CHAPTER 5
POSITION OF WOMEN IN ADOPTION UNDER INTERNATIONAL LAW
5.1. Introduction:

The term “women’s human rights” and the set of practices that accompanies its use are the continuously evolving product of an international movement to improve the status of women. In the 1980’s and 1990’s, women’s movements around the world formed networks and coalitions to give greater visibility to the problems that woman face everyday.

In patriarchal societies male citizens are always granted rights that female citizens almost always will not have unless and until there is a feminist
revolution with enough power to compel the social and legal structures away from patriarchy. Typically these rights have been land rights and personal property rights, agricultural rights; citizenship rights; labour rights; reproductive rights; sexual rights; rights to one’s children; voting rights; right to assemble and speak in public; rights to bodily safety and integrity; educational rights; political voice, and many others. In many countries these rights and others have finally been achieved to differing degrees by and for women, almost all having been acquired within the past 150 years, many more in just the past few decades or even in the case of some countries such as Kuwait where women obtained the right to vote in political elections in 2005. Women have always had to either go without or struggle relentlessly decade after decade in order to win their rights, one at a time and piecemeal. Human rights violations against women take very gendered forms, so not only have women been denied their human rights but they have also been subject to the denial of their rights using misogynistic means. Usually when the violation is physically violent it involves sexual violence, notably rape. This is because the common patriarchal practice has been to commit crimes against women that humiliate them most and sex is the most suitable vehicle. Sexual crimes against women render them most vulnerable to social
ostracism, create women as social outcasts and non-transferable from father to husband and are so stigmatizing that women are rejected from legitimate job markets and relegated into sex markets.

The United Nations (UN) Charter signed in San Francisco in 1945 was the first legal instrument to clearly and unequivocally affirm the equality of all people and expressly refer to gender as a source of discrimination. Of the 160 signatories, only four were women, Minerva Bernardino (Dominican Republic), Virginia Gildersleeve (United States), Bertha Lutz (Brazil) and Wu yi-Fang (China), but they succeeded in inscribing women’s rights in the founding document of the UN which reaffirms in its preamble, “faith in fundamental human rights, in the dignity of the human person in the equal rights of men and women and of nations large and small.”

During the inaugural meeting of the UN General Assembly in London in February 1946, Eleanor Roosevelt, a United States delegate read an open letter addressed to the women of the world: “To this end, we call on the Governments of the world to encourage women everywhere to take a more active part in national and international affairs, and on women who are
conscious of their opportunities to come forward and share in the work of peace and reconstruction as they did in war and resistance.”¹⁰²

Consequently, it has served as the basis for all subsequent international legal instruments pertaining to women and marks the beginning of a significant change in political discourse. Topics that had always been viewed as private matters, the status of women as wives, housekeepers and mothers began to be discussed in a global context. This gave birth to activities such as the compilation of legal texts pertaining to women’s rights and research studies on the status of women throughout the world. The UN served as a catalyst for the promotion of laws that would grant women equal rights with men. One of the purposes of the UN is, “to achieve international co-operation in solving international problems of an economic, social, cultural or humanitarian character and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.”¹⁰³

¹⁰³ United Nations Charter, Article 1(3).
Again, the UN has the duty to promote,

“universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.” \(^{104}\)

In the UN founding San Francisco Conference in the year 1945, a Sub-Commission dedicated to the status of women was established under the Commission on Human Rights. Many woman delegates and representatives of Non-Governmental Organizations believed nevertheless that a separate body specifically dedicated to women’s issues was necessary.

The first chairperson of the Sub-Commission, Bodil Begtrup, President of the Danish National Council (Denmark), also requested the Economic and Social Council (ECOSOC) in May, 1946 for a change to full Commission status. On 21 June 1946, the Sub-Commission formally became the Commission on the Status of Women (CSW), a full-fledged Commission dedicated to ensure women’s equality and to promote women’s rights. Its mandate was to “prepare recommendations and reports to the Economic and

\(^{104}\) United Nations Charter, Article 55.
Social Council on promoting women’s rights in political, economic, civil, social and educational fields and to make recommendations on urgent problems requiring immediate attention in the field of women’s rights.”

Shortly thereafter, the Section on the Status of Women of the UN Secretariat which would become the Division for the Advancement of Women in 1978 was established in the Human Rights Division of the UN to provide secretariat functions.

The CSW was created to draw up recommendations and prepare reports on the promotion of women’s rights in the political, economic, civic, social and educational arenas as well as on other urgent problems relating to women’s rights. In 1987 its mandate was extended to include advocacy on issues of equality, development and peace to monitor the enforcement of internationally agreed measures and to review progress at the national, sub-regional and regional levels. The creation of the Commission on Human Rights in the year 1946, the Commission on the Status of Women in 1946

---

and the adoption of the Universal Declaration of Human Rights (UDHR) in the year 1948, laid the foundations for all future efforts to promote equal rights for women. These instruments were drafted with the participation of other UN agencies like Economic and Social Council, International Labour Organization (ILO), United Nations Educational, Scientific and Cultural Organization (UNESCO) as well as intergovernmental organizations.

The UDHR adopted by the UN General Assembly on 10th December in the year 1948 outlines what is considered in this century to be the fundamental consensus on the human rights of all people in relation to such matters as security of person, slavery, torture, protection of the law, freedom of movement and speech, religion and assembly and rights to social security, work, health, education, culture and citizenship. It clearly stipulates that these human rights apply to all equally, “without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

106 Article 2 of the Universal Declaration of Human Rights, 1948.
Obviously then the human rights delineated by the UDHR are to be understood as applying to women. During the UN decade for Women (1976-1985), women from many geographical, racial, religious, cultural and class backgrounds took up organizing themselves to improve the status of women. The proclamation of the year 1975 as International Women’s year and the UN sponsored Women’s Conferences, which took place in Mexico city in 1975, Copenhagen in 1980, Nairobi in 1985 and in Beijing in the year 1995 were convened to evaluate the status of women and to formulate strategies for women’s advancement. These Conferences were critical venues at which women came together, debated their differences and discovered their commonalties and gradually began learning to bridge differences to create a global movement. Disregard for women’s rights was identified as both a cause and an effect of underdevelopment and was found to be closely related to problems of poverty, overpopulation, illiteracy, malnutrition and poor health. The Women Conference which held in Nairobi marked the end of the decade for women and provided an opportunity to review achievements, overcome obstacles and adopt measures for attaining all the goals of the decade. This Conference produced a report entitled “Nairobi: Forward Looking Strategies for the Advancement of Women”, which stresses that,
given the fact that different countries are at different stages of development, they should be allowed to choose their priorities based on their own development, policies and resources.

In January 1995, another progress report on implementation of the Nairobi strategies was presented. This report mentioned new opportunities that had opened up for the participation of women who were recognized as agents of change and as a valuable resource without which development would be hampered.

The concept of “Women’s Human Rights” has opened the way for women around the world to ask hard questions about the official inattention and general indifference to the widespread discrimination and violence that women experience everyday. As women’s activities developed globally during and following the UN decade for women, more and more women raised the question that why “Women’s Rights” and “Women’s Lives” have been deemed secondary to the “Human Rights” and “Lives of Men”.
The UN World Conference on Human Rights held in Vienna in 1993 was the first such meeting since 1968 and it became a natural vehicle to highlight the new visions of human rights thinking and practices being developed by women. Its initial call did not mention women nor did it recognize any gender specific aspect of human rights in its proposed agenda. The campaign launched through this Conference comprehensively address women’s human rights at every level and recognize “gender violence” a universal phenomenon which takes many forms across culture, race and class as a violation of human rights requiring immediate action. The Vienna Declaration and Program of Action, which is the product of the Conference states unequivocally that the human rights of women and of the girl child are inalienable, integral and indivisible part of Universal Human Rights.

Women continued to lobby for and gain wider recognition of women’s human rights at subsequent UN Conferences. So, for example, at the International Conference on Population and Development in Cairo in 1994, women’s reproductive rights were explicitly recognized as human rights. A particularly significant development was the way in which the platform for Action at the fourth World Conference on Women in Beijing in 1995
became virtually an agenda about the human rights of women. Further anti-discriminatory principles were established through International Bill of Human Rights which comprises of the following:

1- *The Universal Declaration of Human Rights, 1948,*

2- *The Covenant on Civil and Political Rights, 1966,*

3- *The Covenant on Economic, Social and Cultural Rights, 1966 and*

4- *The Optional Protocol to the Covenant on Civil and Political Rights, 1966.*

The International Covenant on Civil and Political Rights, 1966 deals with various traditional human rights and fundamental freedoms like right to life (Article 6 of the covenant); prohibits torture or cruel, inhuman or degrading treatment or punishment (Article 7); prohibits slavery, the slave trade and forced labour (Article 8); prohibits arbitrary arrest or detention (Article 9); provides for equality before the courts and tribunals and for guarantees in civil and criminal procedures (Article 14); stipulates the right of everyone to recognition everywhere as a person before the law (Article 16) and prohibits

---

arbitrary or unlawful interference with privacy, family, home or correspondence and unlawful attacks on honour and reputation (Article 17).

Further the Covenant provides that every child shall have the right to protection by his family, society and the state (Article 24). It calls on state parties to take steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and its dissolution (Article 23). Right to freedom of thought, conscience and religion; right to freedom of opinion and expression; right of peaceful assembly (Articles 18, 19 and 21 respectively) etc. are also recognized by this Covenant.

