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Adoption is the legal act of permanently placing a child with a parent or parents other than the biological parents. Adoption results in the severing of the parental responsibilities and rights of the parents and the placing of those responsibilities and rights onto the adoptive parents. It is a worldwide institution. Almost all religions and mythologies contain some reference or other to adoption. In contemporary world, the thirst of concept of adoption has changed from providing child to childless to providing home to homeless.

International adoption, or inter-country adoption, is a type of adoption in which an individual or couple becomes the legal and permanent parents of a child born in another country. In general, prospective adoptive parents must meet the legal adoption for the requirements of their country of residence and those of the country in which the child resides. It is essential to have legally valid adoption as per laws of both the countries if not then either it will be an “abortive adoption” which has no validity in either of the countries or a “limping adoption”, which has recognition in one country but having no validity in another. These unique terms were
coined by Justice Divan and Justice P.D.Desai in an important case of Rasiklal Chhaganlal Mehta¹.

In India also, concept and practice of adoption has undergone a change i.e. “from parent oriented to institutional care being offered to an increasing number of orphanage destitute children replaced by family based non-institutional approach”. The Indian children are also being adopted by the foreigners irrespective of the fact that there is no legislative provision in this regard. The Supreme Court of India in a “Public Interest Litigation” has acknowledged inter-country adoption as a means to rehabilitate abandoned children. Cases are also being reported of mal practice indulged-in by certain voluntary organizations. The Courts have provided guidelines in this regard. There is need to develop child focused culture.

International adoption is a very important part of the total adoption picture. How various nations of the world shape the rules governing international adoption will define to a great degree adoption's future role as a parenting alternative. In this context World is divided into two categories

1. Countries with low biological-rates and small number of homeless children

2. High biological rates and large numbers of such children

¹ AIR 1982 Guj 193
Diagram: 1.1 Division of world

Inter country adoption may be a realistic step towards the ideal of an el-Dorado (*Swarnim Bhumi*). It is a state where there people live in complete harmony, where there is no barrier of countries, caste, colour, race or creed. It may be an equalizing factor between riches and poverty of nations, it may be a collaborative factor as adopted child will never forget his/her nation of origin as well as a nation that has adopted him/her, nurture and built his personality. It may be an altruistic step as it enhances the moral horizon of adopting parents. It may be a step towards solidarity of human being, towards world peace and integration of world community.

### 1.2 PROBLEMS IN THE INTER-COUNTRY CHILD ADOPTION METHOD:

Inter-country adoption came about largely as an altruistic response to the plight of war orphans and the abandoned children of servicemen in World
War II, the Korean War and the Vietnam War. It now involves the transfer of more than 30,000 children each year from over 50 countries\(^2\). With few exceptions, children move from poor countries to wealthy ones. In the main receiving countries—the United States, Canada and most countries of Western Europe—the number of such adoptions has doubled over the last decade. Many factors have contributed to this increase. Child trafficking is a broad term that refers to the buying, selling or illegal transportation of children. Child laundering is a more precise term that refers to the stealing of children who are then sold to adoptive parents as legitimate "orphans." Often the pretence is that the child's parents are dead where in fact the child's parents are still alive. In some cases the children are stolen from the home; in other cases the children are left at orphanages for temporary care or schools for education. These then sell the children using false papers. In some cases the parents may even sell the children. The trafficking can occur anywhere but is most prominent in poorly regulated countries or where local corruption is a factor. Up to the end of 2007, Guatemala, was one of the top sources of adopted children, and was investigated for this sort of corruption\(^3\). Guatemala changed the country's adoption law after massive international pressure, ratified the Hague-Convention on inter-country adoptions, and the number of adoptions has fallen dramatically.

\(^2\) Journal of International Affairs, September 22, 2001, Masson, Judith  
\(^3\) Adoptions in Guatemala face US ban (March, 2007). Chicago Tribune
While most international adoptions are not tainted by child trafficking, some problems do exist. Receiving nations such as the United States have implemented safeguards to ensure that adopted children are in fact legally available for adoption. Occasionally, the United States has suspended adoption from certain countries in order to investigate fraud and, where needed, require change from the sending country.

