
BRIDGING BORDERS, PROTECTING CHILDHOOD: A COMPARATIVE LEGAL ANALYSIS OF INTERCOUNTRY ADOPTION IN INDIA AND THE UNITED STATES

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ABSTRACT

Intercountry adoption has become an important means of providing a family to children who are orphaned, abandoned, or in need of care, especially in today's interconnected world. This paper examines and compares the legal frameworks governing intercountry adoption in India and the United States, with particular reference to the Hague Adoption Convention, 1993. It looks at how both countries regulate the process, the role of authorities such as CARA in India and the systems in place in the United States, and how far these mechanisms actually protect the interests of the child.

The study is based on a doctrinal method, relying on statutes, case laws, and existing legal literature. It highlights both similarities and differences between the two systems, especially in terms of procedures, safeguards, and implementation. While both countries recognise the importance of ensuring the child's welfare, the paper finds that practical challenges still exist, such as delays in procedures, lack of uniformity, and weak post-adoption monitoring.

Although intercountry adoption can offer better opportunities and living conditions for children, it also raises serious concerns like trafficking and misuse of the system. The paper concludes that there is a need for clearer laws, better coordination between countries, and stronger safeguards to ensure that the process truly serves the best interests of the child.

Keywords: Intercountry Adoption, Child Welfare, Comparative Law, India, United States, Hague Adoption Convention, CARA, Adoption Laws, Best Interests of the Child, Legal Framework.

INTRODUCTION

Every child has the right to be loved, cared for, and live in an environment that assures its overall development and welfare. It is believed that biological parents can provide such an environment in the first place. However, due to unforeseen reasons, if this is not possible, adoption is considered to be the second-best choice to provide a favorable environment for the child. Adoption is the process through which a parentless child is given a family, and a childless couple finds the joy of parenthood. It is broadly classified into two types: domestic adoption, governed by the national laws of a specific country, and international adoption, commonly known as intercountry adoption. Intercountry adoption first emerged as a practice to provide homes for children affected by the aftermath of World War II and the Vietnam War.¹ It was rooted in the belief that no child should grow up without the love and care of a family. Over time, this method became well-known throughout the world, which prompted the legal profession to step in and set up procedures to stop possible abuse or anomalies. Adoptive parents and adopted children from other countries are involved in intercountry adoption, and for the procedure to be successful, both countries' adoption rules must be followed. The Hague Adoption Convention of 1993 was created to control and simplify international adoptions as this practice spread throughout the world. This convention works in the field of private international law and aims to harmonise and harmonise national legal norms. The Central Adoption Resource Authority (CARA) is in charge of both the adoption procedure and post-adoption duties in India, where intercountry adoption is regulated by the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021. Although both nations are signatories to the Hague Adoption Convention, their differing legal systems and procedures create challenges, particularly in post-adoption regulation. The absence of a unified legal framework complicates compliance, making it difficult to consistently protect the rights and welfare of adopted children.

¹ *Judith Masson, Intercountry Adoption: A Global Problem or a Global Solution, 55 JOURNALS OF INTERNATIONAL AFFAIRS 141-166 (2001)*

OBJECTIVE OF THE PROJECT

To critically examine and compare the legal frameworks governing intercountry adoption in India and the United States, with a focus on their alignment with the Hague Adoption Convention, 1993. The goal of this purpose is to present a thorough legal study of the institutional structures, rules, and legislation pertaining to adoption in both India and the US. It will examine how closely these legal systems adhere to international norms, especially those included in the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (1993). The study intends to draw attention to the parallels and discrepancies between the two nations' legislative and procedural procedures, as well as the functions of central authorities, accredited organisations, and legal systems in handling international adoptions. To determine and examine the main obstacles, discrepancies, and procedural shortcomings in both countries' international adoption procedures, with a focus on protecting the child's best interests.

It involves examining areas such as the length and complexity of procedures, lack of uniformity in implementation, jurisdictional conflicts, inadequate post-adoption monitoring, and instances of child trafficking or unethical practices. Special attention will be given to how these shortcomings affect the rights and well-being of the child, and whether the principle of the "best interests of the child" is genuinely prioritized in practice.

