECTIVES

1. Study thoroughly the legal framework for intercountry adoption of Indian children, including its legislation, rules, and policies.
2. Understand the challenges of intercountry adoption, particularly those including the idea of cultural identity preservation and the best interests of the child.
3. To find out the main roles and duties of Indian courts and government officials in helping and supervising international adoption proceedings.
4. To examine the success rate of post-adoption monitoring and assistance methods in protecting the rights and welfare of adopted Indian children.
5. Compare and contrast India's legislative frameworks and practices for intercountry adoption to those of other nations.

6. Provide recommendations for legislative and regulatory changes to improve the protection and well-being of Indian children involved in intercountry adoptions by foreign persons.

V. RESEARCH QUESTIONS

1. What is the Legal structure for the Worldwide adoption of Indian Children?
2. What are any issues or concerns associated with cross-border adoption of such children?
3. Seeking for the rights and interests of international children in international adoption?

VI. RESEARCH HYPOTHESES

Intercountry adoption of Indian children by foreign individuals is highly moderated by a compilation of cultural, economic, and social factors. Although the legal framework in India provides certain safeguards, certain challenges remain in preserving cultural identity and ensuring the child's best interests, necessitating further legal and policy reforms. According to this concept, cultural interchange, economic differences, and social reasons all contribute to intercountry adoption in India. We can also notice that even though India's current legal structure has certain safeguards, it may confront some or other difficulties in properly protecting the adopted child's cultural identity and safeguarding their best interests. The following hypothesis suggests that more updated legal Policies and reforms are required to solve these issues and enhance the protection and well-being of Indian children participating in intercountry adoption by foreign persons.

VII. RESEARCH METHODOLOGY

The research methodology adopted in this paper is purely doctrinal. Doctrinal research, also known as library-based research, is a distinctive method of conducting legal research that involves the study and analysis of existing legal provisions, case laws, and scholarly works. This methodology is well-suited for examining the theoretical and conceptual aspects of law and for providing a systematic exposition of

legal doctrines and principles. The primary sources relied upon in doctrinal research include statutory materials, judicial precedents, and authoritative texts, while secondary sources such as commentaries, articles and legal digests are also consulted. The research process involves identifying, collecting, and critically analysing these sources to draw logical conclusions and offer insights into the legal issues under investigation. Through doctrinal research, this paper seeks to provide a comprehensive and coherent understanding of the legal framework governing the subject matter at hand.

VIII. MEANING DEFINITION & EXPLANATION

“You don't have to give birth to someone to have a family. we're all an extended family” by *Sandra Bullock*. These words are not just mere words but a reality which holds in the case of adoption. Adoption is indeed a noble deed as well as a hope for many both children and couples who have the dream of a complete family. According to Black Law Dictionary ²“Adoption” means “The act of one who takes another’s child into his own family, treating him as his own, and giving him all the rights and duties of his child. A juridical act creating between two persons certain relations, purely civil, of paternity and filiation”. Adoption gives unprivileged children the chance to be raised in stable and loving families. It mainly addresses the emotional, psychological and physical needs of the children keeping in mind they have proper access to healthcare, nutrition, environment, education etc which ultimately promotes their overall growth and development. It also entitles them to a legal recognition of the relationship between the children and the adoptive parents which ensures ultimately that the child has the same rights, privileges, and responsibilities as biological children. ³The Process of adoption also provides social recognition and acceptance from the adoptive family unit.

² *ADOPTION Definition & Meaning - Black's Law Dictionary, THE LAW DICTIONARY*, <https://thelawdictionary.org/adoption/#:~:text=ADOPTION%20Definition%20&%20Legal%20Meaning&text=The%20act%20of%20one%20who,civil,%20of%20paternity%20and%20filiation>. (last visited Apr. 4, 2024).

³ *Adoption - Definition, Meaning & Synonyms, VOCABULARY.COM*, <https://www.vocabulary.com/dictionary/adoption> (last visited Apr. 4, 2024).

