**An Analysis of Inter country Adoption & Private International Law**

 **Dr Manpreet Kaur Rajpal[[1]](#footnote-1)**

 **Introduction**

**Adoption**

The word 'Adopt' comes from Latin 'adoptare', to choose. To take by choice into a relationship; especially to take voluntarily (a child from other parents) as one's own child.[[2]](#footnote-2) Adoption is the act of legally placing a child with a parent or parents other than those to whom they were born. It can be defined as the statutory process of terminating a child's legal rights and duties towards the natural parents and substituting similar rights and duties towards adoptive parents by establishing a parent-child relationship between persons not so related by the birth of the child.[[3]](#footnote-3) For the parentless or the abandoned child, adoption means a balanced physical and psychological family environment and to the desirous parents, chances to become parents and experience family growth.

Adoption is a complex social phenomenon, intimately knitted into its family law framework and shaped by the pressures affecting the family in its local social context. It is the mirror reflecting the changes in our family life and the efforts of family law to address those changes. This has caused it to be variously defines; different societies, in the same society at different times and across a range of contemporary societies.[[4]](#footnote-4)

In other words, it can be said as the judicial or administrative act that establishes a permanent legal parent-child relationship between a minor and an adult who is not already the minor’s legal parent and terminates the legal parent-child relationship between the adoptive child and any former parent(s).[[5]](#footnote-5)

In Legal terms, adoption has been defined as:

 …a legal method of creating between the child and one who is not the natural parent of the child an artificial family relationship analogous to that of parent and child…[[6]](#footnote-6)

Or more bluntly:

… providing homes for children who need them is its primary purpose.[[7]](#footnote-7)

**Inter Country Adoption**

Reckoning the subject matter in context of the domain of Public International Law, by virtue of which the process of adoption of a child, can assume between nationals of different states and hence the institution of adoption has become international, crossing the borders of the national legislations.

Inter-country adoption (ICA) can be defined as adoption of a child by a person of another country. ICA may be more viable choice than domestic adoption for many families especially those who want to adopt a healthy infant.[[8]](#footnote-8)

ICA began primarily as a North American philanthropic response to the devastation of Europe in the World War II that resulted in thousands of orphaned Children. When the European continent was rebuilt and its economy stabilised, the problem of orphaned children was basically solved. But a revitalized economy, coupled with a reduction in Europe’s male population, led to an increased rate of childlessness. Western societies then turned to Third- World countries with high birth rates for a solution to the dearth of healthy infants in the West. This led to evolution of the concept of ICA.[[9]](#footnote-9) Considering the statistics, it is the United States ranks first among the receiving nations, accounting for over half of all ICAs worldwide. ICAs from developing countries happen primarily with the demand for children increasing in developed countries and the supply rising commensurately from the developing countries.[[10]](#footnote-10)

On adhering together, the related feathers it can be said that ICA is the process by which a person:

* Adopts a child from a different country , through legal means; and
* Bring the child to the home country to live permanently with.

Through ICA, the legal transfer of parental rights from birth parent(s) to another parent (s) takes place.[[11]](#footnote-11)

**Hypothesis**

In the present submission on the topic of ICA, wherein diverse issues are involved when a child is adopted from a nation and finally proceeding to a different nation. The act of ICA is for the paramount welfare of the Child, but when a child is adopted few negative considerations even crop up, leading to abuse of the child in many contours.

In this project an attempt is made to analyses the problems associated with ICA like the problem of Child trafficking, loss of culture and identity, exploitation of the child, etc. So, the hypothesis which the project puts forth is the ***problem related to the loss of the cultural and national identity of the child adopted***. When a child is adopted, the child moves from one nation to altogether to a different nation, thereby leading to the loss of the cultural and national identity of the child and further related issues therein.

The adoption of a child is not only the acceptance of a child into a new family, but the intersection of the lives of the child, the adoptive family, and the birth family. This intersection can be complicated at the best of times, bringing issues of family structure, fertility, financial stability, and social class to the surface. However, the adoption process can also raise more controversial issues, based in social/cultural beliefs, prejudices, stereotypes, or simply different priorities. For example, many of these issues may come to light when an adoption involves the exchange of a child of one race into a family with a different racial background, a process known as trans racial adoption[[12]](#footnote-12). Trans racial adoptions refers to the adoption of infants or children by parents of different race.[[13]](#footnote-13) It subsumes aspects of international adoption such that the adoption involves racial and ethnic differences that are often determined by physical features.[[14]](#footnote-14)