The International Covenant on Economic, Social and Cultural Rights includes the following rights: Right to work (Article 6), right to education (Article 13 and 14); right to health (Article 12); right to adequate food (Article 11, Para 2); right to culture (Article 15); right to enjoyment of just and favourable conditions of work (Article 7); right to social security (Article 9); right to family and protection of motherhood and childhood (Article 10) and right to adequate standard of living (Article 11) etc.
The state parties to the present Covenant have undertaken to take steps individually or through international economic and technical assistance and co-operation to the maximum of their available resources for the full realization of rights recognized in the present Covenant. States have also guaranteed that the rights recognized in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, nationality or origin, property, birth or other status (Article 2 of the Covenant).

The most important international treaty specifically addressing women’s human rights violations is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 which was initiated during the UN Decade for women and has been often described as an International Bill of Rights for Women.

Article 1 of the CEDAW says,

“Discrimination against women in the present context means any distinction, exclusion or restriction made on the basis of sex which has the affect or purpose of impairing or nullifying the
recognition, enjoyment or exercise by women, irrespective of their marital status or on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

On the question of nationality of married women it has been laid down under the present Convention that the state parties shall give women equal rights with men to acquire, change or retain their nationality. It shall be the duty of the state parties to ensure that neither marriage with an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife. She can neither be rendered stateless nor can be forced to adopt the nationality of her husband (Article 9(1)). On the question of property rights of married women, Article 15 of the CEDAW lays down that the state parties shall accord to women equality with men before the law and a legal capacity identical to that of men and the same opportunity to exercise that capacity, in particular, women will have equal rights to conclude contracts to administer property. They shall be treated equally at all stages of procedure in courts and tribunals. It has been further provided that all contracts and all other private instruments of any kind with a legal
effect shall be deemed null and void if it has the effect of restricting the legal capacity of women (Article 15(3). Thus, women have a legal capacity identical to that of men to deal with property and to enter into contract.

Article 16 of the Convention deals with other areas, such as marriage and family; parental rights and duties, including guardianship etc. Under Article 16(1) state parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women,

(a) the same right to enter into marriage;

(b) the same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) the same rights and responsibilities during marriage and at its dissolution;

(d) the same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interest of the children shall be paramount;
(e) the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislations, in all cases the interest of the children shall be paramount;

(g) the same personal rights as husband and wife including the right to choose a family name, a profession and an occupation;

(h) the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

Besides abovementioned instruments dealing with women’s human rights, there are various other international human rights instruments which specifically deals with the advancement of women. They are:

**Convention on the Political Rights of Women**

This Convention was adopted by the UN General Assembly on 20th December, 1952 and opened for signature and ratification on the same day.
It provides that women shall be entitled to vote in all elections on equal terms with men, without any discrimination (Article 1). They shall be eligible for election to all publicly elected bodies established by national law on equal terms with men, without any discrimination (Article 2). Also, they shall be entitled to hold offices and to exercise all public functions, established by nations on equal terms with men without discrimination (Article 3).

**Convention on the Nationality of Married Women**

This Convention was adopted and opened for signature and ratification by the General Assembly on 29th January, 1957. According to Article 1 of this Convention, each contracting state agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage shall automatically affect the nationality of the wife. Again, Article 2 says that each contracting state agrees that neither the voluntary acquisition of nationality of another state nor the renunciation of its nationality by one of its nationals shall prevent the retention of its nationality by the wife of such national.
The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage

This Convention was adopted and opened for signature and ratification on 7th November, 1962 by the General Assembly. It has been laid down under Article 1 of the Convention that there must be full and free consent of both parties to the marriage. Under Article 2 of the Convention it is provided that state parties shall specify a minimum age for marriage and Article 3 provides that all marriages shall be registered in an appropriate official register by the competent authority.

Let us know the actual position of rights and privileges enjoyed by women of different countries across the globe with special reference to their adoptive rights.

5.2. Adoptive Rights of Women in United States of America:

The earliest known inhabitants of what is now the United States are thought to have arrived in Alaska by crossing the Bering land bridge at least 14,000-30,000 years ago. Some of these groups migrated south and east and over time spread throughout the America. These were the ancestors to modern
native Americans in the United States and Alaskan native people. In the
United States of America (U.S.A.), women’s rights have a long, constantly
evolving history. In many ways the birth of the women’s rights movement in
the U.S.A. is closely tied to the abolitionist movement, which was supported
by many women.

It was the exclusion of female abolitionist delegates from the 1840 World
Anti-slavery Convention held in London that inspired Elizabeth Cady
Stanton and abolitionist Lucretia Mott to discuss the development of
women’s rights movement in the United States. In the first half of the 19th
century, women were not allowed the freedoms men enjoyed in the eyes of
the law, the Church or the government. Women could not vote, hold elective
offices, attend colleges or earn a living. If married, they could not make
legal contracts, divorce an abusive husband or gain custody of their children.
In July 1848, Stanton and Mott joined with other like minded women for the
first Women’s Rights Convention held in Seneca Falls, New York. Their
“Declaration of Sentiments” based on the United States Declaration of
Independence, demanded equal rights for women, including the right to vote.

\[108\] Maynard, Douglas H., The Mississippi Valley Historical Review, Published by Organization of
Over 300 people attended the Convention; the document was signed by 68 women and 32 men.

In 1920, with the ratification of the 19th amendment of the United States Constitution, American women finally gained the right to vote. Equal opportunity was offered to women in the year 1964 through Civil Rights Act which prohibited sex discrimination in employment. To ensure enforcement of this Act activists joined together to create in 1966 the National Organization for Women (NOW).

By the early 1970s, women serving in both chambers of the United States Congress helped to focus more attention on the needs of women. Some of the significant pieces of legislation affecting women that were passed into law resulted in greater freedom in reproductive choice (1973); minimum wage protection for domestic workers (1974); prohibitions against discrimination in employment against pregnant women (1978); tougher child

---

support laws and protection of pension rights for widows and divorced women (1984); provision of federal funds for child care (1990) etc.

In United States of America (U.S.A.), for the most part, adoption issues are subject to state laws and regulations and adoption law differs from state to state, although federal laws also affect many procedures connected with the adoption processes. State adoption laws are primarily comprised of laws from two sources, state statutes and state case laws. State statutes are provisions enacted by state legislatures that regulate the subject matter of an issue. State case laws consist of rules of law that come from the written decisions of judges who hear and decide litigations. Statues and case laws of a particular jurisdiction are binding on future litigations within that jurisdiction. Additionally, administrative regulations which are enacted by agencies that have the authority within certain limits to make laws that have the force of statues, also address legal issues in adoption.

In order for an adoption to take place a person available to be adopted must be placed in the home of a person or persons eligible to adopt. All states, the District of Columbia and the United States territories Guam PuertoRico, American Samoa, the Northern Mariana Islands have laws that specify
which persons are eligible as adopting parents, and which persons can be adopted. In addition, most states, the District of Columbia, and the territories have laws that designate which persons or entities have the authority to make adoptive placements.

In general, any single adult or a husband and wife jointly are eligible to adopt. In some states married persons may adopt singly if they are legally separated from their spouse, or if their spouse is legally incompetent. A few states allow minors to adopt under certain circumstances such as when the minor is the spouse of an adult adoptive parent or when the minor is the unmarried birth parent of the child to be adopted. Let us know about the various adoption laws and procedures in different states and territories of U.S.A.

5.2.1. TEXAS FAMILY CODE, 1999

Adoption law in Texas, like most Family law, is state law. There are very little federal regulations on adoption. Each state of U.S.A. has the authority to create adoption laws and to regulate adoption agencies. One major exception to this rule concerns adoption of a child from another country.
Adoption of child in Texas is governed by the Adoption law under the Texas Family Code, 1999. An adoption in Texas may be open or anonymous, private or through an agency, or some combination of these types of adoption. Adoption may take place within a family. This kind of adoption sometimes is called a relative adoption.

A stepparent who is responsible for providing the care, love, discipline and guidance for the children of his or her spouse may formalize the relationship by adopting the step-children. A grandparent, aunt or uncle may adopt a child when the child’s birth parent has become unable to care for the child. As with any adoption, a relative adoption can happen only if both natural parents agree.

According to Chapter 162 (Section 162.001to 025) of Sub-chapter A of the Texas Family Code, 1999, any adult in Texas may file a petition to adopt a child. Commonly, married couples apply to become adoptive parents, although single, separated and divorced people have the right to adopt in Texas. Married people must adopt together, one spouse may not seek to adopt a child without consent and joint petition of the other spouse. It is
prohibited by Texas law to discriminate against a person to adopt a child because of his or her race, ethnicity or sex.¹¹⁰

5.2.2. THE 1998 FLORIDA STATUTES (POSITION OF WOMEN UNDER INTERNATIONAL LAW REGARDING ADOPTION: Title VI is CIVIL PRACTICE AND PROCEDURE)

Chapter 63 deals with the concept ‘adoption’. This chapter is known as “Florida Adoption Act” and it consists of Section 63.012 to 63.236. According to Section 63.042,

(1)- any person, a minor or an adult, may be adopted.

(2)- The following persons may adopt,

   (a)- a husband and wife jointly;

   (b)- an unmarried adult; or

   (c)- a married person without the other spouse joining as a petitioner, if the person to be adopted is not his or her spouse, and if;

1-the other spouse is a parent of the person to be adopted and consents to the adoption; or

¹¹⁰ www.law.cornell.edu/wex/table-adoption
2- the failure of the other spouse to join in the petition or consent to the adoption is excused by the court for good cause shown or in the best interest of the child.

