INTER COUNTRY ADOPTION:
THE EMERGING ISSUES

I. Prelude

Adoption is a welfare and protection measure that enables an orphaned or abandoned child to benefit from a permanent family. The practice of adoption is primarily an in-country phenomenon but in recent years, it has assumed international dimensions. Thus, adoption to put it in simple words has national and international prospective. A domestic or national adoption involves adoptive parents and a child of the same nationality and the same country of residence. On the other hand, inter-country adoption is seen as one that involves a change in the child’s habitual country of residence, whatever the nationality of the adoptive parents. In other words, inter-country adoption or international adoption involves parents of a nationality other than that of the child irrespective of the place where such parents maintain residence.

Some of the questions which are proposed to be answered in the present discussion are – How has the concept of inter-country adoption emerged in the global context? Do we have any effective
legal framework for regulating inter-country adoption in India as well as outside India? Whether the legal mechanism, if any, designed for regulating such adoption is fool proof or is open to abuses? What specific role the State of the origin of the child play in safeguarding the interest of the child while being given in inter-country adoption? Do we have any approved mechanism for checking abuses or looking into post adoption problems? Whether the judiciary has been able to play any significant role in protecting the right's of orphaned/abandoned and destitute children being given in inter-country adoption? And lastly, what do statistics speak about inter-country adoption?

II. Inter-Country Adoption – The Background Scenario

The concept of inter-country adoption emerged after the cold war era. It came as an adhoc humanitarian response to the situation of the children orphaned by war. Families in the United States mainly and also Canada, Australia and Europe adopted orphans from countries like Germany, Italy and Greece and children from Asian countries like China and Japan were also adopted. However, at that point of time there was no legal mechanism for regulating such adoption. In 1960's a seminar on inter-country adoption was organised in Leysin, Switzerland, under the auspices of the European office of the Untied Nations which formulated the first set of principles in this sphere. Subsequently, a world conference on Adoption and Foster Care was held in Milan, Italy, in 1971 which focused its attention on international regulation to safeguard the adopted child's interest.¹ The Brighten Guidelines of 1982 and Hong Kong Conference of 1996 revised

and endorsed these guidelines. The notable efforts in this regard were the Hague Convention of 1993 in respect of inter-country adoption ensuring protection of children’s right. Similarly, the provision of United Nations Convention on the Rights of Child, 1989 also followed when considering domestic and international or inter-country adoption for a child.

According to available information by October 2002 the guidelines on inter-country adoption laid down in the Hague Convention have been ratified by 38 States including Russia and China. It is expected that more countries may adopt the guidelines and become party to the Convention. The Convention set out the requirements for inter-country/international adoption. It also talks about establishing authorities and lay down procedural safeguards and requirements for regulating such matters. The significance and relevance of Hague Convention has also received warm response of the Indian Government. In India the Supreme Court guidelines for inter-country adoption laid down in the Laxmikant Pandey judgment and the Guardian and Wards Act, 1890 are a pointer in this direction. Thus in India inter-country adoption has come to stay. The guidelines laid down by the Supreme Court in this regard have started gaining momentum. The Government of India in pursuance of Apex Court’s directions has established a Central Adoption Resource Authority (CARA) to act as a clearing home of information with regard to children available for inter-

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2 The Hague Convention was adopted on 29th May, 1993 and came into force on 1st May, 1995. Over 60 countries and 10 international NGOs participated. For further details see Id. p. 5.
3 Id. Arts. 20, 21 and 25.
4 See Piter Salman, An Overview of Inter-Country/International Adoption, a paper presented at 4th International Conference on Adoption held in New Delhi from October 21st to 23rd, 2002, p. 4.
5 L. K. Pandey Vs. Union of India, AIR 1984 SC 469.
country adoption and to regulate, monitor and develop programmes for the rehabilitation of children through adoption.

It may be submitted that in India there is no legislation which directly governs adoption of an Indian child by a foreign parent and therefore the only legislation which provided help to them in such matter is the Guardian and Wards Act, 1890. This law regulate guardianship of the child only. It is applicable to all minor children irrespective of caste, creed and religion. Once a person is appointed as guardian of the minor person or property such guardian will be under the purview of the Guardian and Wards Act, 1890. Section 7 of the Act mandates that where the court is satisfied that it is for the welfare of the minor that guardian should be appointed, it may pass an order accordingly. Such an order can of course be made on the application of claimant of the guardianship who may be a relative or friend of the minor, the District collector or a Special Collector. While granting permission, the court has to satisfy itself that it is for the welfare of the child and for arriving at this decision, it has to take into account the wishes of the child, his or her age, sex, religion, understanding and other related aspects including the personal law of the minor. Once the court is satisfied that the appointment

6 A minor means a person below the age of 18 years and the age of 21 years if under the superintendence of the Court of Wards. See Indian Minority Act, 1925, sec. 3.
7 Guardian and Wards Act, 1890 contemplates two kinds of guardians: (i) Guardian of person; and (ii) Guardian of property. Both positions may be combined in the same person.
8 See, Guardian and Wards Act, 1890, sec. 7.
9 Id. sec. 17.
10 Guardian and Wards Act, 1890 was enacted in addition to the provisions of various personal laws relating to guardianship of children and not in place of them. It therefore, exists side by side with the provisions of the personal law of ward. The Act itself make it clear that it leaves the rules of personal law unaffected, through all applications for the appointment or declaration of a guardian are to be made under the provisions of the Act. The Act thus
is for the welfare of the minor,\textsuperscript{11} it may pass an order appointing the person as a guardian in any one of the following forms:

(a) a simple order appointing the person as a guardian without security;

(b) appointing a person as guardian and requiring him to furnish security within specified time; and

(c) appointing a person as guardian on the condition that he should furnish security.

The Act clearly states that guardian once appointed shall not make any profit out of his office,\textsuperscript{12} though sec. 22 of the Act entitles him/her to approach the court for an allowance for the service rendered in execution of his/her duties. The Act makes guardian fully responsible for the custody, support, health and education of the ward. This way inter-country adoption have continued in India and foreign parents have made use of the provision of the Act of 1890 with a further prayer to take the child out of India in order to adopt the said child as per the law of their country. The rigours of this law have been softened by the Supreme Court to facilitate the adoption of Indian children to foreign parents. This way we find that the emergence of inter-country adoption is a phenomena which is primarily based on humanitarian prospectives.

As per record available with Central Adoption Resource Authority (CARA), during the last 17 years the following estimated


\textsuperscript{12} See \textit{Guardian and Wards Act}, 1890, sec. 20.
number of children found home through recognized placement agencies dealing with inter-country adoption.

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Year</th>
<th>Inter-Country Adoption</th>
</tr>
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<tbody>
<tr>
<td>1.</td>
<td>1988</td>
<td>1661</td>
</tr>
<tr>
<td>2.</td>
<td>1989</td>
<td>1213</td>
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<tr>
<td>3.</td>
<td>1990</td>
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<td>4.</td>
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<td>5.</td>
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<td>6.</td>
<td>1993</td>
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<td>7.</td>
<td>1994</td>
<td>1128</td>
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<tr>
<td>8.</td>
<td>1995</td>
<td>1236</td>
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<td>9.</td>
<td>1996</td>
<td>990</td>
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<tr>
<td>10.</td>
<td>1997</td>
<td>1026</td>
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<td>11.</td>
<td>1998</td>
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<td>12.</td>
<td>1999</td>
<td>1293</td>
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<tr>
<td>13.</td>
<td>2000</td>
<td>1364</td>
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<td>14.</td>
<td>2001</td>
<td>1298</td>
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<tr>
<td>15.</td>
<td>2002</td>
<td>1066</td>
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<tr>
<td>16.</td>
<td>2003</td>
<td>1024</td>
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<tr>
<td>17.</td>
<td>2004</td>
<td>1021</td>
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<td>Total</td>
<td></td>
<td>20,329</td>
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Source CARA, New Delhi

According to the information made available to the researcher through its publication by CARA during the year 2000, 1363 cases of inter-country adoption were reported. In 2001, 1298 cases were reported and in 2002 and 2003 reported 1018 and 1024 cases of inter-country adoptions were reported respectively.
The figure further declined in 2004 to 1021. All these adoptions are made after a thorough scrutiny of cases made by the Indian Council for Child Welfare (ICCW), New Delhi. No other agency can be assigned this work approved by Central Adoption Resource Agency (CARA). The Voluntary Co-ordination Agency (VCA) has been established to promote in-country adoption so as to find out Indian families for the children. In case it is not possible the Voluntary Co-ordination Agency may allow the processing of the cases for inter-country placement of the children. The State Governments also maintain list of Children Homes and adoption agencies working in the field in the State.