## In the present section of the project, an attempt is made to deal with the legislative provisions on the issue of ICA around the globe. Considering the laws of the various nations, somewhere it can be analysed that the laws are somewhat comprehensive thereby taking into consideration the paramount interest of the child adopted. Here , firstly the Indian laws followed by the laws prevalent in the US and then the related position in the UK

**Indian Perspective**

Although there is no general law of adoption, yet it is permitted by a statute amongst Hindus and by custom amongst a few numerically insignificant categories of persons. Since adoption is legal affiliation of a child, it forms the subject matter of personal law. Muslims, Christians and Parsis have no adoption laws and have to approach court under the Guardians and Wards Act, 1890. Muslims, Christians and Parsis can take a child under the said Act only under foster care. Once a child under foster care becomes major, he is free to break away all his connections. Besides, such a child does not have legal right of inheritance. Foreigners, who want to adopt Indian children have to approach the court under the aforesaid Act. In case the court has given permission for the child to be taken out of the country, adoption according to a foreign law, i.e., law applicable to guardian takes place outside the country. So following is the brief analysis of Indian laws governing adoption and also the provisions relating to ICA.

***The Hindu Adoptions and Maintenance Act*, 1956 (HAMA)**

It is the only statute in force governing adoption of children and its ambit is confined to Hindus in India. There is a legal vacuum as regards adoption by or of other communities in India. Indian citizens who are Hindus, Jains, Sikhs, or Buddhists are allowed to formally adopt a child. The adoption is under the Hindu Adoption and Maintenance Act of 1956. This act is the only statute in force governing adoption of children and its ambit is confined to Hindus[[15]](#footnote-15). Under this act a married man, a widow, a widower, single women, or a divorced or deceased women has the capacity to adopt, if they are Hindus[[16]](#footnote-16).

***The Guardianship and Wards Act*, 1890(GWA)**

It is indirectly invoked by other communities to become guardians of the child during minority. The statute does not deal with adoption as such but mainly with guardian ship, and is to be read along with the personal laws or the topic as ancillary/corollary to the latter. It may be indirectly invoked, in certain cases to confer legal guardianship of children during minority. The Guardians and Wards Act, deals only with the guardians of the person and property of the minor. In appointing or declaring the guardian of a minor, the court shall be guided by what appears in the circumstances of the case to be for the welfare of the minor consistently with the law to which the minor is subject. Among the various factors to be considered by the court in the matter, the welfare of the child is one of the considerations.[[17]](#footnote-17)

***The Juvenile Justice (care and Protection of children) Act*, 2000**

This Juvenile Justice Act Provides for the adoption of abandoned and abused children by people of all communities. §41 (3) of the JJA states that Juvenile justice boards shall be empowered to give children in adoption implying that adoptive powers are not automatic and state government must empower their  respective justice  board  but no state govt. has notified empowerment of its JJBs on adoption matters .

Juvenile Justice Amendment act allows non Hindus to adopt but there is hardly any awareness about 2006 amendment to Juvenile Justice Act. Secondly, amending the act was not enough there has to be more clarity about procedures and information how the law should be applied. Instead of getting approval of higher courts like district court and high courts (in case of the inter country adoption. Adoption should be done locally by child welfare committees and juvenile justice boards. There are no rules or infrastructure in place nor is there clarity on related issues like if the law will apply to Muslims. Juvenile Justice Amendment act will apply to all Indians but it is not clear how this law would override the provisions of other personal laws.

 **Adoption laws of India for Foreign Nationals:**

Adoption of Indian children by foreign nationals or International Adoption is a controversial issue. In foreign countries there are innumerable cases of Indian Orphans being given secured and loving homes. But on the other hand some of the children have been used as domestic servants, beggars and even for prostitution. In the matter of *L.K. Pandey v. Union of India*,[[18]](#footnote-18) SC has laid down certain guidelines that have to be followed in the case of foreign adoption in an attempt to safeguard the interests of the children.  Foreign Nationals adopt an Indian child under provisions of the Guardian and wards Act, 1890. Indian Court will appoint the foreigner as the Childs guardian. The foreign National will take the child to his country and adopt him or her as per laws of his country.