To propose actionable and evidence-based recommendations for harmonizing intercountry adoption laws, fostering international cooperation, and ensuring a more efficient, transparent, and child-centric adoption process. Building on the findings of the comparative and analytical components, this objective aims to suggest reforms at both the national and international levels. Recommendations will be directed toward lawmakers, policymakers, adoption agencies, and relevant international bodies. The study will explore possibilities for enhancing cross-border collaboration, establishing best practices, simplifying procedural requirements, improving transparency and accountability, and ultimately creating a framework where intercountry adoption serves as a protective and nurturing solution for children in need of permanent families.

RESEARCH QUESTIONS

1. What are the key provisions of the legal frameworks governing intercountry adoptions in India and the United States?
2. How do these frameworks align with the principles and guidelines of The Hague

Adoption Convention, 1993?

3. What similarities and differences exist between the adoption laws of India and the United States in terms of procedural requirements and safeguards?
4. What inconsistencies and gaps exist in the current adoption laws and procedures of both countries, particularly in safeguarding the best interests of the child?

SCOPE OF THE STUDY

Adoption is the process through which an orphaned, abandoned, or surrendered child gains a family, while a childless couple finds a child to complete their lives. In today's interconnected world, where cultures and societies are increasingly unified, laws need to reflect this global integration. Adoption can be broadly categorized into two types: domestic adoption, governed by the national laws of a country, and intercountry adoption, which is regulated by the legal frameworks of both the child's and the adoptive parents' respective countries. To streamline the intercountry adoption process, the Hague Adoption Convention of 1993 was established, and as of now, it has been ratified by 99 countries.

Despite the creation of laws and ratification of international conventions, challenges persist in regulating post-adoption procedures due to the lack of a unified legal framework. This research primarily focuses on the concept of intercountry adoption within the framework of private international law, with specific reference to the legal systems of India and the United States. It will explore various aspects of intercountry adoption, highlight its advantages and disadvantages, and provide an overview of the relevant laws in both countries. In India, the research will examine legislations such as the Hindu Adoptions and Maintenance Act, 1956, the Guardians and Wards Act, 1890, the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, and the role of CARA (Central Adoption Resource Authority), a statutory body under the Ministry of Women and Child Development. For the United States, it will focus on the Intercountry Adoption Act of 2000 and the agencies responsible for regulating such adoptions.

LIMITATION OF STUDY

Firstly, the study primarily adopts a doctrinal and analytical legal research methodology. It focuses on analyzing statutes, international conventions, legal proposals, case laws, and scholarly literature rather than conducting empirical or field-based research. As a result, the study does not include scientific environmental assessments, quantitative data analysis, or

direct evaluation of environmental damage caused by corporate activities.

Secondly, the concept of ecocide remains an evolving and developing legal doctrine. Since ecocide has not yet been formally recognized as an international crime under the Rome Statute of the International Criminal Court, the study relies on proposed legal definitions, scholarly interpretations, and emerging policy frameworks. This evolving nature of the concept may limit the availability of authoritative legal precedents and established enforcement practices.

Thirdly, the study examines selected international and domestic legal frameworks rather than providing an exhaustive analysis of all national legal systems. Environmental laws and corporate liability regulations vary significantly across jurisdictions, and therefore, the findings of this study may not fully represent the legal position in every country.

RESEARCH METHODOLOGY ADOPTED

The present study employs a **doctrinal (qualitative) research methodology**, primarily based on an extensive review and analysis of both **primary and secondary legal sources**.

- **Primary sources** include domestic legislations, statutory provisions, judicial decisions, constitutional mandates, and relevant **international legal instruments** such as the Hague Adoption Convention, 1993. These sources form the foundational legal framework for understanding the regulatory structures governing intercountry adoption in India and the United States.
- **Secondary sources** comprise scholarly articles, legal commentaries, research papers, online journals, law commission reports, books, and other academic publications. These materials provide critical insights, interpretative perspectives, and evaluative commentary on the application and effectiveness of existing laws and policies.