IX. LEGAL FRAMEWORK FOR INTERNATIONAL ADOPTION

In India, the organisation responsible for both Inter-Country adoption as well as Intra-Country adoption is the Central Adoption Resource Authority (CARA) which is controlled by the Ministry Of Women and Child Development, Government of India. It acts as a statutory body and nodal body for the adoption of Indian Children and monitors as well as regulates inter-country as well as Intra-Country adoptions. It was designated following the provisions of the Hague Convention on Inter-Country adoption in 1993. CARA mainly deals with the adoption of orphan, abandoned and surrendered children through its recognised adoption agencies.⁴

A. Eligibility⁵

1. The eligibility criteria for NRI/ OCI / Foreigner living abroad are mainly that the adoptive parents should be physically, mentally, emotionally as well as financially good.
2. They should not be convicted under any criminal act or in any case of child rights violation or should not have any life-threatening medical condition.
3. Active consent should be there from both spouses for adoption shall be required in case of married couples. In the case of a single female, she can adopt any child of any gender.
4. But in the case of a single male, he is not eligible to adopt a girl child.
5. To be eligible for adoption a couple must have two years of stable marital relationship.
6. Couples with two or more children shall only be considered for special needs children.

B. Registration And Documentation

The first and foremost step starts with obtaining the necessary adoption application form required for adoption from the CARA website. After that, the adoptive parents

⁴ https://cara.wcd.gov.in/about/about_cara.html (last visited Apr. 4, 2024).

⁵ https://cara.wcd.gov.in/Parents/Eg_living_Abroad.html (last visited Apr. 4, 2024).

tend to undergo an overall assessment by a qualified social worker or agency approved by the concerned authority to check the prospective parent or parents suitability, readiness and ability to provide a nurturing and stable environment for the child. The adoptive couple are urged to take part in the pre-adoption counselling and training sessions to understand the complexities of adoption and the needs of the child. It is mandatory before continuing with the adoption process.⁶

The adoption authority or agency matches the prospective adoptive parents with the suitable child based on several factors such as age, health status and compatibility. Upon matching the agency provides them with the detailed information and medical reports of the child to be reviewed by the prospective parents. Upon the acceptance of the offer, the prospective adoptive parents make arrangements to travel to India to meet the child. It helps to allow interaction with the child before finalising the adoption. Following is the petition for adoption in the competent court of India accompanied by necessary documents and affidavits that also comply with the Legal procedure and formalities. By satisfactory completion of the court proceedings, the court issues the adoption order. Thus, this process legally establishes the parent-child relationship between the adoptive parents and the child.⁷

These conditions guarantee that prospective adoptive parents are capable of providing an appropriate and caring home for the adopted child, according to both Indian adoption rules and international norms.

C. Post-Adoption Follow-Up And Support

After the adoption process is completed the first procedure regarding the same is to arrange the necessary travel documents, including passport and visa for the child to travel to the country of residence. Once the child has reached its residence it would kick start the formalities for obtaining citizenship or residency. Status for the adopted child as per the law of the adopting country. After the adoption is finalized the adoption agency conducts regular post-adoption follow-up visits and provides

⁶ CARA, CARA- CENTRAL ADOPTION RESOURCE AUTHORITY, https://cara.wcd.gov.in/Parents/document_NRI_OCI.html (last visited Apr. 4, 2024).

⁷ *ID.*

support services to ensure the well-being and adjustment of the child in the new family. Regular reporting and updates may be required as per the regulations of the adopting country and India.⁸

X. CHALLENGES IN SUCH CROSS - BORDER ADOPTION

The Primary problem with cross-border adoption is negotiating the complicated legal and regulatory structures that regulate adoption in both countries. In most circumstances, common norms are determined by the Hague Convention laws that are followed.

The cultural and social disparities between the child's country and the adopting country may also affect the adjustment of the child. Problems relating to documentation and verification, including authenticity, accuracy etc. also hinder the process of adoption and sometimes may lead to crimes. Adhering to immigration laws and requirements including residential proof, financial stability, and assurance of the child's development with the support of the adopting country. Ethical considerations in cross border in cross - border adoption include child commodification, possible exploitation and the Kid's best interests. It also assures that the adoption is transparent, accountable and ethical in order to protect the adopted child's rights and welfare. These obstacles and debates show us the real complexities of cross-border adoption of Indian children, emphasising the need for taking measures to develop and going thorough legislative changes, ethical considerations, and accelerated procedures to preserve the rights and well-being of the children involved.⁹

⁸ *Inter Country Adoption under Hague Convention | Best Lawyers in India*, WAZIR SOLICITORS & CO, <https://www.wazirsingh.com/blog/inter-country-adoption-procedure-under-hague-convention.html> (last visited Apr. 4, 2024).

