ADOPTION UNDER OTHER LEGAL SYSTEMS -
A COMPARATIVE OVERVIEW

I. Prelude

The objectives underlying a particular institution is one of the important factors that influence the shape and content of law. In the ancient civilisation as well as in latter cultures, the purposes served by adoption differed substantially in form from those emphasized in modern time. Under the ancient-cum-religion texts, adoption was a purely parent based legal fiction not at all meant to save any interest of adopted child.\(^1\) It originated under a religious belief according to which a son was essential to procure spiritual benefit in the life hereafter. A person must have a son natural born or adopted one.\(^2\) The importance of the male heir stemmed from political, religious or economic condition depending on the particular nation, while the desire to continue a family line or to secure rights to inheritance are still among the motives for:

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2 A Hindu is influenced by the popular superstitions as to the importance of a son. Son was called as putra, because he saved the father from the hell. A sonless person had no chance of future bliss. For more details see M.S. Pandit, *Outline of Ancient Hindu Jurisprudence*, (1989), p. 20.
adoption, interest now centre more on the creation of a parent-child relationship. Modern concept of adoption specially in European countries is used more and more for the benefit and welfare of the child. Inter-country adoptions are comparatively a recent phenomenon which began to develop on a large scale at the end of Second World War. 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 perceptions of childhood and the child's role in the family and society at large. As already pointed out, that adoption law in India continues to be in a rather primitive and unsatisfactory state which indicates need for change. The present chapter attempts a comparative study of the

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3 This attitude partially developed in the period following World War - I because of availability of a large number of children as war orphans and illegitimate births.

4 These days adoption is being increasingly used for several other objectives such as conferring status of legitimacy on illegitimate children and providing homes for homeless children. The Western couples are resorting to adoption from developing countries for non-availability of children in their own countries because of family planning, change of morals, socio-economic pressure and liberalised abolition laws, etc. On the other hand, a large number of children are available for adoption in Asia as abandoned children and war orphans in countries involved in war (e.g. Korea, Vietnam, Iran and Iraq), poverty stricken parents to part with their children and lack of laws and legal safeguards and dubious role of voluntary agencies operating in the field of child welfare have all added up to make it a matter of concern for most of the national governments. For more details see *Innocent Digest*, A UNICEF Publication on Inter-country Adoption, (Italy, 1998), pp. 2-3.

5 There is a growing interest in the contemporary international community in providing for uniform laws relating to the creation and effects of adoption. International Conventions and treaties of various types contribute to the international regime on adoption and set international human rights norms and standards for adoption. See Asha Bajpai, *Adoption Laws and Justice to the Child*, (1986), p. 134.

6 In India there is no general law of adoption though it is permitted by statute amongst Hindus (in its broad legal sense) and by custom amongst a few numerically insignificant categories of persons. All other communities have no general law of adoption of their own, they have to
laws of different countries with a view to search appropriate guidelines and policies for future directions and reforms of the adoption institution. Attempt has also been made to examine the international Conventions and principles that regulate adoptions and their harmony with our domestic laws and how our national legislations have implemented these Conventions and principles.

II. United Nations Instruments Regarding Adoption

Every state has the right to regulate the manner in which an adoption may be effected. However, there are some international Conventions that attempt to harmonize national rules regarding adoption. The Declaration of the Rights of the Child, 1924 was the first major step towards protecting children's rights. In 1959, the United Nations by adopting a ten principles document namely The Declaration of the Rights of Child, 1959 gave official recognition to the human rights of children. It was in commemoration of the twentieth anniversary of Declaration of 1959 that the year 1979 was designated as the International Year of the Child (I.Y.C.). Besides these, there were several general resort to the Guardians and Wards Act, 1890 which provides inadequate protection to Indian children taken abroad.

7 The needs for special safeguards and care including appropriate legal protection for the child has been stated in the Geneva Declaration of the Rights of the Child, 1924. It was drafted by the "Save Child International Union", a non-governmental organisation established by "Eglantyne Jebb" to respond to the need of children during the aftermath of World War - I, The Declaration was adopted by the League of Nations in 1924. See supra note 4, p. 5.

8 The Declaration of 1959 set out certain principles relating to the rights of a child to a name and nation by and to be protected from practice which may foster religious discrimination. See United Nations Declaration of the Rights of the Child, 1959, Principles 1, 3 and 10.

9 As a part of celebration of 20th anniversary of Declaration of 1959, Poland proposed that international treaty be drafted which would put into legally binding language the principles set forth in the 1959 Declaration. The
Declarations, Covenants and Conventions which recognised object of adoption to provide the child who can't be cared for by his or her own parents with a permanent family and foster placement regulated by law.\(^\text{10}\) Under the Convention, a Committee is established to monitor the implementation and all state parties have to submit their first report to the Committee within two years of ratification. In 1992 India ratified the Convention and has an obligation to ensure that the rights enshrined under the Convention are protected in the country.\(^\text{11}\) Art. 4 of the Convention provided that the State Parties should review its legislation and ensure that the laws are consistent with the Convention.\(^\text{12}\) India has also become a signatory to the **Declaration of the World Summit for Children** and has endorsed the survival and development goals in the year 2000.\(^\text{13}\)

At the seventeenth session of the **Hague Conference on Private International Law**, the **Convention on Protection of Children and Cooperation in Respect of Inter-Country**

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\(^\text{11}\) It is the Govt. of India now that is responsible for ensuring that the norms laid down in the Convention are adhered to in actual practice by enacting laws because international treaties do not automatically become part of the national law. They have to be incorporated into the legal system by appropriate law. See *Constitution of India*, Art. 253.

\(^\text{12}\) Art. 4 reads: "States parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in this convention, with regard to economic, social and cultural rights, state parties shall undertake such measures to the maximum extent of their available resources and when needed within the framework of international cooperation."

\(^\text{13}\) The National Plan of action for the child formulated by the Govt. of India incorporated immediate as well as long term goals for the year 2000 and outlined a time bound strategy for achieving the targets.
Adoption was adopted. India was also a participant at the deliberation. The Convention sets a framework of internationally agreed minimum norms and procedure that are to be complied with to protect the children involved and the interest of their parents and adoptive parents. Some important provisions of the convention are summarised as under:

(a) The preamble of the Convention which recognised that the child should grow up in a family environment for his/her full and harmonious development of his/her personality and that inter-country adoption may offer the advantage of a permanent family to a child for which a suitable family can't be found in its state of origin.

(b) The objects of the Convention were to establish safeguard to ensure that inter-country adoptions take place in the vast interest of the child and to establish a system of co-operation amongst contracting state to ensure that those safeguards are respected and thereby prevent the abduction and the state of traffic in children. The object is also to secure the recognition in contracting states of adoption made in accordance with the Convention. The Convention is to apply to all adoptions between contracting states that creates a permanent parent child relationship.

(c) An adoption within the scope of Convention shall take place only if the competent authorities of the state of origin established that the child is adaptable, having regard to the

14 This Conference was convened at Hague on May 10, 1993 at the invitation of the Govt. of Netherlands and was attended by Govt. delegates of nearly 69 countries including India. At the conclusion of the 17th session of the Hague Conference the participating states adopted the final text of the subject Convention.

15 Id. Art. 1.

16 Id. Art. 2.
age, degree of maturity and the welfare of the child and prospective adoptive parents are eligible and suitable couple as the case may be to adopt that particular child.17

(d) The Convention also requires every contracting state to establish Central Authorities and accredited bodies related to inter-country adoptions and the role of these authorities and procedural requirements in inter-country adoption are set out in the Convention.18

(e) The Convention requires that prospective adoptive parents of contracting state if willing to adopt a child from another contracting state, must apply to the Central Authority in the state of their habitual residence or to an accredited agency in the state.19 It is the responsibility of the Central Authority of the particular state to prepare the Home Study Report on the child finding prospective parents eligible and suited to adopt the particular child.20

(f) Chapter - V of the Convention which deals with the recognition and effects of the adoption, ensures that adoption certified as made in accordance with the Convention shall be recognised by operation of law in other contracting state.21

(g) Chapter - VI contains a number of provisions of general application. Arts. 30 and 31 deal with the preservation of information concerning the child origin, identity of its parents and its medical history. Art. 33 deals with the reporting of actual or possible responsibility for ensuring

17 Id. Arts. 4 & 5.
18 Id. Arts. 6 to 13.
19 Id. Art. 22.
20 Id. Art. 22(5).
21 Id. Arts. 23 to 27
that appropriate measures are taken and no reservations are permitted under the Convention.22

The 17th session, unable in the available time to fit the adoption of refugee and internationally displaced children into the structure of the Convention, determined that further study and possibly the elaboration of special instrument supplementary to the convention were necessary on these issues and therefore requested the Hague Conference Secretary General in consultation with the United Nations High Commissioner for Refugees to examine the issue of refugee and internationally displaced children.23

III. Relevance of the Hague Convention to India

The provisions and objectives of the United Nations Convention reiterate and elaborate what is clearly contained in the Constitution of India, the National Policy for Children, 1974, the Guardian and Wards Act 1890 and the Supreme Court guidelines for inter-country adoption laid down in L.K. Pandey's case.24

(a) As per Supreme Court guidelines following in India the first priority is given to the in-country adoption and where this is not possible only then inter-country adoption is allowed in the best interest of the child. Similarly Art. 14 of the Hague Convention states that an adoption within the scope of the Convention will take place only after the possibilities for the placement of the child within the state of origin of the child have due consideration.

22 Id. Art. 40.
23 See supra note 4.
(b) The guidelines provide that where the child is above the age of 7 years the consent of child is necessary and if biological parents of the child are known they should be properly assisted by the social or child welfare agency in making a decision about relinquishing the child. The Convention also provides for the consent of the child as well as biological parents of the child where possible and the counselling of the child as well as biological parents of the child and that consent has not been indicated by payments of compensation of any kind.25

(c) Art. 6 of the Hague Convention states that there should be designated a Central Authority to discharge the duties which are imposed by the Convention. Similarly, as per apex court guidelines in India the Central Adoption Resource Agency (CARA) has been set up with similar functions. The recently formulated CARA guidelines have reiterated the mandate of Arts. 7, 8, 9, 16, 18, 19, 20, 21, 22 and 23 of the Convention.

(d) Under the existing apex court guidelines directions have been given to the Ministry of Social Welfare of the Govt. of India and the State to recognise and license suitable agencies within the country. Arts. 10 to 13 of the Convention provides also for accreditation to the competent bodies and norms for registration of agencies for inter-country adoptions.

(e) Art. 15 of the Hague Convention provides for Home Study Report of the prospective parents which has to accompany every application of the foreigner. There are similar

provisions laid down in the Supreme Court guidelines and the recent guidelines of the task force.  