This methodological approach allows for a comprehensive and comparative analysis of the legal systems in question, facilitating a deeper understanding of the theoretical underpinnings, practical challenges, and potential areas of reform within intercountry adoption practices.

LITERATURE REVIEW

- ***“AN OVERVIEW OF INTERCOUNTRY ADOPTION WITH SPECIAL FOCUS***

ON INDIA” by Dr. Achina Kundu and Ms. Ayushi Kundu,

In this article, the author talks about how adoption fills the need left by a parentless child, but there are certain drawbacks to consider. When inter-country adoptions occur, the adoptive parents are strangers to the kid; it is not a distant relative who has taken on the obligation to raise the child following their parent's death or inability to parent. As a result, there is a scarcity of conventional biological family networks. Not only has the author mentioned that socioeconomic status, color, ethnicity, and cultural heritage all have a part in adopting a child. Typically, the adoptive parents are relatively fortunate white individuals from one of the world's wealthier countries, and they will be adopting a child born to a severely impoverished birth mother from one of the world's poorer countries' less privileged racial and ethnic groupings. Adoption across countries is filled with controversy.

- **Pramit Bhattacharya, a Damodaram Sanjivayya National Law University student, writes about “*The Legal Framework of Inter-Country Adoption.*”**

The practice of inter-country adoption gained momentum around the mid-1940s to protect those children who became orphans in World War II. It was in response to the plight of these children that the practice started. The point to be noted here is that usually, in the country of origin (or the giving country), an increase in population, extreme poverty, and poor economic system lead to the abandonment of children. In the case of *In Re Rasiklal Chhaganlal Mehta*, the issue of transnational adoption was first discussed by the court, which held that adoption under Section 9 (4) of the Hindu Adoption and Maintenance Act, 1956, inter-country adoption is legally valid. In the case of *Laxmi Kant Pandey v. Union of India*, the Apex Court formed some guidelines to govern international adoption. The setting up of a Central Regulatory Body was suggested, and in pursuance of the suggestion, the Central Adoption Resource Agency (CARA) was set up in 1989. The agency plays a pivotal role in laying down substantive and procedural laws on intra-country and inter-country adoption.

- **Misca, G. (2014) The “Quiet Migration”: Is Intercountry Adoption a Successful Intervention In the Lives of Vulnerable Children**

In this article, the author examines how international adoption has evolved into a worldwide

phenomenon involving the cross-border transfer of vulnerable children, primarily from poor, developing nations to wealthier ones, during the last few decades. Debates over foreign adoptions frequently generate solid arguments for and against them. International adoptions are often referred to as “the ultimate form of imperialism,” yet they are also recognized as successful interventions in the lives of the world’s most needy children. This article focuses on research results on the consequences of international adoption and its influence on many elements of adopted children’s development, and it highlights gaps in evidence-based interventions best suited to these children’s post-international adoption requirements.

MAIN FINDINGS

1. CONCEPTUAL FRAMEWORK OF INTER-COUNTRY ADOPTION:

Intercountry adoption refers to the legal process by which individuals or couples from one country adopt a child from another, creating a parent-child relationship that is legally recognized in both countries involved. This framework is rooted in international human rights principles, emphasizing the child’s right to grow up in a family environment and prioritizing their best interests above all.

Key Principles of Intercountry Adoption

- **Best Interests of the Child:** The welfare, safety, and overall development of the child must remain the central focus throughout the adoption process. Every decision made should prioritize the child’s physical, emotional, and social well-being, ensuring that the adoption provides them with a stable, loving, and nurturing environment.
- **Subsidiarity Principle:** Intercountry adoption should only be pursued as a last resort when all viable domestic alternatives, such as kinship care, foster care, or domestic adoption, have been exhausted.
- **Ethical Practices:** It is crucial to maintain the highest ethical standards throughout the adoption process to protect children and families from exploitation, trafficking, or coercion. Transparency, accountability, and strict adherence to legal and moral obligations are essential to ensure that the adoption process is conducted fairly and responsibly.
- **Transparency and Cooperation:** Open communication and effective collaboration between the sending and receiving countries are fundamental to a smooth and ethical

adoption process. Both nations must work together to ensure compliance with domestic and international legal frameworks, facilitate proper documentation, and provide post-adoption support to the child and adoptive family.