(3)- No person eligible to adopt under this Statute may adopt if that person is a homosexual.

(4)- No person eligible under this Section shall be prohibited from adopting solely because such person possesses a physical disability or handicap, unless it is determined by the court or adoption entity that such disability or handicap renders such person incapable of serving as an effective parent.

Again Section 63.064 says that the court may waive the consent of the following individuals to an adoption:

(1)- A parent who has deserted a child without means of identification or who has abandoned a child.

(2)- A parent whose parental rights have been terminated by order of a court of competent jurisdiction.

(3)- A parent who has been judicially declared incompetent and for whom restoration of competency is medically improbable.

(4)- A legal guardian or lawful custodian of the person to be adopted, other than a parent who has failed to respond in writing to a request for consent for
a period of sixty days or who, after examination of his or her written reasons for withholding consent, is found by the court to be withholding his or her consent unreasonably.

(5)- The spouse of the person to be adopted, if the failure of the spouse to consent to the adoption is excused by reason of prolonged and unexplained absence, unavailability, incapacity or circumstances that are found by the court to constitute unreasonable withholding of consent.111

5.2.3. ALASKA STATUTES (1999): Title 25- MARITAL AND DOMESTIC RELATIONS

Chapter 23 deals with ‘adoption’. This Chapter consists of Section 5 to Section 240.

Under Section 10 of the Alaska Statute, any person may be adopted.

Under Section 20 of the Statue, the following persons may adopt:

(1)- A husband and wife together.

(2)- An unmarried adult.

(3)- The unmarried father or mother of the person to be adopted.

111 www.law.cornell.edu/wex/table-adoption
(4)- A married person without the other spouse joining as a petitioner, if the person to be adopted is not the other spouse, and if,

(A)- the other spouse is a parent of the person to be adopted and consents to the adoption;

(B)- the petitioner and the other spouse are legally separated; or

(C)- the failure of the other spouse to join in the petition or to agree to the adoption is excused by the court by reason of prolonged and unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent. 112

5.2.4. THE CODE OF ALABAMA 1975: Title 26- INFANTS AND INCOMPETENTS: Chapter 10A ALABAMA ADOPTION CODE (Acts 1990, no. 90-554)

Alabama Adoption Code deals with various matters related with ‘adoption’ in the state of Alabama in U.S.A. The Code consists of Section 26-10A-1 to 26-10A-38. Section 26-10A-5 is about the eligibility of the persons who may adopt a child under this Code. The Section says,

112 www.law.cornell.edu/wex/table-adoption
(a)- any adult person or husband and wife jointly, who are adults may petition the court to adopt a minor. Section 26-10A-2 defines ‘adult’ as a person who is 19 years of age or older or who by Statue is otherwise deemed an adult and ‘minor’ as a person under the age of 19 or a person who is not an adult under the law in the jurisdiction where he or she resides.

(1)- No rule or regulation of the Department of Human Resources shall prevent an adoption by a person solely because the person is employed outside the home, provided however, the Department of Human Resources may exercise sound discretion in requiring the person to remain in the home with a minor for a reasonable period of time when a particular minor requires the presence of that person to ensure his or her adjustment. Provided however, that the reasonable period of time shall not exceed sixty consecutive calendar days.

(2)- No rule or regulation of the Department of Human Resources or any agency shall prevent an adoption by a single person solely because such person is single or shall prevent an adoption solely because such person is of a certain age.

(3)- Provided however, in cases, where one who purports to be the biological father marries the biological mother, on petition of the
parties, the court shall order paternity tests to determine the true biological father. If the court determines by substantial evidence that the biological father is the man married to the biological mother, then the biological father shall be allowed to adopt the child without the consent of the man, who was married to the biological mother at the time of the conception or birth of the child, or both, when the court finds the adoption to be in the best interest of the child.

(b)- Any adult may petition the court to adopt another adult as provided in this chapter. Section 26-10A-6 says about the persons who may be adopted. The following persons may be adopted:

(1)- A minor.

(2)- An adult under any one of the following conditions:

(a)- He or she is totally and permanently disabled.

(b)- He or she is determined to be mentally retarded.

(c)- He or she consents in writing to be adopted and is related in any degree of kinship, as defined by the intestacy laws of Alabama, or is a stepchild by marriage.

(d)- He or she consents in writing to be adopted by an adult man and woman who are husband and wife.
Section 26-10A-28 deals with adoption by other relatives. A grandfather, a grandmother, great-grandfather, great-grandmother, great-uncle, great-aunt, a brother, or a half-brother, a sister, a half-sister, an aunt or an uncle of the first degree and their respective spouses, if any, may adopt a minor grand child, a minor brother, a minor half-brother, a minor sister, a minor half-sister, a minor nephew, a minor niece, a minor great-grandchild, a minor great niece or a minor great nephew, according to the provisions of this Chapter, except that,

(1)- before the filing of the petition for adoption, the adoptee must have resided for a period of one year with the petitioner, unless this filing provision is waived by the court for good cause shown;

(2)- no investigation under section 26-10A-19 shall occur unless otherwise directed by the court, and

(3)- no report of fees and charges under Section 26-10A-23 shall be made unless ordered by the court.

Section 26-10A-27 deals with step parent adoptions. Any person may adopt his or her spouse’s child according to the provisions of this
Chapter, except that, (1) before the filing of the petition for adoption, the adoptee must have resided for a period of one year with the petitioner, unless this filing provision is waived by the court for good cause shown;

(2)- no investigation under Section 26-10A-19 shall occur unless otherwise directed by the court, and

(3)- no report of fees and charges under Section 26-10A-23 shall be made unless ordered by the court. ¹¹³

5.2.5. ARKANSAS CODE OF 1987 ANNOTATED: Title 9. FAMILY LAW (SUB TITLE-2:DOMESTIC RELATIONS-CHAPTER 9: ADOPTION: SUB-CHAPTER 2. REVISED UNIFORM ADOPTION ACT)

Under Section 9-9-203 Arkansas Code Annotated any individual may be adopted. Under Section 9-9-204 Arkansas Code Annotated the following individual may adopt:

¹¹³ [www.law.cornell.edu/wex/table-adoption](http://www.law.cornell.edu/wex/table-adoption)
(1)- A husband and wife together although one or both are minors; (under Section 9-9-202, a ‘minor’ means an individual under the age of eighteen years.)

(2)- An unmarried adult.

(3)- The unmarried father or mother of the individual to be adopted.

(4)- A married individual without the other spouse joining as a petitioner, if the individual to be adopted is not his spouse; and if,

(i)- the other spouse is a parent of the individual to be adopted and consents to the adoption;

(ii)- the petitioner and the other spouse are legally separated; or

(iii)- the failure of the other spouse to join in the petition or to consent to the adoption is excused by the court by reason of prolonged and unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.

Arkansas Code Annotated, Section 9-9-206 deals with the Persons required for giving consent to the adoption.

(a) Unless consent is not required under section 9-9-207, a petition to adopt a minor may be granted only if written consent to a particular adoption has been executed by,
(1)- the mother of the minor;

(2)- the father of the minor if the father was married to the mother at the time the minor was conceived or at any time thereafter, the minor is his child by adoption, he has custody of the minor at the time the petition is filed, or he has otherwise legitimated the minor according to the laws of the place in which the adoption proceeding is brought;

(3)- any person lawfully entitled to custody of the minor or empowered to consent;

(4)- the court having jurisdiction to determine custody of the minor, if the legal guardian or custodian of the person of the minor is not empowered to consent to the adoption;

(5)- the minor, if more than ten years of age, unless the court in the best interest of the minor dispenses with the minor’s consent; and

(6)- the spouse of the minor to be adopted.

(b)- A petition to adopt an adult may be granted only if written consent to adoption has been executed by the adult and the adult’s spouse.

Arkansas Code Annotated, Section 9-9-207 says about the persons whose consent is not required to adopt a child.

(a)- Consent to adoption is not required of:
(1)- A parent who has deserted a child without affording means of identification or who has abandoned a child;

(2)- A parent of a child in the custody of another if the parent for a period of at least one year has failed significantly without justifiable cause,

(i)- to communicate with the child or

(ii)- to provide for the care and support of the child as required by law or judicial decree;

(3)- The father of a minor if the father’s consent is not required by Section 9-9-206 (a)(2);

(4)- A parent who has relinquished his right to consent under Section 9-9-220 of the Code;

(5)- A parent whose parental rights have been terminated by order of court under Section 9-9-220 of the Code;

(6)- A parent judicially declared incompetent or mentally defective if the court dispenses with the parent’s consent;

(7)- Any parent of the individual to be adopted, if the individual is an adult;

(8)- Any legal guardian or lawful custodian of the individual to be adopted, other than a parent, who has failed to respond in writing to a request for consent for a period of sixty days or who, after examination of his written
reasons for withholding consent, is found by the court to be withholding his consent unreasonably; or

(9)- The spouse of the individual to be adopted; if the failure of the spouse to consent to the adoption is excused by the court by reason of prolonged and unexplained absence, unavailability, incapacity or circumstances constituting an unreasonable withholding of consent.114

5. 2. 6. ARIZONA REVISED STATUES (1956)

Arizona Revised Statues consists of total 49 Statues. Title 8 is all about ‘children’ which is concerned with my research topic. Chapter 1 of Title 8 ‘children’ is related with ‘adoption.’ Article 1 of the Chapter 1 is related with General Provisions; Article 2 with Adoption Subsidies; Article 3 with Nonrecurring Adoption Expenses and Article 4 with Interstate Adoption Assistance Compacts. Under Title 8, Section 102 except as provided in Title 14, Chapter 8, only a child, or a foreign born person who is twenty-one years of age or less and who is not an illegal alien who is present within this state at the time the petition for adoption is filed may be adopted.

