ANNEXURE - V

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTER-COUNTRY ADOPTION (1993)

Final Act of the Seventeenth Session

The undersigned, Delegates of the Governments of Argentina, Australia, Austria, Belgium, Canada, Chile, China, Cyprus, the Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Luxembourg, Mexico, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom of Great Britain and Northern Ireland, the United States of America, Uruguay and Venezuela, Member States, as well as the Delegates of the Governments of Albania, Belarus, Benin, Bolivia, Brazil, Bulgaria, Burkina Faso, Colombia, Costa Rica, El Salvador, Ecuador, Haiti, the Holy See, Honduras, India, Indonesia, Kenya, the Republic of Korea, Lebanon, Madagascar, Mauritius, Nepal, Panama, Peru, the Philippines, the Russian Federation, Senegal, Sri Lanka, Thailand and Vietnam participating as Invitees, convened at the The Hague on 10 May 1993, at the invitation of the Government of the Netherlands, in the Seventeenth Session of the Hague Conference on Private International Law.

Following the deliberations laid down in the records of the meetings, have decided to submit to their Governments -

The following draft Convention

CONVENTION ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTER-COUNTRY ADOPTION

The States signatory to the present Convention,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family
environment, in an atmosphere of happiness, love and understanding.

Recalling that each State should take, as a matter of priority, appropriate measures to enable the child to remain in the care of his or her family of origin,

Recognizing that intercountry adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin,

Convinced of the necessity to take measures to ensure that intercountry adoptions are made in the best interests of the child and with respect for his or her fundamental rights, and to prevent the abduction, the sale of, or traffic in children,

Desiring to establish common provisions to this effect, taking into account the principles set forth in international instruments, in particular the United Nations Convention on the Rights of the Child, of 20 November 1989, and the 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 (General Assembly Resolution 41/85, of 3 December 1986),

Have agreed upon the following provisions -

**CHAPTER I - SCOPE OF THE CONVENTION**

**Article 1**

The objects of the present Convention are -

a. to establish safeguards to ensure that intercountry adoptions take place in the best interests of the child and with respect for his or her fundamental rights as recognized in international law;
b. to establish a system of co-operation amongst Contracting States to ensure that those safeguards are respected and thereby prevent the abduction, the sale of, or traffic in children;

c. to secure the recognition in Contracting States of adoptions made in accordance with the Convention.

Article 2

1. The Convention shall apply where a child habitually resident in one Contracting State ('the State of origin') has been, is being, or is to be moved to another Contracting State ('the receiving State') either after his or her adoption in the State of origin by spouses or a person habitually resident in the receiving State, or for the purposes of such an adoption in the receiving State or in the State of origin.

2. The Convention covers only adoptions which create a permanent parent-child relationship.

Article 3

The Convention ceases to apply if the agreements mentioned in Article 17, sub-paragraph c, have not been given before the child attains the age of eighteen years.

CHAPTER II - REQUIREMENTS FOR INTERCOUNTRY ADOPTIONS

Article 4

An adoption within the scope of the Convention shall take place only if the competent authorities of the State of origin -

a. have established that the child is adoptable:

b. 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 interest:
c. have ensured that

(1) the persons, institutions and authorities whose consent is necessary for adoption, have been counselled 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,

(3) the consents have not been induced by payment or compensation of any kind and have not been withdrawn, and

(4) the consent of the mother, where required, has been given only after the birth of the child; and

d. have ensured, having regard to the age and degree of maturity of the child, that

(1) he or she has been counselled 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 has 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 or any kind.
Article 5

An adoption within the scope of the Convention shall take place only if the competent authorities of the receiving State -

a. have determined that the prospective adoptive parents are eligible and suited to adopt;

b. have ensured that the prospective adoptive parents have been counselled as may be necessary; and

c. have determined that the child is or will be authorized to enter and reside permanently in that State.

CHAPTER III- CENTRAL AUTHORITIES AND ACCREDITED BODIES

Article 6

1. A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.

2. Federal State, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one Central Authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which any communication may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

1. Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to protect children and to achieve the other objects of the Convention.
2. They shall take directly all appropriate measures to -
   a. provide information as to the laws of their States concerning adoption and other general information, such as statistics and standard forms;
   b. keep one another informed about the operation of the Convention and, as far as possible, eliminate any obstacles to its application.