The CARA has enlisted around 250 foreign agencies in over 25 countries of the world for the purpose. The enlisted foreign agencies have to forward a copy of the legal adoption order of the appropriate adoption country in that country as soon as it is made to CARA, the court which awarded the guardianship and to the Indian placement agency concerned. The foreign enlisted agency has to send follow-up report through the Indian Diplomatic Mission abroad with photographs of the child on a quarterly basis of the first two years and as a half yearly basis of the next three years to CARA, the court that awarded the guardianship in India and also to the Indian placement agency concerned. Further the foreign enlisted agency has to send a photo album of the children along with their adoptive parents to CARA once in a year. This all has been made essential so as to protect the ensure the welfare of the child as the entire approach to the inter-country adoption is based on humanitarian prospective.

III. Inter-country Adoption: The Supreme Court Speaks

Inter-country adoption in India saw its emergence in the 60's and there was a considerable rise in the next two decades. Adoption agencies in the receiving countries have been establishing linkages with the child welfare agencies in inter-country adoption. Later on several malpractices were brought to light by the media. There were instances of very small, underweight, malnourished infants who were sent abroad and since there were no checks and safeguards in those days to regulate inter-country adoption, large sources of money were involved in the process. All this was a cause of a serious concern as many private agencies/individuals were involved in offering Indian children in adoption to foreign parents without follow up any procedure or supervision. In response to these problems one Mr. Laxmikant Pandey an Advocate in the Supreme Court wrote a letter to the then Chief Justice and the same was treated as a writ petition and hence came the momentous judgement of 1984 regulating inter-country adoption.¹⁴

This judgement has laid down certain guidelines and principles, norms and procedures for adoption in order to ensure the welfare of the child. The judgement has been delivered by Justice P. N. Bhagwati for himself, R. S. Pathak and Amrinder Nath Sain JJ. Since we do not have a uniform adoption law, the judgement gave directives and guidelines in processing adoptions under the Guardian and Wards Act, 1890. The Apex Court's ruling regulated several aspects of the adoptive situations in terms of the destitute child, the birth parents, adoptive parents and social welfare agencies, with a view to promote adoption. The court

¹⁴ L. K. Pandey Vs. Union of India, AIR 1984 SC 469
laid down procedure for processing guardianship petitions in the case of inter-country adoption. The court's ruling directed that placement agencies will be required to make an application to the Juvenile Welfare Board for declaring a child destitute thereby legally free for adoption. This procedure was not essential if the child had been relinquished by the biological parents in which case a "Deed of Surrender" has to be signed by the surrendering parents. The relinquishing parents are given two months time to reconsider whether he or she would like to take back the child and thereafter the child could be considered legally free for adoption. As per the guidelines every destitute child who is free for adoption should be first offered for adoption to Indian parents and only then the consideration for foreign adoption.15

(A) Guidelines Laid down by the Supreme Court

Subsequent to the judgement the Government of India formulated a new set up of guidelines called the Revised Guidelines to Regulate Matters Relating to Adoption of Indian Children. The aim and the objectives of these guidelines were to provide a sound basis for adoption within the framework of the norms and principles laid down by the Supreme Court judgement. It recognises that adoption of an abandoned, destitute or neglected child in a family setting and providing an atmosphere of happiness, love and understanding for the realization of his/her talents and potentials. It carried with it all emotional, physical and material security necessary for the proper development of the child

and also serves as the most reliable means of preventing situations associated with the abuse, exploitation and social maladjustment of abandoned, destitute and neglected children. The guidelines are incorporated within the adoption procedures, the process to be followed and the role of various agencies in the field of adoption.

An overview of the Guidelines and directions is given as under:  

(a) No child should be offered for adoption.

(i) In the case of abandoned children until the Juvenile Welfare Board/Juvenile Court, the collector or the District Magistrate or the Department of Social Welfare declares the child legally free for placement.

(ii) In the case of surrendered children till the two months period for reconsideration by the parents is over.

(iii) In the case of a child who can understand and express without his/her consent.

(b) In the case of surrendered children after two months time for reconsideration the placement agencies should make all efforts within 45 days to place the child with Indian parents in the

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16 The Supreme Court has since 1984 banned inter-country adoption by individuals (except amongst relatives) and private agencies. It lays great stress on only recognised and licensed agencies being involved in adoption both in sending and receiving countries. The judgement discusses the role of scrutinizing agencies in assisting the court in adjudicating inter-country adoption cases as discussed above. On the basis of the court's direction to the ministries of social welfare of the Govt. of India, a number of social agencies have already been recognised. The CARA guidelines have been formulated what has been stated in Arts. 7, 8, 9, 16, 19, 20, 21, 22 and 23 of the Hague Convention.

country. But in case of destitute or abandoned child, the placement agency getting a releasing order declaring the child legally free for adoption from the competent authority, should make all the efforts to place the child within the country within a period not exceeding seven weeks from the date of releasing order which include one week time for reconsideration of the biological parents, if traced.18

(c) If the Recognised Placement Agency is not able to find suitable Indian family within the country, it will give all the details of the child to the Voluntary Co-ordinating Agency wherever it exists. The information must include details of admission, medical history, legal status, photographs and efforts made to find families in the country within a period of two months. If an Indian family is not available to that particular child within prescribed period of two months than child should be treated as available for inter-country adoption.

(d) Every application from a foreigner desiring to adopt a child must be sponsored by a social or child welfare agency recognised or licensed by the Govt. 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 or 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.19

18 Id. p. 486.
19 AIR 1984 SC 467 at 482. In such a case, where the application of a foreigner for taking a child in adoption is made directly without the intervention of a social or child welfare agency, there would be no authority or agency in the country of the foreigner who could be made responsible for supervising the progress of the child and ensuring that the child is adopted as the earliest in accordance with the law and grows up in an atmosphere of warmth and affection with moral and material security assured to it.
(e) That every application of a foreigner for taking a child in adoption must be accompanied by a home study report and the social or child welfare agency sponsoring such application should also send along with it a recent photograph of the family and other particulars showing the social and financial status of the foreigner and his declaration and appropriate security that he will maintain in child and provide for his education and upbringing. 20

(f) Where there is a Voluntary Coordinating Agency maintaining a register of children available for adoption as also a register of Indian adoptive parents who wants to take a child in adoption, VCA will immediately contact the Indian family which is on its register as prospective adoptive parents and inform them. If within a period of two months, the child is not taken in adoption by an Indian family, it should be regarded as available for inter-country adoption. The possibility of inter-state adoption in India and inter VCA co-ordination should also be exhausted before a child is offered for inter-country adoption. 21

(g) A child should be offered in inter-country adoption by a recognised Indian agency only after receipt of a no-objection certificate from VCA. The VCA shall issue a no-objection certificate

20 All certificates, declarations and documents accompanying the application may be attested by a competent authority in that country of by an officer of the Indian Embassy or High Commission or consulate in that country. The sponsoring agency should carefully get the Home Study report prepared by the professional social worker broadly on the basis of the above information. Id. 485.

21 The first priority in inter-country adoption should be given to Indian residing abroad and, if no such Indian family so available, then to adoptive couples where at lest one parent is of Indian origin. However, the child placed with parents or one of the parents having Indian origin would be considered as given in in-country adoption. In the case of inter-state transfer of children, children may be transferred by the recognised Indian agency to any of its designated branches, provided that it is done with the written consent and permission of the social welfare department/magistrate/collector as is relevant to the case.
to recognised Indian agency only if it has not been possible to find suitable Indian parents for taking a child in adoption within the period of two months as specified above.22

(h) The Indian recognised placement agency thereafter matches the child with prospective foreign adoptive parents and sends photographs of child, child study report, medical report, etc., to enlisted Foreign Agency for parent’s approval and enlisted foreign agency communicates the approval of the foreign adoptive parents to the Indian recognised placement agency.

(i) The receipt of the original application as well as original documents would not entitle the placement agency to proceed with the case. It can proceed only after forwarding the matter to CARA for getting 'No Objection Certificate' from CARA, Ministry of Welfare.

(j) The Central Adoption Resource Authority (CARA) shall have to ensure that the foreign agency is enlisted, Indian placement agency is recognised, all documents are in order and efforts were made for Indian placement by recognised Indian placement agency and clearance certificate by VCA to that effect is also enclosed and thereafter CARA will issue 'No Objection Certificate' within a reasonable period of time say five weeks from the date of receipt of the certified copies of the application and other documents from them.23 In case Central Adoption Resource

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22 It is only where a VCA does not exist or no Indian Family comes forward to take a child in adoption within a maximum period of two months, that the child should be regarded as available for inter-country adoption.

23 In completing formalities for adoption guardianship all the procedure as laid down by Central Govt./CARA should be followed. The documentary proof of age, marriage, income, health, property and savings of prospective parents, letters of acceptance accepting a particular child along with countersigned, child study report, medical report and photograph of the prospective parents/agency consent and power of attorney in the name of the functionary of the Indian agency, should be taken. A Home Study report
agency (CARA) rejects the application, it may specify the reasons for such refusal to the Indian recognised placement agency.

(k) The recognised placement agency thereafter will process the case with the competent court for awarding the guardianship of the child to the foreign prospective adoptive parents. 24 At this stage the scrutinizing agency has to scrutinise all documents and advise/assist the court that the said inter-country adoption is in the best interest of the child.