114 www.law.cornell.edu/wex/table-adoption
Title 14 of the Arizona Revised Statues is concerned with “Trusts, Estates and Protective Proceedings”.

Chapter 8 of the Title 14 deals with Adult Adoption. It says, (A) – any adult person may adopt either another adult who is at least eighteen years of age and not more than twenty-one years of age and who consents to the adoption or another adult person who is a step-child, niece, nephew, cousin or grandchild of the adopting person by an agreement of adoption approved by a decree of adoption of the court in the country in which either the person adopting or the person adopted resides. A foster parent may adopt an adult who was placed in the foster parent’s care when the adult was a juvenile if the foster parent has maintained a continuous familial relationship with that person for five or more years.

(B) - The agreement of adoption shall be in writing, shall be executed by the person adopting, the person to be adopted and shall state that the parties agree to assume towards each other the legal relation of parent and child and to have all of the rights and to be subject to all of the duties and responsibilities of that relation.
A married person who is not legally separated from person’s spouse can not adopt an adult person without the consent of the spouse of the adopting person if the spouse is capable of giving the consent. A married person who is not legally separated from that person’s spouse can not be adopted without the consent of the spouse of the person to be adopted if the spouse is capable of giving that consent. Neither the consent of the natural parent or parents of the person to be adopted, nor of any other person is required.  

5.2.7. CALIFORNIA FAMILY CODE, 1999

The California Family Code, 1999 consists of twenty Divisions. Division 13 is related with ‘adoption’ and is consists of three parts. Part 1 deals with ‘definitions’; Part 2 with “adoption of unmarried minors”; and Part 3 is related with “adoption of adult and married minors”.

Part 2 of Division 13 has eight Chapters and having Sections run from 8600 to 9212. Under Section 8600, Chapter one headed “General Provisions”, an unmarried minor may be adopted by an adult as provided in this part. Section 8601 says that,

---

115 [www.law.cornell.edu/wex/table-adoption](http://www.law.cornell.edu/wex/table-adoption)
(a)- except as otherwise provided in sub-division (b), a prospective adoptive parent or parents shall be at least ten years older than the child.

(b)- if the court is satisfied that the adoption of a child by a step parent, or by a sister, brother, aunt, uncle or first cousin and if that person is married, by that person and that person’s spouse, is in the best interest of the parties and is in the public interest, it may approve the adoption without regard to the ages of the child and the prospective adoptive parent or parents.

Section 8603 says that a married person, not lawfully separated from person’s spouse, may not adopt a child without the consent of the spouse, provided that the spouse is capable of giving that consent.¹¹⁶

5.2.8. GEORGIA CODE (1982): TITLE 19 -DOMESTIC RELATIONS:

CHAPTER 8 – ADOPTION

Chapter 8 of Title 19 consists of total 26 Sections. Under Section 19-8-3,

(a)-Any adult person may petition to adopt a child if the person,

(1)- is at least twenty five years of age or is married and living with his spouse;

¹¹⁶ www.law.cornell.edu/wex/table-adoption
(2) – is at least ten years older than the child;
(3)- has been a bonafide resident of this state for at least six months immediately preceding the filing of the petition; and
(4)- is financially, physically and mentally able to have permanent custody of the child.

(b)- Any adult person, including but not limited to a foster parent, meeting the requirements of Subsection (a) of this Code shall be eligible to apply to the department or a child placing agency for consideration as an adoption applicant in accordance with the policies of the department or the agency.

(c)- If a person seeking to adopt a child is married, the petition must be filed in the name of both spouses, provided however, that when the child is the step child of the party seeking to adopt, the petition shall be filed by the step parent alone.

Adult persons may be adopted under Section 19-8-21 of Georgia Code on giving written consent to the adoption. In such cases, adoption shall be by a petition duly verified and filed together with two conformed copies in the country in which either any petitioner or the adult to be adopted resides, setting forth the name, age and residence of each petitioner and of the adult.
to be adopted, the name by which the adult is to be known, and his written consent to the adoption. The court may assign the petition for hearing at any time. After examining each petitioner and the adult sought to be adopted, the court, if satisfied that there is no reason why the adoption should not be granted, shall enter a decree of adoption and, if requested, shall change the name of the adopted adult.

Thereafter, the relation between each petitioner and the adopted adult shall be as to their legal rights and liabilities, the relation of parent and child.\textsuperscript{117}

5.2.9. THE INDIANA CODE (1998): Title 31 FAMILY LAW AND JUVENILE LAW

Article 19 of Title 31 deals with Family law, consists of total 29 Chapters. Chapter 2 is all about filing of petition for adoption.

Section 2 (a) of Chapter 2 says that a resident of Indiana who seeks to adopt a child less than eighteen years of age may, by attorney of record, file a petition for adoption with the clerk of the court having probate jurisdiction in the country in which,

\textsuperscript{117} \url{www.law.cornell.edu/wex/table-adoption}
(1)- the petitioner for adoption resides;

(2)- a licensed child placing agency or governmental agency having custody of the child is located; or

(3)- the child resides.

Section 2 (c) says that, if an individual who files a petition for adoption of a child, decides not to adopt the child; or is unable to adopt the child; the petition for adoption may be amended or a second petition may be filed in the same action to substitute another individual who intends to adopt the child as the petitioner for adoption. The amended petition or second petition under this Sub-section relates back to the date of the original petition.

Section 4 (a) of Chapter 2 says that, (except as provided in Subsection (b)), a petition for adoption by a married person may not be granted unless the husband and wife join in the action.

According to Section 4 (b), if the petitioner for adoption is married to the,

(1)- biological; or

(2)- adoptive;
father or mother of the child, joint action by the father or mother is not necessary if an acknowledged consent to adoption of the biological or adoptive parent is filed with the petition for adoption. 118

5. 2.10. IOWA ADOPTION CODE (1998)

Section 600.4 of the Code tells us about the qualifications to file adoption petition.

Any person who may adopt may file an adoption petition under section 600.3. The following persons may adopt,

1. An unmarried adult.
2. Husband and wife together.
3. A husband or wife separately if the person to be adopted is not the other spouse and if the adopting spouse,
   a. is the step parent of the person to be adopted;
   b. has been separated from the other spouse by reason of the other spouse’s abandonment as prescribed in section 597.10; or
   c. is unable to petition with the other spouse because of the prolonged and unexplained absence, unavailability, or incapacity of the other spouse or

118 www.law.cornell.edu/wex/table-adoption
because of an unreasonable withholding of joining by the other spouse, as determined by the court.\footnote{www.law.cornell.edu/wex/table-adoption}

5. 2.11. KENTUCKY REVISED STATUTES (1998)

Section 470 to 590 of chapter 199.00 deals with various provisions relating to adoption. Section 199.470 says,

(1)- Any person who is eighteen years of age and who is a resident of this state or who has resided in this state for twelve months next before filing may file a petition for leave to adopt a child in the circuit court of the country in which the petitioner resides.

(2)- If the petitioner is married, the husband or wife shall join in a petition for leave to adopt a child unless the petitioner is married to a biological parent of the child to be adopted, except that if the court finds the requirement of a joint petition would serve to deny the child a suitable home, the requirement may be waived.

(3)- If a child is placed for adoption by the cabinet through an agency licensed by the cabinet or with written approval by the secretary of the cabinet, the petition may be filed at the time of placement. In all other
adoptions, the petition shall not be filed until the child has resided continuously in the home of the petitioner for at least ninety days immediately prior to the filing of the adoption petition.

(4)- No petition for adoption shall be filed unless prior to the filing of the petition the child sought to be adopted has been placed for adoption by a child placing institution or agency or by the cabinet, or the child has been placed with written approval of the secretary; but no approval shall be necessary in the case of,

(a)- a child sought to be adopted by a step parent, grand parent, sister, brother, aunt, uncle, great grandparent, great aunt, or great uncle, however, the court in its discretion may order a report in accordance with KRS 199.510 (related with investigation of the petition and filing of report and a background check as provided in KRS (KENTUCKY REVISED STATUTES) 199.473(8)).

(b)- a child received by the proposed adopting parents or parents from an agency without this state with the written consent of the secretary; or

(c)- a child adopted under the provisions of KRS 199.585(1), that is, the Commonwealth of Kentucky shall recognize a decree, judgment or final order of adoption issued by a court or other governmental authority with
appropriate jurisdiction in a foreign country when the child to be adopted has been approved for United States citizenship, or as otherwise provided by federal law.

Under Section 199.471 of KRS petitions for adoption of children placed for adoption by the cabinet or a licensed child placing institution or agency shall not be denied on the basis of the religious, ethnic, racial, or interfaith background of the adoptive applicant, unless it will be contrary to the expressed wishes of the biological parent or parents.¹²⁰

5.2.12. LOUISIANA STATE STATUTE: Title X11- ADOPTION OF CHILDREN

Article, 1170 of Title X11, deals with types of adoption. There are three types of adoption of minor children in Louisiana, viz, Agency adoption, Private adoption and Interfamily adoption.

¹²⁰ www.law.cornell.edu/wex/table-adoption
Article, 1198 of chapter 9 of Title X11 is about Agency adoption. A single person, eighteen years or older, or a married couple jointly may petition to adopt a child through an agency.

