CHAPTER – 2
CONCEPTUALIZING
INTER-COUNTRY ADOPTION:
MEANING, DEFINITIONS & MODES
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2.1 MEANING OF ADOPTION:
Adoption means the process through which the adopted child is permanently separated from his parents and becomes the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship.\(^8\)

2.2 DESCRIPTION OF ADOPTION:
Adoption can be described as a two-step judicial process in conformance to state statutory provisions in which the legal obligations and rights of a child towards the parents are terminated and new rights and obligations are created between the child and the adoptive parents. Adoption involves the creation of the parent-child relationship between individuals who are not naturally so related. The adopted child is given the rights, privileges, and duties of a child and heir by the adoptive family. An adult assumes the role of parent for a child other than his or her own biological offspring through the process of adoption. Informal adoptions occur when a relative or step-parent assumes permanent parental responsibilities without court involvement. However, legally recognized adoptions require a court or other government agency to award permanent custody of a child (or, occasionally, an older individual) to adoptive parents. Specific requirements for adoption vary among states and countries.

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8 Lakmi Kant Pandey v. Union of India AIR 1984 SC 469
2.3 BASIC DOCUMENTS ON CHILD RIGHTS: ADOPTION IN THE BEST INTEREST OF THE CHILD:

It is very difficult to name any one way by which children are exploited and abused all over the world especially with reference to child adoption. There is exploitation at all levels whether with the orphanage or with adoptive parents. Lately in many instances we have seen inhuman behavior with hapless children most of all resulting from economic injustice. To bring the oppressive situation under control United Nations has acted like a catalyst and the United Nations Commission on Human Rights has appointed a Special Rapporteur on the sale of children, child prostitution and child pornography. The Special Rapporteur, an expert in the field, works to gather and analyze facts for the Commission.

The Convention serves as both a rallying point and a useful tool for civil society and individual people, working to protect and promote children's rights. In many ways, it is an innovative instrument. The United Nations Convention on the Rights of the Child, 1989 recognizes a child’s rights. Article 21 of the Convention states-

"States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status
concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counseling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

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

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.”

2.4 A CATALYST- UNICEF IN CHILD RIGHTS:

Adoption is a practice that dates to ancient times, although there have been fundamental changes in the process. Ancient Romans, for example, saw adoption as a way of ensuring male heirs to childless couples so that family lines and religious traditions could be maintained. In contrast,
modern American adoption laws are written in support of the best interests of the child, not of the adopter\(^9\).

2.4.1 UNICEF (United Nations International Children's Emergency Fund):

The United Nations International Children's Fund was created by the United Nations General Assembly on December 11, 1946, to provide emergency food and healthcare to children in countries that had been devastated by World War II. In 1953, UNICEF became a permanent part of the United Nations System and its name was shortened from the original United Nations International Children's Emergency Fund but it has continued to be known by the popular acronym based on this old name. Headquartered in New York City, UNICEF provides long term humanitarian and developmental assistance to children and mothers in developing countries.

It also, believes that all decisions relating to children, including adoptions, should be made with the best interests of the child as the primary consideration. The Hague Convention on International Adoptions is an important development, for both adopting families and adopted children, because it promotes ethical and transparent processes, undertaken in the best interests of the child. UNICEF urges national authorities to ensure that, during the transition to full implementation of the Hague Convention, the best interests of each individual child are protected. The Convention on the Rights of the Child, which guides UNICEF’s work,

\(^9\) Psychology Encyclopaedia : Psychology Encyclopaedia (A-Am)
clearly states that every child has the right to know and be cared for by his or her own parents, whenever possible. Recognizing this, and the value and importance of families in children’s lives, UNICEF believes that families needing support to care for their children should receive it, and that alternative means of caring for a child should only be considered when, despite this assistance, a child’s family is unavailable, unable or unwilling to care for him or her.

For children who cannot be raised by their own families, an appropriate alternative family environment should be sought in preference to institutional care which should be used only as a last resort and as a temporary measure. Inter-country adoption is one of a range of care options which may be open to children, and for individual children who cannot be placed in a permanent family setting in their countries of origin, it may indeed be the best solution. In each case, the best interests of the individual child must be the guiding principle in making a decision regarding adoption.