(l) Pending completion of formal adoption/guardianship proceedings, the child may be placed with prospective adoptive parents in foster care in the case of Indian parents living in India.

(m) The competent court within the stipulated time as laid down by the Supreme Court of India awards the guardianship of the child to the foreign parents.

(n) On the basis of the guardianship order by the court the recognised placement agency is to apply in the Regional Passport Office for obtaining an Indian Passport in favour of the child and also submit copy of the court order to CARA. Thereafter, the visa is issued by the concerned Embassy/High Commission of the concerned country for the child.

(o) The child leaves the country along with the prospective adoptive parents or with the escort, 25 whatever the case may be to

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24 AIR 1984 SC 469, p. 487
25 The Indian recognised placement agency authorises to any of the following person to escort the child to the country of his/her prospective adoptive parents.

(a) The adoptive parents themselves.
(b) An escort appointed by the same agency.
(c) An escort appointed by the Enlisted Foreign Agency.

Prepared by or under the supervision of a professional trained social worker should be taken into account, photographs of prospective parents should also be kept on record.
the country of prospective adoptive parents i.e. child's future
country of residence.

(p) Thereafter foreign enlisted agency will receive the child in
that country and hand over the child to the concerned adoptive
parents as the case may be and watch the progress of the child
and co-ordinate in legalising the adoption at the earliest, thereby
safeguarding the interest of the child.

(q) After the legal adoption of a child is done by the foreign
parents according to the law of his/her country, it is presumed
that subject to the laws of the land the child would acquire the
same status as a natural born child within wedlock with the same
rights of inheritance and succession and the same nationality as
the foreign parent adopting the child. The foreign enlisted agency
will submit a copy of the order of the legal adoption and periodic
progress reports of the child to CARA, concerned Indian placement
agency and concerned Indian court and the post adoption
counselling should be provided by the agency to the adoptive
parents.

(r) The organisation shall pursue only non-profit objectives.
Under no circumstances should it derive improper financial gain
from any activity related to inter-country or in-country adoption.
The judgement\textsuperscript{26} also laid down a scale of expenses to be recovered
by the agency offering placement for maintaining the child from the
adoptive parent.\textsuperscript{27} It allowed escalation of expenses by 30% to be
reviewed once in three years.\textsuperscript{28}

\textsuperscript{26} \textit{L. K. Pandey Vs. Union of India}, AIR 1986 SC 236
\textsuperscript{27} AIR 1985 Supp SCC 701. The question was raised by some of the social and
child welfare agencies that the sum of Rs. 60/- per day fixed by the court as
the maximum for reimbursement of maintenance expenses which may be
incurred by a social or child welfare agency on the child was too high and
that it should be reduced to Rs. 500/- per month because if such a high
(s) That the child should be given in adoption so far as possible before it completed the age of 3 years. But where the child is above the age of 3 years his wishes may be ascertained.\(^{29}\)

(t) That biological parents should not have any opportunity of knowing who are the adoptive parents taking the child in adoption, therefore, notice of the application for guardianship should not be given to biological parents.\(^{30}\)

(u) That the proceedings should be held by the court in camera and they should be regarded as confidential and as soon as an order is made on the application the entire proceedings including the papers and documents should be sealed.\(^{31}\)

(v) On adoption of the child by the foreign parent according to the law of his/her country, it is presumed that subject to the laws of the land the child would acquire the same status as a natural born child within wedlock with the same rights of inheritance and succession and the same nationality as the foreign parents adopting the child.

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amount was permissible to be charged by way of maintenance expenses many social and child welfare agencies engaged in placing children in adoption would prefer to give the children to foreigners in inter-country adoption rather than to Indian parents. The court made it clear that the sum of Rs. 60/- per day which court has provided, represents the outside limits of the maintenance expenses which may be recovered from the prospective adoptive parents and it does not represent the rate at which maintenance expenses should be recoverable in every case.

28 AIR 1992 SC 118. The judgement laid down a scale of expenses to be recovered by the agency offering placement for maintaining the child from the adoptive parents. There was some modifications in 1986. Keeping in view the general rise in cost of living the court is prepared to allow escalation by 30%. The court does not, however, agree to an escalation of 10% every year. The matter may be reviewed once in the three years so far as escalation is concerned.

29 AIR 1984 SC 469, p. 491
30 Id. p.492.
31 Ibid.
(w) Some directions were also issued with regard to the execution of bonds to ensure the security of the child in case the conditions in the guardianship order are broken.  

(x) In order to facilitate the implementation of these norms, principles and procedures, the Govt. of India, Ministry of Welfare, adopted a resolution provided for the violation of guidelines. It laid down that if it comes to the notice of any state government on any India's diplomatic mission abroad that a recognised Indian agency or an enlisted foreign agency respectively is not observing all or any of the provision of these guidelines or is otherwise functioning in a manner which is not in the interest of the welfare of the children, the recognition granted to any Indian agency or any foreign agency may be revoked during the period of recognition at the discretion of the Government of India provided a reasonable opportunity has been given to the agency concerned to be heard.

The supreme Court observed that these are the principles and norms which must be observed and the procedure which must be followed in giving a child in adoption to foreign parents. If these principles and norms are observed and this procedure is followed, there is no doubt that the abuses to which inter-country adoptions, if allowed without any safeguards may lend themselves would be considerably reduced, if not eliminated and the welfare of the child would be protected and it would be able to find a new

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32 The court is of pinion that it need not insist on security or cash deposit or bank guarantee from the foreign enlisted agencies and it should be enough if a bond is taken from the recognised placement agency which is processing the application and such recognised placement agency which is processing the application may in its turn take a corresponding bond from the sponsoring social or child welfare agency on the foreign country. Same directions issued in AIR 1984 SC 469 and AIR 1986 SC 272, modified - AIR 1987 SC 237.

33 Guidelines to Regulate Matters Relating to Adoption of Indian Children - Resolution No. 13-33/85-CHR (AC) Govt. of India, Ministry of Welfare, New Delhi, 4th July 1989.
home where it can grow in an atmosphere of warmth and affection of family life with full opportunities for physical, intellectual and spiritual development. These guidelines laid down by the Supreme Court are in conformity with the policy already laid down in Art. 39(e) and 39(f) of the Constitution of India.\(^{34}\)

**B) Implementing Court Directions: Role of Different Agencies**

The Supreme Court of India in its judgement banned inter-country adoption by individuals (except amongst relatives) and private agencies and directed Govt. of India to authorise competent agencies in India and abroad to co-ordinate the placement of Indian children abroad. The judgement itself makes reference for certain regulating agencies like, the Scrutinizing Agency, Voluntary-coordinating Agency, Central Adoption Resource Agency, Recognised Child Welfare Agency (Placement Agency), etc.\(^{35}\)

**a) Role of Scrutinizing Agency (SA)**

The Supreme Court of India has recognised the Indian Council for Child Welfare and the Indian Council for Social Welfare as the appropriate agencies for the purpose of scrutinizing adoption cases.\(^{36}\) Whenever a petition is filed in the court by a

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\(^{34}\) See Art. 39(c) of Indian Constitution reads "that the health and strength of workers, men and women and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength and Art. 39(f) reads "that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that children and youth are protected against exploitation and against moral and material abandonment."

\(^{35}\) See, D. Paul Choudhary's, *Inter-country Adoption, Social and Legal Aspects*, (Indian Council for Child Welfare), New Delhi, pp. 80-81.

\(^{36}\) *Id.* p. 487
foreigner for the adoption of an Indian child the concerned court must send all the papers to the Scrutinizing Agency to verify:

(i) Whether the giving institution is recognising by the Govt. of India to place children in foreign county.
(ii) Whether the institution processing the case in the receiving country has recognition from the Govt. of India.
(iii) Whether the child is legally free for adoption.

The social worker of the Scrutinizing Agency visits the Agency, looks at the health, record of child and documents of prospective adoptive parents, their financial status, Home Study Report etc. and after verifying all these documents, it would send its report to the court. On the basis of this report court would pass an order placing the foreign adoptive parents as a legal guardians for the child when the court is convinced that such an adoption would really be in the best interest of the child. The foreign parents can legally adopt the child within two years from the date of such order, as per the laws of their country.57

Scrutinizing Agencies are regarded as the links between the Voluntary Co-ordination Agency and courts. The Scrutiny Agency should work very closely with the Voluntary Co-ordinating Agency to ensure that all genuine efforts have been made to locate Indian families before clearance is given for inter-country adoption.38 The Scrutinizing Agency could be used to check on the antecedents of the child so that the surrendering parents are given proper counselling. The Scrutinizing Agency may be paid by parents for its services such amount as the court considered reasonable.