Chapter 10 of Title X11 is private adoption. Under Article 1221, a single person, eighteen years or older, or a married couple jointly may petition to privately adopt a child. Article 1243 of Title X11 is interfamily adoptions. It says,

A- A step parent, step grandparent, grandparent, aunt, great aunt, uncle, great uncle, sibling or first cousin may petition to adopt a child if all of the following elements are met:

(1)- The petitioner is related to child by blood, adoption, or affinity through a parent recognized as having parental rights.

(2)- The petitioner is a single person over the age of eighteen or a married person whose spouse is a joint petitioner.

(3)- The petitioner has had legal or physical custody of the child for at least six months prior to filing the petition for adoption.
B- When the spouse of the step parent or one joint petitioner dies after the petition has been filed, the adoption proceedings may continue as though the survivor was a single original petitioner.

Article 1193 is about the persons whose consent or relinquishment is required for a valid adoption to take place. These are:

(1) The mother of the child.

(2) The father of the child, regardless of the child’s actual paternity, if any of the following apply,

(a) the child is a child born of the marriage in accordance with the Louisiana Civil Code or its legal equivalent in another state;

(b) the father is presumed to be the father of the child in accordance with the Louisiana Code or its legal equivalent in another state.

(3) The alleged father of the child who has established his parental rights in accordance with Chapter 10 of the Title XI

(4) The biological father of the child whose paternity has been determined by a judgment of filiations and who has established his parental rights in accordance with Chapter 10 of the Title XI.

(5) The custodial agency which has placed the child for adoption, except that the court may grant the adoption without the consent of the agency if the
adoption is in the best interest of the child and there is a finding that agency has unreasonably withheld its consent.121

5. 2.13. MAINE REVISED STATUE: TITLE 18-A

(Article-9 is known as “The Adoption Act” 1995)

Section 9-301 of Title 18-A says that, a husband and wife jointly or an unmarried person, resident or non resident of the state, may petition the probate court to adopt a person, regardless of age, and to change that person’s name. Section 9-312 of Title 18-A says that, if an adoption in a foreign country has been finalized and the adopting parents are seeking an adoption under the laws of this state to give recognition to the foreign adoption, a judge of probate may enter a decree of adoption based solely upon a judgment of adoption in a foreign country and may order a change of name if requested by the adopting parents.

5. 2.14. MISSISSIPPI CODE OF 1972 (as amended in 1999)

Under Mississippi Code, any unmarried adult, or husband and wife jointly may adopt a child. They must be Mississippi resident for ninety days

121 www.law.cornell.edu/wex/table-adoption
preceding filing of petition except under certain circumstances. Couples of the same gender are prohibited from adopting.¹²²

5. 2.15. NEW York STATE CONSOLIDATED LAWS: “DOMESTIC RELATIONS LAW” (Article - V11 is Adoption (Title 1 to 4)

Section 110 of Article V11:

In New York an adult unmarried person or an adult husband and his adult wife together may adopt another person. An adult married person who is living separate and apart from his or her spouse pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded or an adult married person who has been living separate and apart from his or her spouse for at least three years prior to commencing an adoption proceeding may adopt another person, provided however, that the person so adopted shall not be deemed the child or step child of the non adopting spouse for the purposes of inheritance or support rights or obligations or for any purposes. An adult or minor husband and his adult or minor wife together may adopt a child of either of them born

¹²² [www.law.cornell.edu/wex/table-adoption](http://www.law.cornell.edu/wex/table-adoption)
in or out of wedlock and an adult or minor husband or an adult or minor wife may adopt such a child of the other spouse.

An adult married person who has executed a legally enforceable separation agreement or is a party to a marriage in which a valid decree of separation has been entered or has been living separate and apart from his or her spouse for at least three years prior to commencing an adoption proceeding and who becomes or has been the custodian of a child placed in their care as a result of court ordered foster care may apply to such authorized agency for placement of said child with them for the purpose of adoption.

Section 111-c of Article V11:

A final judgment of adoption granted by a judicial, administrative or executive body of a jurisdiction or country other than the United States shall have the same force and effect in this state as that given to a judgment of adoption entered by a court of competent jurisdiction of New York state without additional proceedings or documentation provided,

(a)- either adopting parent is a resident of this state; and
(b)- the validity of the foreign adoption has been verified by the granting of an IR-3 immigrant visa, or a successor immigrant visa for the child by the United States citizenship and immigration services.\footnote{www.law.cornell.edu/wex/table-adoption}

\textbf{5.2.16. NEW MEXICO STATUTES ANNOTATED 1978 (COMPILATION -1999)}

Chapter 32A, Article 5 is related with ‘adoption’. It says,

A- any child may be adopted.

B- Residents who are one of the following may adopt:

(1)- any individual who has been approved by the court as a suitable adoptive parent pursuant to the provisions of the Adoption Act (Article 5 is known as the Adoption Act) and

(2)- a married individual without the individual’s spouse joining in the adoption if,

(a)- the non joining spouse is a parent of the adoptee;

(b)- the individual and the non joining spouse are legally separated; or

(c)- the failure of the non joining spouse to join in the adoption is excused for reasonable circumstances as determined by the court.\footnote{www.law.cornell.edu/wex/table-adoption}
IS ADOPTION OF CHILDREN AND CHANGE OF NAMES.

Chapter 210 says that, a person of full age may petition the probate court in
the country where he resides for leave to adopt as his child another person
younger than himself, unless such other person is his or her wife or husband,
or brother, sister, uncle or aunt, of the whole or half blood. A minor may
likewise petition, or join in the petition of his or her wife or husband for the
adoption of a natural child of one of the parties. If the petitioner has a
husband or wife living, competent to join in the petition, such husband or
wife shall join therein, and upon adoption the child shall in law be the child
of both; provided however, that the prayer of the petition may be granted
although the spouse of the petitioner is not a party to the petition if the court
finds:
(i)- the failure of the spouse to join in the petition or to consent to the
adoption is excused by reason of prolonged and unexplained absence, legal
separation, prolonged separation, incapacity or circumstances constituting an
unreasonable withholding of consent;
(ii)- the husband and wife are not in the process of an ongoing divorce; and
(iii) the granting of the petition is in the best interest of the child.

If a person not an inhabitant of this Commonwealth desires to adopt a child, the petition may be made to the probate court in the country where the child resides.\textsuperscript{125}

\section*{5.2.18. REVISED CODE OF WASHINGTON (TITLE-26 IS “DOMESTIC RELATIONS”)}

Section 140 of Chapter 33 of Title 26 tells us about the persons who may adopt a child and who have the eligibility to be adopted.

(1)- Any person may be adopted, regardless of his or her age or residence.

(2)- Any person who is legally competent and who is eighteen years of age or older may be an adoptive parent.

Section 045 of Chapter 33 of Title 26 says that, an adoption shall not be delayed or denied on the basis of the race, colour or national origin of the adoptive parent or the child involved. However, when the department or an agency considers a placement option in a child’s best interests, the department or agency may consider the cultural, ethnic or racial background

\footnote{\url{www.law.cornell.edu/wex/table-adoption}}
of the child and the capacity of prospective adoptive parents to meet the needs of a child of this background.\textsuperscript{126}

\textbf{5.2.19. CODE OF VIRGINIA (1999)}

\textbf{ADOPTION PROCEDURES IN VIRGINIA ARE GOVERNED BY CHAPTER 12 OF TITLE 63.2 OF THE CODE OF VIRGINIA (1999).}

Under Section 1200 of Title 63.2 any child or adult under certain conditions may be adopted. Any natural person may petition to adopt minor child. If petitioner is married, spouse must join. Any natural person may adopt another adult under certain conditions. There are two types of adoptive placements that are allowed by Virginia law: agency placements and non-agency placements.

A-Agency placements occur when the child is in the custody of a local department of social services or licensed child placing agency. In an agency placement, all parental rights are terminated, custody with authority to place for adoption is granted to the agency, and the agency consents to the child’s adoption.

\textsuperscript{126} [www.law.cornell.edu/wex/table-adoption](http://www.law.cornell.edu/wex/table-adoption)
B- A Non-agency placement occurs when the child is not in the custody of an agency. In a non-agency placement, the birth parents or legal guardians consent to the adoption and parental rights are terminated by entry of the final order of adoption. Interstate and International adoptions are subject to all relevant Virginia statutes as well as compliance with the child placement and adoption laws of the sending and receiving states and foreign countries including the Interstate compact on the placement of children (Chapter 10 of Title 63.2 of the Code of Virginia), with regard to interstate placements.\textsuperscript{127}

Though it is not possible to discuss all about the adoption processes of all the fifty states of America in detail but after going through the various aspects of the process of adoption in abovementioned states, we can conclude that there exists no uniformity among American states regarding adoption laws perhaps due to the very personal nature of these laws. But, there is one basic similarity among all states that all are equal in the eye of law irrespective of race, colour, nationality and more particularly with regard to sex. Men and women are equally entitled to adopt a child or adult if any, if they are otherwise eligible. Legal process of adoption in America is

\textsuperscript{127} \url{www.law.cornell.edu/wex/table-adoption}
complicated not only by the different kinds of children who are adopted and the different kinds of people who seek to adopt but also by confusing system of state, federal and international laws and regulations. To bring uniformity and to reduce this confusion in adoption laws the Uniform Adoption Act, 1994 was drafted by the National Conference of Commissioners on Uniform State Laws and has been approved and recommended for enactment in all the states at its annual conference meeting in Chicago, Illinois (July 29-August 5, 1994).

Article 1 is all about General Provisions. Section-1-102 of Article-1 of the Uniform Adoption Act deals with the persons who may adopt a child and who are eligible to be adopted under this Act.