IV. Adoption in other Legal Systems

(A) Adoption under English Legal System

Under English Legal System adoption law contained mainly in the Adoption Act, 1959 and Part - I of the Children Act, 1975 (not all of its provisions are in force). The activities of adoption agencies are governed by regulations and the court proceedings are governed by 'Adoption Court Rules' relating to the magistrate's and county courts as also the High Court. English courts make yet another adoption order named as 'Convention Adoption Order', issued in favour of British subjects domiciles abroad.

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26 The Supreme Court guidelines provide that every application received from a foreigner desiring to adopt a child from India must be sponsored by a social or child welfare agency recognised by a social or child welfare agency recognised or licensed by the Govt. of the country in which the foreigner is resident.

27 Prior to World War I in England there was no law regarding adoption, but a demand arose during the period following the World War I due to a large number of war orphans in need of homes and in response to this demand England passed many Acts relating to adoption law e.g. the first adoption law, Adoption of Children Act, 1926, Adoption Act, 1958, which ultimately replaced by Adoption Act, 1979, Children Act, 1975. See Bromley's Family Law (6th edn. 1981) p. 336 and http://travel.state.govt/family/adoption/country/country_353html

28 These rules are enacted in 1976 under the Children Act, 1975 and are in operation in England, see id. pp. 336-37.

29 Regarding convention adoption orders, the desire to produce a uniform law of jurisprudence and recognition led to the Hague Convention on Adoption of Children in 1965. The term of the Convention are embodied in the Adoption Act, 1968. Nationality and residence is the governing factor in Convention adoption order. Unless stated otherwise, the law and procedure applicable to other adoption orders also apply to Convention adoption orders. For details see id. p. 355.
(a) Person Competent to Adopt

The English law mandates that the applicant must be domiciled in the United Kingdom. Where both the spouses, apply jointly, one of them must be domiciled in England.\textsuperscript{30} In case of Convention adoption order both the spouses must be habitual resident and national of United Kingdom or convention country otherwise residence in England is not necessary.\textsuperscript{31} A married person can't adopt without the consent of his or her spouse unless the court is satisfied that the other spouse:

(i) is dead,
(ii) can't be found by the usual process, or
(iii) is legally separated,
(iv) the spouse is too ill (whether physically or mentally) to join the applicant,\textsuperscript{32}
(v) there are some other justifiable grounds e.g. candid of a serious criminal offence against the child or biological parent etc.

The applicant must have completed the age of 21 years when he or she is married otherwise must be over 21 years of age.\textsuperscript{33}

\begin{itemize}
\item \textsuperscript{30} See \textit{Adoption Act}, 1958, sec. 1(1)(5)
\item \textsuperscript{31} See \textit{Children Act}, 1975, sec. 24(4)(5) and \textit{Adoption Act}, 1976, sec. 17(4) & (5).
\item \textsuperscript{32} See, \textit{Children Act}, 1975, sec. 11(1)(b); also see \textit{Adoption Act}, 1976, sec. 15(1)(b).
\item \textsuperscript{33} Before the \textit{Children Act} came into force a sole applicant and at least one of the joint applicant had to be aged 25 years unless he or she was a parent or a relative of the child. See \textit{Children Act}, 1975, sec. 10(1)(2) and \textit{Adoption Act}, 1976, sec. 15(1)(2). In England most adoption agencies and local authorities further insist that the applicant must be under 35 years (if women) or 40 years (if male) to ensure that they will still be active and vigorous when the child is growing up.
\end{itemize}
(b) Person Competent to give in Adoption

In England the consent of natural parents (or mother of the child be illegitimate) and the guardian of the child in case the parents are dead or their consent is dispensed with is necessary for giving the child in adoption. In case the child is surrendered to the institution (i.e. Hospital, orphan asylum or child care agencies, etc.) the consent of institution is Mandatory and the consent of natural parents can be dispensed with. When a child has been adopted previously, its adoptive parents under the first order are its parents for the purpose of consent. Under English law, the mother of the child is competent to consent only if the child is at least 6 weeks old. The consent of parent or guardian is revocable till the adoption is made final. The parent or guardian must give general consent to adoption by which parental rights will vest in the adoption agency. If the child is not adopted within the 12 months from the date of consent, the parent or guardian

34 The term parents include mother and not father of an illegitimate child. So the consent of putative father is not required in England unless he has legal custody of the child. See Children Act, 1975, sec. 85(J).
35 In case of a ward of the court the consent of the court must also be obtained. If the child has a legally appointed guardian under the Guardians of Minor Act, 1971, the guardian's consent is necessary, even if the child is not living with him. See Children Act, 1975, sec. 12(1) and Adoption Act, 1976, sec. 16(1)(b)(i).
36 Young Vs. Smith 191 Tenn 25, 231.
37 Adoption Act, 1958, sec. 6(2).
38 This is becoming a source of fear to many of the applicants in England to overcome this difficulty, the Children Act, 1975, sections 14-16 (sections not yet in force) has provided for freeing a child for adoption through the court.
39 Once the general consent is given, the child is free for adoption so long as the order freeing a child for adoption in force, veto powers to the proposed adoption cannot be exercised by the parents or guardian. The rights and duties may be transferred to another adoption agency by the court order. See Children Act, of the and Adoption Act, 1976, sec. 21.
becomes entitled to get the order revoked. In England the court may dispense with the consent of the parents or guardian if it is satisfied that the parents or guardian:

(i) can't be found by taking all reasonable and proper steps; or
(ii) is incapable of giving the consent e.g. because of mental disorder; or
(iii) is with-holding his or her consent unreasonably; or
(iv) has persistently failed to discharge parental duties and the rehabilitation of child within his household is unlikely.
(v) has abandoned or neglected the child.

(c) Who may be Adopted

The child must be at least 6 weeks old and not more than 18 years old for the purpose of being adopted. The child must be unmarried. Child if adopted earlier can be readopted. The English law is silent in respect of the consent of the child. The child must be a national of United Kingdom or a conventional country and habitually resident in British Territory or convention country only for convention adoption order, no such condition is laid down for other adoption orders. Regarding the religion of the

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40 If the adoption order is revoked, parental rights and duties revest in the parents or guardian. If not revoked, a further application for revocation can't be made without the leave of the court.
41 This is permissive and the court may consider whether or not to exercise its discretion in any given case. See Children Act, 1975, sec. 12 and the Adoption Act, 1976, sec. 16.
42 This includes not only legal obligation but also moral obligation to show affection, care and interest.
43 If the ill-treatment is serious, it need not be persistent rehabilitation of the child in the household of the parents or guardians is unlikely e.g. the child is in care of the parent in person.
44 The terms abandoned and neglected denote conduct which would render the parent or guardian liable to criminal proceedings under the Children and Young Persons Act, 1933.
45 Children Act, 1975, sec 8(1).
46 Children Act, 1975, Sec 8(5) and of Adoption Act, 1976, sec. 12(5)
child the law is silent. According to sec. 9 of the Children Act, 1975, an adoption order shall not be made unless the child is at least 19 weeks old and at all times during the preceding 13 weeks had his home with the prospective parents/applicants if they are related to the child. In other cases the adoption order cannot be made unless the child is 12 months old and has his home for continuous 12 months with the applicant preceding the order. In both the cases the court must be satisfied that the adoption agency or local authority has had sufficient opportunity to see the child with the applicant or in his home environment.

(d) Procedure for Adoption

Under English law a child may be placed for adoption by:

(i) an approved adoption agency; or
(ii) a local authority; or
(iii) the parent or guardian.

All the adoption agencies are required to be registered with the Adoption Agencies Regulations, 1983.

The adoption proceedings commence with the filing of adoption application in the authorised court. After hearing the applicant, court appoints a guardian ad litem to safeguard child's

47 Under the Children Act, 1975 the conditions relating to residence will disappear but the child must have home with the applicant for 3 or 12 months means that the child will normally have to be physically present in this country. See Children Act, 1975, sec. 9(1) and Adoption Act, 1976, sec. 11(1).

48 See, Children Act, 1975, sec. 9(2) and Adoption Act, 1976, sec. 11(2).

49 See, Children Act, 1975, Sec. 9(3) and Adoption Act, 1976, sec. 11(3).

50 The parents and guardian can place the child for adoption only where the proposed adopter is a relative of the child or made under High Court order otherwise private placement is illegal. See Asha Bajpai, supra note 5, pp. 147-149.

51 The authorised court are the High Court or Country Court or Magistrate's Court within whose jurisdiction the child is living.
interest and welfare. It is the duty of the guardian ad litem to investigate on behalf of court all the circumstances surrounding the proposed adoption e.g. the suitability of applicant, marriage, personality, religion, home and health, etc. and the purpose of adoption. The adoption proceedings in the High Court are heard in the chamber and whereas in the county court, in-camera proceedings are done to ensure privacy. The court has to see that the consent of the every person is given freely whose consent is required and ensure that the applicant has not made any payment or reward in consideration of the adoption and the adoption is for the welfare of the child. There is a provision of interim order passed by the court before the final decree by giving the custody of the child to the applicant. While passing the final order the court can also make such order for the welfare of the child as it thinks just and expedient. Appeal of that order lies to the higher court.

(e) Effects of Adoption

Once the adoption process is completed the child is deemed to be the adopted legitimate child of the adoptive parents as if he or she had been born to them on marriage except that if can't inherit a title peerage or dignity. The child ceases to be the child of his or her natural parents from the date of adoption, but an

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52 The guardian ad litem means the guardian appointed by the court in the case. In the county court or juvenile court the Director of Social Services or Probation Officer is appointed as guardian ad litem. In the High Court the official solicitor, if he consents is generally appointed as ad litem guardian.
53 See Children Act, 1975, sec. 21(1)
54 See Children Act, 1975, sec. 22(5) and Adoption Act, 1958, sec. 7(i).
55 See Children Act, 1975, sec. 3
56 Id. sec. 19.
57 Ibid.
58 Appeal from High Court and County Court lie to the court of appeal within 6 weeks and from Magistrate Court to High Court within 28 days.
59 See Children Act, 1975, sec. 8(1).
adoption order has no effect on agreements or orders to make payments other than maintenance payment.\textsuperscript{60} Under English law, an adopted child can't marry its natural parents or its adoptive parents and with other member in the natural family.\textsuperscript{61} However, an adopted child can legally marry natural born as well as adopted children of the adoptive parents or any other relative of the adoptive parents. Regarding the inheritance, an adopted child inherits the property and money of the adoptive parents equally with the natural born child of the adoptive parents.\textsuperscript{62} Regarding the nationality of the adoptive child who is not a citizen of United Kingdom such a child become citizen of United Kingdom from the date of adoption order.\textsuperscript{63} However, a child who is a British subject will not lose his British nationality by reason of being adopted by a foreigner.\textsuperscript{64} Adoption once made validly cannot be revoked except where an illegitimate child has been adopted by child's natural mother and father and subsequently they marry each other only in that case the adoption can be revoked.\textsuperscript{65} Adoption can also be revoked on the ground of fraud duress or mistakes used in

\textsuperscript{60} So a divorce court order providing for payment of a lump sum to the child would not be affected, if the child is subsequently adopted. Similarly, it does not destroy the right to payments under a custody order to claim arrears accrued before the date of the adoption order but a custody order can't be enforced after the adoption. See \textit{Children Act}, 1975, sec. 8(3)(b) and \textit{Adoption Act}, 1976, sec. 12(3)(b).