37 L. K. Pandey Vs. Union of India, AIR 1987 SC 274.
38 See Second International Conference on Adoption (1992), (ICCW, New Delhi,) p. 44.
(i) **Recognition of Scrutinising Agency**

It is open to the court looking into the matter of appointment of guardian under the Guardian and Wards Act 1890 in exercise of its powers under sec. 11 to appoint any independent reputed social or child welfare agency as a Scrutiny Agency for scrutinizing an application from prospective adoptive parents for adoption of a child. At present the Supreme Court of India has recognised two Scrutinizing Agencies namely Indian Council of Child Welfare and Indian Council of Social Welfare in the field of adoption. Inspite of these two recognised Scrutinizing Agencies by court, CARA also have power to recognise those agencies as Scrutinizing Agency which according to it can satisfactorily perform the function of a Scrutinizing Agency. Criteria for recognition of Scrutinizing Agency are:

(i) The agencies are to be an independent, reputed social/child welfare agency and must be a body of experts in the field of child care and welfare.

(ii) The Agency is not to be involved in the placement of children adoption and is run on a non-commercial and non-profitable basis.

(iii) The agency is to be a society registered under the Societies Registration Act 1860 and all office bearers of agencies are to be Indian nationals.

The procedure to be adopted for recognition of an agency as Scrutinizing Agency other than Indian Council of Child Welfare (ICCW) and Indian Council for Social Welfare (ICSW) is to be that the Agency has to apply to CARA for recognition as a Scrutinizing Agency after fulfilling all the criteria laid down by the CARA for the
recognition of Scrutinizing Agency. CARA may seek such information as may be necessary from the Scrutinizing Agency.

A Scrutinizing Agency would be recognised initially for a period of three years. Thereafter the Scrutinizing Agency should apply for renewal of recognition, six months prior to the date of expiry of the previous recognition. The recognition may be renewed from time to time if the performance of the Scrutinizing Agency has been found satisfactory as per the guidelines laid down by CARA.

(b) Role of Voluntary Co-ordinating Agency (VCA)

It is an association of all licensed adoption agencies in a particular region and is recognised by the Govt. of India in pursuance of the Supreme Court's directions. The Voluntary Co-ordinating Agency (VCA) was established basically with the singular objective of promoting in-country adoption with a belief that in country adoption is the best possible alternative for the rehabilitation of an abandoned child and every child has a right to a family of its own country and in its own social and cultural milieu. Only if this is not possible, the child could be regarded as available for inter-country adoption. It maintain a list of eligible prospective adoptive parents, receives information regarding available children from recognised member agencies and tries to match them. Thus, the information available would be pooled with the VCA and it should be the responsibility of the VCA to see and find the placement of the children within Indian parents in India within sixty days from the day when VCA assistance is sought to locate an Indian family for a particular child. It is mandatory for the placement agency to register the child with VCA. The clearance

39 AIR 1987 SC 274
would be issued by the VCA for inter-country placement of the child only when there is no such Indian family available with the VCA for taking the child in adoption. If there is difference between the placement agency and VCA in regard to the clearance of a child for inter-country adoption, the placement agency concerned may refer the cases to CARA. In such cases CARA will decide whether to give the clearance of the child or not and the decision of CARA shall be final.

(i) Structure of Voluntary Coordinating Agency (VCA)

The VCA is an independent registered body with a democratic structure. It consists of an Executive Committee for managing the day to day affairs of VCA and the Executive Committee shall consist of not less than three members and not more than one third the number of member of the VCA.

(ii) Executive Committee of Voluntary Coordinating Agency (VCA)

It comprises of -

(1) The Chairman of VCA
(2) A representative of the State Govt. of the level of the Deputy Director (Welfare) social welfare or above.

40 The Scrutinizing Agency has to ensure that at the time of scrutinizing the case, the VCA has issued a clearance certificate for inter-country adoption and the certificate is attached along with the documents to the petition. The VCA thus serves as a co-ordinating agency for promoting Indian adoption and also providing assistance to prospective adoptive parents. For more details see AIR 1987 SC 274.

41 The Clearance Certificate issued by the VCA would be signed and issued by two persons - the Chairperson and Member-Secretary, both of whom will not be connected with adoption activities whether in country or inter-country.

42 The recognised placement agencies would have the right to vote for electing the Executive Committee of the VCA, but the child welfare agencies would not enjoy any voting right. The Chairman of VCA should not be connected with either in-country or inter-country placements.
(3) One senior representative of each Scrutinizing Agency working in the jurisdiction of the concerned VCA.

(4) One representative from the agencies exclusively doing Indian adoption.

(5) Three representatives of the recognised placement agencies.\(^\text{43}\)

The term of office of the members of Executive Committee of items (3) and (4) is two years.\(^\text{44}\)

(c) Role of Central Adoption Resource Authority (Ministry of Welfare) (CARA)

In pursuance of the directions of the Supreme Court Central Adoption Resource Agency was set up on 28.06.1990 under the Ministry of Welfare, Govt. of India to act as a clearing house of information in regard to children available for in-country adoption and inter-country adoption and to monitor, regulate and develop programmes for the rehabilitation of children through adoption/guardianship.\(^\text{45}\) The Central Adoption Resource Agency is now a part of the Ministry of Social Welfare.\(^\text{46}\)

(i) Structure of Central Adoption Resource Authority

Central Adoption Resource Authority functions under the guidance of a steering committee consisting of:

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\(^{43}\) The two representatives shall be from those placement agencies, which have placed at least 50 percent children within the country during last three years to be elected by the recognised placement agencies in which are members of VCA.

\(^{44}\) They are not eligible for re-appointment for the next succeeding period of two years. The Executive Committee of VCA may appoint staff to carry out the day-to-day functioning of the VCA. Such paid staff would be accountable to the Executive Committee.

\(^{45}\) AIR 1992 SC 118.

\(^{46}\) Art. 6 of the Hague Convention, 1989 states that there should be designated a Central Authority to discharge the duties which are imposed by the Convention. In India CARA has been set-up with similar function.
(i) Chairman (non-officials) 47

(ii) Secretary (CARA) - Member-Secretary-cum-Executive Officer. 48

(iii) One representative from ICCW (parent body)

(iv) One representative from Indian Council for Social Welfare (Parent body).

(v) One representative of recognised placement agencies, one from each region, during at least more than 50 percent in-country adoption. 49

(vi) One representative from among voluntary co-ordinating agencies. 50

(vii) One representative from the Ministry of External Affairs.

(viii) One representative from the Department of Women and Child Development.

(ix) One representative from the Ministry of Information and Broadcasting. 51

The functions of Central Adoption Resource Authority are as follows:

(i) The Central Adoption Resource Authority is to maintain liaison with Indian diplomatic missions abroad in order to

47 The appointment of the Chairman would be in an honorary capacity.
48 The Member-Secretary-cum-Executive Officer of CARA would be an official of the rank of Deputy Secretary/Director in the Govt. of India who would enjoy a reasonable tenure preferably five years.
49 Representative of recognised placement agencies are from those agencies only who are doing at least more than 50 percent in-country adoption.
50 The tenure of the members representing recognised placement agencies and voluntary co-ordinating agencies shall be for a period of two years on rotational basis. On the expiry of the tenure, the members shall not be eligible for renominating for the next succeeding period of two years.
51 The Central Government may pay to the CARA such sums of money as may be considered necessary for the performance of its functions and the accounts of the CARA shall be maintained and audited in such a manner as may, in consultation with Comptroller and Auditor-General of India, be specified by the Central Govt.
safeguard the interest of children of Indian origin adopted by foreign parents against neglect, maltreatment, exploitation or abuse and to maintain an unobtrusive watch over the welfare and progress of such children. It shall maintain the list of all recognised foreign agencies for adoption entitled by the Govt. of India.

(ii) The Central Adoption Resource Authority prepares a list of all recognised Indian agencies and voluntary co-ordinating agencies for adoption in each state. It shall inspect, monitor and regulate the working of Indian social or child welfare agencies recognised by CARA and shall send the report to the Central Government on the working of such agencies. Central Adoption Resource Authority shall also arrange training programmes for social workers of these agencies and other engaged in child welfare activities specially act in the rehabilitation of children by means of adoption and also to bring about standardisation of training

52 For this purpose the CARA informs every Indian Diplomatic Missions concerned whenever an Indian child is taken in adoption or for the purpose of adoption by foreign parents with all particulars of such children and these particulars of adoptive/prospective adoptive parents shall be supplied to Indian diplomatic missions as early as possible and in any case before the end of every quarter.

53 The list of all recognised agencies shall be published once in a year in three leading newspapers having wide circulation in the State, one in the English language, one in the Hindu language and the third in the regional language of the State where the recognised agency is operating and the list also be circulated to all High Courts, Dist. Courts in each State, all the State Governments, all the recognised agencies, all Indian missions abroad, all VCA and Scrutinizing agencies.

54 CARA also receive periodical reports about the children taken by foreign parents for the purpose of adoption in a perform a prescribed by it from all recognised social or child welfare agencies in foreign countries through India’s Diplomatic Mission in the country where such agency is located.