Subject to this Act, any individual may adopt or be adopted by another individual for the purpose of creating the relationship of parent and child between them. No one is categorically excluded by the Act from being considered as a prospective adoptee or as a prospective adoptive parent. Determinations concerning the availability and suitability of individuals to become each other’s adoptive parent or child are to be made on the basis of the particular needs and characteristics of each individual. Marital status,
like other general characteristics such as race, ethnicity, religion, or age, does not preclude an individual from adopting but if a prospective adoptive parent is married, his or her spouse must join in the petition. After a decree of adoption becomes final, each adoptive parent and the adoptee have the legal relationship of parent and child and have all the rights and duties of that relationship (Section 1-104).

Section 1-108 of the Adoption Act says that, a final decree or order of adoption is entitled to full faith and credit under Article 4, Section 1 of the United States Constitution.128

5.3. Adoption Procedures with Special Reference to Women’s Adoptive Rights in United Kingdom:

Now, after discussing the various aspects of adoption rules in different states of America, we will discuss adoption procedures in Great Britain. The United Kingdom (U.K.) of Great Britain and Northern Ireland, commonly known as the United Kingdom, is a sovereign state located off the northern coast of continental Europe. The U.K. is consists of four countries: England,

128 www.uniformlaws.org/Act.aspx?
Northern Ireland, Scotland and Wales. The U.K. is a Constitutional monarchy and a unitary state. It is governed by a parliamentary system with its seat of government in London, the capital. The U.K. does not have a single legal system. Today the U.K. has three distinct systems of law: English law, Northern Ireland law and Scots law.

There are a number of main Acts and orders affecting adopting and the public care of children in Scotland.

- **The Adoption and Children (Scotland) Act 2007**
  
The Act introduces provisions that will modernize and improve the legal framework for adoption and permanence planning and is based on the work carried out by the Adoption Policy Review Group.

- **The Adoption and Children Act, 2002**
  
  This Act applies to England and Wales, although some sections apply to Scotland and Northern Ireland. The Act introduces a new legal order, special guardianship, which offers legal permanence for children for whom adoption is not suitable and modernizes the whole existing legal framework for domestic and inter-country adoption. The Act was fully implemented on 30<sup>th</sup> December 2005.
• **Adoption (Inter-country Aspects) Act, 1999**


• **The Children (Scotland) Act, 1995**

This Act defines parental responsibilities and rights and sets out the duties on local authorities to promote the welfare of children.

**The Hague Convention on Inter-country Adoption, 1993:** This Convention applies to the U.K. as a whole and provides a framework for the process of inter-country adoption and sets out minimum standards and requirements for countries of origin.

• **The Children Act, 1989**

The Act applies to England and Wales. Some sections affect Northern Ireland and Scotland also. This Act introduces major reforms in legislations
for children including introducing the concept of parental responsibilities and giving powers to local authorities to provide services for children in need.

- **The Adoption and Children (Scotland), 2007**

Under Chapter 2 of part 1 of the Act eligibility criteria for making an application for adoption are given. Section 29(1) says, where,

(a) each member of a relevant couple is aged twenty one or over;

(b) neither member of the couple is a parent of the child to be adopted and

(c) one of the conditions in Subsection (2) is met, an adoption order may be made on the application of the couple.

Under Section 29(2), those conditions are:

(a) That a member of the couple is domiciled in a part of the British Islands,

(b) That each member of the couple has been habitually resident in a part of the British Islands for a period of at least one year ending with the date of application.

According to clause (3) of Section 29, “relevant couple” means:

(a) Persons who are married to each other;

(b) persons who are civil partners of each other;
(c)- persons who are living together as if husband and wife in an enduring family relationship; or

(d)- persons who are living together as if civil partners in an enduring family relationship. According to clause (4) of Section 29, ‘parent’ in relation to the child to be adopted, means a parent who has any parental responsibilities or parental rights in relation to the child.

Section 30 says that,

(1)- an adoption order may be made on the application of a person if,

(a)- the person is aged twenty one or over;

(b)- Subsection (2), (3), (4) or (5) applies;

I- one of the conditions in Subsection (6) is met and

(d)- where the person is a natural parent of the child to be adopted, Subsection (7) applies. Subsection (2) applies if the person is not a member of a relevant couple. Clause (3) of Section 30 applies if,

(a)- the person and another are a relevant couple;

(b)- the other person is aged eighteen or over;

I- the other person is a parent of the child to be adopted and

(d)- the other person,

(i)- is domiciled in a part of the British Islands, or

-190-
(ii)- has been habitually resident in a part of the British Islands for a period of at least one year ending with the date of the application. Clause (4) of the Section 30 applies if,

(a)- both the person are;

(i)- married to each other, or

(ii)- civil partners of each other,

(b)- that the other person is not a parent of the child to be adopted and

(c)- the court is satisfied that,

(i)- the other person cannot be found;

(ii)- the both person have separated and are living apart and the separation is likely to be Permanent; or

(iii)- that the other person is by reason of ill health (whether physical or mental) incapable of making an application for an adoption order. Clause (5) of Section 30 applies if,

(a)- both the person are a relevant couple by virtue of being members of a couple falling within paragraph (c ) or (d) of Subsection (3) of Section 30;

(b)- the other person is not a parent of the child to be adopted and
(c)- the court is satisfied that the other person is by reason of ill health (whether physical or mental) incapable of making an application for an adoption order.

The conditions which need to met under Section 30(1) are that the person who has made the application,

(a)- is domiciled in a part of the British Islands,

(b)- that has been habitually resident in a part of the British Islands for a period of at least one year ending with the date of application (Subsection 6 of Section30).

Subsection (7) applies if the court is satisfied that,

(a)- the other natural parent is dead;

(b)- the other natural parent cannot be found;

(c)- by virtue of Section 28 of the Human Fertilization and Embryology Act, 1990, there is no other parent, or

(d)- the exclusion of the other natural parent from the application for adoption is justified on some other ground.
The Adoption and Children Act, 2002

This Act applies to England and Wales and some sections apply to Scotland and Northern Ireland.

Chapter 38, Part-1 of the above Act deals with adoption. Chapter 3 of Part-1 of the Act enumerates the eligibility criteria for adopting a child.

Under Section 49 of Chapter-3, an application for an adoption order may be made by,

(a) a couple; or

(b) one person, but only if it is made under Section 50 or 51 and one of the following conditions is met:

(i) The first condition is that at least one of the couple (in the case of an application under Section 50) or the applicant (in the case of an application under Section 51) is domiciled in a part of the British Islands.

(ii) The second condition is that both of the couple (in the case of an application under Section 50) or the application (in the case of an application under Section 51) have been habitually resident in a part of the British Islands for a period of not less than one year ending with the date of the application.
(iii)- An application for an adoption order may only be made if the person to be adopted has not attained the age of eighteen years on the date of the application.

(iv)-References in this Act to a child, in connection with any proceedings (whether or not concluded) for adoption (such as “child to be adopted” or “adopted child”), include a person who has attained the age of eighteen years before the proceedings are concluded.

Under Section 50, an adoption order may be made on the application of a couple where both of them have attained the age of twenty one years; or where one of the couple is the mother or the father of the person to be adopted and has attained the age of eighteen years, and the other has attained the age of twenty one years.

Section 51 of the Act says about the criteria to be followed in adoption by one person.

Section 51(1) - an adoption order may be made on the application of one person who has attained the age of twenty one years and is not married.
Section 51(2) - an adoption order may be made on the application of one person who has attained the age of twenty one years if the court is satisfied that the person is the partner of a parent of the person to be adopted.

Section 51(3) - an adoption order may be made on the application of one person who has attained the age of twenty one years and is married if the court is satisfied that:

(a)- the person’s spouse can not be found,

(b)- the spouses have separated and are living apart and the separation is likely to be permanent, or

(c )- the person’s spouse is by reason of ill health, whether physical or mental, incapable of making an application for an adoption order.\textsuperscript{129}

5.4. Adoption Laws with a Special Reference to Women’s Right to Adopt in Canada:

Canada is a country occupying most of northern America, extending from the Atlantic Ocean in the east to the Pacific Ocean in the west and northward into the Artic Ocean. The Provinces and territories of Canada combine to

\textsuperscript{129} www.adoptionpolicy.org/pdf/eu-england
make up the world’s second largest country and share the world’s longest common border with the United States to the south and northwest. Currently the ten provinces of Canada are Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan; while the three territories are Northwest Territories, Nunavut and Yukon. Canada is a parliamentary democracy and a Constitutional monarchy. The Constitution is the supreme law of the country and consists of written text and unwritten Conventions. Adoption in Canada is a matter of provincial jurisdiction. Therefore, there are as many adoption statues as are provinces. Let us see, one by one, the basic features of adoption processes in various provinces and territories of Canada.

5.4.1. The Adoption Act of Manitoba

(Assented to June 28, 1997 and as amended on January 1, 2003)

There are seven categories of adoption as found in the Province of Manitoba. Division-1 (Section 35 of the Adoption Act) deals with adoption of permanent ward. The Section says, a husband and wife, common law
partners or a single adult may apply to a child and family services agency to adopt a child who is a permanent ward. “Common law partner” of a person means a person who not being married to the other person, is cohabiting with him or her in a conjugal relationship of some permanence; and “permanent ward” means a child whose permanent guardian is,

(a) the director or a child and family services agency either by-:

(i)- voluntary surrender of guardianship of the child under Section 16 of the Child and Family Services Act, or

(ii)- an order of the court under Clause 38 (1) (f) of that Act, or

(b)- an extra provincial agency.