Kinds of Adoption

- **Intra-country (Domestic) Adoption:** This involves adopting a child within the same country of birth. It legally transfers parental rights from the birth parents to the adoptive family, making the child a permanent member of the new family. Birth parents may actively participate in the process, often through agencies or adoption professionals.
- **Inter-country Adoption:** This occurs when a child is adopted by individuals from a different country. It involves the legal transfer of parental rights across national borders, allowing the child to permanently reside with the adoptive family in their home country.

Legal Basis and Regulation

The Hague Adoption Convention, 1993, serves as the cornerstone of intercountry adoption regulation. It establishes uniform standards to ensure ethical practices, protect children, and prevent trafficking. The Hague Adoption Convention, 1993 was formed so as to control the intercountry adoption processes. This convention has been ratified by 99 countries and India is one among them². India has ratified this convention; hence it puts an obligation on India under Article 253 of the Indian Constitution³ to make certain laws on intercountry adoptions in the country.

² Marvel & Alexandra, *The U.S. Convention and Co-operation on the Rights of the Child and the Hague Conference on Private International Law: The Dynamics of Children's Rights through the Legal Strata, 1996*, *JOURNAL OF TRANSNATIONAL LAW AND CONTEMPORARY PROBLEMS (FALL)*, pp. 309-328

³ Article 253 of Indian Constitution- *Legislation for giving effect to international agreements Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body*

This convention is based on 2 principles that aim toward the protection of children who are directed toward international adoption to establish certain safeguards to ensure that intercountry adoptions have been opted looking at the best interest of the child. To establish a system of cooperation between the states that are party to intercountry adoption for the smooth functioning of the process. It is the Convention on the Rights of the Child (CRC).

India ratified this convention in the year 1992⁴. Thus, accepting to frame certain laws with regard to the rights of children in the country. Article 21 (c) of CRC states that adopting parents need to ensure that the adopted child enjoys the same level of standards of care as those children who are placed in domestic adoption⁵. It also emphasizes the role of parents and family in the life of a child and underscores their roles in the upbringing of the child. In case this is not possible, it also provides for the option of alternative care for the child.

2. INTER-COUNTRY ADOPTION UNDER INDIAN LAW:

Inter-country adoption is defined under section 2(18) of CARA⁶'s guidelines of 2015, which means the adoption of a child or children by persons who are Non-Resident Indians or Overseas Citizens of India or persons of Indian origins or foreign citizens. An inter-country adoption is one that includes a difference in the country of residence of a child and the nationality of the adopting parents. Generally, there is no law of adoption in India; however, it is granted permission by statutes amongst Hindus and by some customs among a few insignificant categories of persons. Adoption forms the subject matter of personal law because it is the legal association of a child. For Muslims, Christians, and Parsis, there are no adoption laws required for approaching the court under the Guardians and Wards Act of 1890. Muslims, Christians, and Parsis are permitted to take a child under the said act only for promoting care. As soon as such a child under care becomes a major, he is allowed to break all his connections; however, such a child does not have legal rights of inheritance. Also, foreigners wanting to adopt Indian children are required to approach the court under the said act.