The Hague Convention on Inter-country Adoption, 1993 is one measure intended to further shield international adoption against child trafficking. Another problem to tackle is Health and developmental status that may require special attention in the early years, while issues of adoption, identity, and racism (most often the children are of minority ethnic heritage) require parental attention as the child grows. Supports for the family include adoptive parent support groups, interaction with local ethnic communities, visits to the child's country of origin, programs provided by adoption agencies and adoptive parent groups to support ethnic heritage, and parenting resource materials such as books and videotapes. Openness in adoption may provide additional support for families of children who have found homes through inter-country adoption and for adopted adults. However, policies of other countries may inhibit information exchanges that allow for various levels of contact between biological parents and their children who are adopted. Those who support inter-country adoption often find themselves stuck between a rock and a hard place. On one hand there is an ongoing barrage of media reports
that sensationalize inter-country adoption, combine it with child trafficking, and create the appearance that a minority of criminal cases represent the norm. On the other hand exists a government bureaucracy that at times seems unwilling to address simple reforms that could curtail the limited problems which do exist.

1.3 PERCEPTION ABOUT THE CONCEPT OF INTER-COUNTRY CHILD ADOPTION WITH SPECIAL REFERENCE TO LAXMIKANT PANDEY’S LANDMARK CASE:

The concept of Inter-Country adoption is relatively a new concept in India. It did not find place in the top priorities of the legislators. There was not and still does not exist a legislation which primarily provides for the rules regarding Inter-Country adoption. But in the year 1984, the Hon'ble Supreme Court of India in a landmark case of *Laxmikant Pandey v. Union of India*[^4] laid down few principles governing the rules for Inter-Country adoption. Prior to Laxmikant Pandey’s case, in the year 1982 came a decisive judgement by the Hon’ble Gujarat High Court in the case of *In Re: Rasiklal Chhaganlal Mehta*[^5], in which under inter country child adoptions Court must ensure that adoptions is legally valid as per laws of both Countries and adoptive parents fulfil requirement of law of adoptions in their country. Adoptive parents have requisite permission to adopt from appropriate authority that child would not suffer;

1. in immigration and
2. obtaining nationality in adoptive parent’s country.

[^4]: AIR 1984 SC 469
[^5]: AIR 1982 Guj 193
In this important case the Indian Council of Social Welfare has recommended that in the interests of the child it is necessary to regulate inter country adoption by legislations and by strict collaborations between qualifies and authorized personal and social authorities. Judges states in the said judgment that,

"adoption would not be mere legalistic arrangement but the creation of an environment in which the child can grow under same nationality as well as one the habitual residence of the in health and happiness, integrated in the society."

Therefore, the Indian Council of Social Welfare feels that it is best for the homeless child to be within his own country where he can assimilate easily with people, culture and customs. It, therefore, campaigns for more adoptions of Indian children by Indians. However, since there are more children in need of homes than there are parents forthcoming, inter-country adoptions are filling the gap. The Indian Council of Social Welfare has, therefore, also focused attention on inter-country adoptions to ensure that the child’s interest is secured in cases of such adoptions. To give shape to the recommendations given by Gujarat High Court, landmark case of Laxmikant Pandey came into existence. It gave soul to the Gujarat High Court judgment by giving guidelines to the government to ensure safe and secure inter-country child adoption. This was a big leap towards ensuring legally valid and sheltered inter-country child
adoption. The case was instituted on the basis of a letter addressed to the court by a lawyer, Laxmikant Pandey alleging that social organizations and voluntary agencies engaging in the work of offering Indian children to foreign parents is indulged in malpractices. It was alleged that these adopted children were not only exposed to long horrendous journey to distant foreign countries at the risk of their life but they also ultimately become prostitutes and beggars. Supreme Court in this case expressed its opinion and framed certain rules for Inter-Country adoption. The Hon'ble Court asserted in the judgment that,

"While supporting Inter-Country adoption, it is necessary to bear in mind that the primary object of giving the child in adoption being the welfare of the people, great care has to be exercised in permitting the child to be given in adoption to foreign parents, lest the child may be neglected or abandoned by the adoptive parents in the foreign country or the adoptive parents may not be able provide to the child a life of moral and material security or the child may be subjected to moral and sexual abuse or forced labour or experimentation for medical or other research and may be placed in worse situation than that in his own country."

It further went on to give the prerequisites for foreign adoption. It stated that,
"In the first place, every application from a foreigner desiring to adopt a child must be sponsored by social or child welfare agency recognized or licensed by the government of the country in which the foreigner is a resident. No application by a foreigner for taking a child in adoption should be entertained directly by any social welfare agency in India working in the area of Inter-Country adoption or by any institution or centre or home to which children are committed by the juvenile court."