UNICEF strongly supports this international legislation, which is designed to put into action the principles regarding inter-country adoption which are contained in the Convention on the Rights of the Child. These include ensuring that adoption is authorized only by competent authorities, that inter-country adoption enjoys the same safeguards and standards which apply in national adoptions, and that inter-country adoption does not result in improper financial gain for those involved in it. These provisions
are meant first and foremost to protect children, but also have the positive effect of providing assurance to prospective adoptive parents that their child has not been the subject of illegal and detrimental practices.

The case of children separated from their parents and communities during war or natural disasters merits special mention.

2.5 DEFINITIONS OF THE TERM ADOPTION GIVEN BY THE VARIOUS SOURCES ARE AS FOLLOWS:

1. **The Gale Encyclopaedia of Children’s Health: Infancy Through Adolescence**

   “A practice in which an adult assumes the role of parent for a child who is not his or her offspring.”

2. **Black’s Law Dictionary**

   “Adoption- legal process pursuant to state statute in which a child’s legal rights and duties towards his natural parents are terminated and similar rights and duties towards his adoptive parents are substituted. To take into one’s family the child of another and give him or her the rights, privileges, and duties of a child and heir. The procedure is entirely statutory and has no historical basis in common law. Most adoptions are through agency placements.”

3. **The Barker Foundation**

   “Adoption (like giving biological) ultimately involves a leap of faith. After we have thought and considered and compared and planned, there still comes that point where we just have to trust our emotions.”

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4. **The New Encyclopaedia Britannica Vol I**

"An adoption is the act of establishing a person as parent to one who is not in fact or in law his child. Thus adoption signifies the means by which a status or legal relationship of parent and child between persons who are not so related by nature is established or created. 11"

2.6 **ADOPTION PROCESS:**

Before adoption is decided, court proceedings take place. Well, this is basically how the adoption is decided and made. In court hearings, it is expected from the court to identify the parents of the child to be adopted. This must be determined lawfully and with full understanding, so to avoid conflicts. However, deciding on this depends greatly on the established state law and the circumstances. Usually, the cutting of the rights of the parents and bestowing those rights to the adoptive parents may be done at the same time at the finalization of the adoption.

Speaking of finalization, what usually happens in the court during the proceeding is that the judge reviews all the gathered information about the child, his or her parents, and the adoptive parents. The home study and other conducted evaluation of the adopting parents and their capability to take custody of the child are reviewed. Also included in the review are the reports of pre-adoption counseling, case worker’s recommendations and notes, and some other necessary, valuable reports.

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11 [www.wikipedia.com](http://www.wikipedia.com)
During the finalization hearing, the adoptive parents and their attorneys are required to be present. This requirement also covers the placing parents and their attorneys, the children, the legal case worker or advocate of the child, and case workers of both the adoptive parents and the placing parents. With the presence of these personalities and the information gathered, the decision to approve or disapprove the petition for adoption will be made. And, once the adoption is finalized, the Adoption Decree is issued.

### 2.7 MODES OF ADOPTION:

There are diverse types of adoption prevalent in the society which can be understood with the help of diagram.
A) **De facto** - Adoption is a Voidable agreement to adopt a child, based on a statutory proceeding in a particular state, which becomes lawful when the petition to adopt is properly presented.

B) **Equitable or estoppel adoption** - It is sometimes referred to as virtual adoption, is treated by the law as final for certain purposes in spite of the fact that it has not been formally executed. When adoption appears to comply with standards of fairness and justice, some states will grant a child the rights of one who has been adopted even though the adoption procedure is incomplete. An equitable adoption might be enforced by the court for the benefit of a child in order to determine inheritance rights, for example, estoppel is the equitable adoption of a child by promises and acts that prevent the adoptive parents and their estates from denying the child adoptive status. Equitable Adoption, “refers to situation involving oral contract to adopt child, fully performed except that there was no statutory adoption, and in which rule is applied for benefit of child in determination of heirship upon death of person contracting to adopt. In certain jurisdictions a child has rights of inheritance of person who has contracted to adopt him but has not done so.