⁴ Dillon Sarah, *Making Legal Regimes for Inter-Country Adoption Reflect Human Rights Principles: Transforming the United Nations Convention on the Rights of the Child with the Hague, 2003 Convention on Intercountry Adoption*,

⁵ Article 21 (c) of CRC- Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption

Intercountry Adoptions under the Hindu Adoptions and Maintenance Act, 1956

The concept of adoption is defined under Chapter II of the Act. It talks briefly about the concept of adoption in sections 5 to 17. Under this act, adoption as a concept is nowhere defined. But then this act governs the adoption process taking place within the ambit of Hindu law. So, when it comes to intercountry adoptions, this concept was debated for the first time

was debated in the case of *Re. Rasiklal Chaganlal Mehta Case*⁷. In this case, the court held that intercountry adoptions are legally valid under section 9 (4) of the HAMA Act⁸ and are also valid as per the laws of both countries. In all, it meant that the adoptive parents needed to complete the requirements of adoption in their country and in the child's country and to obtain the requisite permission to do so from the appropriate authority. But as mentioned above, this act only governed adoptions under Hindu law. So, to govern the process of adoption into non-Hindus, the Guardian and Wards Act of 1890 was touched upon.

Guardianship and Wards Act, 1890

For the objective of facilitating adoption by a foreigner for which no statutory enactment has been provided in our country or that there is a lack of procedure that provides for such an adoption, we have to rest upon the provisions of the Guardianship and Wards Act, 1890. This statute is an old one that was enacted solely to appoint guardians to the minor or the property of the minor, and it is also about to be amended. The provisions of this Act that are related to inter-country adoption are sections 11, 17, and 26, and these provisions deal with the procedure that is to be followed for inter-country adoption. According to it, the foreign parents can make an application in the court to be appointed as the guardian of a child whom they wish to adopt, and also for the leave of the court to take the child along with them to their country on being appointed as such guardian of the child. If there is an absence of any law that provides for the adoption of an Indian child by foreign parents, such adoption can only be made effective by making it according to the law of the country where such foreign parents reside.

⁶ Central Adoption Resource Authority (CARA) is an autonomous body controlled by the Ministry of Women and Child Development, the government of India.

⁷ AIR 1982 Guj. 193

⁸ Section 9 (4) of HAMA Act- Where both the father and mother are dead or have completely and finally renounced the world or have abandoned the child or have been declared by a court of competent jurisdiction to be of unsound mind or where the parentage of the child is not known, the guardian of the child may give the child in adoption with the previous permission of the court to any person including the guardian himself

Juvenile Justice (Care and Protection of Children) Amendment Act, 2021

Now, looking at the concept of intercountry adoptions and its wide acceptance in the country, this concept was initially placed within the Juvenile Justice (Care and Protection of Children) Act, of 2000 but nowhere the term adoption was defined. It was in the subsequent amendments that the concept was brought more into the picture. Therefore, the current act in the country on juveniles is the Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, and this was recently amended with regard to adoptions in 2021. So, according to this act, the concept of adoption is mentioned under Chapter VIII of the act. Whereas, adoption as a concept is mentioned under section 2 (2) of the act. So now, when it comes to intercountry adoption, it is mentioned under section 56 (4), which states that intercountry adoptions will be regulated by this act, and it needs to be done as per the provisions of this act. Further, the procedure for the same is mentioned under section 59 of the act. Firstly, it states that, if the orphan, abandoned, or surrendered child is unable to be placed in domestic adoption within 60 days from such condition, then such child will be directed towards intercountry adoption. Secondly, NRIs in such conditions will be given priority over the foreign parents in case of such kind of adoptions.

In the case of *Karnataka State Council for Child Welfare V. Society of sisters of Charity, St. Gerosa Convent*⁹ the court held that Indian parents are preferred before foreign parents, looking at the welfare of the child so that the child can grow up in Indian surroundings and can retain its culture and heritage. Thirdly, NRIs or Indians living overseas, irrespective of any religion, may opt for such a kind of adoption by the appropriate authority. Here, in this case, the appropriate authority means CARA as mentioned under section 2 (7) and defined under section 68 of the act.

In the case of *Varsha Sanjay Shinde and Anr V. Society of Friends of the Sasson Hospital and Ors*¹⁰ the court held that, once a child is fixed by the overseas Indian couple or foreign parents, such a child cannot be shown to other Indian parents just on the preference of being of the same nationality. Fourthly, the appropriate authority must prepare the home study report of such adoptive parents as per the procedure set by the authorities.

