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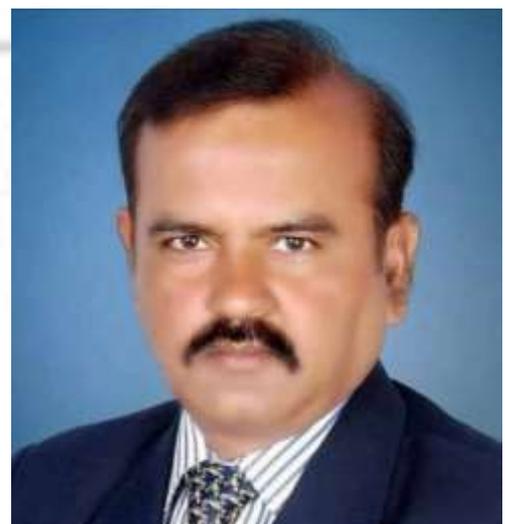


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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE TRENDS OF INTER-COUNTRY **ADOPTIONS IN INDIA**

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Abstract

The practice of inter-country adoption has evolved from a patriarchal legal transfer of authority to a child-centric mechanism aimed at securing the welfare of children without parental care. India's legal and institutional responses to this transformation have been shaped significantly by landmark judicial pronouncements, international conventions, and policy reforms. The landmark judgment in *Laxmi Kant Pandey v. Union of India* (1984) marked a watershed in Indian inter-country adoption jurisprudence, establishing procedural safeguards and emphasizing the principle of the best interest of the child. The formation of the Central Adoption Resource Authority (CARA) and India's accession to the Hague Adoption Convention in 2003 further reinforced institutional oversight and international cooperation.

Despite a robust regulatory framework under the Juvenile Justice (Care and Protection of the Children) Act, 2015 and Adoption Regulations, 2017 (revised in 2017) inter-country adoption in India faces persistent challenges. These include delays, identity issues, limited follow-up mechanisms, post-adoption neglect, inheritance complications, and the lack of standardization in international legal procedures. Moreover, evolving issues such as access to birth identity and cross-cultural integration of adoptees demand greater legal clarity and diplomatic coordination. This article critically examines the development of inter-country adoption in India, reviews the current legal and procedural landscape, and highlights key challenges, ultimately advocating for reforms that harmonize global best practices with the paramount consideration of the child's welfare.

Keywords: CARA, Hague Convention, *Laxmi Kanth Pandey* case, Adoption Regulations, PAPs

Introduction

The institution of adoption, which was once primarily concerned with transferring *patria potestas*—the authority of the natural father to the adoptive father—has undergone a significant transformation. Its primary aim is now to secure a parental relationship for children who have been deprived of their biological families. The concept has thus evolved from emphasizing *patria potestas* to recognizing the paramountcy of the child's welfare. This shift in attitude is reflected globally, with inter-country adoption representing one of the most developed forms of this modern approach.¹

In 1982, the Indian government ordered an investigation after the London Daily Mail newspaper revealed that a Kolkata-based adoption agency was selling babies to a US organisation. In response to the news report, a Public Interest Litigation (PIL) was filed in the Supreme Court—*Laxmi Kant Pandey v. Union of India*. In that case, the procedure was followed, but in exchange for money. The Supreme Court examined the procedure then being followed for inter-country adoptions, with reference to the procedures laid down by the High Courts of Bombay, Delhi, and Gujarat, and found it to be in order. While laying down the guidelines, the Supreme Court also examined the Adoption of Children Bills of 1972 and 1980 (which had some provisions relating to inter-country adoptions but could not be passed and were allowed to lapse), to understand what principles and norms the central government considered necessary to secure the welfare of children given in adoption to foreign parents, and what procedural safeguards were essential to this end. Keeping in view the provisions of the Indian Constitution and the Indian National Policy on Children, 1974, the apex court also referred to various existing international conventions, declarations, and draft guidelines.

The judgments of the *Laxmi Kant Pandey* case and their effects

In 1982, the London Daily Mail newspaper published an exposé about a Kolkata-based adoption agency selling babies to a U.S. organisation.² Based on this report, a PIL was filed in the Supreme Court of India to prevent child profiteering and illegal adoption from India. In return, the Supreme Court issued a series of guidelines. The first judgment in the case was

¹ Vibha Sharma, “Inter-country Adoptions in India – An Appraisal” 3/4 (45) *JILI* 543 (2003).