The Supreme Court also insisted the age within which a child should be adopted in case of Inter-Country adoption. "If a child is to be given in Inter-Country adoption, it would be desirable that it is given in such adoption before it completes the age of 3 years." Such a ruling was delivered by the Supreme Court because it felt if a child is adopted by a foreign parent before he/she attains the age of 3, he/she has more chances of assimilating to the new environment and culture. Another important rule framed by the Court during the course of judgment was "Since there is no statutory enactment in our country providing for adoption of a child by foreign parents or laying down the procedures which must be followed in such a case, resort had to be taken to the provisions of Guardian and Wards Act, 1890 for the purpose of felicitating such adoption."
The Bombay High Court in *Re Jay Kevin Salerno*\(^6\) reiterated that,

"where the custody of a child is with an institution, the child is kept in a private nursing home or with a private party for better individual care of the child, it does not mean that the institution ceases to have the custody of the child."

Therefore it may be submitted that in the absence of any explicit legislation on the subject, the Supreme Court has played a pivotal role in regulating the adoption of tendered aged children to foreign parents. The need for continuing modification of international laws and regulations is another major problem confronting inter-country adoption. The Hague Adoption Convention has been working since 1980 to create an international policy to respond to problems regarding inter-country adoption. In 1993, the Hague Adoption Convention set as its goals and minimum standards to protect children and to eliminate fraud and illegal coercion of termination of parental rights. Although many countries participated in the negotiation process, some countries didn't ratify the Convention until after its initial development. For example, the U.S. signed a year after the first inter-country act was approved. Now, As of February 26, 2008, there are 75 countries that have joined the Convention\(^7\). Although these 68 countries have signed the Inter-country Adoption Act, there is still a need to improve policies and services. Unless

\(^6\) AIR 1988 BOM 139  
\(^7\) U.S. Department of State, 2008
the law governing them works perfectly, there will always some sort of malpractices exist.

Inter-country adoptions involve different concerns than do domestic adoptions, including the distance involved, the different laws and authorities that must be consulted, the problems with illegal sale of children, as well as cultural issues. These problems are not so issue to tackle. It is of larger magnitude and proportion. Hence very discreet approach is needed to avoid malpractices.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations, but the ICJ hears few cases about conflicts on inter-country adoption. Families cannot seek relief through the ICJ because the court does not work for private parties. Legal disputes can only be submitted by states, authorized U.N. organs, or specialized agencies. Because of this limitation, there is a definite need for a proper pathway or authority to protect the adopted child, the adoptive parent, and the parent under uniform international laws, as well as to regulate inter-country adoptions through the international community rather than only through individual nations or states within a nation. Therefore, the Inter-country Adoption Act (IAA) needs to be continuously modified to govern all aspects of inter-country adoptions more effectively.

1.4 NEED FOR THE RESEARCH:

It may sound contradictory for selecting the topic of inter country child adoption by the researcher in the field of law not only for factual legal
study but also for idealistic role of inter country adoption in enhancing equality, solidarity and harmony among human beings. The problems relating to child trafficking and child abuse in adoption are obtrusive or right in the face to grab attention of concerned research scholars, social workers, judiciary and NGO’s working towards betterment of child adoption rights and welfare. All the above agencies contribute in a manner which can give, “a home to homeless and a child to childless”. As discussed in above paragraph one of the vital problems is the obsolete laws. The child adoption laws worldwide are not enough to tackle complex inter country child adoption so it necessitates the need to amend the laws and offer comprehensible guidelines. If guiding force like Hague Convention and other Conventions broadens its horizons more, a lot of problems can be taken care of by the signatory countries. In fact the Hague Convention is an excellent ideal, in implementation it could actuality impede many adoptions. A country like Guatemala, which has had a plethora of child trafficking, prostitution and many orphans, are now temporarily closed to adoptions after the country's ratification of the Hague Convention. The Convention causes some governments like India to run incredibly slow, creates a rigorous process that few pass, and instead of helping the children get out of orphanages, it keeps them inside them, getting older and older until they pass the age of adoption and simply wait until they are legally adults. Most children who grow up in orphanages and become legally adults get very little in the way of education, most become unemployed or pregnant and begin the vicious
cycle all over again. While the Hague Convention is an exemplary step in the right direction by most governments, it could sometimes actually hinder many adoptions to families that would normally qualify and causing children to miss opportunities that could have saved and changed their lives. Inter-country adoption cannot survive unless the spirit and letter of the Hague Convention are implemented globally.

In the field of law largely speaking only factual studies are done on the child adoption and not all the problems pertaining to the topic are embarked upon. Need for empathetic research is required in this field as children are not only innocent but are also tender like bud and need to be nurtured well. To know the plight of the adopted child and also to throw light upon the slack and obsolete laws it becomes necessary to do in-depth research on this subject.