C) **In transracial adoptions** - Children are placed with an adoptive family of another race. These adoptions may be through public and private agencies or be independent, but most transracial adoptions take place through the public child welfare system.
D) **Foster care adoption** - It is a type of domestic adoption where the child is initially placed into a foster care system and is subsequently placed for adoption. Children may be placed into foster care for a variety of reasons, including removal from the home of the biological family by a governmental agency because of maltreatment of the child by the biological family. Maltreatment can take the form of neglect or abuse. In most adoptions regarding foster children, the foster parents decide to adopt and become the legal parents. In some jurisdictions, adoptive parents are licensed as and technically considered foster parents while the adoption is being finalized. Not all adoptions are from outside of the family.

E) **An intra-family adoption** – It occurs when a child is adopted by an existing close family member and/or his or her partner. A common example is a "step-parent adoption", where the new partner of a parent may legally adopt a child from the parent's previous relationship. Intra-family adoption can also occur through surrender, as a result of parental death, or when the biological parent cannot care for the child and a family member agrees to take over.

**2.7.1 ADOPTION ON THE BASIS OF LOCATION:**

Adoption can be divided on the basis of location, it is as follows;

A) **Domestic Adoption**

A domestic adoption is the placement of a child for adoption within the country in which he or she was born and normally resides. A special case
is an interstate adoption - where an adoption occurs across states in the U.S., or within different Canadian provinces. In such cases, additional regulations may apply.

Domestic Foster care adoption: Foster care adoption is a type of domestic adoption where the child is initially placed into a foster care system and is subsequently placed for adoption. Children may be placed into foster care for a variety of reasons, including removal from the home of the biological family by a governmental agency because of maltreatment of the child by the biological family. Maltreatment can take the form of neglect or abuse. In most adoptions regarding foster children, the foster parents decide to adopt and become the legal parents. In some jurisdictions, adoptive parents are licensed as and technically considered foster parents while the adoption is being finalized. Altogether, of the 127,500 adoptions in the U.S. in 2001, about 51,000 occurred through the foster care system. Children with histories of maltreatment, such as physical and psychological neglect, physical abuse, and sexual abuse, are at risk of developing psychiatric problems. Such children are at risk of developing a disorganized attachment.

B) Inter-country Adoption

Inter country or non domicile adoption occurs outside adopted child’s birth country. It can be done through private as well as public agencies. In

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India, approval from CARA is a requisite without which adoption not considered legal.

Adoption requirements are;

**Firstly**, to find a potential placement where adoption requirements or restrictions and the restrictions of the birth parents, the state and federal governments, and the child adoption agency are all consistent with each other.

**Secondly**, a Home Study is required to be prepared.

**Thirdly** and most importantly, selecting the child adoption agency plays major role.

**Lastly**, after completion of all formal procedure, curious parents get to take their adopted child home.

The laws of different countries vary in their willingness to allow international adoptions. Recognizing the difficulties and challenges associated with international adoption, and in an effort to protect those involved from the corruption and exploitation which sometimes accompanies it, The Hague Conference on Private International Law developed the Convention, which came into force on 1 May 1995.

**2.7.2 CONTEMPORARY ADOPTION PRACTICES CAN BE DIVIDED INTO TWO FORMS:**

A. **Open**

B. **Closed**
A. Open Adoption

Open adoption allows identifying information to be communicated between adoptive and parents and, perhaps, interaction between kin and the adopted person. Rarely, it is the outgrowth of laws that maintain an adoptee's right to unaltered biological certificates and/or adoption records, but such access is not universal (it is possible in a few jurisdictions - including the U.K. and six States in the U.S.). More often, open adoption is an informal arrangement subject to termination by adoptive parents who have sole authority over the child (in some jurisdictions, the adoptive parents may enter into a binding agreement concerning visitation, exchange of information, or other interaction regarding the child, however).