² “Calcutta slum babies reported sold to U.S. families” *United Press International*, Aug. 25, 1982, <https://www.upi.com/Archives/1982/08/25/Calcutta-slum-babies-reported-sold-to-US-families/4860399096000/> (last visited January 2, 2024).

delivered on September 27, 1984.³ Since the Supreme Court was establishing the framework for a modern adoption system, implementing these principles and establishing a structure posed certain difficulties, which the Court sought to rectify through subsequent judgments. Hence, over a span of seven years, there were four judgments in the *Laxmi Kant Pandey* case—delivered in 1984, 1985,⁴ 1986,⁵ and 1991.⁶

The objective of this case was to regulate inter-country adoption from India. Inter-country adoptions were an international concern. In foreign countries, children were often subjected to moral and sexual abuse, forced labour, and scientific experimentation. Therefore, the Court directed child welfare agencies to consider inter-country adoption as a last resort for providing a family to a child. The Supreme Court emphasized that every effort must first be made to find adoptive parents for the child within India. The Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, 1993 established the preferential rule of domestic adoption over inter-country adoption. India became a signatory to the Hague Adoption Convention on June 6, 2003,⁷ but the rules and procedures established by it had already been adopted by India in the mid-1980s.

The Supreme Court ordered that every effort must first be made to find adoptive parents within the country. Keeping the child within India not only prevents illegal inter-country adoption but also avoids problems of assimilation into the adoptive family, which might arise due to cultural, racial, or linguistic differences. Inter-country adoption should be permitted only after exhausting the possibility of adoption by Indian parents within the country. Since the principle of the ‘Best Interest of the Child’ aims to provide a family for every child, adoption by foreign parents is preferable to allowing children to grow up in orphanages or institutions.

Following the Bombay Adoption System Model, the Court also recommended establishing a Voluntary Coordinating Agency or any other centralised agency to maintain two registers: one of children available for adoption and the other of Indian prospective adoptive parents (herein

³ 1984 SCR 795.

⁴ 1985 SCR Supl. (3) 71.

⁵ 1987 (1) 383.

⁶ MANU/SC/0020/1992.

⁷ “India ratifies Intercountry Adoption Convention”, *HCCH*, available at: <https://www.hcch.net/en/news-archive/details/?varevent=4#:~:text=On%206%20June%202003%2C%20India.of%20Contracting%20States%20to%2053> (last visited January 3, 2024).

referred to as PAPs). The Voluntary Coordinating or Centralised Agency could immediately contact an Indian family listed in the PAPs register and inform them about a particular child available for adoption. If, within three to four weeks, no Indian family adopted the child, the child would be considered available for inter-country adoption. Even where it was not possible to find an Indian family willing to adopt a child with special needs, and the child was cleared for inter-country adoption, first priority should be given to Indians residing abroad. If no such Indian families were available, preference should be given to adoptive couples where at least one parent was of Indian origin. The foreign parents could adopt the child according to the law of their country, whose guardianship they had taken under the Guardians and Wards Act, 1890. Having carefully considered all the material, the Supreme Court laid down the principles, norms, and procedures to be followed when giving a child in adoption to foreign parents. These safeguards were designed to reduce, if not eliminate, abuses associated with inter-country adoptions and to ensure the child's welfare. In line with the Court's directions, the Ministry of Welfare established the Central Adoption Resource Agency (CARA) in June 1990 to supervise inter-country adoptions. CARA received autonomous status on March 18, 1999, and became a statutory body on January 15, 2016,⁸ under the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015).

Following the *Laxmi Kant Pandey* judgment, the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption came into force on May 29, 1993. The Hague Convention aims to prevent the abduction, sale, and trafficking of children for illegal international adoption. The Convention functions through a system of national central authorities and reinforces Article 21 of the United Nations Convention on the Rights of the Child, 1989, which guarantees that children involved in inter-country adoption enjoy a safe and nurturing environment. CARA is the nodal body in India responsible for inter-country adoptions. It handles registration, matching, and monitoring of adoptions under the Convention.

According to the Convention's guidelines for inter-country adoption, a No Objection Certificate (NOC) is required. This NOC is issued by the central authorities of the sending country after receiving documentation in compliance with Articles 5 and 17 from the receiving country.

⁸ "RTI Manual of CARA" CARA 1, available at: <http://cara.nic.in/PDF/RTI/RTI%20Manual%20of%20CARA.pdf> last visited January 3, 2024).