⁹ *Legal Challenges in Inter- Country Adoption: Indian Perspective - Aishwarya Sandeep- Parenting and Law*, AISHWARYA SANDEEP- PARENTING AND LAW - SIMPLIFYING LAW FOR COMMON MAN AND STUDENTS, <https://aishwaryasandeep.in/legal-challenges-in-inter-country-adoption-indian-perspective/>

XI. THE ROLE OF INDIAN COURTS AND GOVERNMENT AUTHORITIES IN FACILITATING INTERCOUNTRY ADOPTION

Indian courts are critical facilitators of intercountry adoption, guaranteeing legal compliance, protecting children's rights, and prioritising their best interests. Their tasks include:

1. **Legal oversight:** Adoption petitions undergo scrutiny to ensure they comply with both local and international adoption regulations. Before giving authorization for intercountry adoption, ensure that all essential consents and permits have been obtained.
2. **Child-Centred Approach:** Prioritising the child's welfare and best interests throughout the adoption process. Conducting rigorous examinations to determine potential adoptive parents' appropriateness and compatibility with adoption arrangements.
3. **Ensuring compliance:** Before accepting intercountry adoptions, we ensure that all procedural criteria, papers, and evaluations are met. Maintaining the values of transparency, fairness, and legitimacy in all adoption procedures.¹⁰

Government authorities, particularly the Central Adoption Resource Authority (CARA), also play critical roles in enabling intercountry adoptions through:

1. **Regulatory Oversight:** Developing and implementing rules and guidelines for intercountry adoption processes. Monitoring and evaluating adoption agencies to ensure they follow set norms and standards.
2. **Facilitating Procedures:** Streamlining the adoption process to speed up placements and reduce delays. Providing help and guidance to prospective adoptive parents, assuring their grasp of the legal requirements and duties associated with intercountry adoption.

¹⁰ *Inter-country Adoption Laws in India*, LAW FIRM IN INDIA: INDIA LAW OFFICES LLP - PAN INDIA, <https://indialawoffices.com/legal-articles/inter-country-adoption> (last visited Mar. 19, 2024).

3. **Collaboration & Coordination**¹¹: Collaboration with foreign agencies and authorities to assist cross-border adoptions. Ensure that intercountry adoptions comply with international treaties and norms, protecting children's rights and well-being.¹²

Indian courts and government agencies work together to facilitate intercountry adoptions, ensure ethical and lawful behaviour, and prioritise children's wellbeing. Their teams strive to give children safe and loving homes through intercountry adoption procedures while staying committed to child protection and welfare ideals.¹³

XII. SAFEGUARDING THE RIGHTS AND INTERESTS OF INDIAN CHILDREN IN INTERNATIONAL ADOPTION

Safeguarding the rights and well-being of Indian children in foreign adoption is an important part of the adoption process. Several precautions have been taken to protect their safety and well-being.

The Juvenile Justice Act of 2000 provides India's legal underpinning for adoption, promoting child welfare and protection. The latest change to the Adoption Regulations under the JJ Act in 2021 intends to streamline intercountry adoption processes, allowing for smoother transforms for both children and adoptive parents.¹⁴ The Central Adoption Resource Authority (CARA) regulates and supervises intercountry adoptions in India, ensuring compliance with applicable laws and regulations. Furthermore, Indian diplomatic missions are responsible for safeguarding adopted children whose parents left the country within two years after adoption, emphasising the need to protect their interests.¹⁵ India's acceptance of international treaties, such as the Hague Convention on the Protection of Children,

¹¹<https://docs.manupatra.in/newslines/articles/Upload/AAE0786F-285D-424E-B557-16F742371D48.pdf> (last visited Mar. 19, 2024).

¹² <https://www.pmc.gov.in/sites/default/files/Role%20of%20Judiciary.pdf> (last visited Mar. 19, 2024).