\textsuperscript{61} Even if a child is adopted for a second time as it is permissible under English law, the bar against marrying the first adoptive parents remain. See \textit{Adoption Act}, 1958, sec, 20(A) and \textit{Children Act}, 1975, Schedule 3 para 8

\textsuperscript{62} A child adopted by one parents can't claim on the death of other. For more details see \textit{Adoption Act}, 1976, sections 39(1)(2)(5) and 46(4).

\textsuperscript{63} See \textit{Adoption Act}, 1976, sec. 40. The law also prohibits adoption of a foreign child made with the sole object of obtaining British nationality.

\textsuperscript{64} For more details see Bromley supra note 27.

\textsuperscript{65} Because by subsequent marriage of natural parents of illegitimate child, the child will be deemed to be legitimate child of both the parents. See \textit{Adoption Act}, 1958, sec. 26.
obtaining consent of the relevant parties. Under English law, every adoption order must be registered with the Registrar General. Such records are secret and not open to public inspection, except with the permission of the court.

(B) Adoption under American Legal System

In American legal system adoption began to take shape in the second half of the 19th century, when it was introduced for the first time in some of the states when the legal system was based on English common law and in the latter states, legislation was influenced by Roman law. At present Adoption Assistance and Child Welfare Act, 1980 is a natural law, though every State has its own adoption law, the child placing resources provide the mechanism for uniting the parent and the child or assisting the family to complete related emigration, immigration and adoption activities.

(a) Person Competent to Adopt

Any adult may adopt but most of the States require the residence of adopters where they plan to adopt. The American legal system does not require the adopter to possess the United States nationality or citizenship except in two States viz. Tennessee

66 See Children Act, 1975, sec. 101(2) and Adoption Act, 1976, sec. 63(2).
67 See Adoption Act, 1958, sec. 20(1)(3).
68 See Adoption Act, 1976, sec. 50, sch. 1. An exception to this rule permits an adopted child at the age of 18 or under (if about to marry) to get information about the natural parents and also see Adoption Act, 1976, sec. 26.
70 See Asha Bajpai, supra note 5, p. 147.
71 The period of residence varies from 6 months to 1 year but this period does not apply in case of step child.
and New Jersey. All United States couples who are willing to adopt are to complete the immigration and naturalization service in the case of adoption from other countries. Under the American law a married person can adopt jointly or with the consent of the other spouse. The consent of the other spouse is not required if:

(i) he/she is dead; or
(ii) can't be found by the usual process; or
(iii) is legally separated.

Regarding the age of the adoptive parents it varies from State to State. But generally the adoption is for adults only. A person is adult at the age of 18 or 21 years and most the States have laid down the age to be 21 years. Most adoption agencies in America insist that the adopting parents are less than 40 years.

(b) The Person Competent to give in Adoption

Under American legal system the provision regarding the capacity of the person to give the child in adoption is the same as mentioned under the English legal system. The consent given by the parents or guardian is absolutely irrevocable in Florida whereas in Minnesota States it is revocable until the adoption decree. The remaining forty-eight States fall between these two extreme position e.g. in New York, mother's consent becomes

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73 A step child can be adopted with the consent of the other spouse (natural parent) and a joint petition can't be made in such a case.
74 In some States a person adopting must be at least fifteen years older than the person adopted and in the State of Utah the person adopting a child must be at least ten years older than the child.
75 See supra note 72.
irrevocable after 30 days. In America the court may dispense with the consent of the parents or guardian, where they:

(i) have neglected abandoned or deserted the child; or
(ii) have been deprived of custody judicially for delinquency or dependency of adversary proceeding; or
(iii) have been deprived of their civil right; or
(iv) are unknown or missing; or
(v) have voluntarily surrendered the child to a welfare agency; or
(vi) are alcoholics; or
(vii) have no clear-cut status; or
(viii) have been imprisoned for a felony.

The court has the power to dispense with the consent of parents or guardian only in the best interest of the child.

(c) Who may be Adopted

In American legal system any child who is a minor can be adopted but a few States statutes authorises the adoption of adults as well. The minority terminates at the age of 21 years even though some statute prescribe different age limitation for majority. Regarding the status of the child, the child to be adopted may be married or unmarried. A child even if adopted earlier can be re-

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76 In Baby Lenare case in 1971 where the court ordered that the daughter be returned to mother after 1.6 years as properly the mother has withdrawn the consent. State legislation passed to protect the adopter.
77 Where the parents can't be located for 6 to 12 months the child is abandoned and failure to support or provide a home or ill-treatment of the child is considered as neglected.
78 See Hapkins Vs. Giffered, 309 ILI 363.
79 The court can seek expert advice question to be determined on attendant circumstances.
80 An extended period of imprisonment or life imprisonment.
81 See supra note 78.
82 See supra note 72, p. 14.
adopted where the adopting parents have died or are unable to support the adopted child. The consent of the child to adopted must be obtained, but it varies from place to place. In majority of the States the age is 14 years whereas rest of the States it is 12 years or 10 years. Regarding the nationality and residence of the adopted child, the child must reside within the adopter for normally six months before adoption proceedings are started in the court. The religion of the child preferred to be the same religious faith of the adoptive parents.

(d) Procedure for Adoption

In America a child can be adopted by judicial process and not by private agreement. The adoption proceedings starts with the filing of adoption petition in the appropriate court of competent jurisdiction. Notice of the petition/application is given to all the parties whose consent is deemed necessary either personally or through publication. If the adoption is through child placement agency, it must privately investigate the case and file a preliminary report to the court within 30 days of receiving the child. The proceedings of the courts are to be conducted in closed court or in judge's chamber (camera proceedings). The prospective adoptive parents and child must be present during the proceeding of the

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83 Ibid.
84 More than half of the States in America specifically prohibit inter-social adoption. But the court can allow a mixed adoption where recommendation is given by a child placement agency and court must state the reasons for doing so. Id. p. 20.
85 The adoption proceedings are usually brought in courts having jurisdiction over wills and descendants estate or over family or children proceedings. In some states, adoption cases are heard by Parabolic courts, in other by the district court in still other juvenile court, Supreme Court or sullegate courts. In number of States, more than one court are disposing adoption cases generally the proceeding brought in the country where the petitioner resides. See Id. pp. 23-24.
court. The medical report of the child and the adoptive parent is required by the court to certify the physical condition of child and prospective parents. When the court is satisfied by the proper investigation it may approve the adoption provided the proposed adoption is for the welfare and the best interest of the child and issue an order or decree. It would be either final decree or an interlocutory decree depending upon the particular State law.

(e) Effects of Adoption

Regarding the effects of the adoption the statute contemplate a complete severance of the child's ties and relationship with its natural parents and substitute similar relationship in the adoptive family. It will enjoy all the rights and duties of a natural born child in the adoptive family subject to such limitations and restrictions imposed by the statute. The relation between the child taken in adoption and its natural parents does not revive even after the death of the adopting parents. Regarding restrictions on marriage under American law is similar to the English legal system. In America all the state statute give the right to the adopting child to inherit from the adopting parents. Similarly adopting parents may inherit from the child except where the property inherited by adopted child is from blood relatives. Regarding the inheritance by the child from the natural parents, in the absence of statutory provision, the child is not entitled to inheritance as his legal

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86 Id. pp. 42, 43 & 50.
87 Where an interlocutory decree is issued, usually six months or a year later called a trial period, the court reconsiders the application for grant of final decree. During this period child resides with the adoptive parents. Id. pp. 50-52.
88 Some statutes in U.S.A. specifically provide for the rights of the child to claim education, care and maintenance from the adoptive parents. Ibid.
89 Ibid.
On adoption the child acquires the domicile of the adoptive parents and loses its earlier domicile. An adopted child can claim citizenship of the limited States by naturalization only after establishing two years residence in the U.S.A. To bring the adopted child into the country, approval of the United States Immigration Service must be obtained. The adoption once final can't be revoked except in the following cases on the grounds:

(i) that the adopting parents have not discharged their duty properly.

(ii) that the child has developed a disease from the pre-existing conditions not known at the time of adoption.

(iii) that the consent of the parties are obtained by fraud, duress or mistake.

(iv) that the child after attaining the age of 21 years only can seek revocation of adoption in certain conditions.

Regarding the registration of adoption in America the adoption records are filed in the State of adoption and sometimes also in the State of child's birth residence. The records are sealed and they can be opened only by the prior permission of the court for sufficient reasons. The new birth certificate with changes in name and surname of the child and parents and of adopting parents will be issued. The certificate will not reveal any information about the natural parents nor will it otherwise show that the child has been adopted.

90 However, a number of States have given the right of inheritance from the natural parents by then statutory provisions e.g. viz., Florida, Maine, Massachusetts, Texas, etc. In some States even in the absence of specific statute the courts have held that the child is entitled to inherit from natural parents under the common law e.g. Iowa etc.

91 See M. C. Mamarajoan, Adoption Adviser, (1975), pp. 34, 66.
(C) Adoption under German Legal System

The adoption law has always been recognised in Germany and is governed by German Civil Code, 1976 which deals with the adoption of minors only.92

(a) Person Competent to Adopt

Under German legal system single or married couple can adopt a child. A husband or wife is allowed to adopt his or her illegitimate child or the child of his or her spouse alone.93 German law permits a married person to adopt a child alone during the lifetime of the other spouse provided:

(i) the other spouse is incapable of acting in law; or
(ii) the other spouse is of limited legal capacity.

A joint application by two persons can't be made for adoption unless they are married. Age of the adopter must be 25 years if single and when the adopter are husband and wife the age of one spouse must be 25 years and other is 21 years old. If a person wishing to adopted his or her illegitimate child must be at least 21 years old than the child.

(b) Person Competent to give in Adoption

Under the adoption law of Germany, an adoption order can't be made without the consent of:

(i) natural parents (or mother if the child be illegitimate).
(ii) guardian of the child (in case the parents are dead or their consent is dispensed with).