1.5 **OBJECTIVE OF THE RESEARCH:**

The objectives of the research may be summarized as follows:

1. To study the Role of Judiciary, Home, NGO’s in relation with problems of Child Rights.

2. To study, the laws related to inter-country child adoption pertaining to malpractices prevalent in this field.

3. To understand, the complexities of the Various Conventions and analysis with case studies of different countries.
4. To ponder, upon the intricacies of government policies in controlling child trafficking and giving this system a better environment to breathe.

5. To compare, the inter-country adoption between various countries like USA, India, UK, etc.

6. To trace, the historical perspective of the child adoption from ancient times to modern times.

7. To examine, the present agencies like CARA etc, working for child adoption and to suggest programmes and amendments for the smooth and better working.

8. To examine the present legislations working for adoption and suggest amendment for plugging loopholes for smooth and proper functioning.

1.6 HYPOTHESIS:

The present research has determined the following hypothesis to achieve the aims and objective mentioned in the Para 1.4.

1. Is the regulatory domain of Hague Convention incapable of containing the malice of child trafficking in the name of Child adoption?

2. Is the prominent issues facing the inter-country adoption globally still unresolved?

3. Are laws inadequate and ineffective in tackling the menace of child trafficking via child adoption route?
4. Has Child Adoption process turned into a heaven for lucrative money making business?

5. Have various Conventions failed to resolve various issues confronting child adoption process?

6. Are Indian Government policies globally ineffective in containing the trafficking problems of child adoption?

1.7 SCOPE AND LIMITATION:
This research is limited to the study of inter-country child adoption and its present malice in the society. It focuses only on the problems mentioned in this thesis. This research does not focus only on domestic child adoption, although some of the examples could have been used to determine the relationship between countries and its process. Whole focus of the research is on the lacunas of the child adoption system and not of child abuse in general. Post adoptive care of child and follow up after the adoption is the focal point of this research. Under this, researcher have tried to touch upon all the laws and procedure of various countries related to child adoption. Study of emerging agencies like CARA and functions are studied in-depth. This agency does not include crèche, children homes or any place used to keep children together. Study includes data from orphanage gathered from NGO’s and government offices. The scope of this research is limited to the inter-country aspect of child adoption and reduction of the menace of child trafficking in name of adoption. The present research undertakes adoption within India, from India to other countries and between other countries with above mentioned limitations.
1.8 METHODS OF STUDY:
Methodology applied to conduct this research is content analysis and descriptive method. The method of studies used is empirical, normative, questionnaire, descriptive and analytical. Both primary and secondary source of information is extensively used to examine and support various propositions. Material is gathered from primary source such as information gathered from local institutions including judiciary, lawyers, child rights activists, children organizations, scrutinizing agency in the matter of adoption i.e. Voluntary Coordinating Agency (VCA), Central Adoption Resource Agency (CARA), Indian Association for Promotion of Adoption and Child Welfare (IAPA), National Adoption of Adoptive Families (NAFA), secondary resources i.e. library and journals, electronic media, internet etc. are also used to collect material for research.

1.9 CONTRIBUTION OF RESEARCH:
1. This research may contribute important details to the researcher, who is researching on the International or Inter-country Child Adoption Laws and Procedure.

2. This research may contribute to legal fraternity those who are interested in helping the adopted child and knowing the rights of children. And also know about how inter country adoption takes place and what are the intricacies of the Adoption.

3. This research may be beneficial to jurisprudent, judiciary, academicians and NGO’s dealing with child related complicated adoption cases.
4. This research may be especially beneficial to those who want to attempt to go for inter-country child adoption and benefit from it too.

5. This research may be beneficial to the researcher other than legal fraternity like Sociology, Psychology and Anthropology.

6. This research may be referred back for further research in the area of Adoption in different subjects.

1.10 CHAPTERISATION:

The research is divided into seven chapters; the introduction and scheme of chapters are as follows-

1. Introduction, proposed research, research problem, scope and methodology

2. Conceptualizing Inter-country adoption: Meaning, Definitions & types

3. Legal perspective in child adoption

4. The International human rights depiction: the Hague Convention, the Convention on the Rights of the child & Indian Legal system pertaining to child adoption

5. Country specific case studies:
   A. European Union
   B. United States of America
   C. Guatemala
   D. Asia- India, China, Cambodia, Japan, Nepal
6. Lacunas of inter country adoption system: Malpractice, Child abuse & related cases

7. Conclusion