¹³ *INTERCOUNTRY ADOPTIONS IN INDIA: AN OVERVIEW - Prof. Mahantesh G.S - ijalr*, IJALR, https://ijalr.in/volume-3-issue-4/intercountry-adoptions-in-india-an-overview-prof-mahantesh-g-s/#google_vignette (last visited Mar. 19, 2024).

¹⁴ *Adoption Rules Changed | Indian Missions to guard the interests of kids taken abroad by Adoptive Parents*, CHILD ADOPTION, <https://childadoption.in/changed-adoption-rules-indian-missions-to-guard-the-interests-of-kids-taken-abroad-by-adoptive-parents/>

¹⁵ https://nhrc.nic.in/sites/default/files/UNCRC_2020.pdf (last visited Mar. 19, 2024).

demonstrates its commitment to ensuring that intercountry adoptions meet global child protection standards. Adoptive parents must meet strict eligibility conditions, which include age limitations, financial stability, and mental health. These guidelines seek to ensure that children are put in appropriate and caring surroundings.¹⁶

XIII. HAGUE CONVENTION

The Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption, signed in 1993 in The Hague, Netherlands, acts as a global legal foundation for intercountry adoptions. Signed by the United States in 1994, it went into force for the United States on April 1, 2008, and applies to adoptions by US residents habitually residing in the US from nations beyond its borders.¹⁷

The Hague Convention requires each member country to create a Central Authority, which is now fulfilled by the United States Department of State. This Authority oversees intercountry adoptions, assuring compliance with the Convention's standards aimed at avoiding child abduction, sale, or trafficking, with a focus on the children's best interests.¹⁸ Adoptive parents seeking adoption from Convention nations are afforded greater safeguards than non-Convention adoptive parents. Accredited adoption agencies serve a critical role in helping these adoptions while upholding professional and ethical standards. Transparency is emphasised, with adoption service providers required to disclose all fees and costs in writing, fostering more responsibility.¹⁹

Every child adopted from a Convention nation obtains a Hague Adoption Certificate or Hague Custody Certificate from the US Embassy or Consulate that issues their immigrant visa. These documents certify compliance with the Convention and the

¹⁶ *International Adoption Laws: Safeguarding Children's Interests - Law n Guilt*, LAW N GUILT - YOUR LAW WIKIPEDIA, <https://www.lawnguilt.com/international-adoption-laws-safeguarding-childrens-interests/>

¹⁷ *HCCH | #01 - Full text*, HCCH | SPLASH, <https://www.hcch.net/en/instruments/conventions/full-text/> (last visited Mar. 19, 2024).

¹⁸ <https://assets.publishing.service.gov.uk/media/5b27d4d4ed915d2cdb024d71/a21-eng.pdf> (last visited Mar. 19, 2024).

¹⁹ *International Adoption Laws: Safeguarding Children's Interests - Law n Guilt*, LAW N GUILT - YOUR LAW WIKIPEDIA, <https://www.lawnguilt.com/international-adoption-laws-safeguarding-childrens-interests/> (last visited Mar. 19, 2024).

Intercountry Adoption Act. Before granting final adoption or custody in the child's native country, USCIS evaluates the child's eligibility for immigration to the United States as a "Convention adoptee." For Convention adoption cases, prospective adoptive parents must submit particular paperwork to USCIS, such as paperwork I-800A and I-800, to determine the child's immigration eligibility. Children adopted from Convention nations must fulfil "Convention adoptee" requirements to be eligible for immigration, with visa types IH-3 and IH-4 enabling their admission into the United States.

The Hague Convention established a system for cooperation between authorities in the origin and receiving countries to guarantee that intercountry adoptions take place under conditions that prioritise the child's best interests. By establishing defined rules and barring financial gain, the Convention ensures security, predictability, and transparency for all parties. To summarise, the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption is an important tool for regulating intercountry adoptions globally. Its provisions protect children's rights and well-being, encourage ethical adoption procedures, and prioritise children's best interests, allowing them to grow up in a stable and loving family environment that crosses international borders.²⁰

XIV. COMPARATIVE ANALYSIS OF INTER-COUNTRY ADOPTION ALONG WITH INTRA-COUNTRY ADOPTION

In India, adoption rules cover both intercountry and intercountry adoption, which are controlled by separate legal systems. Laws governing intercountry adoption, or adoption inside the same country, include the Hindu Adoption and Maintenance Act of 1956 and the Juvenile Justice (Care and Protection of Children) Act of 2000. These