***Legislative Provisions in Nations around the Globe***

 ***CARA Guidelines***

Adoptions are regulated by CARA (Central adoption resource authority). CARA pointed out some of the loopholes in Indian Adoption. CARA specifies the eligibility conditions, processing steps, documentation, costs, court processes, foster care conditions, issuance of birth certificates and post adoption follow ups.[[19]](#footnote-19)

In India millions of children are bound to live the life of orphanage and destitute. Today when any child is adopted we are proud of giving a decent homely life to the child. But in the absence of the common adoption code for all community members, we cannot hope the expected results. So now it is a time to reassess our laws and regulations that deal with cases of Intra country and Inter country adoptions. Government cannot try and plug loopholes in one act by amending another. The most obvious feature of the Indian system for foreign adoptions is its bureaucratic layering of multiple institutions that must approve each adoption. By creating a system where multiple institutions must approve each adoption, within the context of a system often suffering from corruption through bribery and personal connections, safeguards can instead become opportunities for abuse. The system of adoption can become one where, in order to get an adoption through the system, an individual has to either have certain personal connections, or else be willing to “grease palms.” Once it becomes apparent that approvals are based on such personal connections or monetary inducements, incentives to follow the rules may disappear. Hence it’s a high time that adoption laws in India need an amendment to bring in grater uniformity for all religions but it needs to be done more systematically. Because of uncertainty of laws governing adoption and inter country adoption in India there arises the problem of conflict of laws. Thus the legislature has to take an imitative firstly to make a uniform adoption laws for all persons living in India and also to make a concrete legislation on inter country adoption.

**UNITED STATES OF AMERICA**

In United States, through ICA, the legal transfer of parental rights from birth parent(s) to another parent(s) takes place. Over the last decade, U.S. families have adopted on average approximately 20,000 children from foreign nations each year.[[20]](#footnote-20)

Every child benefits from a loving home in deeply profound ways.  ICA has made this permanently possible for hundreds of thousands of children worldwide.  When children cannot remain with a relative, and new parents within their communities cannot be found, ICA opens another pathway to children to receive the care, security and love that only a permanent family can provide.[[21]](#footnote-21) ICA is required for the welfare and development of a child, who may get an opportunity for this in some other country.[[22]](#footnote-22)

**Traditional Legal Principle**

Most states allow either an individual or a married couple to adopt a child. Adoption by two persons not married to each other is not permitted. Absent a specific prohibition, a child may be placed with a homosexual individual, including an individual who resides with a homosexual partner.

**Legalization of Homosexual Partnership**

At least four states (California, Hawaii, Massachusetts, and Vermont), though, authorize [marriage](http://www.allbusiness.com/public-administration/administration-human-resource/138061-1.html) or an equivalent civil union for homosexual couples. If a state allows homosexuals to marry, these couples must be allowed to adopt on the same terms as any other married couple.

If a state authorizes some form of civil union rather than marriage per se, the couple can adopt only if the statute authorizing the civil union so provides. Most of these statutes were enacted in response to judicial decisions requiring as a matter of equal protection that same-sex couples have access to the legal benefits of marriage, which would normally include the legal right to adopt.

**Adoption Law Responds**

Through either statutes or case law, some states have modified their adoption laws to specifically address homosexual adoption. While some have broadened homosexuals' right to adopt, others have moved in the opposite direction, specifically prohibiting homosexual adoption. Some of these merely restate existing law by prohibiting same-sex couples and cohabiting couples from adopting. However, a few also prohibit adoption by homosexual individuals or by any individual in a cohabiting relationship[[23]](#footnote-23)

**Best Interests of the Child**

When the state places children in a foster or adoptive home, it is responsible for assuring the placement is consistent with the child's best interests. This responsibility requires not just that the home be "fit" or suitable, but that it be the best available placement for that particular child.

Various arguments have been made against placing children with homosexual individuals or couples. For instance, it is argued that homosexual relationships are unstable, that children parented by homosexuals are subject to harassment from their peers, and that the best environment for a child is with a married couple. The validity of these arguments will not be evaluated here, but an agency basing policy on rationales such as these must make sure there is adequate factual support for its conclusions.