92 See, E. J. Cohn, Manual of German Law, (1968), p. 248 and also see http://travel.state.gov/family/adoption/country/country_386html
93 German Civil Code, 1976, Art. 1741
In German legal system of adoption, when the illegitimate child is given in adoption, the third party can't be pronounced when the father has applied for the adoption or legitimacy of the child, but this does not apply where the mother adopts her illegitimate child. The putative father can waive his right to make such an application, but such waiver requires documentary proof.94

The consent once given is irrevocable but where the adoption is rejected or the child is not adopted within a period of 3 years from the date of consent, it becomes ineffective.95

In Germany, the guardianship court can dispense with the consent of a parent or guardian in the adoption proceeding if:

(i) they have neglected the child; or
(ii) their whereabouts are not known; or
(iii) their behaviour is indifferent to the child and it is in the interest of the child that adoption should take place; or
(iv) they, due to especially serious mental handicaps, are permanently not able to care for the child in the child's development is seriously endangered.96

(c) Who may be Adopted

Only a minor can be given in adoption under German legal system. A child below the 18 years of age can be given in adoption, but a child should not be below eight weeks of age.97 Regarding the married status of the child German law is silent. The consent of

94 The consent can't be subject to any condition of time and nor can it be through representative. For more elaboration see German Civil Code (Rules Relating to Adoption of Minor), 1976, Arts. 1747 and 1750.
95 Id. Art. 1780.
96 Id. Art. 1748.
97 Id. Art. 1747.
the child is essential under German law provided the child has attained the age of 14 years and is capable of acting in law. The child can withdraw his or her consent before the guardianship court until the time the pronouncement of the adoption becomes effective.\(^9\) Adoption law of Germany is silent regarding the nationality, residence and religion of the child.

**d) Procedure for Adoption**

Under German adoption law only authorised professional agencies are competent to arrange adoptions except where persons are related to the applicants or the child to the third degree and the adoption agencies have to be equipped with at least one professional expert in the field.\(^9\)

**e) Effects of Adoption**

The adoption of a child shall be pronounced by the guardianship court by filing application in the court by adoptive parents. Generally, the adoption is granted where the adoptive parents have the foster care of the child for sufficient cause.\(^1\) Adoption can only be granted if it is in the interest and welfare of the child. Financial interest shall not be the deciding factor in adoption.\(^1\) The child takes the surname of adoptive parent as birth name though not the nationality of adopter\(^1\) and the child

\(^9\) Id. Art. 1746.

\(^9\) Adoption agency may be private agency or public youth authority. Every one who would like to adopt or give in adoption must turn to one of these agencies. See, Law concerning the agreement of the Child Adoption, 2nd July 1977, Art. 2. Also see D. Paul, Chaudhary, Inter-Country Adoptions, (1988), p. 342.

\(^1\) See German Civil Code (Rules Concerning Adoption of Minors, 1976), Art. 1744.

\(^1\) Id. Art. 1745.

\(^1\) Id. Art. 1757.
has unlimited legal status of a legitimate child of the adoptive parents. Regarding the revocation of adoption in Germany, the guardian court can revoke the adoption on the following grounds:

(i) where the adoption is without the consent of the necessary parties.  

(ii) where it is necessary for the welfare and in the best interest of the child.

(iii) where the child was adopted by a married couple and also the status of adoption was existing between the child and one of the adoptive parents.

(D) Adoption under Canadian Legal System

The adoption laws in Canada are written under Canada's Code through each of the provinces and over all adoption law of Canada is adopted only for international adoptions and the best interest of the child is paramount consideration. Under Canadian legal system a person who is competent to adopt must be a domicile of province except in exceptional circumstances. If the adopter is a single person in that situation he or she must be of the same sex as the adoptee unless he or she is the natural parent of the child or widower or widow and the child was living in the home of the applicant proceeding the date of death of the applicant spouse. The age of the adopter must be above 21 years but in some jurisdictions merely specify a 'person' or an 'adult'

103 Id. Art. 1760
104 The Guardian Court can revoke the adoption within the minority years of the child on the 2 and 3 grounds mentioned above. See Id. Art. 1763.
105 See supra note 4.
106 http://travel.state.gov/family/adoption/country_363html
107 This type of provision is presumably to prevent any possible sexual abuse of the child. Ibid.
person.\textsuperscript{108} Under Canadian legal system the character of the adopter is a statutory requirement and it is specifically required that the child be adopted into a family of same religious faith.\textsuperscript{109} None of the jurisdiction specify a maximum age for adopting parents although in practice many placement agencies are inform of a parents below 40 years of age.

Under the adoption law of Canada, an adoption order can't be made without the consent of:

(i) natural parents (or mother if the child be illegitimate).\textsuperscript{110}
(ii) guardian of the child (in case the parents are dead or their consent is dispensed with).\textsuperscript{111}

In case the child has been surrendered, the consent of the institution who is taking care of that child, is essential and not that of natural parents.\textsuperscript{112}

The consent is revocable at will within 21 days or month from the date of its execution and thereafter can be revoked only if it is in the best interest of the child.\textsuperscript{113}

The court may dispense with the consent of the parties.\textsuperscript{114} Provided it is essential or desirable in the best interest of the child on the following grounds:

\begin{itemize}
  \item \textsuperscript{108} The exception to the minimum age requirements are often provided where the adopter is the natural parent of the adoptee or where one spouse is under the specified minimum age and wishes to join in the application. \textit{Ibid.}
  \item \textsuperscript{109} \textit{Ibid.}
  \item \textsuperscript{110} But in some of the cases the consent of putative father is required where the child is living with the being supported by the putative father. \textit{Ibid.}
  \item \textsuperscript{111} \textit{Ibid.}
  \item \textsuperscript{112} \textit{Ibid.}
  \item \textsuperscript{113} \textit{Ibid.}
  \item \textsuperscript{114} The consent of the spouse, however, may be waived in limited, specified circumstances such as where the natural parents are living separate from each other and if they have adopted the child \textit{defecto} prior to their separation, see \textit{Ibid.}
\end{itemize}
(i) that the parents or guardian has abandoned or designated the child; or
(ii) that the parents or guardian are incapable of giving their consent; or
(iii) that the parents or guardian is undergoing imprisonment for specified period of time; or
(iv) that the parent or guardian has neglected or has ill-treated or has failed to support or maintain the child; or
(v) that the parents or guardian are guilty of moral turpitude towards the child.

The child must be under 21 years of age and must not be below 10 days. The child must be unmarried and where the child is mature to understand the nature of the proceedings, the consent of such child must be obtained. The child must be domicile or residence of Canadian jurisdiction. The age difference between the child and he adopter must be 18 years unless the person adopted is a child of the spouse of the adopter.

(a) Procedure for Adoption

Under Canadian legal system it is required that an adoptee must live in the house of prospective parents usually for a period of six months under the supervision of authorised agencies to ensure that the prospective parents and the child are fit and proper person for adoption. The prospective parents must serve notice of intention to direction of child welfare before presentation.
of the petition/application in the court and direct or thereafter conduct a social investigation and submit a report with his recommendation to the Court. The court will issue notice to all the persons who consented and the proceedings are conducted in camera i.e. in closed court-room or the chamber of the judge. The court may grant or refuse to grant adoption order keeping in view the welfare of the child. In Canada an adoption order cannot be made in favour of a person if that person is married and is not living separately or apart from his or her spouse. An interim order can be passed by the court with regard to the custody of the child.

(b) Effects of the Adoption

Once the adoption is validly done there is complete severance of the child's ties and relationship with its natural family and substitute similar relationship in the adoptive family. It will enjoy all the rights and duties of a natural born child in the adoptive family subject to such limitation and restriction as may be imposed by statute. The adoptive child has right to succession in the property of adoptive parents and can also succeed to the kin of adoptive parents, but all his ties in the natural family ceases to exist from the date of adoption for the purpose of succession except in few Canadian jurisdiction.

118 Ibid.
119 Ibid.
120 Ibid.
121 Ibid.
122 Ibid.
123 New Brunswick and New Foundland jurisdictions, preserve the right of adoptee to inherit from his natural family as well as from adoptive parents
Canada the adoptive child can't marry its natural family members as well as the adoptive family members.\textsuperscript{124}

Canadian legal system permits for change in the adoptee's surname and forename upon adoption, unless the court orders otherwise.\textsuperscript{125}

Once the adoption is validly done can't be revoked except by the order of the court\textsuperscript{126} on the following grounds:

(i) that the consent for adoption order was obtained by fraud, duress or unfair means; or

(ii) that the consent for the adoption order was obtained by fraud, duress or a unfair means; or

(iii) that the child stands to inherit a substantialism from his natural parents if the adoption is annulled.

(iv) that the facts have been discovered particularly regarding the adopters, which is known to the court at the time of adoption proceedings, would have rendered the adoption order unobtainable keeping in view the welfare and interest of the child.

(E) Adoption Under Swedish Legal System

Sweden has a long tradition of adoption. The adoption law in Sweden was enacted in 1917 for the first time and later replaced by \textbf{Parenthood and Guardianship Code}, 1950 which is the present law of adoption in Sweden for both in-country and inter-

\textsuperscript{124} Even if a child is adopted for a second time by a different couple, the bar against marrying the first adoptive family members remains. \textit{Ibid}.

\textsuperscript{125} \textit{Ibid}.

\textsuperscript{126} \textit{Ibid}.
country adoptions. Upto the middle of the 1960s it was relatively common for Swedish children to be adopted within the country. 127 Under Swedish adoption law 128 any man or woman over the age of 25 years may adopt a child. The law does not indicate any maximum age limit, but adoption agencies require maximum age of a person 45 years. However, a person who has attained the age of 18 years can also adopt his or her own child or the child of his or her spouse. The person must be a Swedish citizen and domiciled in Sweden. Where the person is married the spouses must adopt jointly except where the other spouse is 129:

(i) unsane or mentally ill; or
(ii) missing or is living in an unknown place.

The law also provides that an adoption order can’t be made without the consent of:

(i) natural parents 130 (or mother's consent of the child if be illegitimate)
(ii) guardian of the child (where the parents are dead of their consent is dispensed with).

127 Since the end of the 1960s almost 40,000 orphaned children from other countries have found a family in Sweden. This means that Sweden today has more internationally adopted children per capita than any other country in the world. Responsibility for overseas adoption lies with the Swedish National Board for Inter-country adoption (NIA) which is the executive body under the Ministry of Health and Social Affairs, see Booklet on Adoption Centre, A Swedish Society for International Child Welfare which is authorized by NIA, the Swedish National Board for Inter-country Adoption, pp 1-5 and also see http://travel.state.govt/family/adoption/country/country_331.html

128 In Sweden the Social Service Act of 1980, Act on Internal Legal Regulations Concerning Adoption of 1971, Foreign Act Orders Ordinance of 1981 and Act of Inter-country Assistance of 1979 are governing adoptions. Sweden has ratified the 1993 Hague Inter-country Adoption Convention. An adoption takes place in cooperation with the local authority, the National Board for Intercountry Adoption (NIA), for further details see Asha Bajpai, supra note 5, pp. 149-150.