55 CARA shall maintain the register of names and particulars of children available for adoption and given in adoption (in-country as well as inter-country adoption), who are under the care of social and child welfare agencies recognised by CARA.
courses conducted by the voluntary agencies and arrange periodical meetings of VCAs working in the field of adoption.

(iii) The Central Adoption Resource Authority assists the court to cross check or re-verify the information furnished to them by the various sources (i.e. Placement Agencies and Scrutinizing Agencies) and also provide independent advice in matter of adoption of children. It shall also receive data from the competent courts about the children whose guardianship has been awarded in favour of foreign adoptive parents as well as by Indian parents.

(iv) The original application/documents for adoption of an Indian child may be submitted by the foreign agencies directly to the recognised Indian Placement Agency with a photo copy to CARA. The CARA has to furnish the clearance certificate within the time frame viz., five weeks from the date of receipt of the application to the concerned placement agency. As per guidelines, the foreign listed agencies are required to forward required application and documents to CARA.56

(v) To initiate action on any other activity relating to adoption of children within the country and abroad.

(d) Role of State Government/Union Territory Administration

The State Government maintains a list of children's homes and adoption agencies working in the State.57 They shall also form an Advisory Committee on adoption and effectively supervise the

56 AIR 1992 SC 118.
57 The State Government shall call for information and data every quarter from all agencies engaged in adoption in order to monitor the functioning of these agencies in a proforma to be prescribed by the Central Adoption Resource Agency.
adoption work and to carry-out the inspection of the adoption agencies. The Advisory Committee on adoption has the following as members -

(i) Secretary, woman and child Development/Social Welfare/Panchayat Raj - Chairman

(ii) Director Welfare/Social Welfare/Women and Child Development - Member.

(iii) Two representative of placement agencies, VCAs and scrutinizing agencies operating under the State - Member

(iv) Three experts in the field of social and child welfare -Member

The State Government shall see that adoption activity is being pursued by the recognised agency for adoption as a welfare measure in the interest of children not as a commercial activity and children admitted to the homes are provided with basic minimum facilities for their care, at least education and development. The State shall also verify that the lists of persons interested in adopting a child or taking a child under guardianship are being maintained by the organisation regularly and reports about the well-being of children given in adoption. State Government forwards application of Indian agencies for inter-country adoption recognition to Central Adoption Resource Authority (CARA) after proper verification after 60 days and also issue recognition to agencies for in-country adoption as per procedure laid down. State Government also mentions the adoption programme within its jurisdiction and coordinate the activities of placement agencies, VCAs and scrutinizing agencies.
(e) Role of Recognised Indian Placement Agencies for Adoption (RIPA)

No agency is allowed to engage in placement or promotion of in-country and inter-country adoption unless it is recognised by the State Government. The agency should be a child welfare agency. The rules and guidelines for this purpose are formulated by the State.\(^5^8\)

(i) Every social child welfare organisation recognised for placement work in adoption has to regularly maintain a list of all prospective parents with full bio-data on the basis of which they have approached the organisation for taking a child in adoption.

(ii) The placement agencies shall make all out efforts to place a child in an Indian family according to a time frame. The placement agencies are required to adhere the following order of priority while considering the adoption of Indian children.\(^5^9\)

1. Indian families in India
2. Indian families abroad.
3. One parent of Indian origin abroad.
4. Totally foreign

The voluntary co-ordinating agencies shall issue necessary clearance certificate in favour of a placement agency for pursuing

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\(^5^8\) Only such voluntary agencies as are primarily engaged in child welfare programmes for the growth and development of children and which undertake adoption as a part of their total activities may apply for recognition for inter-country adoption to the CARA. Arts. 10,11,12 and 13 of the Hague Convention provide for accreditation of the competent bodies and norms or registration of agencies for inter-country adoptions. Under the Supreme Court guidelines the court has given directions to the Ministry of Social Welfare of the Govt. of India and of the State to recognise and license suitable agencies within the country.

\(^5^9\) However, the handicapped children, children above 6 years of age, and siblings will be excluded from this calculation.
inter-country adoption only if they fail to find an Indian family for the adoption of child.\textsuperscript{60}

(iii) Every recognised organisation for placement of children shall also give full details of the child to the prospective adoptive parents except the name and address of the biological parents, where known to the agency.

Adoption of Indian children placed with Indian living abroad will be treated as in-country placement. However, such Indian would have to send their application documents, etc., through an enlisted foreign agency in that country as in the case of inter-country adoption.

(iv) A separate file is to be maintained by every recognised Indian placement agencies for each child with the complete case history and medical report of the child.\textsuperscript{61}

(v) In the case of surrender of child where the biological parents are known they are to be properly assisted and counselled in making a decision about relinquishing the child for adoption, by the recognised placement agency to which the child being surrendered. The biological parents are to be told all consequences of the adoption. They are not to be subjected to any duress in making decision about relinquishment. They are to be given a further period of about two months to reconsider their decision of relinquishment. Once the decision is taken and not reconsidered within such further time as may be allowed to them, it must be

\textsuperscript{60} Every recognised agency shall keep a complete record in chronological order of the efforts made by it for locating an Indian parent for the adoption of a child and shall specifically note the reasons for any case of non-placement of a child in in-country adoption with any particulars of Indian parents.

\textsuperscript{61} All children admitted by a recognised placement agency shall be entered in the admission register with all the available information in the format prescribed by the CARA. It should also ensure that medical examination of the child is conducted regularly by the agency.
regarded as irrevocable and the procedure for adoption can then be initiated. The surrender document should be executed on stamped paper in the presence of two responsible witnesses whom the recognised agency should be able to produce, if necessity arises. The responsibility for the authenticity of the surrender document would be on the agency.

During the surrender process, the recognised Indian placement agency must ensure that:

(1) If the legitimate child is surrendered, both parents sign the relinquishment document and in case one of the parents is dead, proof of death is furnished.

(2) In case of a child born out of wedlock, the mother herself and none else, surrenders the child.

(3) If the surrender is effected by any person other than the biological parents/parent, the same procedure is followed as for an abandoned child.

(4) If a child is found abandoned or destitute by social or child welfare agency or a nursing home or hospital or anyone else a report should immediately be lodged with the local police station along with a photograph of the child and information to this effect is to be given to the Collector of the district, who is required to inform about the same to nearest recognised agencies or VCA. The police shall thereupon undertake an inquiry to ascertain and trace the biological parents of the said child. Such an inquiry is to be completed within one month of the report being lodged with the local police station. In the mean time the social or child welfare agencies having the custody of the child shall make an

application to juvenile welfare board or where there is no juvenile welfare board to the juvenile court or social welfare department or the Collector as the case may be for a release order to declare the child as legally free for adoption. As inquiry by police is to be completed within one month the order for declaring the child legally free for adoption should be passed within a period of six weeks from the date of such application in case of a child below the age of two years and three months, in case of child above that age.

(5) For issuing a birth certificate in respect of an abandoned or destitute child, the registration of whose birth is not available, the recognised agency concerned must make an application to the local magistrate along with any other material which the recognised agency considers relevant in the form of an affidavit made by a responsible person belonging to that recognised agency. The local Magistrate will then pass an order approving the particulars to be entered in the birth certificate and on this basis of the magisterial order the requisite certificate should be granted by the local birth certificate issuing authority of the city/town/area where the child has been found. Only after the adoption is finalised and the particulars of the adopting parents are available to be included. In case the child has attained the age of three, and the adoption has still not been finalised, the recognised agency may obtain a birth certificate, if it is found necessary by the permission of the court. In such cases a second

63 AIR 1992 SC 18
64 The recognised placement agency should file an affidavit and should mention in the affidavit: (a) that to the best of its knowledge the child has attained the age of three years; (b) that his/her adoption has not been finalised and is likely to take some time or may never be finalised in all probability; (c) that a
birth certificate may be issued after adoption to provide for a change in the name of the child and the adoptive parents obtain an order to that effect from the court which has passed order for issuing the original birth certificate.

(i) Recognition of Indian Placement Agencies for Adoption

Any Indian social/child welfare agency desirous of obtaining recognition from the Govt. of India for undertaking inter-country adoption work shall submit an application in the prescribed form in the CARA through the Department dealing with social welfare/women and child development in the State in which the agency is located. The Indian agency which seeks recognition shall generally fulfill the following conditions.