B. Closed Adoption

The practice of closed adoption, the norm for most of modern history seals all identifying information, maintaining it as secret and baring disclosure of the adoptive parents', kins', and adoptees' identities. Nevertheless, closed adoption, may allow the transmittal of non-identifying information such as medical history and religious and ethnic background. Today, as a result of safe haven laws (Safe Haven law, also known in some states as Baby Moses law, is the popular name for United States laws that decriminalize leaving unharmed infants with statutorily designated private persons so that the child becomes a ward of the state. "Safe Haven" laws typically let parents remain nameless to the court,
often using a numbered bracelet system as the only means of linking the baby to the mother.), passed by some U.S. states, closed adoption is seeing renewed influence. In safe-haven states, infants can be left, anonymously, at hospitals, fire departments, or police stations within a few days of biological, a practice criticized by some adoptee advocacy organizations as being retrograde and dangerous.

2.7.3 CUSTOMARY PRACTICE IN MODERN TIMES:

1) Private Agency Adoption

Some agencies are leaning toward more open adoptions, while others continue with traditional adoption practices. While little conclusive research is available on the ramifications of open vs. closed adoptions, the debate as to which practice is preferable continues.

The services provided by most agencies today differ considerably from that time. Biological parents are often involved in the selection of the adoptive family. Some design the adoption plan and make decisions about the placement. Some biological parents plan the adoption with the adoptive parents of the child they have selected. Although typically private agency adoptions include some communication between the families, most are still through the agency that maintains their anonymity. This may be changed if, at a future date, both parties choose to have direct communication.
The role most agencies pursue in facilitating adoption plans is to assure that the adoption meets the needs of the child, who is prime focal point. Agencies typically have educational and counselling components for the parties making these important decisions.

Efforts are made to place special needs children in adoptive homes. These children may be members of a sibling group, older, have medical conditions requiring special care, be mentally or physically challenged, or exhibit behavioural problems. Adoption subsidies are available for these children, when placed by an agency, to encourage their adoption and lessen the likelihood of their growing up in foster care or in institutions.

2) Private or Attorney Adoption

In America, there is a choice of selecting private or public agency. Private adoptions are often carried out with the aid of a family law attorney who specializes in adoption matters.

Private adoption takes place when the adoptive parents already know the prospective child so, they don’t have to approach an agency to procure a child for adoption. This type of adoption may exist in a variety of cases such as where a child of family friends is orphaned or when one knows of an acquaintance that can no longer take care of their child and is hoping to have the child adopted. Private adoption follows different steps than an adoption through an adoption agency as one uses a different method to select the child whom they wish to adopt.
The distinctions between private (attorney facilitated) adoptions and agency adoptions have lessened in recent years. Until recently, agencies often had specific requirements for prospective adoptive parents including age, number of other children, length of marriage, etc. In particular, agencies often required that one parent commit to remain at home following an adoptive placement. Private adoption was an alternative to those who did not fall within all of these criteria, or who wanted to take a more aggressive role in locating a prospective biological parent who might wish to place a child with them. From a biological parent's perspective, private adoption was sometimes viewed as a viable alternative because they wanted to feel more in control of obtaining knowledge regarding the adoptive home and the selection process.

Attorneys working in private practice provide access to most of the same services as adoption agencies. While attorneys cannot provide counselling, most attorneys skilled in the area work closely with social workers, and sometimes adoption agencies, in providing counselling support for biological parents and adoptive parents.

Perhaps the biggest distinction between private and agency adoptions in the 1990’s is cost. Agencies generally amortize their costs and have a flat fee arrangement with their clients, although non-profit agencies generally utilize some form of sliding scale approach, depending upon income levels. Thus, if a biological mother places a child post-biological with an
adoption agency, the agency is able to charge its normal fee for the placement of that child without having incurred any significant expense in the process. On the other hand, the adoptive home incurs no liability in the case where the placement of a child may have generated debt to the agency that far exceeds the amount of the fee.

Today, private adoption generally has a larger degree of flexibility than many agency adoptions in terms of permitting the biological parents and the adoptive home to design a plan as to how an adoption will proceed. Agencies and attorneys often act in concert to affect a positive adoption experience.  

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13 The History of Adoption, Authors, Rita Meiser, Esq. and Marcie Velen of Arizona Children’s Home Association.