²⁰ *Hague Convention: Child Protection & Adoption Regulations*, STUDYSMARTER UK, <https://www.studysmarter.co.uk/explanations/law/international-and-humanitarian-law/hague-convention-on-the-protection-of-children/> (last visited Mar. 19, 2024).

statutes ensure that adopted children have rights acknowledged by the Hague Convention.²¹

In contrast, intercountry adoption in India follows international accords such as the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. India's acceptance of this treaty aims to protect intercountry adoptions by ensuring they match global standards. The Central Adoption Resource Authority (CARA) plays an important role in conducting provisions about intercountry adoption under the Juvenile Justice Act.²²

XV. SIGNIFICANCE OF ADOPTION IN THE GLOBALIZED WORLD

Both inter-country adoption as well as intra - country adoption led to a major change in the dynamic of both adoptive parents and the child. Nowadays the adoption process is strong and closely scrutinised to ensure the safety and welfare of the child. However even after going through such a long process and failing at the final stages due to administrative work can be very fatal for the adoptive parent or parents, both mentally and psychologically.²³

Needless to say, the adoption of the child has countless beneficial effects on the child. By adoption, a child can get a stable foundation and family situation that is essential for growth and development and can provide new opportunities and resources for the adoptive child. However, the process of post-adoption monitoring can be mentally and emotionally taxing for both parties

XVI. CONCLUSION, SUGGESTIONS & RECOMMENDATIONS

Cross-border adoption of Indian children by foreign individuals is a tremendous idea which is filled with challenges that demand careful consideration and resolution.

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https://dash.harvard.edu/bitstream/handle/1/4891648/InternationalAdoption_A_Way_Forward.pdf (last visited Mar. 19, 2024).

²² SMU SCHOLAR, <https://scholar.smu.edu/cgi/viewcontent.cgi?article=1307&context=til> (last visited Mar. 19, 2024).

²³ *Selling Children on the Global Market: The Recreation of the Transnational Adoption Discourse - South Coast DTP*, SOUTH COAST DTP, <https://southcoastdtp.ac.uk/selling-children-on-the-global-market-the-recreation-of-the-transnational-adoption-discourse/> (last visited Apr. 4, 2024).

These challenges happen to provide a wide-eyed and positive outlook for increasing such cases of inter-country adoption.

This includes sticking to international adoption laws, such as those outlined in the Hague Convention, which aim to safeguard the rights of the child and ensure ethical practices in adoption procedures. Negotiating these legal intricacies requires expertise and coordination among adoption agencies, authorities, and legal representatives across borders.

Cultural and social differences pose another significant challenge in cross-border adoption. Adoptive parents from foreign countries may belong to cultures and societies that differ markedly from those of the adopted child's birth country.

Documentation and verification processes represent is also a difficult hurdle in cross-border adoption. Ensuring the authenticity and accuracy of documentation, including birth certificates, medical records, and legal consent forms, can be complicated when dealing with international adoption procedures. Delays and bureaucratic obstacles may arise, necessitating patience and persistence in obtaining the necessary paperwork and approvals from multiple authorities in different countries which may eventually turn into psychological pressure on both the parents and the child.

Travel and immigration issues further complicate the cross-border adoption process. Prospective adoptive parents must navigate visa applications, immigration procedures, and travel logistics for the adopted child to enter and reside in the adopted country legally. Post-adoption support and follow-up services are crucial to ensure the successful integration and well-being of the adopted child in their new family and community. Identity preservation and cultural connection represent ethical imperatives in cross-border adoption. While the adoption process offers vulnerable children the opportunity for a better life within loving families, it is essential to uphold their sense of identity, heritage, and cultural ties to their birth country. Balancing these dual objectives requires a commitment to cultural sensitivity, openness, and respect for the child's background and origins.

In conclusion, cross-border adoption of Indian children by foreign individuals demands careful attention to legal, cultural, logistical, and ethical considerations. By

addressing these challenges with diligence, sensitivity, and ethical integrity, cross-border adoption endeavours can fulfil their noble purpose of providing children in need with loving homes and brighter futures, transcending geographical boundaries in the pursuit of a better life for all involved.