The agency also must make sure that any differential treatment goes no further than is justified by the rationale. For instance, a finding that the best environment for a child is with a married couple would justify a preference for placement with married couples, but not a prohibition on placement with homosexuals. A finding that non-marital cohabiting relationships are unstable would not justify treating homosexual cohabitants differently from heterosexuals.[[24]](#footnote-24)

Over a Quarter Million Children Adopted in Three Decades Between 1971 and 2001, U.S. citizens adopted 265,677 children from other countries.[[25]](#footnote-25)



International Adoptions Have More Than Doubled in the Last 11 Years[[26]](#footnote-26)



Internationally Adopted Girls Predominate[[27]](#footnote-27)



**UNITED KINGDOM**

Adoption was unknown to common law, and is a creature of statute, the first of which was the *Adoption of Children Act, 1926*, now replaced by *the Adoption Act, 1976*.[[28]](#footnote-28) The English courts only have jurisdiction if the applicant, or in the case of a married couple applying, one of the applicants, is in any part of the United Kingdom, and the child is in England.[[29]](#footnote-29)

Although there are many children in England who are looking for an adoptive family, there are also children in other countries who need homes. ICA may be their only opportunity to have a permanent family. For humanitarian reasons, the Government allows ICA to proceed where:

* The child cannot be cared for in any suitable manner in his or her own country;
* The adoption would be in the best interests of the child and with respect for his or her fundamental rights as recognised in international law; and
* The adopter has been assessed as eligible and suitable to adopt from overseas by an adoption agency.[[30]](#footnote-30)

Certain restrictions have been very clearly laid down in a proper act that has been passed in the UK namely *the UK* *Children Adoption Act 2006*. Such a provision is the special restrictions that have been placed under this act. The part III of this Act deals with the adoptions with foreign element.[[31]](#footnote-31) This provision can be of help as it gives complete power in the hands of the British Parliament to restrict adoptions which seem to it as against public policy or as harming any involved interests. The ICA procedure can seem daunting and complicated for those who are unfamiliar with the process.[[32]](#footnote-32) Adoption law differs from state to state, and federal laws also affect many procedures connected with the adoption process.[[33]](#footnote-33) The UK does not impose any restrictions on which country you may adopt a child from. However, not all overseas Governments allow ICA .[[34]](#footnote-34)

The 1993 Hague Convention on Protection of Children and Co-operation in respect of ICA is an international system of collaboration that aims to prevent the abduction of, sale of, or traffic in children. The Convention requires that ICA happens only where it would be in the child's best interests, that all adopters are assessed and approved as suitable to adopt and that no profit is made from the adoption process. The UK ratified the Convention on 1 June 2003.[[35]](#footnote-35)

Currently there are around 300 children adopted by UK families from overseas each year. Such adoptions can be plagued by legal and administrative complexities and many believe that the needs of these children would be better served if they were able to secure a place within a family in their country of origin. For some the idea of allowing children to be adopted by a foreign person or family, who are almost always from a very different culture, and are often of different racial origin, is a very questionable practice.[[36]](#footnote-36)

Those who wish to adopt from overseas must first become an approved adopter. To do this they should contact their local social services who may carry out the home study themselves or ask another agency or independent social worker to do it for them. An individual or family can also ask a voluntary adoption agency to carry out the assessment. A home study cannot be obtained from any other organisation or individual.[[37]](#footnote-37)

Most agencies which offer services related to overseas adoption are based in the U.S.A. where there has been a much greater number of overseas adoptions. Overseas agencies should not assist you to adopt a child from abroad until you have completed the process outlined above. If they offer to do so before confirming your status as an approved adopter we would strongly suggest that you should not use them.[[38]](#footnote-38)

This is to explain the provisions in the Immigration Rules for children who are not British citizens or nationals of the European Economic Area to join their adoptive or prospective adoptive parent(s) in the United Kingdom. While this is only a guide and is not an authoritative statement of the law, it aims to answer the immigration questions that are most likely to arise.[[39]](#footnote-39)

**The Status of E.U. / E.E.A. Nationals in the United Kingdom[[40]](#footnote-40)**

European Economic Area, (E.E.A.) nationals residing and exercising Treaty rights in the United Kingdom are not “settled” for the purposes of the Immigration Rules, unless they have become entitled to “Permanent Residency” status in the U.K. If they do not have “Permanent Residency” they cannot sponsor the entry of a child under any of the Immigration Rules. E.E.A. Nationals can, once they can demonstrate that there has been a continuous exercise of Treaty rights in the U.K. for a period of five years, apply for a document to declare that they have acquired “Permanent Residency”. Please note that when making an application for Entry Clearance to bring a child to the U.K. under the adoption provisions in the Immigration Rules, EEA nationals must be able to demonstrate that they have acquired “Permanent Residence” in the U.K. by way of confirmation from UK Borders Agency. (i.e. EEA nationals must apply for confirmation of their “permanent residency” from the UK Borders Agency. BA prior to their leaving the U.K. to adopt a child)[[41]](#footnote-41)

**International Perspective: Comparison**

**COMPARATIVE ANALYSIS OF THE LEGAL PROVISIONS**

**India**

In this chapter, an attempt has been made to compare the provisions of the laws prevailing in different countries. Here, for the purpose of simplification, the study of ICA has been narrowed down to comparison between European, American and Indian Laws.