129 Id. pp. 103-104.

130 In Sweden, when a child has been adopted previously, its adoptive parents under the first order are its parents for consent purpose, see Id. p.115.
(iii) the consent of the institution (where the child is surrendered)
(iv) the mother's consent is valid only if given after she had sufficiently recovered after confinement.  
Regarding the revocation of consent the Swedish law is silent.
Similarly, the marital status, residence and nationality of the child the law is silent.
In Sweden a person who has attained the age of 12 years may not be adopted without his or her consent.

(a) Procedure for Adoption
In Sweden the prospective parents must obtain the consent to proceed from their local welfare authority and this is granted only when the Home Study has proved satisfactory. Agencies have to be approved by the Inter-country Adoption Assistant Act, 1979. The consent obtained by the prospective parents is valid upto one year and therefore, has to be renewed if adoption proceedings are not completed within this period and child is not received by them. The parents or guardians whose consent is not required, shall nevertheless be heard.

The court qualified to deal with adoption matters means court in the place where the adopter is resident or court of

131 See Parenthood and Guardianship Code, (1950), sec. 5(9).
132 See Asha Bajpai, supra note 5, p. 119.
133 Id. p. 113.
134 See supra note 127, p. 2.
135 See Asha Bajpai, supra note 5, p. 150.
136 In case of re-adoption of child, the adoptive parents and if a spouse had adopted the other spouse's child each of spouses shall be heard. See id. p. 129.
Stockholm. The court may grant or refuse to grant adoption order keeping in view the best interest and welfare of the child.

The adoptive child is in all respects equal to the natural born child even in respect of inheritance rights. Therefore adoptive parents as well as biological parents are entitled to one year's leave of absentee from work with compensation.

In Swedish adoption law, the child acquires the family name of its adoptive parents and child becomes a Swedish citizen after a special application following the completion of adoption formalities in Sweden. Once adoption is validly made, it can't be revoked except:

(i) where the adopter enters into marriage with the adopted child;
(ii) where the adopted child is adopted by a person other than adopter's spouse; and
(iii) where the adopted parents are no longer able to care for the child.

(F) Adoption under Norwegian Legal System

In Norwegian legal system, the Adoption Act, 1986 is in force at present and an adoption order may be granted by the

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137 See Parenthood and Guardianship Code, 1950, sec. 9.
138 The court shall not grant permission unless the adoption is to the benefit of the child and the adopter has brought up the child or wishes to bring up the child or considering the personal relationship between the applicant and the child. See id. sec. 6.
139 In case where the adopted child is not having a right of inheritance he or she can claim maintenance from the deceased adopter's estate. Id. sec. 4.
140 See Asha Bajpai, supra note 5, p. 150.
141 It can also be given permission to retain its former family name in combination with the new name if so desired.
143 Ibid.
Ministry of Norway. In 1950 inter-country adoption took place in the country and in 1978 Council for inter-country adoption was established by the Norwegian authorities.\textsuperscript{144}

Under the Norwegian adoption law, any person who is resident in Norway can adopt but such adoptions are permitted after thorough investigation.\textsuperscript{145} The Act does not prohibit adoption by persons who live together without being formally married, but can't adopt jointly and the permission to adopt is given to one of the parties only.\textsuperscript{146} Regarding the age of adopter in Norway the person must have attained the age of 25 years barring few exception where Ministry may grant an adoption order to person who has attained the age of 20 years.\textsuperscript{147}

Under adoption law of Norway the consent of (i) Natural parents\textsuperscript{148} or mother of the child be illegitimate (ii) the guardian where the natural parents are dead or their consent is dispensed with, (iii) the institution who is taking care and custody of the child in case the child is surrendered by the biological parents is required.\textsuperscript{149}

Regarding the revocation of consent, it may voluntarily withdraw until the adoption order is granted. The consent of a parent/parents may be dispensed with on the following grounds :-

(i) that the parent/parents are missing or not known; or

\textsuperscript{144} See Jekhelln Henning, \textit{An Outline of Norwegian Legislation on Adoption, Adoption Agencies and Foster Children}, (1975), p. 1 and also see http://travel.state.gov/family/adoptions/country/country_3083.html
\textsuperscript{145} See \textit{Adoption Act}, 1986, sec. 1.
\textsuperscript{146} It means joint application by two persons can't be made unless they are legally married to each other e.g. a brother & sister etc., can't jointly adopt a child. \textit{Id.} sec. 2.
\textsuperscript{147} \textit{Id.} sec. 5.
\textsuperscript{148} Under Norwegian adoption law a person may not be adopted without the consent of the persons exercising parental authority over him or her. See \textit{Id.} sec. 7.
\textsuperscript{149} \textit{Ibid.}
(ii) that the parent/parents are suffering from insanity; or
(iii) that parent/parents are mentally retarded.

In such cases the consent of the other spouse or guardian is sufficient.\textsuperscript{150}

Under the Norwegian legal system the child must be under 18 years of age and must not be below 2 months of age.\textsuperscript{151} In respect of the marital status of the child Norwegian law is silent like Swedish laws, but general practice shows preference for the unmarried. The child can be re-adopted where the adoptive parents are no longer in position to care for the child and it is the duty of Local Social Welfare Committee to find a new family for such child.\textsuperscript{152}

The consent of the child is relevant in case the child has attained the age of 12 years.\textsuperscript{153} Regarding the nationality residence and religion of the child the Norwegian adoption law is silent.

\textbf{(a) Procedure for Adoption}

Under the Norwegian legal system an adoption order is granted by the Ministry on an application filed by the adoptive parents. The notice is issued to the parents and such other persons whose consent is necessary for adoption including the child, if necessary. After special evaluation of the states of the adopting parents an adoption permit shall be or shall not be granted keeping in view the fact that the adoption will be beneficial to the child. An adoption permit is not a regular and current

\textsuperscript{150} Ibid.
\textsuperscript{151} Ibid.
\textsuperscript{152} See supra note 4.
\textsuperscript{153} The foster parent could adopt foster child with child's consent if the child was under 16 years but if above 12 years of age. See, Adoption Act, 1986, sec. 6.
Often the child will come to the adopting parents as foster child before the adoption procedure is finalized.\textsuperscript{155}

If the child is adopted in a foreign country, it would entail considerable disadvantage to the child if the adoption is not valid in foreign country.\textsuperscript{156}

The question of validity of an adoption order can't be raised as a legal issue in a suit concerning some other issue.\textsuperscript{157}

In Norway modern adoption statutes contemplate a complete severance of the child's relationship with its natural family and substitute similar relationship in the adopting parents.\textsuperscript{158} If a spouse has adopted a child or adopted child of other spouse, the child shall have the same legal rights in relation to both spouses as if he or she was their joint child.\textsuperscript{159}

Regarding the restriction on marriage under Norway legal system the law is different from that of other legal system. In Norway, if the adopted child become the subject of new adoption, the country Governor may nevertheless approve a marriage between the adopted child and one of the original adoptive parents or their kid but not otherwise.\textsuperscript{160}

Regarding inheritance in case of foreign adoption, that law shall apply which is otherwise applicable to the right inherited

\begin{itemize}
  \item \textsuperscript{154} See supra note 144.
  \item \textsuperscript{155} In many cases adoption takes place in such a way that the biological and adoptive parents do not know of each other and is called anonymous adoption. See \textit{Adoption Act}, 1986, sec. 2 and sec. 11.
  \item \textsuperscript{156} The foreign adoption orders are valid in Norway as well if valid in foreign country and do not offend Norwegian legal principles. See \textit{Id.} sec. 18.
  \item \textsuperscript{157} \textit{Id.} sec. 10.
  \item \textsuperscript{158} The child shall be deemed to have born to adopting parents in lawful wedlock and will enjoy all the rights and duties of a natural born child in the adoptive family subject to such limitations and restrictions as may be imposed by statute. See supra note 144, pp. 130-131.
  \item \textsuperscript{159} See, \textit{Adoption Act}, 1986, sec. 13.
  \item \textsuperscript{160} \textit{Id.} sec. 24.
\end{itemize}
from the deceased, regardless of which country's law the decision relating to adoption is based on.\textsuperscript{161}

The nationality of the adopted child will not be altered on adoption and as regard the religious education of the adopted child special provision may be made in the adoption order.\textsuperscript{162}

Once the adoption is validly made it can't be revoked.

The adoption order must be registered and a register is maintained for said purpose. Every adoption order is to be noted under the name of the adopted child in the popular register and in other public records or as the Ministry may decide in this regard.\textsuperscript{163}

(G) Adoption under Australian Legal System

Australia is a federation of six States and two territories. Adoption law in Australia is largely uniform.\textsuperscript{164} The State of Victoria enacted the first \textbf{Adoption of Children Act} in 1964 and was followed by Tasmania in 1968.\textsuperscript{165} The \textbf{Adoption of Children Act}, 1964 provides for two types of adoptions:

(a) Adoption by a relative of the child e.g. parent or a married couple one of whom is parent or relative of the child. (b) Adoption by Stranger - Such a adoption.s are arranged by State authorities.\textsuperscript{166}

\textsuperscript{161} \textit{Id}. sec. 21.
\textsuperscript{162} \textit{Id}. sec. 14.
\textsuperscript{163} \textit{Id}. sec. 16.
\textsuperscript{164} See Nygh P. E., Conflict of Laws in Australia (4th edn., 1984), p. 382 and also see http://travel.state.govt/family/country/country_405.html
\textsuperscript{165} \textit{Ibid}.
\textsuperscript{166} Except in Western Australia and Northern Territory the Acts do not permit adoption by a stranger by a purely private arrangement. Special provisions are made for adoption to be arranged by private adoption agencies. For details see Dicey Authory, \textit{Family Law}, (1985), pp. 360-370.
Under Australian legal system requirement of an adoption is that the person or persons (in cases spouses) willing to adopt must be resident or domiciled within the State or territory where the application is made and the child must be present in that territory.\(^{167}\) Regarding the status of the person or persons adopting the child a single person can adopt in exceptional circumstances\(^{168}\) otherwise husband and wife jointly adopt the child after five years of their marriage.\(^{169}\) The adopter must be 18 years old but three jurisdictions prescribes minimum age to be 21 years. The age difference between the male adopted and the child must be 18 years and female adopter and the child must be 16 years.\(^{170}\) Regarding the reputation and character of the adopter, the applicant must be of good character and reputation.\(^{171}\)

In Australia if the consent of the parent or guardian is required except when the one of the parent or guardian is applicants for the adoption order.\(^{172}\) Consent once given can be revoked only by giving notice in writing within 30 days from the date of its execution.\(^{173}\)

\(^{167}\) Ibid.