**Article 8**

Central Authorities shall 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.

**Article 9**

Central Authorities shall take, directly or through public authorities or other bodies duly accredited in their State, all appropriate measures, in particular to-
   a. collect, preserve and exchange information about the situation of the child and the prospective adoptive parents, so far as is necessary to complete the adoption;
   b. facilitate, follow and expedite proceedings with a view to obtaining the adoption;
   c. promote the development of adoption counselling and post-adoption services in their States;
   d. provide each other with general evaluation reports about experience with intercountry adoption;
   e. reply, in so far as is permitted by the law of their State to justified requests from other Central Authorities or public
authorities for information about a particular adoption situation.

**Article 10**

Accreditation shall only be granted to and maintained by bodies demonstrating their competence to carry out properly the tasks with which they may be entrusted.

**Article 11**

An accredited body shall -

a. pursue only non-profit objectives according to such conditions and within such limits as may be established by the competent authorities of the State of accreditation;

b. be directed and staffed by persons qualified by their ethical standards and by training or experience to work in the field of intercountry adoption; and

c. be subject to supervision by competent authorities of that State as to its composition, operation and financial situation.

**Article 12**

A body accredited in one Contracting State may act in another Contracting State only if the competent authorities of both States have authorized it to do so.

**Article 13**

The designation of the Central Authorities and, where appropriate, the extent of their functions, as well as the names and addresses of the accredited bodies shall be communicated by each Contracting State to the Permanent Bureau of the Hague Conference in Private International Law.
CHAPTER IV- PROCEDURAL REQUIREMENTS IN INTERCOUNTRY ADOPTION

Article 14

Persons habitually resident in a Contracting State, who wish to adopt a child habitually resident in another Contracting State, shall apply to the Central Authority in the State of their habitual residence.

Article 15

1. If the Central Authority of the receiving State is satisfied that the applicants are eligible and suited to adopt, it shall prepare a report including information about their identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, as well as the characteristics of the children for whom they would be qualified to care.

2. It shall transmit the report to the Central Authority of the State of origin.

Article 16

1. If the Central Authority of the State of origin is satisfied that the child is adoptable, it shall -

   a. prepare a report including information about his or her identity, adoptability, background, social environment, family history, medical history including that of he child's family, and any special needs of the child:

   b. give due consideration to the child's upbringing and to his or her ethnic, religious and cultural background:

   c. ensure that consents have been obtained in accordance with Article 4: and
d. determine, on the basis in particular of the reports relating to
the child and the prospective adoptive parents, whether the
envisaged placement is in the best interests of the child.

2 It shall transmit to the Central Authority of the receiving State
its report on the child, proof that the necessary consents have
been obtained and the reasons for its determination on the
placement taking 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 17**

Any decision in the State of origin that a child should be entrusted to
prospective adoptive parents may only be made if -

a The Central Authority of the State has ensured that the
prospective adoptive parents agree:

b the Central Authority of the receiving State has approved such
decision, where such approval is required by the law of that
State or by the Central Authority of State of origin:

c the Central Authorities of both States have agreed that the
adoption may proceed and

d it has been determined, in accordance with Article 5, that the
prospective adoptive parents are eligible and suited to adopt
and that the child is or will be authorized to enter and reside
permanently in the receiving State.

**Article 18**

The Central Authorities of both States shall take all necessary steps
to obtain permission for the child to leave the State of origin and to
enter and reside permanently in the receiving State.
Article 19

1. The transfer of the child to the receiving State may only be carried out if the requirements of Article 17 have been satisfied.

2. The Central Authorities of both States shall ensure that this transfer takes place in secure and appropriate circumstances and, if possible in the company of the adoptive or prospective adoptive parents.

3. If the transfer of the child does not take place, the reports referred to in Articles 15 and 16 are to be sent back to the authorities who forwarded them.

Article 20

The Central Authorities shall keep each other informed about the adoption process and the measures taken to complete it, as well as about the progress of the placement if a probationary period is required.