(i) It has to be a society registered under the **Societies Registration Act, 1860** or Trust created under the **Charitable Trust Act** or an organisation registered under an appropriate law or an organisation which has worked for the welfare of the children during the preceding five years;

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65 Where the application for the renewal of recognition of adoption agency in that case the State Government shall submit its recommendation on the application of renewal submitted by the placement agencies to the Central Adoption Resource Agency within a period of two months from the date of receipt of the application. In the absence of any recommendation from the State Government will be presented by the CARA and the application will be processed by CARA for grant of recognition within maximum period of two months. If no response is received from the CARA to the application by the placement agency within a further maximum period of two months or before the expiry of the recognition of the agency, whichever is later, the renewal shall be deemed to have been granted for a period of two years.
(ii) The organisation must be duly licenced by the State Government under the provisions either of the *Women and Children Institution (Licensing) Act*, 1956 or the *Orphanage or Charitable Institutions (Supervision and Control) Act*, 1960;

(iii) It shall has a duly constituted Executive Committee and the members of ex-committee must be Indian citizen;

(iv) It must have appropriate children's home for the protection and up keep of children including infants;

(v) It must be able to raise funds through donations or Govt. grants;

(vi) It must be running on a non-commercial, non-profitable basis;

(vii) It must have atleast one qualified social worker on its staff to carry on the adoption work.

The Chief Executive of the organisation should be willing to sign a written undertaking to follow the guidelines laid down by the Supreme Court of India. The application for declaring a foreigner or an Indian to be the guardian of an Indian child shall be proceeded only by a recognised Indian agency after following the procedure set out in the guideline laid down by the Supreme Court.

The recognition of agency shall be renewed only when the agency has given satisfactory performance in the promotion of in-country or inter-country adoption and they have submitted their reports and returns timely as may be specified by CARA.

**(ii) Status of Unrecognised Indian Agency**

The Supreme Court guidelines have also laid down the status of unrecognised agencies. If any unrecognised institution,
centre or agency which has a child under its care will have to approach a recognised social or child welfare agency if it desires such child to be given in inter-country adoption.\textsuperscript{66} This child can be placed for inter-country adoption through the recognised agency provided the recognised agency must have the custody of the child for a period of at least one month before it can prepare a child study report and medical report.\textsuperscript{67}

The recognition of Indian agencies may be withdrawn by CARA on receipt of a report from the State Government regarding unsatisfactory performance, after giving the Indian agency an opportunity to explain its position.

\textbf{(h) Role of Enlisted Foreign Agencies for Adoption}

The request from the foreign agencies for enlistment for the purpose of inter-country adoption shall be routed through the Indian Embassies/High Commission in their country. The recommendation of the Indian Embassies/High Commissions in their country will be taken into account while considering the request of the foreign agencies for enlistment by the Central Adoption Resource Agency (CARA)

\begin{itemize}
\item \textsuperscript{66} (1984) 2 SCC 244
\item \textsuperscript{67} It is the recognised placement agency which has to prepare the child study report including the medical report for submission to the court along with the application for appointment of the foreigner as guardian of the child and this obviously can't be done unless the child is with the recognised placement agency, because the recognised placement agency has to observe the child and gather full information about him/her along with the medical report in order to be able to make the report for submission to the court. The court, therefore, direct that no recognised placement agency shall make the process on application for appointment of a foreigner as guardian of a child with a view to its eventual adoption, unless the child has been in the custody of the recognised placement agency for a period of at least one month before the \textit{making of the application and it shall not be permitted to act merely as a post office or conduit pipe for the benefit of an unrecognised agency. AIR 1987 SC 236.}
Criteria for enlistment of foreign agencies by CARA for the purpose of inter-country adoption are asunder:

(i) The Foreign Agencies shall be a registered and recognised agency by the appropriate authority of that country or should be a part of Government of that country.

(ii) The foreign recognised agency shall be a child welfare organisation having an establishment standing in this field and agency shall be running on non-commercial and non-profitable basis. The foreign agency should be asked to submit a report and audited statement of accounts of their operation in India.

(iii) Where the child is not legally adopted by the adoptive parents in the receiving state within two years from the date of order of the Court in India appointing the adoptive parents as guardian either on account of disruption in the family or child is not properly looked after, the enlisted foreign agency will take care of the child under intimation to the Indian Diplomatic Mission, CARA, Ministry of Welfare and concerned Indian recognised placement agency and try to find suitable alternative placement for the child with the concurrence of the recognised placement agency which proceeded the case and report such alternative placement to the Indian court which made the order for guardianship and also to CARA.

The Chief Executive or head of the organisation should be willing to sign written undertaking to follow the guidelines laid down by the CARA/or observance by the enlisted foreign agencies.

A foreign agency engaged in inter-country adoption would be listed by CARA initially for a period of five years. The enlistment
would be renewable for five years at a time in case of satisfactory performance subject to conditions laid down in the CARA guidelines.\textsuperscript{68}

Renewal of enlistment may, however, be denied at the discretion of CARA for valid or legitimate reasons but CARA shall not be bound to disclose such reasons.

All enlisted foreign agencies should send a copy of their annual report to CARA every year.

The foreign agency shall with reference to every child placed by it send follow-up reports through India's Diplomatic Mission abroad with photographs of the child on a quarterly basis for the first two years and on a half-yearly basis for the next three years to CARA and to the court that awarded the guardianship in India and the Indian placement agency concerned.

The legal adoption order of the child has to be forwarded by the enlisted foreign agency to CARA, the court which awarded the guardianship and to the Indian agency concerned. The enlisted foreign agency should maintain contact with the adoptive family and providing support and counselling services, if necessary and safeguard the interest of the child till such time as she/he attains majority.

The enlisted foreign agency has to help the Indian Diplomatic Mission in its country to arrange get together of

\textsuperscript{68} CARA will take into the following factors into consideration while granting renewal of enlistment of foreign agencies:

(a) Whether the agency is still recognised by the appropriate authority of the country in which it is based.

(b) Whether the agency has been regular in the submission of progress reports of the children placed by them in adoption.

(c) Whether the general performance of the agency is satisfactory and whether the children placed by them are making satisfactory progress.

(d) Whether Govt. of India is Diplomatic Mission in the country concerned has recommended the case for renewal.
adopted children of Indian original and their adoptive families for exposing them to the culture of India. The enlisted foreign agencies can't employ their representative in India for any kind of activities relating to inter-country adoption. It will be desirable for the Govt. of India to enter into bilateral agreement with the countries which are receiving children from India for the purpose of adoption and such bilateral agreement should provide for full co-operation and co-ordination between the appropriate authorities of India and the receiving state and also for protection and safeguarding of the welfare of the children taken for adoption in the receiving state.

(i) List of Documents

List of documents required from foreign adoptive parents and social or child welfare agency enlisted by the Govt. of India for consideration of an inter-country adoption of Indian child are as follows:

(i) Home study report of the foreign adoptive parent prepared by a professional worker of the agency, which should generally include the following information.

(a) Social status and family background
(b) Description of Home.
(c) Standard of living as it appears in the Home.
(d) Current relationship between husband and wife.

69 These get-together may be organised at the time of national occasion 15th August, 14th November, 2nd October, 26th January, etc. CARA may on some occasions participate in these get-together in order to know the feedback of progress of the adopted child.

70 Art. 15 of the Hague Convention provides the Home Study Report which has to accompany every application of the foreigner and on the basis of this Art. the similar provisions of Home Study are laid down by the Supreme Court guidelines.
(e) Current relationship between the parent and child (if any children natural or adopted).
(f) Development of already adopted children (if any).
(g) Current relationship between the couple and the members of each other's family.
(h) Employment status of couple.
(i) Health details such as clinical, heart condition, past illness etc.
(j) Economic status of the couple.
(k) Accommodation of the child.
(l) Schooling facilities for the child.
(m) Amenities in the Home.
(n) Reasons for adopting an Indian child.
(o) Attitude of grand-parents and relatives towards adoptive child.
(p) Anticipated plans for the adoptive parents.
(q) Legal status of the prospective adoptive parents.
(ii) Recent photographs of the adoptive family.
(iii) Marriage certificate of foreign adoptive parents.
(iv) Declaration concerning health of adoptive parents with medical certificate of fitness of adoptive parents duly certified by a medical doctor.
(v) Employment certificate, if applicable of foreign adoptive parents and declaration regarding financial status of foreign adoptive parent along with supplementary documents and bank reference and particulars of properties owned by them.
(vi) Declaration from foreign adoptive parents stating willingness to be appointed guardian of the child.
(vi) Undertaking from the social or child welfare enlisted agency sponsoring the foreigner to the effect that child would be legally adopted by the foreign adoptive parents according to the law of the country within a period not exceeding two years from the time of arrival of the child and as soon as the adoption is effected. 71

(viii) Undertaking from the foreign adoptive parents that adopted child would be provided necessary education and upbringing according to the status of adoptive parents.

(ix) Power of Attorney from foreign adoptive parents in favour of officers of the social or child welfare agency in India which will be required to process the case and such power of attorney should authorise the attorney to handle the case on behalf of the foreigner in case the foreigner is not in position to come to India and undertaking to the effect that in case of disruption of the family of the foreigner before legal adoption has been effected, it will take care of the child and find a suitable alternative placement for the child with the approval of CARA and report of placement to concerned placement agency and court handling guardianship proceedings if placement is not probable then it will arrange for the safe return of the child to India.

(x) Undertaking from the social or child welfare enlisted agency that it will reimburse all expenses to the concerned Indian social or child welfare agency as fixed by the competent court towards maintenance of the child and processing charge fees.