\(^{168}\) A single spouse can adopt only if he or she is living separately and apart from his or her spouse. Ibid.

\(^{169}\) All jurisdictions permit one spouse to adopt the child of the other spouse jointly with that other spouse except Victoria where adoption order can't be made in favour of mother in respect of her child whether legitimate or illegitimate or in favour of father in respect of his illegitimate child because of recognition of paternity is one of the specified ways. Ibid.

\(^{170}\) The age limit of the adopting parents has been prescribed so that they should look like natural parents of the child. The court in all Australian jurisdiction can depart from this age limit in case the applicant or one of the applicants is a natural parent of the child. See http://travel.state.govt/family/country/country_405html

\(^{171}\) Ibid.

\(^{172}\) Ibid.

\(^{173}\) Ibid.
The court may dispense\textsuperscript{174} with the consent of the parents or guardian on the following grounds:

(i) that parent or guardian are unknown after reasonable inquiry; or

(ii) that parent or guardian has abandoned, neglected or failed to discharge the duty of maintenance of the child; or

(iii) that parents or guardian are not in position to give his consent because of his mental retardation.

In all jurisdiction except in some territories the child must be less than 18 years of age at the time of filing application for adoption order.\textsuperscript{175} This age limit does not apply where the child has been brought up, maintained and educated by the applicant under a \textit{defecto} adoption.\textsuperscript{176} The adoption of the newly born baby is prohibited in Australia. Only after few days of the child's birth i.e. 7 days after birth.\textsuperscript{177}

The child adopted must be married, the child can be re-adopted when the previous adoptive parents are not in position to maintain that child.\textsuperscript{178}

The consent of the child must be obtained if he or she has attained the age of 12 years.\textsuperscript{179} Most jurisdiction in Australia require the residence or domicile of the child which determine the

\begin{itemize}
  \item \textsuperscript{174} \textit{Ibid.}
  \item \textsuperscript{175} In Western Australia, the age limit is 15 years and in Tasmania a court can't make an adoption order in respect of a person under the age of 21 years unless it has received a report on the physical and mental condition of the child. \textit{Ibid.}
  \item \textsuperscript{176} \textit{Ibid.}
  \item \textsuperscript{177} For example in New South Wales after 3 days, in South Australia after 5 days and in Victoria after 11 days of the child's birth, the said child can be given in adoption. \textit{Ibid.}
  \item \textsuperscript{178} \textit{Ibid.}
  \item \textsuperscript{179} The court may permit adoption of the child above the age of 12 years without his or her consent if the adoption is for the best interest of the child, \textit{Ibid.}
\end{itemize}
competency of a provincial court to make an adoption order. Regarding the religion of the child Australian law is silent on this point.\textsuperscript{180}

\textbf{(a) Procedure for Adoption}

Australian law recognized two types of adoptions i.e. by relatives and by agency or society which is arranged by the State authority. After filing application for adoption, a notice of adoption proceedings and an adequate opportunity of hearing must be given to the person consented for the adoption. Thereafter the investigation of the adoptive home is required by the individual agency before the adoption hearing is completed.\textsuperscript{181} The proceeding of the court must be held in camera. The court may grant or refuse to grant adoption order keeping in view the welfare and the best interest of the child ad may impose such terms and conditions as it think fit.\textsuperscript{182}

Under Australian law, a child has the same legal rights and duties as any natural born child to the adopting parents, subject to such limitations and restrictions as may be imposed by the state. An adopted child can't marry its natural parents or members of the astral family or its adoptive parents or members of that family.\textsuperscript{183} It is provided that an adoption order does not deprive a child of any vested or contingent proprietary right that he or she may have acquired before the making of the order.\textsuperscript{184} The law permit for

\begin{itemize}
\item \textsuperscript{180} \textit{Ibid.}
\item \textsuperscript{181} \textit{Ibid.}
\item \textsuperscript{182} \textit{Ibid.}
\item \textsuperscript{183} Even if a child is adopted for a second time, by a 'different couple, the bar against marrying the first adoptive parents remain. \textit{Ibid.}
\item \textsuperscript{184} \textit{Ibid.}
\end{itemize}
change in the adopters surname and forename upon adoption unless the court orders otherwise.\textsuperscript{185}

Once adoption is final it can't be revoked except on the following grounds:

(a) where the consent for adoption order was obtained by fraud, duress or oppressive means; or

(b) where there are other exceptional reasons keeping in view the welfare and interest of the child.\textsuperscript{186}

In Australia, the registration of adoption is compulsory in the office of Registrar of Birth, Deaths and Marriages. Where the child was born in one jurisdiction and adopted in another, the fact of adoption must be given to the Registrar of child's birth as well.\textsuperscript{187}

(H) Adoption under Indian Legal System : Comparative Overview

Adoption is an age old practice in India. Hindu law provides for adoption by Hindus only and by custom amongst a few numerically insignificant categories of persons, e.g. Muslims, Parsis and Christian communities. The old shastric and customary law of Hindus was codified in the Hindu Adoption and Maintenance Act, 1956.\textsuperscript{188} The communities other than the Hindu have been taking recourse to the Guardian and Wards Act,

\begin{itemize}
\item \textsuperscript{185} The forename of the child can't be changed without the consent of the child having regard to the age and understanding of the child. \textit{Ibid.}
\item \textsuperscript{186} \textit{Ibid.}
\item \textsuperscript{187} The child on attaining the age of 18 years is entitled to his or her original birth certificate and information in his or her adoption records. The natural parents and relatives of an adopted child are also entitled to information concerning the child. \textit{Ibid.}
\item \textsuperscript{188} Hindu Adoption and Maintenance Act, 1956 does not cover Muslim, Christians, Parsis and Jews. The personal laws of these communities does not recognise adoption. Mayne, \textit{Treatise on Hindu Law and Usages}, (1996), p. 392.
\end{itemize}
1890, when they wish to adopt a child under which parents are appointed guardians of the child until he or she became a major i.e. 21 years.

Adoption is one of such areas which underwent radical changes in the course of its evolutions from the primitive to modern times. However, in the Indian context the law of adoption has not changed with the changing social values. There is no doubt that for the Hindus we have the law governing all adoptions in all its forms. But we do not have any legislation enabling the other communities like, Muslims, Christians and Parsis to take and give child in adoption. Though social and social concept of adoption has undergone a process of remarkable transformation from providing a childless couple a child to providing a family and shelter to neglected section of the Indian population, we are yet to see a regulating uniform code for the same. There is an important need to form a child based law in place of a parent based law. The law should apply not merely to Hindus but to all other communities who cannot today legally adopt a child and have a resort to the Guardian and Wards Act, 1890 to obtain a bare guardianship of the child. Thus, the present legislative exercise which was indulged as early as in 1956 has fallen short of this goal. Adoption in the broader perspective is a recognised necessity and therefore, this opportunity must be available to all the countrymen irrespective of the religion to which he or she may belong. Therefore adoption law need a second look.

According to Indian adoption law the adopter must be a Hindu by religion for making an adoption, though there is no condition of residence or nationality for a adopter under the Indian

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189 See, Hindu Adoption and Maintenance Act, 1956, sections 7 and 8.
legal system. The adopter may be a single person or a married couple.\textsuperscript{190} If the adopter is married, the Indian adoption law give preferential right to adopt to father but the consent of the mother is essential,\textsuperscript{191} and there is no requirement for the joint application by the couple. Where a adopter is a male he can adopt the child without the consent of his wife if she:

(i) has ceased to be a Hindu; or

(ii) as been declared by a court of competent jurisdiction to be unsound mind; or

(iii) has completely and finally renounced the word.

A Hindu female can adopt only if she is unmarried or if married:

(i) her marriage has been dissolved; or

(ii) her husband is dead; or

(iii) her husband has completely and finally renounced the word; or

(iv) her husband has ceased to be a Hindu; or

(v) her husband has been declared by a court of competent jurisdiction to be of unsound mind.\textsuperscript{192}

The adoption by a single person is likely to raise many social and moral issues as the child have one parent only i.e. either father or mother. It is submitted that his right of the single person to adopt should be suitably restricted except in exceptional cases keeping in view the proper social and moral growth of the child as it is in English legal system.

\textsuperscript{190} Two persons can't jointly adopt a child unless they are married e.g. brother, sister, etc.

\textsuperscript{191} If a Hindu male has more than one wife living at the time of adoption, the consent of all the wives is necessary unless the consent of any one of them is not necessary for any of the reason specified in the Hindu Adoption and Maintenance Act, 1956 sec. 7

\textsuperscript{192} Id. sections 7 and 8.
As or society is moving fast from male dominating society it is submitted that in India the preferential right of father to adopt needs to be suitably amended so as to reciprocally authorize mother also to adopt with the consent of her spouse or alternatively, i.e. only joint application by husband and wife should be permitted for adoption as it is permissible in most of the other legal systems of the world.

Indian legal system with regard to adoption does not lay down any upper age limit as in Sweden, England, America, etc. where the upper age limit of the adoptive parents are in between 35 to 45 years old. However, it is suggested that the upper age limit of the adopter should be laid down as 45 years of age in the interest of the child. With a discretion of the court in appropriate cases to permit adoption by adopter above 45 years where the child welfare so demands.

In India the child can be adopted only by a childless person. If the adoption is of a son, the adoptive Hindu father or mother must not have a Hindu son, son's son or son's son's son (whether by legitimate blood relationship or by adoption) living at the time of adoption.\(^{193}\) If the adoption is of a daughter or son's daughter (whether by legitimate blood relationship or by adoption) living at the time of adoption.\(^{194}\)

The above mentioned stipulation in the Act of 1956 that if one has a child, grandchild or great grandchild of one sex, he can't adopt a child of the sex need to be changed whatever may be the sex of the child, the fact that it is being adopted shows that there is a great eagerness on the part of the adopter. Moreover, a grand child should not come in the way of adoption as it impedes

\(^{193}\) id. sec. 11 (i) \\
\(^{194}\) id. sec. 11 (ii)
fulfilment of the emotional need of a person to have his or her own child. However, the prior satisfaction of the court, welfare agency or a social worker regarding the earlier adoptions may be prescribed before permitting a person to adopt more than one child. The English and American law do not impose any such condition for adoption. Both the English and American laws permit the adopter to adopt even if any child either natural born or adopted is in existence.

Similarly, the age difference between the father and adopted son and the mother and the adopted daughters has not been provided by the Hindu law. However, it is submitted that this age difference should be 18 years so that parents of the child are adequately mature to look after the child. The Australian law has laid down this age difference to 18 years whereas in American the age difference is 10 to 14 years.

In India the adopter should not be minor and minority terminates at the age of 18 years.195

Under Hindu law of adoption a child can be given in adoption by:

(i) father or mother (only mother if the child be illegitimate) 196 the consent of the putative father is not required even if he has married the mother of the child before giving in adoption.