⁹ AIR 1994 SC 658, 1995 Supp (4) SCC 529

¹⁰ 3 Writ Petition no. 9227 of 2013 Decided on 18th October 2013

CARA

As per the guidelines of CARA, whosoever foreigner, NRI, or overseas Indian wishes to adopt a child from the country needs to be sponsored by either by social or child welfare agency that has been licensed by the government and needs to register with CARA. Moreover, these guidelines also encourage domestic adoption and when no last pursuit is left for the child then international adoption comes into the picture. In the case of *Mr. Craig Allens Coates.V. State through the Indian Council for Child Welfare and Welfare Home for children*¹¹ it was held by the court that if the adoptive parents failed to prove their intention of adoption, then such would be barred from the process on the grounds of malicious intention. Thus, demanding stricter guidelines from CARA for such adoption processes. Hereinafter, when the central authority is referred to, it comes within the purview of section 2 (11) of the JJ Amendment Act, 2021, which states that the country is the party to the Hague Adoption Convention 1993. So, when it comes to CARA, it is defined under section 68 of the act. It states that this body is in existence to promote intercountry adoptions and to facilitate and coordinate the process of state adoption process. Further, it states that CARA has been enshrined to regulate and carry out the procedure of intercountry adoption as per the Hague Adoption Convention, 1993

In light of the aforementioned legislation and procedures, it can be concluded that Indian laws governing intercountry adoptions are overly complex and lack efficiency in their implementation. Additionally, none of the existing laws address the critical aspect of post-adoption monitoring, which is essential for ensuring the well-being of children in their adoptive country. The fragmented approach across various legislations creates challenges in establishing a unified and streamlined process. Although recent amendments have been introduced to improve these laws, there is still significant progress to be made in simplifying and enhancing the intercountry adoption process.

3. INTER-COUNTRY ADOPTION UNDER THE US LAW:

The United States of America is considered to be the originator of intercountry adoptions¹². Thus, it can be perceived that there are a large number of US families

¹¹ (162(2009) DLT 605)

¹² Aditya Rajasthani and Reuban Philip Abraham, *A comparative analysis of adoption and domicile in Canada, USA, UK, and India*, 3 COMMONWEALTH LAW REVIEW-JOURNAL (2017)

adopting children from other countries and vice versa. From a political point of view, it is very difficult to get the Senate to ratify the international agreement. Thus, the US ends up signing many multilateral and bilateral agreements. For example, the US bilateral agreement with Vietnam on intercountry adoptions in 2005, the United Nations Convention on the Rights of the Child, etc. Therefore, it signed and ratified The Hague Adoption Convention in 1994 pertaining to intercountry adoptions. Thus, making certain laws regarding intercountry adoptions in the country based on the lines of this convention. This led to the development of the Intercountry Adoption Act, of 2000 in the US. This act formally came into force in the country in April 2008.

Intercountry Adoptions via Lens of the Intercountry Adoption Act, 2000

The traces of the Hague Adoption Convention, 1993, can be seen in the Intercountry Adoption Act, 2000, in the following ways, such as

- 1) The US Department of State is considered to be the central authority to take up and look into the matters of international adoptions in the state
- 2) Any person or agency interested in giving in for such an adoption needs to be accredited by the state.
- 3) 3) The definition of child was amended in the Immigration and Nationality Act so as to incorporate the view of the convention.

This act does not function and operates independently. Rather, to opt for intercountry adoption in the US one needs to fulfill certain requirements as mentioned under other legislations. Such as for a person or a couple to opt for international adoption need to be accredited by the state and for this they need to comply with the standards as mentioned under section 96.7 of Title 22 the US Federal Code¹³. This code also governs the foreign relations of the state. In this section, there is a vivid discussion on the type of agencies that can receive accreditation for the individuals who want to opt for such an adoption, and the guidelines to go forward with the same. Therefore, these guidelines are based on the goals of the Hague Adoption Convention and IAA.

¹³ Section 96. 7 of Title 22 of US Federal Code- Responsibilities of Accrediting Agencies.