All the above certificates, declaration, documents must accompany the application of the foreigner for taking a child in

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71 Social or child welfare enlisted agency will send three certified copies of adoption order each to the social or child welfare agency in India through which the application for guardianship is processed for filling in the court and one copy to Central Adoption Resources Agency, Ministry of Welfare.
adoption. These should be duly notarised by a Rotary Public whose signature should be duly attested either by an officer of the Ministry of External Affairs or Justice or social welfare of the country of the foreigner or by an officer of the Indian Embassy or High Commissioner or consulate in that country.

IV. Inter-Country Adoption of Handicapped/Older/Female Children
The directions of the Supreme Court are explicit in case of older or handicapped child. Such children should not be allowed to languish in orphanages when they can easily be assimilated into loving families and join mainstream of the society. Children should be allowed to lead a happy life and each country and its people should ensure the accomplishment of this aim. More and more placement agencies should be encouraged to come forward to provide rehabilitative services to the handicapped, older and to the female children as our apex court has given clear guidelines for the adoption of such children.  

(A) Inter-Country Adoption of Handicapped Children/Older Children
No case of adoption of handicapped children by Indians has been reported so far. Foreigners who get medical subsidies for adopting such children from respective governments are adopting handicapped children. Handicapped child needs extra attention,

72 Guardian and Wards Act, 1890 has proved of immense help in resolving this problem.
73 It is rather difficult to induce Indian parents to adopt handicapped children because of economic reasons as also because of lack of adequate treatment facilities for the handicapped. Therefore, in such cases while the inter-country adoption may be encouraged, the Indian government and resourceful voluntary agencies may think about necessary programmes of subsidy and free education, medical treatment etc.
extra resources and mature parents who have the patience, tolerance and ability to deal with a handicapped child. The bringing up of such a child must provide solace and joy and the parents must have a positive feeling about the child's future. The humanism perspective should be the sole motivative factor in such adoptions. The child should be considered as an asset to the family.

The Supreme Court has rendered singular service in the area of child welfare and has laid down a comprehensive set of norms and guidelines for placing a handicapped or older child for adoption. For a handicapped or older child the process is different from that of placing an infant. For a handicapped or older child the required information should include:

(a) Child profile
(b) Education ability
(c) I.Q.
(d) Personality traits
(e) General behavioural patterns
(f) Physical examination reports.
(g) Special medical reports (if the child is handicapped).

In short, all possible information which is available be sent to the enlisted foreign agency and the enlisted foreign agency should select the family on the basis of parent's skills and medical

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74 The handicapped child is likely to put extra strains on the parents. The prospective parents must accept the limitation of their child willingly and be prepared to cope with them. Such parents should not expect any return in material terms.

75 Pity should not be motivating factor in the adoption of a handicapped child. If the adoptive parents feel sorry for such a child subsequently they are giving the child the added handicap or crippled spirit.

76 For an infant the complete documentation on the family is sent to a placing agency in India by enlisted foreign agency and approved by recognised placement agency and then the family awaits the referral of a child.
facilities available. The child ought to be adopted before it attains the age of understanding. It will be easier for it to get integrated in the new environment in which it may find itself on being adopted.\textsuperscript{77} But it is not suggested that children above the age of three years should not be given in adoption under any circumstances. In this regard the Supreme Court has made the following observations:

"We would suggest that even children above the age of seven years may be given in inter-country adoption but we would recommend that in such cases their wishes may be ascertained, if they are in a position to indicate any preference. The statistics placed before us show that even children past the age of seven years have been happily integrated in the family of their foreign adoptive parents."\textsuperscript{78}

The court has made it clear that for adoption of such children foreign parents need not come to India, because a complete information about the child consisting of photographs, details, medical reports and other relevant particulars is forwarded to the enlisted foreign agency.\textsuperscript{79} Older children come in a wide range of ages posing a variety of challenges. Therefore, agency have to search parents who can face those challenges and create a climate of love and affection so that the younger male/female child could be easily adjusted to the new environment.\textsuperscript{80} The adoptive parents need patience and a firm commitment to this newly

\textsuperscript{77} Comparatively, it may be somewhat difficult for a grown up child to get acclimatized to new surroundings. Sometimes a problem may also arise as to whether adoptive parents would be able to win the love and affection of the grown up child.

\textsuperscript{78} \textit{Lakhmikant Pandey v. Union of India}, AIR 1989 SC 469.

\textsuperscript{79} The Supreme Court has desired that as far as possible, the foreign parents, or even one of them, need not be required to come down to India for the purpose of approval of the child. \textit{Ibid.}

\textsuperscript{80} It requires time for a child of older age to adjust and get assimilated into the new family.
created relationship of adoption. If the child has reached the age of understanding, child welfare agency can play a decisive role in making the child capable of finding adjustment to live in new environment. Actually, they are in need of such parents who can provide them care as well as a lovable environment.\footnote{In such cases selection of suitable parents with positive perceptions is a \textit{sine qua non} for sustaining parent-child relationship.}

According to guidelines laid down by the Supreme Court if a child is handicapped or is a sibling or above 6 years of age, the procedure of obtaining VCA clearance need not be followed and the child should be regarded as available for inter-country adoption without waiting period of two months (as in ordinary case). In other cases also, if the child is in a bad state of health, needing urgent medical attention which it is not possible for the social or child welfare agency looking after the child to provide proper medical care within the country the agency need not wait for the period of two months but after obtaining a medical certificate from a medical specialist in a Govt. hospital stating the need for urgent treatment and also that the child will be able to withstand the journey, get VCA clearance and process the case for inter-country adoption. However, in case of surrender children, the three months time for reconsideration should always be adhered to. CARA shall ordinarily issue \textit{`No Objection Certificate'}, in case of handicapped/special need children, etc., within a period of one week from the date of receipt of information of such child from the Indian recognised placement agency. Simultaneously, the recognised Indian placement agency would be allowed to send the referral of such children to foreign enlisted agencies of its choice because the placement of handicapped children and children with deficiencies may be considered as a plus point in evaluating the
performance. The rest of the procedure is to be followed by the Indian recognised placement agency as per procedure laid down in the judgement of the Supreme Court of India.

(D) Inter-Country Adoption of Female Child

In a country like India where religious and spiritual consideration have dominated our cultural and civilization for thousands of years, adoption of a male child has always dominated the scenario as our mind set always remained a male dominated one. Son was always considered essential one for continuance of the family and performance of indispensable religious duties after death. However, with the passage of time and widespread of education and the social perception about equality of sexes, the attitude of the people have started changing and female children are now being considered for adoption. All this has been made possible due to the role of social welfare organization who are NGO’s and also government sponsored agencies as well as the electronic media. Now more and more people are coming forward to adopt female children without any gender bias. In this regard one of the suggestive approach can be the role which the recognised agencies/institutions who are involved in the process can play in streamlining the total process on the principle of first come first basis and provide a better way for eliminating male/female selection whims and fancies of prospective parents and in the ultimate analysis female children may find more homes and better families to lead a better and joyous life.
V. Welfare of the Child

The old Hindu law of adoption was parent based and the welfare of the child was not its prime concern. While the adoption of orphans, illegitimate children and girls was prohibited, whereas the adoption of grown-up married men was permitted. The child welfare services were in the nature of providing institutional service to orphans, destitute, foundling abandoned, disabled and delinquent children. Such children were kept in charitable and welfare institutions on the assumption that the child needs food, clothing, shelter and nothing more.\(^2\) The state of law was obviously most unsatisfactory and unfortunate in the modern context as the need of orphan, abandoned or foundling child for adoption was the greatest.\(^3\)

The social concept of adoption has undergone a momentous change. Adoption is no longer considered a crutch to aid childless or a means to relieve a person from the torments of hell. Now adoption is guided by the principles of social reform, equity, justice and welfare of the child. There is a growing realisation that institution are not the right places for the proper development of children because institutions are unable to meet their fundamental need of love and affection and above all recognition of them as normal and ordinary children which is psychologically and socially essential to their security.\(^4\) Therefore, it is just and human to give shelter and providing home and family to such helpless, the

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\(^2\) Under the Mitaksra law, an orphan, a foundling or an abandoned child could not be given in adoption because the child could be given in adoption by parents only and not by the guardian. Similarly a girl could not be given in adoption because son played the key role in the socio-religious life of a man for the sake of funeral cake, the liberation of water and for the celebrity of father's name.


unwanted, the destitute or orphan and the institutionalised children and rehabilitate them in the society.\textsuperscript{85} Inter-country adoption is perhaps the most recent stage of the new social and welfare concept of the adoption. As knowledge about child development and welfare grew, experts and social workers began to realise the all important need for every child to be raised in a family situation by giving him in adoption.\textsuperscript{86}

The Economic and Social Council of the United Nations in January 1975 has taken up this matter in conformity with the world-wide importance and dynamic development in inter-country adoption as a means of child welfare and a report was submitted on the subject of foster and adoptive children.\textsuperscript{87}

The child must be provided a life of moral and material security in the foreign countries. An expert group formed by the United Nations met in Geneva in December 1978 and adopted a "draft declaration on social and legal principles relating to the

\textsuperscript{85} Ibid. p. 3.