Division-2 (Section 51 of the Adoption Act) - is all about private adoptions. A child may be privately placed for adoption by the birth parents or if the parents are deceased, by a court appointed guardian.

Under Section 73(1) of Division 4 (de facto adoption), anyone can apply to court to adopt a child whom he or she has cared for and maintained for at least two consecutive years. A husband and wife, common law partners or any two persons may apply together to adopt a child where at the time of the application they are jointly caring for the child and one of them has cared for
and maintained the child for at least two consecutive years. Notice of the application must be given to the child’s parents and the agency in the area where the applicants live.

Division-5(Section 77.1) of the Adoption Act (Extended Family Adoptions): A parent may place a child for adoption with one member, or jointly with two members of the child’s extended family. (“extended family” includes, in addition to the persons in the definition of ‘family’, aunts, uncles and cousins of a birth parent and a spouse or common law partner or any of those persons).

Division- 6 (Section 88) of the Adoption Act (Adoption by spouse or common law partner of child’s parent): Under this division, a person who (a)- is married to the parent of a child; or (b)- is a common law partner of the parent of a child; may, together with that parent or alone but with the consent of that parent, apply to the court in the prescribed form to adopt the child if the child is living with the applicants and is being cared for by them.
Division-7 (Section 94) of the Adoption Act (Adoption of an adult):

Under this head, a judge may make an order of adoption of an adult without the consent of anyone, except the person to be adopted, as long as

(a) the person adopting is older by a reasonable number of years than the person to be adopted; and

(b) the reason for the adoption is acceptable to the judge hearing the application.

International adoption in Manitoba is covered by either the International Adoption (Hague Convention) Act or by the same process as adoptions of children who are permanent ward (Division-3 of Section 69 of the Adoption Act).  

5.4.2. Adoption Act of British Columbia, 1996

Section 29 of the Adoption Act of British Columbia states that,

(1) One adult alone or two adults jointly may apply to the court to adopt a child in accordance with this Act.

130 www.adoptiveparents.ca/mb
(2)- One adult may apply to the court to jointly become a parent of a child with a birth parent of the child.

(3)- Each applicant must be a resident of British Columbia.

The Act does not say anything about same sex couples. The sexual orientation of the prospective parents is not an issue in the Province of British Columbia.

Regarding interprovincial and inter-country adoption, Part 4 of the Adoption Act has two divisions. Division-2, 51(1) says that, the Hague Convention on Inter-country Adoption have the force of law in British Columbia and also that if adoption law of British Columbia comes in conflict with the provisions of the Hague Convention, the Convention shall prevails (Sub section 3 of Section 51). Division-1of the Adoption Act (Interprovincial Adoptions and Inter-country Adoptions outside the scope of the Hague Convention):Section 48(1) of the Division-1 says that, before a child who is not a resident of British Columbia is brought into the province for adoption, the prospective adoptive parents must obtain the approval of a Provincial Director or an adoption agency. But Section 48 does not apply to a child who,
(a)- is brought into British Columbia for adoption by a relative of the child or by a person who will become an adoptive parent jointly with the child’s birth parents; or

(b)- is a permanent ward of an extra-provincial agency.  

5.4.3. Ontario Child and Family Services Act, 1990 (as amended up to April 1, 2009)

Under Section 146(4) of Part (vii) of the Ontario Child and Family Services Act, an application for adoption may only be made,

(a)- by one individual; or

(b)- jointly by two individuals who are spouse of one another.

According to Section 146(2) of Part seven of the Act, under Family Adoption, the court may make an order for the adoption of a child, in the child’s best interests, on the application of,

(a)- a relative of the child;

(b)- the child’s parent; or

(c)-the spouse of the child’s parent.

Under Section 146(3), the court may make an order for the adoption of,
(a)- a person eighteen years of age or more; or
(b)- a child who is sixteen years of age or more and has withdrawn from parental control on another person’s application.

In Ontario, under Section 159, an adoption effected according to the law of another jurisdiction, before or after the 1st day of November, 1985, has the same effect in Ontario as an adoption under this Part seven.132

5. 4. 4. Adoption Laws in the Province of Alberta

In the Province of Alberta, there are three possible sources of law on adoption. The first is the Adult Adoption Act, 2000, which deals with the situation where the adoptee is at least eighteen years of age. The second potential source of adoption law is what we call a common law or customary adoption. This would impact particularly the aboriginal communities who had their own customs. The third and most often used source of adoption law in Alberta was the Child Welfare Act, 1984 which is replaced by Child, Youth and Family Enhancement Act, 2004.

Under Section 62(1) of the Division-1 of Chapter C-12 of Part-2 of the Child, Youth and Family Enhancement Act, an adult subject to this Section who,

(a)- maintains the adult’s usual residence in Alberta, or

(b)- maintained the adult’s usual residence in Alberta at the time the adults received custody of a child under this Division, may petition the court in the prescribed form for an adoption order.

Sub- section (3) of Section 62 says that, no petition for adoption order shall be filed in respect of a child unless the child is a Canadian citizen or has been lawfully admitted to Canada for permanent residence and the period for revoking consent to adoption has expired. A court and all persons who exercise any authority or make any decision under this Act relating to the adoption of a child must do so in the best interests of the child. If the adoption is in the best interests of the child it should be granted regardless of whether the petitioner is single, married, separated or in a common law relationship or whether the petitioner is a gay or lesbian or whether the petitioner is able bodied, disabled, wealthy or poor.
Regarding adoption of non resident of Canada, a resident of Alberta who wishes to adopt a child who is not lawfully admitted to reside in Canada must apply to the Provincial Director for approval to proceed with the placement of the child. According to Section 95 of Division 6 (Inter-country adoption), if a child is habitually resident in a designated state (a state recognized as a designated state under section 105 of the Act; that is the Minister may, by order, recognize states as designated states for the purposes of this division), an adoption under this Division may take place only if the competent authority for Alberta,

(a)- has determined that the prospective adoptive parents are eligible and suited to adopt;

(b)- has ensured that the prospective adoptive parents have received training satisfactory to the Central Authority for Alberta, on preparation for international adoption;

(c)- is satisfied that the child is or will be authorized to enter and reside permanently in Canada.\textsuperscript{133}

5. 4. 5. Prince Edward Island Adoption Law

Adoption in Prince Edward Island is primarily governed by the Adoption Act, 1988 and the Inter-country Adoption (Hague Convention) Act.

Under Section 14 of the Adoption Act, 1988, no person shall apply to adopt unless he or she has attained the age of majority and is older than the person to be adopted. Section 16(1) of the Adoption Act says that, in the case of a married couple, the two persons may apply jointly. Sub section (2) says that, Sub section (1) does not apply where one of the spouse is the parent of and has guardianship of the child and in that case the adoption order does not affect the parental relationship of that person to the child. A person may apply to adopt a competent adult and the court may so order (Section 28(1)).  

5. 4. 6. The Adoption Act, 1998

(Chapter A-5.2 of the Statutes of Saskatchewan, 1998)

According to Section 16(2), subject to Sub section (3), an application to the court for an order of adoption of a child may be made pursuant to this Section by:

(a)- married adults jointly;

(b)- an unmarried adult, or

(c)- any other person or persons that the court may allow, having regard to the best interests of the child. Sub section (3) of Section 16 says that, subject to Sub section (5), no person mentioned in Sub section (2) is entitled to apply unless the person is a resident of Saskatchewan. Sub section (5) says that the court may waive the residency requirement of Sub section (3), if in the opinion of the court, it is in the best interests of the child to do so.

Under Section 23(1) of the Adoption Act, a resident of Saskatchewan may with the consent of his or her spouse, apply to the court to adopt a child of the spouse if the child is:

(a)- living with the applicant; and
(b)- being cared for by the applicant. Section 24 (1) of the Act deals with adoption of an adult. According to this Section, a person who is eighteen years of age or more may be adopted if,

(a)- subject to Sub section (3), the person consents; and

(b)- the court considers the reason for the adoption to be acceptable.

According to Sub section (3) of Section 24, if the person to be adopted pursuant to this section is unable to give or understand consent, the court may dispense with the requirement of the person’s consent. An application for an order of adoption of a person mentioned in Sub section (1) of Section 24 may be made by:

(a)- married adults jointly;

(b)- an unmarried adult; or

(c)- any other person or persons that the court may allow, having regard to the reasons for the adoption.

Section 27 of the Part (v) of the Adoption Act deals with International adoptions.
According to this Section, a resident of Saskatchewan who wishes to adopt a child who is not a resident of Canada must apply to the Provincial Director for approval for placement of the child.\footnote{www.qp.gov.sk.ca/documents/english/statutes/statutes/a5-2.pdf}

5.4.7. Adoption Act, (statutes of Northwest Territories), 1998

Part-1 of the Act is related with adoption proceedings. Section 5(1) of Part-1 says that, subject to Sub section (2), the following persons may petition to adopt a child under this Act:

(a)- an unmarried person who has attained the age of majority and is not the spouse of a person who is married;

(b)- spouses jointly, where at least one of them has attained the age of majority and neither of them is married to another person;

According to Section 1(1) ‘spouse’ means a person who,

(a)- is married to another person, or

(b)- is living in a conjugal relationship outside marriage with another person,

if

(i)- they have so lived for a period of at least two years, or
(ii)- the relationship is one of some permanence and they are together the natural or adoptive parents of a child.

(c )- a spouse, where the child of his or her spouse and neither spouse is married to another person.