Article 21

1. Where the adoption is to take place after the transfer of the child to the receiving State and it appears to the Central Authority of that State that the continued placement of the child with the prospective adoptive parents is not in the child’s best interests, such Central Authority shall take the measures necessary to protect the child, in particular -

   a. to cause the child to be withdrawn from the prospective adoptive parents and to arrange temporary care;

   b. in consultation with the Central Authority of the State of origin, to arrange without delay a new placement of the child with a view to adoption or, if this is not appropriate, to arrange alternative long-term care; an adoption shall not take place
until the Central Authority of the State of origin has been duly informed concerning the new prospective adoptive parents;

c. as a last resort, to arrange the return of the child, if his or her interests so require.

2. Having regard in particular to the age and degree of maturity of the child, he or she shall be consulted and, where appropriate, his or her consent obtained in relation to measures to be taken under this Article.

Article 22

1. The functions of a Central Authority under this Chapter may be performed by public authorities or by bodies accredited under Chapter III, to the extent permitted by the law of its State.

2. Any Contracting State may declare to the depositary of the Convention that the functions of the Central Authority under Articles 15 to 21 may be performed in that State, to the extent permitted by the law and subject to the supervision of the competent authorities of that State, also by bodies or persons who -

a. meet the requirements of integrity, professional competence, experience and accountability of that State; and

b. are qualified by their ethical standards and by training or experience to work in the field of intercountry adoption.

3. A Contracting State which makes the declaration provided for in paragraph 2 shall keep the Permanent Bureau of the Hague Conference on Private International Law informed of the names and addresses of these bodies and persons.

4. Any Contracting State may declare to the depositary of the Convention that adoptions of children habitually resident in its
territory may only take place if the functions of the Central Authorities are performed in accordance with paragraph 1.

5. Notwithstanding any declaration made under paragraph 2, the reports provided for in Article 15 and 16 shall, in every case, be prepared under the responsibility of the Central Authority or other authorities or bodies in accordance with paragraph 1.

CHAPTER V- RECOGNITION AND EFFECTS OF THE ADOPTION

Article 23

1. An adoption certified by the competent authority of the State of the adoption as having been made in accordance with the Convention shall be recognized by operation of law in the other Contracting States. The certificate shall specify when and by whom the agreements under Article 17, sub-paragraph c, were given.

2. Each Contracting State shall, at the time of signature, ratification, acceptance, approval or accession, notify the depositary of the Convention of the identity and the functions of the authority or the authorities which, in that State, are competent to make the certification. It shall also notify the depositary of any modification in the designation of these authorities.

Article 24

The recognition of an adoption may be refused in Contracting State only if the adoption is manifestly contrary to its public policy, taking into account the best interests of the child.

Article 25

Any Contracting State may declare to the depositary of the Convention that it will not be bound under this Convention to
recognise adoptions made in accordance with an agreement concluded by application of Article 39, paragraph 2.

**Article 26**

1. The recognition of an adoption includes recognition of
   a. the legal parent-child relationship between the child and his or 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 or her mother and father, if the adoption has this effect in the Contracting State where it was made.

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 recognized, rights equivalent to those resulting from adoptions having this effect in each such State.

3. The preceding paragraphs shall not prejudice the application of any provision more favourable for the child, in force in the Contracting State which recognizes the adoption.

**Article 27**

1. 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 recognizes the adoption under the Convention, be converted into an adoption having such an effect -
   a. if the law of the receiving State so permits; and
   b. if the consents referred to in Article 4, sub-paragraphs c and d, have been or are given for the purpose of such an adoption.

2. Article 23 applies to the decision converting the adoption.
CHAPTER VI - GENERAL PROVISIONS

Article 28

The Convention does not affect any law of a State of origin which requires that the adoption of a child habitually resident within that State take place in that State or which prohibits the child’s placement in, or transfer to, the receiving State prior to adoption.

Article 29

There shall be no contact between the prospective adoptive parents and the child’s parents or any other person who has care of the child until the requirements of Article 4, sub-paragraphs a to c, and Article 5, sub-paragraph a, have been met, unless the adoption takes place within a family or unless the contact is in compliance with the conditions established by the competent authority of the State of origin.