\textsuperscript{86} Adoption has come to assume a more significant economic context in recent years by cutting across international barriers of religion, caste or race. There has been a remarkable increase in the number of inter-country adoption since second world war. This has led to European Seminar on \textbf{Inter-country Adoption in Leysin}, Switzerland in 1966 to assess the actual situation and recognisable trends of welfare and development of child in sphere of inter-country adoption and also led to the formation of two international Conventions - \textbf{The Hague Convention on Jurisdiction, Applicable Law and the Recognition of Decrees Relating to Adoption}, 1965 and the \textbf{European Convention on the Adoption of Children} 1965 and 1976. See \textit{Hague Conference on Private International Law}, 15.11.1965.

\textsuperscript{87} See Classie Ris, Adoption and the Law : Present Situation and New Trends, 28 \textit{International Child Welfare Review}, 52-58 (March 1976). This article gives an overall idea of adoption laws currently in force, together with a look at development and welfare of the child in the field of adoption. It is based on information gathered from some thirty countries and on the report of the United Nations dated 18.11.1975, on the Convening of UNS Conference for an International Convention of an Adoption Law.
protection and welfare of the children with special reference of foster placement and adoption, nationally and internationally.\(^8\)

There has been great concern for the welfare of the children at the international level culminating in the declaration of the rights of the child adopted by the General Assembly of the United Nations on 20th November, 1959. The declaration in its Preamble points out that, "the child by reason of his physical and mental immaturity, needs special safeguards and care including appropriate legal protection, before as well as after birth, and that mankind owes to the child the best it has to give.

The framers of the Constitution of India being aware of the growing needs of the child, incorporated several radical and progressive provisions regarding the concept for child welfare in India reflected and embodied in the *Directive Principles of State Policies*\(^9\) and the Government of India adopted and formulated the *National Policy for Children* in 1974, to promote child welfare on the premises that nation's future depends upon the development of the child.\(^1\) The children of today are the adult of tomorrow, therefore, the physical, mental, social and emotional development of the child have assumed great importance. It is well recognised that the best child welfare is good family welfare. When biological family care is not available or child who can't remain in his or her biological family substitute family care should be considered. Thus, adoption, as a concept of care, protection and

\(^8\) See for more details, *L. K. Pandey Vs. Union of India*, 1984 SC 469(477)

\(^9\) See *Constitution of India*, Part IV

\(^1\) *National Children Policy* of 1974 describes the nation's children as the supremely important assets. The policy resolution imposes an obligation on the state to provide adequate services to the children both before and after birth and throughout the period of growth to ensure their complete and full physical, mental social development. It further as that the state shall progressively increase the multidimensional scope of child development services within a reasonable time span.
education, which arising out and supported by the principles enunciated by the Declaration of Rights of the Child adopted by the General Assembly of United Nations, Arts. 15, 24 and 39 of Constitution of India91 and provisions of National Children Policy, 1974.

Children are on the international agenda today in a way that they have never been before. There are now some universally accepted basic rights which are essential to any child’s harmonious and full development even if there is a diversity of nation’s socio-economic, religious and cultural perception of childhood and the child’s role in the family and society at large. The inter-country adoption or international adoption are becoming increasingly frequent in the modern world. There is a growing interest in the contemporary international community in providing for uniform laws relating to the creation and effects of adoption. International Convention and realities of various types contribute to the international regime on adoption and set international human rights, norms and standards for adoption. The need for special safeguards and care including appropriate legal protection for child has been stated in the Geneva Declaration on the Rights of the Child of 1924.92 This declaration stated that, "mankind owes to the child the best that it has to give." Similarly the Declaration on the Rights of the Child, 1959 also set out certain principles and norms relating to the rights of a child to a name and nationality to

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91 For further details see Constitution of India, Arts, 15, 24 and 39.
92 The Declaration was drafted by the Save The Child International Union, a non-governmental organisation established by Eglantyne Jeb to respond to the need of children during the aftermath of World War-I and the Declaration was adopted by the League of Nations in 1924.
be protected from practices which may foster religious discrimination.93

The discussion clearly establish the point that the Supreme Court judgements in L. K. Pandey's case has provided new impetus to the adoption procedure as well as the role of different agencies involved in the inter-country adoption process which in the ultimate analysis have succeed in protecting and safeguarding the rights of the children including their welfare.

VI. Emerging Issues

Inter-country adoption has now become an established phenomena in our country. Since the Hon'ble Supreme Court delivered its judgement in 1984, some settled procedures have continued to be followed for regularizing such adoption. The centre in this context has virtually shifted from parent centred to child centered adoption. Despite all best possible efforts in finding suitable parents the process of adoption sometime gets delayed due to several reasons. The emerging issues facing the adoption professional are related to both the practice of adoption and law of adoption in India. The expeditious processing of inter-country adoption cases through juvenile justice system in case of abandoned children consume longer time due to the specific investigating procedures adopted for the clearing the child legally free for adoption. The deleting procedure being adopted for obtaining birth certificate of such children also adds to the magnitude of the problem. The guidelines of CARA framed in pursuance of Apex Court's judgement are significant. However, the

guidelines can’t be a substitute for a legislation which should cover all aspects of the in-country and inter-country adoptions. Therefore, the need for a uniform adoption law in India can’t be over emphasized. The law once enacted can incorporate all aspect of the subject matter including the role of different recognised agencies which can be associated in this work. The Hindu Adoption and Maintenance Act, 1956 is just a half hearted effort and touches only one segment of the total population and that too without any application to inter-country adoption. Similarly, the Guardian and Wards Act, 1890 which has been pressed into service in this area has a need for uniform legislation which must be made applicable to all Indian and also should cover all adoption matters. Article 44 of the Constitution of India gives ample powers and authority to the Parliament to enact such a law having general application. Once such a legislation came into being the existing legislation can be repealed as the new law which may be secular in nature will have a uniform application.

VII. Sum-up

The foregoing discussion demonstrate that the practice of adoption is primarily an in-country adoption phenomenon, but in recent years it has assumed inter-country/international dimensions. Inter-country adoption involves a change in the child's habitual country of resident. In other words, it involves parents of a nationality other than that of the child irrespective of the place where such parents maintain residence. The concept emerged after the cold war era in response to the situation of children orphaned by the war. Today inter-country adoption has become a global phenomena. In India in pursuance of directions issued by the
Supreme Court in *L. K. Pandey's case* (1984) the Government of India has established a Central Adoption Resource Agency (CARA) to act as a clearing home of information with regard to children available for inter-country adoption and to regulate, monitor and develop programmes for the rehabilitation of children through adoption. In India the only assisting legislation to process inter-country adoption is the *Guardian and Wards Act*, 1890. The guardian appointed by the court under the law makes him responsible for the custody, support, health and education of the ward. The foreign parents have made use of the provision of this Act and taken the children out of India in order to adopt the child as per the law of their country within two years. This Act of 1890 read in the light of Supreme Court’s directions have facilitated the adoption of Indian children to foreign parents.

The Voluntary Co-ordination Agency (VCA) has been established to promote in-country adoption so as to find out Indian families for the children. In case it is not possible the Voluntary Co-ordination Agency may allow the processing of the cases for inter-country placement of the children. The State Governments also maintain list of Children Homes and adoption agencies working in the field in the State.

The State Government further process the applications of Indian agencies for inter-country adoption for recognition from CARA. No agency is permitted to engage in such matters unless recognized by the State Government and CARA. Another important aspect that deserve mention here is that the adoption of Indian children placed with Indian families living abroad is treated as in-country placement. The process of surrender of child by the biological parents is pure and simple legal one and once the
process if legally completed it become irrevocable. The discussion further shows that a child can be placed for inter-country adoption only through the recognized agency. Further such agency should have the custody of the child for a period of at least one month before it can process the matter. As per record available with Central Adoption Resource Authority (CARA), during the last 8 years 9498 estimated number of children have found home through recognized placement agencies dealing with inter-country adoption.

It is also mandated that the enlisted foreign agency should maintain contact with the adoptive family so as to safeguard the interest of child till the child attains the age of majority. Cases of handicapped children being adopted by foreign parents have also been reported as their country provide support to such children.

The Convention on Inter-country Adoption and Protection of Children 1993 has also highlighted the fact of ensuring proper safeguards for inter-country adoption so that the interest and welfare of the child vis-à-vis his or her fundamental rights receive adequate protection in international law. It may not be out of place to mention here that inter-country adoption has emerged as a solution for the better protection of the abandoned/destitute and orphaned children where appropriate care cannot be ensured in the country of their origin. It is submitted that for permitting or facilitating proper functioning of inter-country adoption it is desirable that an appropriate legislation to cover all situations including procedure enacted.