(ii) guardian of the child (in certain circumstances).

195 Id. sec. 3.
196 The expression father and mother do not include adoptive father and adoptive mother. This is obvious also as an adopted child can't be given further in adoption under any circumstances.
If the father is alive he shall alone have the right to give child in adoption but he consent of the mother of the child is essential, unless mother has:

(i) completely and finally renounced the word; or
(ii) ceased to be a Hindu; or
(iii) been declared by a court of competent jurisdiction to be of unsound mind.

The mother's consent is required even after divorce.

Similarly mother can give her child in adoption only if father:

(i) is dead; or
(ii) has completely and finally renounced the world; or
(iii) has ceased to be a Hindu; or
(iv) has been declared by a court of competent jurisdiction to be of sound mind.

The guardian can give the child in adoption with the prior permission of the court only, if both the father and mother:

(i) are dead; or
(ii) have completely and finally renounced the word; or
(iii) have abandoned the child; or
(iv) have been declared by a court of competent jurisdiction to be of unsound mind; or
(v) where the parentage of the child is not known.

It is noteworthy that the guardian can give the child in adoption if the court will give the permission to the effect after giving due consideration to the wishes of the child having regard to

197 Id. sec. 9.
198 Ibid.
199 Ibid.
the age and understanding of the child.\textsuperscript{200} The court proceedings are not prescribed when the child is given in adoption by the parents of the child. In India the guardian can give the child in adoption even to himself but the prior permission of the court is essential.

As per the Act the powers to formally give a child in adoption by guardian depends on the permission to do so which is to be issued by the District Court.\textsuperscript{201} It has been observed that under our judicial system District Courts are often over burdened with other judicial works and this makes the procedure to obtain the necessary permission for adoption extremely time consuming and thus resulting inconvenience to the prospective parents. Moreover what should not be lost sight of the fact is that a child being given in adoption is to get a new home where it will get all love, affection and parental care, but delayed proceedings often result in denying all these privileges to the child for a considerable period of time. It is, therefore suggested that like other developing countries in India also we should have separate family courts to deal with the family and adoption matters particularly because they involve a lot of social welfare machinery. We need sociologist, psychologist or criminologist who will go into the background of the child and the family before a court sitting in a room can decide, whether the child is going to a right home. Therefore, it is suggested that marriage law, divorce laws, adoption laws, and property disputes arising out of marriage and juvenile delinquent cases should be dealt with by the family courts.

The father's right to give the child in adoption even though the consent of mother as provided by the Act is discriminatory. In

\textsuperscript{200} Ibid.
\textsuperscript{201} Ibid.
this age of equality it is submitted that in India the preferential right of father to give the child in adoption needs to be suitably amended and mother should have the same power to give the child in adoption as father.

In India since adoption are through the court the Hindu law does not provide for revocation of the consent of adoption. The parents and guardians can exercise these rights till the child is finally given in adoption.

Similarly, Indian law is silent regarding dispensing with the consent of the parents or guardian as the adoptions are not made through the court. In order to avoid unnecessary litigation and violation of law, child in India should not be permitted to be adopted by private agreement except when adopted by relatives as is the position in American, Germany, Australia and Canada. All other adoption should be through the court.

In India the child who is given in adoption must be below the age of 15 years unless there is a custom or usage applicable to the parties which permits adoption of the children even above 15 years.202

The child to be adopted must be a minor i.e. under 18 years of age. It is suggested that this age limit of 15 years may be raised to 18 years when minority terminates as most of the developing countries allow adults to adopt i.e. 21 years of age.

Regarding the marital status of the child to be adopted in India, the child must be unmarried unless there is a custom or usages applicable to the parties which permits adoption of married children.203 This position of Indian law appears to be satisfactory.

202 Id. sec. 10.
203 Ibid.
The child once given in adoption can't be readopted.\textsuperscript{204} Keeping this fact in view, what will be the fate of the child who is adopted by a person at the death bed (being of old age or illness). It is suggested that the child's re-adopting should be permitted under certain circumstances i.e. where the adopting parents have died or are unable to maintain the child as laid down by American, Australian, Swedish or Canadian legal systems.

Regarding the consent of the child, the Indian law is silent on this point. However, it is suggested that if the child is old enough and understanding, the consent of the child must be ascertained before the adoption as prescribed by the other legal systems of the world.

In India the requirements of residence and nationality are not prescribed by the Act. Neither any such restrictions need be prescribed as it may put unnecessary curbs on adoption. However, the requirement for the child to reside with the adopter may help in many ways, to put the institution of adoption on a sound footing as prescribed by the American law.

The procedure for adoption in India is that the child must be actually given and taken in adoption with intent to transfer the child from the family of his birth to the family of its adoption.\textsuperscript{205}

In case of abandoned child, he must be transferred from the place of family where he or she has been brought up to the family of his or her adoption.\textsuperscript{206}

With regard to the adoption of the abandoned children it is suggested that such adoptions should be strictly supervised by the State as is the position in American, Australia, and Canada. All the

\textsuperscript{204} Ibid.
\textsuperscript{205} Id. sec. 11.
\textsuperscript{206} Id. sec. 11 (vi)
adoption should be through court. An adoption agency or local authority appointed by the government should align to all the formalities in the court. After observing the proper procedure, as is done in other civil cases, the court may pass the adoption order if that is in the interest and for the welfare of the child.

The adoption proceeding in India ought to be held in camera as in England, America, Australia and Canada and such adoption proceedings should not be printed or published save with the permission of the court of law except the judgment of the High Courts and the Supreme Court.

In India, adopted child has the same legal rights and duties as any natural born child to the adopting parents from the date of adoption.207 Where a Hindu who has a wife living adopts a child she shall be deemed to be adoptive mother.208 In case a single person209 adopts a child any subsequently married spouse shall be step parent of the child. The Indian position is similar to that of England, America, Australia, Canada, Swedish, Marwegian and German with regard to personal rights and duties.

In India, an adopted child can't marry its natural parent or any else in its natural family whom he or she could not have married before adoption.210 Similarly, the adopted child can't marry its adoptive parents or other relations in the adoptive family. Similarly, an adopted child will inherit in the adoptive family like

207 Id. sec. 12.
208 In case a child has been adopted with the consent of more than one wife, the senior most in marriage among them shall be deemed to be adoptive mother and other to be step mothers.
209 Unmarried woman or widow or widower or bachelor.
210 Ibid.
natural born son.\textsuperscript{211} the adopted child shall not divest any person of any state which vests in the adopted child before the adoption\textsuperscript{212} and any property which vests in the adopted child before the adoption shall continue to vest in him or her subject to the obligations, if any, attached to the ownership of such property including the obligation to maintain relatives in the family of his or her birth.\textsuperscript{213}

So viewed comparatively regarding the effects of adoption in Indian law is quite satisfactory and clear and there are no social compulsions suggesting any change in the existing law on the point.

In Indian legal system an adoption once validly made can't be revoked by the adoptive father or mother or any other person, even the adopted child can't renounce his or her status and return to the family of his or her birth.\textsuperscript{214}

When we compare this provision with English, American, Canada and Germany's legal system we find that adoption is revocable in exceptional circumstances in these legal systems. This provision in Indian context needs a certain flexibility in the above mentioned legal system where the adoption can be revoked where the child is neglected, ill-treated, exploited or exposed to pernicious influences. So in India too, adoption should be made revocable in the above mentioned circumstances with the prior permission of the court.

\textsuperscript{211} Subject to any agreement to the contrary, an adoption does not deprive the adoptive father or mother of the power to dispose of his or her property by transfer inter-vivos or by will. \textit{id. sec. 13.}

\textsuperscript{212} \textit{id. sec. 12(c).}

\textsuperscript{213} \textit{id. sec. 12(b)}

\textsuperscript{214} \textit{id. sec. 15.}
Regarding the registration of adoption in India, it is not compulsory even where an adoption is registered, that is only an evidential proof of adoption and confers no rights on the adoptive family.\textsuperscript{215}

It is submitted that the registration of adoption should be made compulsory which itself would be proof of adoption as is provided for in most foreign legal systems under study e.g. England, America, Australia, Norway, etc. Even adoption should be disposed of by the court and every adoption order must be entered in a register mentioned for the purpose. A new birth certificate should be issued with the name of adopting parents as the parents of the child and the fact of the adoption should not be mentioned in the new birth certificate as in case of most foreign laws. No intimation should be provided to the child and other parties involved in the adoption concerning the parentage and similar other details on the lines of American and English law on this point and this will help to avoid unnecessary social and psychological complications as often arising in adoption cases. Though the child may be given the legal right to get information concerning his or her natural parents after attaining the majority.

(I) Adoption in Some Developing Countries

(a) Thailand

Under the legal system of Thailand adoption is regulated by the Adoption Board. An orphan, abandoned and related child below the age of 18 years can be adopted by a single person or married as the case may be. The age of the adoptive parents must

\textsuperscript{215} The relevant provision simply requires that unless disapproved, a presumption of adoption in accordance with the legal provisions of the Hindu law of adoption is to be drawn from such registration. \textit{Ibid.} sec. 16.
be at least 30 years. The age difference between the adoptive parents and child should be 15 years. When the child is related to the prospective parents the proposal of adoption will be sent to Central Child Adoption Sub-Committee for the approval and registration of the adoption. In other cases the proposal of adoption will be approved by the Director-General of the Department of Probation. Before final order of the adoption the child is placed on supervision base for 6 months to the adoptive parents and thereafter the final adoption is done after the approval by the Central Child Adoption Sub-Committee for registration only if the same is for the welfare of the child.216

(b) Columbia

In Columbia only orphan and abandoned children who are below the age of 17 years are given in adoption. The persons who are married or the step mother of the child or the father of the illegitimate child take the child in adoption who is below the age of 17 years. The age of the adoptive parent should be at least 25 years. The age difference between the child and the adoptive parents should be at least 15 years. The adoption is done by filing an application in the court of competent jurisdiction. Where the child is adopted from the institution, the institution must produce its licence in the court. The inter-country adoption is done only at government level. Local adoptions are very limited.217

216 See, Asha Bajpai, supra note 5, p. 144 and also see http://travel.state.govt./family/ adoption/country/country_337html
217 http://travel.state.govt./family/ adoption/country/country_366html
(c) Kenya

Although there is a law of adoption under the legal system of Kenya, yet it is hardly ever done legally. Only orphans or destitute children of the relatives are kept by the married persons who are above the age of 25 years. The child must be below the age of 14 years and the age difference between the adoptive parents and the child is of 21 years. The law regarding inter-country adoption is very strict, but it is hardly ever practised.218

(d) Nepal

The adoption in Nepal is done by customary law. There is a custom of adopting an orphan child below the age of 10 years by married persons (married for at least four years). The age of the adoptive parents should be above 25 years and below 40 years of age. The consent of the parents who adopt is essential and the family background of the adoptive parents is required. Adoption Sub-Committee on Child Welfare deals with adoption. The registration of adoption is essential.219

(e) Philippines

Under Philippines legal system adoption of orphans, abandoned and voluntary relinquished children below the age of 14 years are recognised. A single person or married person of any age are competent to adopt the child, however, the age difference between the adoptive parents and the child must be at least 21 years. The adoption proceedings are initiated in the Regional Trial Courts (Regular Courts). 220

218 http://travel.state.govt./family/adoption/country/country_409html
219 http://travel.state.govt./family/adoption/country/country_424html
220 http://travel.state.govt./family/adoption/country/country_437html
(f) Ethiopia

In Ethiopia only orphan and destitute from disabled parents are adopted by the married persons only. The age of the child should be below 14 years whereas the age of adoptive parents should be above 25 years and below 40 years. Under Ethiopia legal system adoption is conducted by the Governmental agencies. The local people rarely adopt children because of social taboo and lack of awareness. Poor families are given maintenance instead of being encouraged to give away children for adoption.221

V. A Comparative Overview

The comparative study of the laws of some developing and developed countries regarding adoption reveals the following trends:

(i) In developing countries generally, orphan, destitute and abandoned children are adopted whereas in the developed country the system of adoption is based on highly professionalized child care service.