US has dual domicile, that is, both the country and the state, and they need to furnish the proof for the same. When it comes to the Intercountry Adoptions Act, 2000, it has different procedures for immigrating children and emigrating children. Such is mentioned under sections 301 and 303 of the acts.

This is done keeping in mind the cumbersome process and lengthy procedure that is followed when looking at this kind of adoption.

Firstly, when it comes to the procedure for children immigrating to the United States, it is as follows:

- The NOC needs to be granted by the state secretary regarding the acceptance of such adoption after furnishing the domicile documents of adoptive parents and receiving appropriate notification of the same from the child's country of origin.
- This certificate granted by the state secretary is considered conclusive evidence for such adoption to be accepted legally in the US. From, this procedure it can be derived that such children migrating to the US have easy entry and the major paper and procedure work needs to be done by the contracting country or origin country rather than the receiving country.
- In the case of *Trower.V. Blinken*¹⁴ the court held that the threshold inquiry is required of the background of the child and prospective adoptive parents before any international adoptions take place and also the NOC provided by the accrediting agency needs to be considered as evidence to go forward with such kind of adoption.
- In the case of *Croyle.V. United States*¹⁵, the court held proving the domicile of the prospective adoptive parents is the mandatory requirement for intercountry adoptions in the United States.

Intercountry Adoption Accreditation and Maintenance Agency- An Instrument on Check

The Intercountry Adoption Accreditation and Maintenance Entity (IAAME) plays a key role in overseeing intercountry adoptions in the United States, similar to how CARA functions in India. It operates under the U.S. State Department and is responsible for accrediting, approving, and monitoring the activities of adoption agencies, as well as ensuring the suitability of

¹⁴ 4:22-CV-00077-JAR (E.D. Mo. Jun. 3, 2022)

¹⁵ 908 F.3d 377, 380

prospective adoptive parents. IAAME also maintains a list of accredited agencies authorized to facilitate international adoptions. While not a statutory body, it operates independently and

is the first step in the intercountry adoption process in the U.S. After IAAME's involvement, the state, country, and NOC processes follow. Essentially, IAAME serves as a watchdog for international adoptions, ensuring that all legal and procedural requirements are met while prioritizing the best interests of the child.

4. PROS AND CONS OF INTER-COUNTRY ADOPTION:

Intercountry adoptions have emerged as a global trend, with a noticeable pattern where vulnerable children from developing and underdeveloped nations are adopted by families in developed countries. However, the process of intercountry adoption is quite intricate, primarily due to the varying laws and policies in each country. These differences ultimately lead to both advantages and challenges associated with intercountry adoptions.

The benefits of intercountry adoptions are as follows:

1. **Providing a Better Life for Vulnerable Children:** Intercountry adoption offers children from developing or conflict-ridden countries a chance to live in a stable, safe, and supportive environment. Many of these children come from orphanages or situations of poverty, neglect, or abuse. Adoption by families in developed countries can provide them with access to better healthcare, education, and overall quality of life.
2. **Cultural Exchange and Diversity:** Intercountry adoption promotes cross-cultural understanding and allows both the adoptive families and the children to experience and learn from different cultures. The child grows up in an environment that exposes them to new customs, languages, and perspectives, while the adoptive family gains insight into a different cultural heritage, fostering tolerance and global awareness.
3. **Relieving Overburdened Adoption Systems in Home Countries:** Many countries with large numbers of orphaned or abandoned children struggle to provide adequate care. By facilitating intercountry adoption, these countries can place children in loving homes abroad, alleviating the pressure on their domestic child welfare systems and orphanages, while also ensuring children have the opportunity to grow up in a family setting.
4. **Opportunity for Adoptive Families:** Intercountry adoption offers families in developed countries an opportunity to expand their families when they may not be able to adopt domestically due to legal, financial, or other barriers. It also provides the chance to adopt children with special needs, older children, or sibling groups who might be harder to place within their home country's adoption system.