In India there is paucity of legislations regarding ICA. The main laws regulating ICA derives its authority and validity from Judicial Pronouncements and CARA Guidelines. The Government of India, in pursuance of its constitutional mandate, has evolved a National Policy for the welfare of children. The thrust of this policy is summed up in the following words: “The Nation’s children are a supremely important asset. Their nurture and solicitude are our responsibility. Children’s programmes should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivation needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice.” The National Policy for the Welfare of Children also stresses the vital role which the voluntary organisations have to play in the field of education, health, recreation and social welfare services for children and declares that it shall be the endeavor of the state to encourage and strengthen such voluntary organisations.[[42]](#footnote-42)

There is no express provision regarding ICA and India is now a signatory to Hague Convention of 1993. India has signed the treaty in 2003

The “Revised Guidelines for the Adoption of Indian Children-1995” were issued by the Govt. of India on 21st May’1995 and it has now been decided to further revise this Guidelines keeping in view the developments such as the ratification of the Hague Convention on Inter-country Adoption-1993 by India on 06.06.2003 etc. since then. [[43]](#footnote-43)

**United States America**

[**Intercountry Adoption Act of 2000**](http://www.internationaladoptionhelp.com/international_adoption/intercountry_adoption_act.htm) (P. L. P. L. 106-279; 114 Stat. 825; 42 U.S.C. 14901 et seq.).   The major goal of the Act was to provide for implementation by the United States of the Hague Convention on Protection of Children and Cooperation in Respect to Intercountry Adoption (aka [**The Hague Convention**](http://www.internationaladoptionhelp.com/international_adoption/international_adoption_hague_treaty.htm)).  By so doing the Act accepted standards and procedures for adoptions between implementing countries that prevents abuses such abduction or sale of children, ensures proper consent for the adoption, allows for the child's transfer to the receiving country, and established the adopted child's status in the receiving country.[[44]](#footnote-44) The law is recent so, is in consonance with the recent changes and trends and is exhaustive in nature and in toto.

**United Kingdom**

In UK, the provisions of ICA are governed by *the children and Adoption Act,* 2006. Part 2 of the Act makes provision for the Secretary of State to suspend ICA from a country if he has concerns about the practices there in connection with the adoption of children.

Section 13 of the act makes other provision for the following other matters relating to ICA:

* Providing a power for the Secretary of State and the National Assembly for Wales to charge a fee to adopters or prospective adopters for services provided in relation to ICA;
* Preventing an overlap of functions by local authorities where a child is brought into the country for the purposes of ICA; and
* Amending section 83 of the Adoption and Children Act 2002 to make it harder for intercountry adopters to circumvent restrictions on bringing children into the UK.[[45]](#footnote-45)

**For futher explanations a camparative analysis has been given below.**

**Suggestions and Recommendations**

 When Romans and Hindus conceived the idea of adoption they did not contemplate it as a mode of conferring state legitimacy on illegitimate children. The sole object then was to provide a child to childless. It was a means by which the family line was prevented from extinction made to continue.[[46]](#footnote-46)

ICA has pressed into the public consciousness in two contradictory ways. On the one hand, ICA is presented as a heart-warming act of good will that benefits both child and adoptive family.[[47]](#footnote-47) The child is characterized as a bereft orphan doomed to a dismal future within a poor country.[[48]](#footnote-48) The future of ICA will be determined by the perceptions of its success held by officials and the public in the children's countries of origin. Safeguards contained in the Hague Convention on ICA , a multilateral treaty of cooperation and controls now being considered for ratification by countries around the world (including the U.S.), will help reassure all parties that the rights of the children and birth parents in an inter-country adoption are respected. The Convention should put to rest some of the fears (that the children are being used as organ donors, for example) that make the process unstable and deny the love of a permanent family to children who could benefit from adoption.[[49]](#footnote-49)

**Limitations**

Keeping in mind the large-scale child trafficking in the world, *The Rights of the Child*, 1989 convention requires that ICA will receive only the last priority while searching for the foster home. Like any other types of adoption, ICA can be expensive, time-consuming and uncertain. If the challenges involved in inter country adoption can be taken care of then ICA will give thousands of families’ joy and satisfaction as it has already fulfilled dreams of many.[[50]](#footnote-50)

Human rights activists in the international adoption arena have spoken with a relatively singular voice – a voice that is generally critical of international adoption, calling either for its abolition, or for restrictions that curtail its incidence in ways that I see as harmful to children, limiting their chances of being placed in nurturing homes with true families, and condemning even those who are placed eventually to unnecessary months and years in damaging institutions.