Article 30

1. The competent authorities of a Contracting State shall ensure that information held by them concerning the child’s origin, in particular information concerning the identity of his or her parents, as well as the medical history, is preserved.

2. They shall ensure that the child or his or her representative has access to such information, under appropriate guidance, in so far as is permitted by the law of that State.

Article 31

Without prejudice to Article 30, personal data gathered or transmitted under the Convention, especially data referred to in Articles 15 and 16, shall be used only for the purposes for which they were gathered or transmitted.
Article 32

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

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

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

Article 33

A competent authority which finds that any provision of the Convention has not been respected or that there is a serious risk that it may not be respected, shall immediately inform the Central Authority of its State. This Central Authority shall be responsible for ensuring that appropriate measures are taken.

Article 34

If the competent authority of the State of destination of a document so requests, a translation certified as being in conformity with the original must be furnished. Unless otherwise provided, the costs of such translation are to be borne by the prospective adoptive parents.

Article 35

The competent authorities of the Contracting States shall act expeditiously in the process of adoption.

Article 36

In relation to a State which has two or more systems of law with regard to adoption applicable in different territorial units -
a. any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;
b. any reference to the law of that State shall be construed as referring to the law in force in the relevant territorial unit;
c. any reference to the competent authorities or to the public authorities of that State shall be construed as referring to those authorized to act in the relevant territorial unit;
d. any reference to the accredited bodies of that State shall be construed as referring to bodies accredited in the relevant territorial unit.

Article 37

In relation to a State which with regard to adoption has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 38

A State within which different territorial units have their own rules of law in respect of adoption shall not be bound to apply the Convention where a State with a unified system of law would not be bound to do so.

Article 39

1. The Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the State Parties to such instrument.

2. Any Contracting State may enter into agreements with one or more other Contracting States, with a view to improving the
application of the Convention in their mutual relations. These agreements may derogate only from the provisions of Articles 14 to 16 and 18 to 21. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

**Article 40**

*No reservation to the Convention shall be permitted.*

**Article 41**

The Convention shall apply in every case where an application pursuant to Article 14 has been received after the Convention has entered into force in the receiving State and the State of origin.

**Article 42**

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convene a Special Commission in order to review the practical operation of the Convention.

**CHAPTER VII- FINAL CLAUSES**

**Article 43**

1. The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Seventeenth Session and by the other States which participated in that Session.

2. It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.
**Article 44**

1. Any other State may accede to the Convention after it has entered into force in accordance with Article 46, paragraph 1.

2. The instrument of accession shall be deposited with the depositary.

3. Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph b of Article 48. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

**Article 45**

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in the Convention, it may at the time of signature, ratification, acceptance approval or accession declare that this Convention shall extend to all its territorial units or only to one ore more of them and may modify this declaration by submitting another declaration at any time.

2. Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

3. If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

**Article 46**

1. The Convention shall enter into force on the first day of the month following the expiration of three months after the
deposit of the third instrument of ratification, acceptance or approval referred to in Article 43.

2. Thereafter the Convention shall enter into force -

a. for each State ratifying, accepting or approving it subsequently, or acceding to it, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

b. for a territorial unit to which the Convention has been extended in conformity with Article 45, on the first day of the month following the expiration of three months after the notification referred to in that Article.

**Article 47**

1. A State Party to the Convention may denounce it by a notification in writing addressed to the depositary.

2. The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period after the notification is received by the depositary.

**Goals**

The needs of children and our duties towards them have been expressed in the Constitution. The resolution on a national policy on education, which has been adopted by Parliament, gives direction to State policy on the educational needs of children. We are also party to the U.N. declaration of the rights of the child. The goals set out in these documents can reasonably be achieved by judicious and efficient use of the available national resources. Keeping in view
these goals, the Government of India adopts this resolution on the national policy for children.

**Policy and Measures**

It shall be the policy of the State to provide adequate services to children, both before and after birth and through the period of growth, to ensure their full physical, mental and social development. The State shall progressively increase the scope of such services so that, within a reasonable time, all children in the country enjoy optimum conditions for their balanced growth. In particular, the following measures shall be adopted towards the attainment of these objectives:

(i) All children shall be covered by a comprehensive health programme.