The Disadvantages of Inter-Country adoption are as follows

1. The first and foremost challenge attached to intercountry adoption is of illegal activities carried out in the name of such adoptions. They are child laundering, human trafficking, child labor, etc. Thus, looking at the growing menace attached to this convention the Supreme Court in 2012 has asked the center to ban intercountry adoptions in India until and unless a concrete set of laws considering it are brought into picture⁶⁵. Thus, it led to the entry of intercountry adoptions in the JJ Act.

2) The process is quite lengthy and cumbersome, due to the unavailability of unified laws on this concept.

3) The problem of post-adoption identity is massive. This is because the adoptive parents have to complete both the adoption process of the contracting country and the receiving country and in case if such is not done then it leads to another set of problems for the children.

4) The process of post-adoption is quite difficult as it is not possible to monitor the activities of children in the adopted country. Thus, this is regarded as the post-adoption negligence.

5. COMPARATIVE ANALYSIS:

ASPECT	INDIA	UNITED STATES
Legal Framework	Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act) Hindu Adoption and Maintenance Act, 1956 (HAMA) Central Adoption Resource Authority (CARA) oversees adoption	Intercountry Adoption Act (2000) Adoption laws vary state by state
Governing Authority	CARA (Central Adoption Resource Authority)	State adoption agencies and the U.S. Department of State for intercountry adoption
Priority of Adoption	Domestic adoption is prioritized; intercountry adoption is only if domestic adoption is not feasible	Domestic adoption is prioritized; intercountry adoption follows if domestic adoption is not viable

Adoption Process	The child must be registered with CARA and placed in a licensed adoption agency The process involves legal paperwork, a home study, and a final court order	Adopting parents must meet state-specific requirements and federal regulations Home study, legal paperwork, and finalization in court
Eligibility of Adoptive Parents	Indian citizens, non-resident Indians (NRIs), and foreigners are eligible Adoptive parents must be between 30 and 55 years of age	U.S. citizens and permanent residents are eligible Varies by state; usually must be at least 21 years old
Intercountry Adoption	Governed by the Juvenile Justice Act and the Hague Convention on Intercountry Adoption	Regulated by the Intercountry Adoption Act, which ensures compliance with the Hague Convention
Role of International Adoption Agencies	Only accredited agencies can facilitate intercountry adoptions	Accredited adoption agencies facilitate intercountry adoption

SUGGESTIONS

1. The laws pertaining to intercountry adoptions in India are not limited to a particular legislation; rather, they are divided and adjudicated under different sets of laws. Thus, considering the development of international adoption and its popularity, India should opt to make a particular legislation on this concept.
2. In this manner, India will be obligated to follow the convention under Article 253 of the Indian Constitution and CARA. The statutory body will also be kept in check while dealing with the matters of intercountry adoptions.
3. Moreover, when it comes to the US, though they have legislation on intercountry adoption it needs amendments to gel in with the developments around the world. Moreover, having 50 states altogether and bringing their opinions on the same front foot becomes a challenging task.
4. Lastly, intercountry adoptions are criticized for the cons attached to it such as trafficking, child labor, etc. But when it comes to the pros of this concept no such awareness is spread about it and on a large scale such kind of adoptions are disregarded due to the problems attached to it. Therefore, on the global level awareness must be spread regarding this adoption so that no child is left homeless and without a family.

CONCLUSION

Intercountry adoption is an evolving concept on a global scale, and while The Hague Adoption Convention of 1993 advocates for the prioritization of domestic adoptions, it acknowledges that when domestic adoption is not feasible, intercountry adoption becomes an essential alternative. However, the legal frameworks surrounding intercountry adoption are complex and require reform. Many countries recognize the need for more streamlined and effective legislation to simplify the adoption process and ensure a smoother transition for both children and adoptive families. The introduction of specific and updated laws would contribute to improving the speed, efficiency, and ethical standards of international adoptions. At the core of these legal advancements should be the child's best interests, ensuring that their safety, well-being, and future prospects are always the highest priority. It is crucial that as international adoption practices evolve, all countries collectively work to ensure the rights of vulnerable children are protected, offering them a brighter, safer future through responsible and well-regulated adoption processes.

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