Furthermore the research in the area of adoption has been parent – centric and consumed with the issue of whether adopted children perform better or worse than biological children. If we are to move towards more child-centered studies we need to document parent child interactions at the micro level and understand how these are important in giving both parent and child a sense of well-being and self-worth. There is a complete absence of longitudinal data on families in the country.[[51]](#footnote-51) ICA is focused on parents in the developed world and placing a child in a foreign country strips her of her culture and heritage.[[52]](#footnote-52) Despite any attempts by the adoptive parents to incorporate their child’s native culture into the home, removing a child from his country of origin makes inaccessible to him an integral part of whom he is.

The international community acknowledges that cultural identity is very important, and international standards always favor placing adoptable children – whenever possible – within those children’s home countries for that reason[[53]](#footnote-53).

With more and more families coming forward to adopt children within the country we need to understand what works best , say for example in context of India – a context that is pluralistic and ridden with inequalities, but provides a child a great deal of stability and strength, through the family. In understanding the influences on the growing child it is important to take into consideration the socio-cultural context.

Thereby concluding on the whole the research, the aforesaid mentioned hypothesis of the project has not been taken into consideration as a vital part in the mentioned legislations of the nations, thereby forming to be a major limitation in the are of ICA for the child who is being trans-racially adopted. The provisions nowhere explicitly talk about this aspect of the ICA, i.e. the loss of the cultural and national identity of the child which is and should be the paramount interest of the child.

Although the Rights of the Child Convention talks or throws a bit of light on such circumstances but the member states have not ratified the same in their municipal law, so there is a paucity of provision regarding the hypothesis presented.

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9. HOWARD ALTSTEIN, RITA J.SIMON, INTERCOUNTRY ADOPTION: AMULTINATONALPERSPECTIVE, 1 ( Praeger Publishers, New York, 1st ed., 1991). [↑](#footnote-ref-9)
10. Asha Krishna Kumar, The Adoption Market, at http://www.thehindu.com/fline/fl2211/stories/20050603006700400.

Htm (May 2, 2010). [↑](#footnote-ref-10)
11. What is Inter Country Adoption, at http://adoption.state.gov/about/what.html (May 1, 2010). [↑](#footnote-ref-11)
12. Maureen Ittig , *A Family Perspective on Trans racial adoption,* 1 (University of Wisconsin, Madison) at http://familyimpactseminars.org/fia\_analyses\_fpta.pdf ( May 1, 2010) [↑](#footnote-ref-12)
13. Even B. Dondlandson, Overview Of Adoption in the United States, at

http://adoptioninstitute.org/research/adoptionfacts.php (May 1, 2010). [↑](#footnote-ref-13)
14. AMANDALA BADEN, ROBBIE J. STEWARD, HANDBOOK OF ADOPTION: IMPLICATIONS FOR REASERCGHERS, PRACTIONERS AND FAMILIES 91 ( Sage Publications, New Delhi, 1st ed., 2007) [↑](#footnote-ref-14)
15. §2 The Hindu Adoptions and Maintenance Act, 1956 applies:-

To any person, who is a Hindu by religion in any of its forms or developments, including a Vira Shaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

To any person who is a Buddhist, Jian or Sikh by religion, and

To any other person who is not a Muslim, Christian, Parsi or Jew by religion, unless it ids proved that any such person would not have been governed by Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt dealt with herein if this Act had not been passed. [↑](#footnote-ref-15)
16. Capacity of a female Hindu to take in adoption, any female Hindu-

a. who is of sound mind

b. who is not a minor, and

c. who is not married or if married, whose marriage has been dissolved or whose husband is dead or has completely and finally ahs renounced the world or has ceased to be Hindu or has been declared by a court of competent jurisdiction to be of unsound mind, has the capacity to take a son or daughter in adoption-sec 8 [↑](#footnote-ref-16)
17. Matters to be considered by the court in appointing guardian-

In appointing or declaring the guardian of a minor, the court shall, subject to the provisions of this section, be guided by what, consistently with the law to which the minor is subject appears in the circumstances to be for the welfare of the child.