Section 39 of the Adoption Act deals with extra-territorial adoption. The Section says that an adoption effected according to the law of another territory or a province or of any other country, or part of it, before, on or after November 1, 1998, has the same effect in the Territories as an adoption under this Act.¹³⁶

5. 5. Women’s Adoptive Rights in Commonwealth of Australia:

The Commonwealth of Australia is a country in the southern hemisphere comprising the mainland, which is both the world’s smallest continent and the world’s largest island, the island of Tasmania and numerous other islands in the Indian and Pacific Oceans. Australia has six states and two major mainland territories. The states are New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia. The two major mainland territories are the Northern Territory and the Australian Capital

¹³⁶ www.gov.pe.ca/law/statutes/pdf/a-04-1
Territory. In most respects these two territories function like states, but the Commonwealth Parliament can override any legislation of their parliament.

The Commonwealth of Australia is a Constitutional democracy based on federal division of powers. The form of government used in Australia is a Constitutional monarchy with a parliamentary system of government. In Commonwealth of Australia, the Adoption of Children Act, 1965 (New South Wales), which came into force in 1967, is based on a model adoption Act which was followed by all Australian jurisdictions and led to relatively uniform adoption laws. Since the 1960, the differences between the Australian jurisdictions have become much greater as there have been numerous amendments and in some cases completely new Acts. After passing through the various stages of amendments, this Act that is Adoption of Children Act 1965 now becomes Adoption Act, 1994.

Let us see the various relevant provisions of this Act and other legislations, if any, in various states and territories of Australia to evaluate that, is there any discrimination exists in matters of adoption solely on the ground of sex.

Section 67(1) of the Division 10 of the Adoption Act, 1994 says that, a person may adopt a child if he or she,
(a)- is a step-parent of the child and has been married to or in a de facto relationship with a parent of the child for at least three years;

(b)- is a carers of the child; or

(c )- has under this Act, had the child placed in his or her care with a view to the child’s adoption by him or her.

Section 67 (2) says that, persons referred to in Sub-section (1) (b) and (c) and carers referred to in Section 66 (2) (that is, a person who is eighteen or more years of age may be adopted by a person who was a carers or step-parent of the first mentioned person immediately before the first mentioned person attained eighteen years of age) may, subject to this Act, jointly adopt another person if the first mentioned persons or carers are married to, or in a de facto relationship with each other and have been so far at least three years, but not otherwise.

Under clause 3 of Section 67, a child is not eligible to adopt another child.

Under clause 4 of Section 67, for the purpose of Sub-section (1) (a), if the step-parent is married to a parent of the child and before the marriage those persons were living as de facto partners, the period of living as de facto
partners may be included while calculating the period referred to in Sub-
section (1) (a).

In the same way for the purposes of Sub section (2), if the persons referred
to in Sub section (1) (b) and (c) or the carers referred to in Section 66(2) are
married and before the marriage those persons or carers were living as de
facto partners, the period of living as de facto partners may be included
while calculating the period referred to in Sub section (2).\textsuperscript{137}

5.6. Adoption Laws with a Special Reference to Women’s Right to
Adopt in People’s Republic of China:

The People’s Republic of China, Commonly known as China, is the largest
country in East Asia and the most populous in the world. China is a titular
Socialist Republic ruled by the Communist party of China under a single
party system and has jurisdiction over twenty-two provinces, five
autonomous regions, four municipalities and two largely self-governing
special Administrative Regions (Hong Kong and Macau). The Capital is
Beijing. China has control over mainland China and the largely self

\textsuperscript{137}Charlesworth, Stephanie ; Nevill Turner, J. ; Foreman, Lynne, Disrupted Families: The Law, The
governing territories of Hong Kong and Macau. Republic of China, commonly known as Taiwan, has control over the Islands of Taiwan, Penghu, Kinmen and Mastu. Chinese law is one of the oldest legal traditions in the world. In the 20th and 21st century, law in China has been a complex mixture of traditional Chinese approaches and Western influences. After the founding of the People’s Republic of China in 1949, four Constitutions have been formulated successively in 1954, 1975, 1978 and 1982. Chinese legal system includes laws of seven categories: the Constitution and related laws, Civil and Commercial laws, Administrative laws, Economic laws, Social laws, Criminal laws and litigation and non litigation procedural laws.

Before 1992, there was no legal procedure for domestic adoption in China. Adoption, a taboo subject in traditional Chinese society, was usually conducted secretly behind “closed door”. Adoption commonly occurred through private connections, such as among relatives or between adoptive parents and local children’s hospitals where the abandonment of female infants by their birth parents was and still is common. For the first time in 1992, adoption laws of the People’s Republic of China were passed. This
law was amended to suit the present needs of China on November 4, 1998 and came into force on April 1, 1999.

Under Chapter 11 of the Adoption Law of the People’s Republic of China, adopters shall meet the following requirements:

(1)- Childless;
(2)- capable of rearing and educating the adoptee;
(3)- no illness which is deemed medically as inappropriate for the adopter to adopt children and an overseas Chinese in adopting a child belonging to a collateral relative by blood of the same generation and up to third degree of Kinship may even be not subject to the adopter childless status (Article 7).

Also, according to Article 8 of the Chapter11 of the said Act, orphans, disabled children or abandoned infants and children, who are raised in the social welfare institutions and whose biological parents can not be ascertained or found, may be adopted irrespective of the restrictions that the adopter shall be childless and adopt one child only. But where a person with spouse adopts a child, the husband and wife must adopt the child in concert (Article 10). Also, where a male person without spouse adopts a female child, the age difference between the adopter and adoptee shall be no less
than forty years. Under Article 14 of the Chapter 11, a step- father or step-
mother, may with the consent of the parents of the step- son or step -
daughter, adopt the step- son or step- daughter. In China, under Article 21 of
Chapter 11, a foreigner may in accordance with this law, adopt a child (male
or female). When a foreigner adopts a child in the People’s Republic of
China, his or her adoption shall be examined and approved by the
responsible agency of the adopter’s resident country in accordance with the
country’s law. The adopter shall submit papers certifying such particulars of
the adopter as age, marital status, profession, property, health and whether
subjected once to criminal punishment, which are provided by the
authoritative agency of his or her resident country. Such certifying papers
shall be authenticated by the department of foreign affairs of the country of
his or her residence, agency authorized by the department of foreign affairs
and by the Embassy or Consulate of the People’s Republics of China in the
country concerned.138

138 www.travelchinaguide.com
5.7. Adoptive Rights of Women in Japan:

Japan officially, Nippon-Koku or Nihon-Koku, is an island nation in East Asia. Located in the Pacific Ocean, it lies to the east of the sea of Japan, People’s Republic of China, North Korea, South Korea and Russia, stretching from the sea of Okhotsk in the north to the East China sea and Taiwan in the south. Japan comprises of 6,852 islands making it an archipelago. Since adopting its Constitution in 1947, Japan has maintained a unitary Constitutional monarchy with an emperor and an elected parliament, the Diet. The main body of Japanese statutory law is a collection of six Codes, viz,

(1) The Constitution of Japan

(2) The Civil Code

(3) The Penal Code

(4) The Commercial Code

(5) The Code of Civil Procedure

(6) The Code of Criminal Procedure

Book 4 of Japan Civil Code is headed as “Relatives”. Chapter 111 of Book 4 is about parents and children. Section 2 of the Chapter 111 deals with ‘adoption’.
Article 792 of Section 2 says that, any person who has attained majority may adopt another. Article 793 but prohibits adoption of ascendant or person of older age. According to Article 794, a guardian shall obtain the leave of the Family court in order to adopt the ward (meaning a minor ward and a major ward). Again to adopt a minor child, a person who has a spouse shall do it so jointly with the spouse. However, this shall not apply in cases where a person adopts the legitimate child of a spouse or where a spouse is unable to declare his or her intention (Article 795 of Section 2).

According to 796 of Section 2 of the Japan Civil Code, to effect adoptive relation a person who has a spouse shall obtain the consent of the spouse. However, this shall not apply in cases where a person effects adoptive relation jointly with a spouse or a spouse is unable to declare his or her intention.

Article 817-4 of the Section 2 of the Code says that, a person who has not attained the age of twenty-five may not become an adopter. However, this shall not apply when either husband or wife becomes an adopter of the
legitimate child of one spouse (excluding an adopted child by adoptive relation other than a special adoptive relation).

According to Article 817-5 of the Section 2 of the Code, a person who has attained the age of six at the time of the application prescribed in Article 817-2 (deals with formation of special adoptive relation) may not be come an adopted child. However, this shall not apply in cases where the person is under the age of eight and is placed under the care and custody of a person to become an adopter continuously before attaining the age of six. In cases Japanese subjects resident in a foreign country desire to effect an adoption, notification thereof may be made to the Japanese Ambassador, Minister or a Japanese Consul acting in that country.\footnote{www.law.yale.edu/rcw/jurisdictions/ase/japan/japan-civ-code.htm}

After going through the various provisions relating to adoption procedures in different countries, viz America, England, China, Japan, Canada etc, we can conclude that there is nothing in these countries which can discriminate between a man and a woman in the matter of adoption of children on ground of sex alone. Men and women are equal in all respects. The only
consideration is being the best interest of the child to be adopted. Not only
the child but adults are also eligible to be adopted. There is no age bar in
respect of the persons to be adopted. Gay and lesbian peoples are also given
the right to adopt a person as well as to be adopted by other peoples. Again,
any considerations like religion, race, colour also have no role to play in
adoption laws of such countries.