(ii) Most of the developed countries allow adults to adopt i.e. 21 years of age, whereas in most of the developing countries the average age of the child to be adopted is below 14 years.

(iii) In most of the legal systems of the world both married as well as single persons are allowed to adopt except in Nepal, Ethiopia and Kenya.

(iv) The consent of the child is relevant in most of the States.

221 http://travel.state.govt./family/adoption/country/country_380html
(v) The age of the adoptive parents in most of legal systems is in between 25 to 40 years except in India, England, Kenya and Philippines where no upper age limit is prescribed.

(vi) The average age of the child in developing countries is 0-14 years whereas the average age of the child in developed countries is normally under 18 years.

(vii) In Nepal there is no foreign adoption, customary adoptions are carried out in India, Kenya and Nepal.

(viii) There are special procedures for legitimatizing children under the various legal systems, the child is given all rights as a natural born child including inheritance rights.

(ix) Almost in all the above mentioned legal systems the child is given all rights as a natural born child including inheritance rights.

(x) Adoptions are regulated by legislations.

(xi) Several countries do not specify the age difference between the adoptive child and the parents but countries like Columbia, Philippines, Thailand give it as 15 years or more and India and Kenya give it as 21 years or more.

(xii) The right to custody of an illegitimate child is with the mother and illegitimate child can be adopted by his or her biological parents in certain cases.

(xiii) In several countries laws of adoption have been founded upon humanitarian principles. even the right of grand parents to adopt grand children is recognised.

(xiv) It is not usually a requirement that a person who is willing to adopt must be a married person, although where the person is married the consent of the other spouse is essential.
(xv) The maternity benefit and compensation are normally extended to the adoptive parents in the developed countries whereas such rights are not available in the developing countries legal system.

(xvi) In most of the legal systems the welfare and the best interest of the child is paramount consideration.

(xvii) The custody of the illegitimate child is with the mother as her right and most of the statutes recognise this right and the consent of mother is essential requirement of the adoption of the illegitimate child. In the absence of any acknowledgement of paternity by the father of an illegitimate child and father married to the mother of that child, the consent of the father of an illegitimate child to its adoption by mother is not essential and he is not entitled to the notice of adoption proceeding. The consent of minor mother does not invalidate the adoption.

(xviii) In case of inter-country adoption many States specially in United Kingdom, counselling and preparation of anyone considering adoption from abroad is done through professional social workers or person trained in the field and the home visit report of the adoptive reflect the status and suitability of prospective adoptions to adopt from abroad. Certain norms and principles are provided for supervision and support to child and family pending the proceedings of the court. The follow-up procedure by social child welfare agencies after the adoption order also protect the welfare and interest of the child in foreign countries.

(xix) But as already stated that in United States, adoption law currently varies widely from State to State and due to these
conflicting rules and regulations by the different states developed a conflict between biological parents and adoptive parents. Recently there have been several instances wherein courts have been regularly called in to resolve the choice of applicable State Law viz. Baby Jessica\textsuperscript{222} and Baby Emily\textsuperscript{223}. This conflict between the biological parents and adoptive parents are often questions of consent and conflict of law.\textsuperscript{224} A proposed new law known as the Uniform Adoption Act, under which it is proposed that once an order of adoption is granted, it would be presumed valid. A birth father who claimed that his rights had been violated would still have six months to contest the adoption but only on grounds of fraud and duress and if he establishes he could be a good father. Act also proposed cross-social adoptions and attempts to balance the right of adoption who wants to find their birth parents and biological parents. By the provisions of open adoption\textsuperscript{225} there is a need for uniform legislation on adoption in United States of America. The post adoption services are recognised in several countries by helping

\begin{itemize}
\item \textsuperscript{222} In Baby Jassca's case, the two and a half year old girl, now known as Annaschmidt who was surrendered to her biological parents in law by the Michigam couple who had turned to adopt her.
\item \textsuperscript{223} In Baby Emily's case, Emily was a two year old Florida girl whose adoption was set aside by a state appeals court because her biological father had not waived his right to consent to the adoption. The child's birth mother has said that she would take Emily back, just to keep her away from her biological father. The appeal court decided that his burglary and rape convictions, seventeen years ago were irrelevant whether he waived consent. For further details see Asha Bajpai, \textit{supra} note 5, p. 158.
\item \textsuperscript{224} On the question of consent alone, more than half the States say it can't be obtained until seventy two hours after a baby is born and in other State consent may be obtained after 24 or 48 hours. Some States are silent on the subject.
\item \textsuperscript{225} The Act would seal the records of an adoption for ninety-nine years, although it would establish a registry through which both parents and adopted children could find one another by mutual consent.
\end{itemize}
adopters wishing to find more about their birth parents because need to be connected with one's biological and historical past is an integral part of one's identity formation. So the search and ultimate reunion between adopters and their birth parents provide the means for bringing together the broken connections from the past. Adoption agencies now no longer guarantee secrecy and anonymity.

(xx) In several countries the tendency of the adoption laws is to confer upon adopted children the right to inherit not only from the adoptive parents but also through the adoptive parents next of kin and take away the rights of inheritance from the adopted child not only from its natural parents but from all blood relations of natural parents.

(xxii) Under many legal systems the provision of re-adoption is recognised, and adoption of more than one child is permitted even where any child either natural born or adopted is in existence.

(xxii) Under the English and American legal system the condition of domicile, residence or nationality is an essential qualification for adopters.

(xxiii) In most of the legal system the adoption proceedings are to be held in camera as is being done in other family law proceedings.

(xxiv) In adoption law of England, America and Germany the registration of adoption is compulsory, which itself is the proof of adoption.
VI. Sum-Up

Children are on the international agenda today in a way that they have never been before and practices of child welfare have undergone a significant change form a historical perspective. The traditional approach of custodial care in an institution is being replaced because of a strong conviction that the right to 'Family' is one of the most basic right of a child. There is growing interest in the contemporary international community in providing for uniform law relating to the creation and effects of adoption. International conventions and treaties of various types contribute to the international human rights norms and standards for adoption. The United Nations Conventions on the Rights of the Child clearly declares that every country must first make exhaustive efforts to ensure that the child grows up within his/her own social-cultural milieu and with parents of the same ethnic origin because this is in the best interest of the child. However, when there are circumstances that are compelling and it is not possible to locate suitable adoptive parents within their own country, then the next best option is an adoptive family in another country and the last resort should be residential/institutional care. As per the United Nations Convention on the Rights of the Child the Preamble recognizing that the child for the full and harmonious development of his or her personality should grow-up in a family environment, in an atmosphere of happiness, love and understanding. Any measure taken for the protection of a child must be guided by the best interest of the child and the priority for a child is to be cared for by his/her biological parents. The Governments and societies shall commit themselves to provide families, and policies and programmes shall be formulated on the
basis of equality and compassion. The child, biological parents and
the adoptive parents have a right to confidentiality and the
adoption of children shall not be a source of improper financial or
other gains which shall led to severe prosecution. In all procedures
related to adoption, it is important that the highest standards of
practice and procedure are followed within the accepted principles.

In India inter-country adoption begun in the sixties and saw
a considerable rise in the next two decades. The provisions and
objectives of the United Nations Conventions reiterate and
elaborate what is clearly contained in the Constitution of India,
the National Policy for Children (NPC) 1974, the Guardian and
Wards Act, 1890 and Supreme Court Guidelines for inter-country
adoptions laid down in L. K. Pandey's case. The
enlisted/recognised child welfare agencies in receiving countries
established linkage with recognized child welfare agencies in India
and a large number of children were placed in inter-country
adoptions (see Annexure - 2).

Inter-country adoption or international adoption are
becoming increasingly frequent in the modern world and concept of
adoption is used more and more for the benefit and welfare of the
orphan/destitute and abandoned children who can be adopted.
The most of the developed countries allow adults to adopt i.e. 21
years of age and the child adopted normally under 18 years of age.
The adoptions are regulated by legislations and there are special
procedure for legitimating children under various legal systems of
the world. In English and American legal system the condition of
domicile, residence and nationality is an essential qualification for
adoption, that is why in many countries particularly in Europe and
America, no longer have a sufficient number of children available
for inter-country adoption. In other legal systems of the world laws permit the adopter to adopt even if any child either natural born or adopted is in existence, whereas under Indian legal system the preference is given to childless couples and child of an opposite sex. The age difference between the father and adopted child is 18 years in Australia and in American legal system the age difference is 10 to 15 years, whereas in India the age difference of the adopter and the adoptee of opposite sex is 21 years. The age of adoptive parents in most of the legal systems of the world is in between 25 to 40 years except in India, England, Kenya and Philippines where no upper age limit is prescribed. In most of the legal system adoption proceedings are to be held in camera and registration of adoption is compulsory which itself is a proof of adoption. Almost in all legal systems of the world which recognize adoption, the child is given all rights as a natural born child including inheritance rights and adoption can be revoked under certain circumstances. In several countries laws of adoption have been founded upon humanitarian principles. Even the right of grand parents to adopt grand children is recognised. The maternity benefit and compensation are normally extended to the adoptive parents in the developed countries whereas such rights are not available in the developing countries. Under many legal systems the provisions of re-adoption is recognized, whereas in India re-adoption is not permitted. In Nepal there is no foreign adoption. The customary adoptions are recognised in India and Kenya whereas Thailand, Ethiopia, Indonesia, Columbia and Philippines carry it through government recognised adoption agencies and courts.226