In considering what will be for the welfare of the minor, the court shall have regard to the age, sex and religion of the minor, the character and capacity of the proposed guardian and neamess of kin to the minor, the wishes, if any, of s deceased parent, and any existing or previous relations of the proposed guardian with the minor or his property.

If minor is old enough to form an intelligent preference, the Court may consider that preference [↑](#footnote-ref-17)
18. A.I.R. 1984 S.C. 469 [↑](#footnote-ref-18)
19. CARA Guidelines, at http://www.cara.nic.in/, (May 5, 2010). [↑](#footnote-ref-19)
20. What is Inter Country Adoption, at http://adoption.state.gov/about/what.html ( May 3, 2010). [↑](#footnote-ref-20)
21. Ibid. [↑](#footnote-ref-21)
22. “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…Inter country adoption may offer the advantage of a permanent family to a child for whom a suitable family cannot be found in his or her State of origin.”*-****Hague Adoption Convention, Preamble.*** [↑](#footnote-ref-22)
23. In the case of Lawrence v. Texas, decided last year, the U.S. Supreme Court increased constitutional protection against discrimination for homosexuals. Although the issue in that case was quite different, the court announced as a general principle that the law cannot treat homosexuals differently simply because they or their lifestyle are viewed as immoral. Thus, any statutes, policies, or practices which disfavor homosexuals in placement decisions must be supported by a reason other than moral judgment. [↑](#footnote-ref-23)
24. Patterson, Elizabeth, Homosexual Rights and the placement of Children, at http://www.allbusiness.com/public-administration/administration-human-resource/138061-1.html (April 30, 2010). [↑](#footnote-ref-24)
25. U.S. Department of State, IMMEDIATE RELATIVE VISAS ISSUED, FY 1971-2001. [Data from FY 2001 is preliminary and subject to change, last update was issued February 26, 2002. Summary data from FY 1989 - FY 2001 is available athttp://travel.state.gov/orphan\_numbers.html. Federal fiscal year (October 1 - September 30) data are used throughout. Thus, a reference to 1992 is FY 1992, October 1, 1991 - September 30, 1992.

U.S. State Department data on international adoptions is based on the number of visas issued to children being adopted from other countries by U.S. citizens, although technically the visa data tracks the immigration of the children to the U.S., not their adoptions. Two types of visas are issued: IR3, for orphans adopted in their birth country and then immigrating to the U.S.; and IR4, for orphans whose adoptions are finalized in U.S. state courts after immigration to the U.S. The regulations of the birth country determine which procedure is used.

Although the visa records are a reliable substitute for adoption records, the year a visa was issued may not be the year the adoption was finalized. For example, a child receiving an IR4 in September 1991, the last month of the 1991 fiscal year, might not be formally adopted in the U.S. until October 1991, FY 1992. A child receiving an IR3 visa in October 1991, the first month of FY 1992, likely was adopted in FY 1991 in his or her birth country.

Because the federal government changed its fiscal year dates in 1976, there was a "temporary quarter" from July 1 to October 1, 1976. The total number of adoptions in Charts 1 and 9 includes this temporary quarter.] [↑](#footnote-ref-25)
26. U.S. State Department, IMMEDIATE RELATIVE VISAS ISSUED, FY 1991-2001. [↑](#footnote-ref-26)
27. Immigration and Naturalization Service, U.S. Department of Justice, Immigrant-Orphans Adopted by U.S. Citizens by Sex, Age, and Region and Selected Country of Birth, at 65-66, Table 15, 1998 STATISTICAL YEARBOOK OF THE IMMIGRATION AND NATURALIZATION SERVICES (Nov. 2000), at http://www.ins.usdoj.gov/graphics/aboutins/statistics/1998yb.pdf ( May 1, 2010) [↑](#footnote-ref-27)
28. Atul M Setalvad CONFLICT OF LAWS (401) Lexis Nexis Butterworths Wadhwa Nagpur ed. 2nd New Delhi 2009. [↑](#footnote-ref-28)
29. Re *Askew* [1930] 2 Ch. 259. [↑](#footnote-ref-29)
30. Inter Country Adoption, at, http://www.dcsf.gov.uk/intercountryadoption/( May 1, 2010). [↑](#footnote-ref-30)
31. Declaration of special restrictions on adoptions from abroad:

(1) This section applies if the Secretary of State has reason to believe that, because of practices taking place in a country or territory outside the British Islands (the “other country”) in connection with the adoption of children, it would be contrary to public policy to further the bringing of children into the United Kingdom in the cases mentioned in subsection (2).