(ii) Programmes shall be implemented to provide nutrition services with the object of removing deficiencies in the diet of children.

(iii) Programmes will be undertaken for the general improvement of the health and for the care, nutrition and education of expectant and nursing mothers.

(iv) The State shall take steps to provide free and compulsory education for all children up to the age of 14 for which a time-bound programme will be drawn up consistent with the availability of resources. Special efforts will be made to reduce the prevailing wastage and stagnation in schools, particularly in the case of girls and children of the weaker sections of society. The programme of informal education for pre-school children from such sections will also be taken up.

(v) Children who are not able to take full advantage of formal school education shall be provided other forms of education suited to their requirements.
(vi) Physical education, games, sports, and other types of recreational as well as cultural and scientific activities shall be promoted in schools, community centres and such other institutions.

(vii) to ensure equality of opportunity, special assistance shall be provided to all children belonging to the weaker sections of the society, such as children belonging to the Scheduled Castes and Scheduled Tribes and those belonging to the economically weaker sections both in urban and rural areas.

(viii) Children who are socially handicapped, who have become delinquent or have been forced to take to begging or are otherwise in distress, shall be provided facilities for education, training and rehabilitation and will be helped to become useful citizens.

(ix) Children shall be protected against neglect, cruelty and exploitation.

(x) No child under 14 years shall be permitted to be engaged in any hazardous occupation or be made to undertake heavy work.

(xi) Facilities shall be provided for special treatment, education, rehabilitation and care of children who are physically handicapped, emotionally disturbed or mentally retarded.

(xii) Children shall be given priority for protection and relief in times of distress or natural calamity.

(xiii) Special programmes shall be formulated to spot, encourage and assist gifted children, particularly those belonging to the weaker sections of society.
Existing laws should be amended so that in all legal disputes, whether between parents or institutions, the interests of children are given paramount consideration.

In organising services for children, efforts would be directed to strengthen family ties so that full potentialities of growth of children are realised within the normal family, neighborhood and community environment.

Priority in Programme Formation

In formulating programmes in different sectors, priority shall be given to programmes relating to:

(a) preventive and promotive aspects of child health;
(b) nutrition for infants and children in the pre-school age along with nutrition for nursing and expectant mothers;
(c) maintenance, education and training of orphan and destitute children;
(d) creches and other facilities for the care of children of working or ailing mothers; and
(e) care, education, training and rehabilitation of handicapped children.

Constitution of National Children's Board

During the last two decades we have made significant progress in the provision of services for children on the lines detailed above. There has been considerable expansion in the health, nutrition, education and welfare services. Rise in the standard of living, wherever it occurred, has indirectly met children's basic needs to some extent. But all this work needs a focus and a forum for planning and review and proper co-ordination of the multiplicity of services striving to meet the needs of children. A National Children's Board shall be constituted to provide this focus and to ensure at
different levels planning, review and coordination of all the essential services. Similar Boards may also be constituted at the State level.

**Role of Voluntary Organisations**

The Government shall endeavor that adequate resources are provided for child welfare programmes and appropriate schemes are undertaken. At the same time, voluntary organisations engaged in the field of child welfare will continue to have the opportunity to develop, either on their own or with State assistance, in the field of education, health, recreation and social welfare services, India has a tradition of voluntary action. It shall be the endeavor of the State to encourage and strengthen voluntary action so that State and voluntary efforts complement each other. The resources of voluntary organisations, trusts, charities and religious and other endowments should be tapped to the extent possible for promoting and developing child welfare programmes.

**Legislative and Administrative Action**

To achieve the above aims, the State will provide necessary legislative and administrative support. Facilities for research and training of personnel will be developed to meet the needs of the expanding programmes and to improve the effectiveness of the services.

**People's Participation**

The Government of India trusts that the policy enunciated in this statement will receive the support and co-operation of all sections of the people and of organisations working for children. The Government of India also calls upon the citizens, State Governments, local bodies, educational institutions and voluntary organisations to play their part in the overall effort to attain these objectives.