(2) The cases are that a British resident—

(a) wishes to bring, or cause another to bring, a child who is not a British resident into the United Kingdom for the purpose of adoption by the British resident, and, in connection with the proposed adoption, there have been, or would have to be, proceedings in the other country or dealings with authorities or agencies there, or

(b) Wishes to bring, or cause another to bring, into the United Kingdom a child adopted by the British resident under an adoption effected, within the period of twelve months ending with the date of the bringing in, under the law of the other country. [↑](#footnote-ref-31)
32. *Supra* note 29. [↑](#footnote-ref-32)
33. Adoption laws , at, http://laws.adoption.com/ ( May 1, 2010). [↑](#footnote-ref-33)
34. Inter Country FAQs, at, http://www.dhsspsni.gov.uk/adoption\_intercountry\_faqs ( May 1, 2010). [↑](#footnote-ref-34)
35. *Supra* note 33. [↑](#footnote-ref-35)
36. Adopting from Overseas, at http://www.adoption.org.uk/information/overseas\_adoption.html (May 2,2010). [↑](#footnote-ref-36)
37. Ibid. [↑](#footnote-ref-37)
38. *Supra* note 35. [↑](#footnote-ref-38)
39. Further information on adoption and the Immigration Rules can be found on the United Kingdom Border Agency website: www.ukba.homeoffice.gov.uk under “Law and Policy”, (also by links to the following pages: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter8/ And in §5 of the following link: http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/IDIs/idischapter8annxes/and further information on Inter-country Adoption generally can be found on the Department for Children, Schools & Families, (formerly Dept. for Education & Skills), website at: http://www.dfes.gov.uk/intercountryadoption/ [↑](#footnote-ref-39)
40. The Adoption Process, at http://www.communitycare.co.uk/assets/getAsset.aspx?ItemID=7013 (May 2, 2010). [↑](#footnote-ref-40)
41. Inter Country Adoption and Immigration Rules, 4, at http://www.ukba.homeoffice.gov.uk/sitecontent/documents/residency/intercountryadoption.pdf ( May 2, 2010). [↑](#footnote-ref-41)
42. CARA, Ministry of Women and Child Development, Government of India, at http://www.adoptionindia.nic.in/guide\_inter\_country\_chap1.htm [↑](#footnote-ref-42)
43. CARA, Ministry of Women and Child Development, Government of India, at http://www.adoptionindia.nic.in/guide\_inter\_country\_chap1.htm [↑](#footnote-ref-43)
44. ICA help at http://www.internationaladoptionhelp.com/international\_adoption/intercountry\_adoption\_act.htm [↑](#footnote-ref-44)
45. Explanatory Notes to Children And Adoption Act 2006 Chapter 20 at , http://www.opsi.gov.uk/acts/acts2006/en/ukpgaen\_20060020\_en\_1 [↑](#footnote-ref-45)
46. PARAS DEEWAN & PEEYUSH DEEWAN PRIVATE INTERNATIONAL LAW INDIAN AND ENGLISH 350 (Deep & Deep Publications, ed. 4th New Delhi 1998). [↑](#footnote-ref-46)
47. Kathy Boccella, *Family Forged amid Tragedy Gives Girls, Parents Chance to Live, Love*, MILWAUKEE J. SENTINEL, Mar. 23, 2003, at 11L, *available at* LEXIS, News Library. [↑](#footnote-ref-47)
48. Jeff D. Opdyke, *Adoption’s New Geography*, WALL ST. J., Oct. 14, 2003, at D1. (“The U.S. adopts more foreign children than all other nations combined.”). [↑](#footnote-ref-48)
49. David M. Smolin, The Two faces of Inter Country Adoption, 408, at, http://works.bepress.com/cgi/viewcontent.cgi?article=1001&context=david\_smolin ( May 5, 2010). [↑](#footnote-ref-49)
50. The Paradox of Inter Country Adoption, at http://www.legalserviceindia.com/articles/pard.htm ( May 7, 2010). [↑](#footnote-ref-50)
51. VINIT BHARGAVA, ADOPTION IN INDIA : POLICIES AND EXPERIENCES , 75 ( Sage Publication , New Delhi, 1st ed., 2006). [↑](#footnote-ref-51)
52. Lara Kislinger, Inter Country Adoption : Brief Background and Case Study, at http://www.adoptionpolicy.org/pdf/backgroundCS.pdf ( May 3, 2010). [↑](#footnote-ref-52)
53. Article 29 (c) of the Rights of the Child Convention, 1989. [↑](#footnote-ref-53)