Article 5 of the Hague Convention states that adoption shall take place only if the competent authorities of the receiving state have determined that the prospective adoptive parents are eligible and suited to adopt, have received the necessary counselling, and the child is or will be authorized to enter and reside permanently in the receiving state. Article 17 provides that any decision in the state of origin regarding whether a child should be entrusted to prospective adoptive parents can only be made once the central authority has confirmed that the prospective adoptive parents agree; the central authorities of the receiving state have approved the decision; both central authorities agree on the adoption; and it is ensured that all conditions of Article 5 are met.

All inter-country adoptions—whether involving an orphan, an abandoned or surrendered child, or adoption of a relative’s child—must be conducted strictly in accordance with the provisions of the JJ Act, 2015, and the Adoption Regulations, 2017. The Adoption Regulations were revised in 2022 to enhance procedural clarity and child protection safeguards.

Eligibility for Intercountry adoption in India⁹

1. Both single adopters and heterosexual married couples may adopt.
2. A married couple with a combined age of up to 90 years, or a single adopter up to 45 years may apply for a child up to 4 years of age.
3. A married couple with a combined age of up to 100 years, or a single adopter up to 50 years may apply for a child between 4-8 years of age.
4. A married couple with a combined age of up to 110 years, or a single adopter up to 55 years may apply for a child up to between 8 and 18 years of age.¹⁰

Legal procedure in inter-country adoption

The process of inter-country adoption of orphaned, abandoned, or surrendered children begins with counselling and preparation of a Home Study Report (HSR) for the Prospective Adoptive Parents (PAPs). This is conducted by a social worker affiliated with an Authorized Foreign Adoption Agency (AFAA) in countries that are signatories to the Hague Convention, or by the Indian Mission in countries that are not.¹¹

⁹ Adoption Regulations, 2022, Reg. 5.

¹⁰ *Ibid.*

¹¹ *Id.*, Reg. 16.

Following this, the AFAA or Indian Mission registers the PAPs on the Child Adoption Resource Information and Guidance System (CARINGS) and uploads the necessary documentation. The CARA then scrutinizes the application, while the District Child Protection Unit (DCPU) and State Adoption Resource Agency (SARA) undertake verification at the local level.¹²

Upon completion of these verifications, CARA issues a pre-approval under Article 16 of the Hague Convention. The PAPs must then submit the adoption application in court and obtain a judicial order. At this stage, CARA must issue a No Objection Certificate (NOC), which is a prerequisite for placing the child in pre-adoption foster care.¹³

Once the court order is granted, other legal documents are processed, including the Conformity Certificate (under Article 23), as well as the child's passport, visa, and exit clearance. The final stage of the process involves the child's travel to the receiving country and the acquisition of that country's citizenship.

In detail, the procedural steps include:

1. The AFAA, Central Authority, or relevant government department sponsors the application of eligible PAPs to CARA.
2. CARA forwards the sponsorship letter to the District Magistrate (DM) of the child's place of residence.
3. The DM commissions a Family Background Report, including documents relating to the child and biological parents, through the District Child Protection Officer or the unit designated under Schedule XXXIV.
4. CARA, after receiving the Family Background Report, transmits it to the corresponding AFAA, Central Authority, or government department in the receiving country to obtain the required approval under the Hague Convention or a support letter for non-signatory countries.
5. Upon receiving the District Magistrate's verification certificate and the required permission under Articles 5 or 17 of the Hague Convention, CARA issues a No Objection Certificate (NOC).

¹² *Ibid.*

¹³ *Id.*, Reg. 17.

6. CARA subsequently issues a Conformity Certificate under Article 23 for adoptions governed by the Hague Convention. For non-Hague countries, a support letter is issued based on the verification certificate, facilitating further steps in the adoption process.

Since the Adoption (Amendment) Regulations, 2021, inter-country adoption under the Hindu Adoption and Maintenance Act, 1956, has followed a specific process for eligible Non-Resident Indians (NRIs) and Overseas Citizen of India (OCI) cardholders seeking to adopt Indian Hindu children. Hindu PAPs residing abroad who wish to adopt an Indian Hindu child born to Hindu parents in India must contact the AFAA, Central Authority, or appropriate government department in their country of residence to initiate the process.¹⁴

Challenges in Inter-Country Adoption

Lengthy process

The adoption process in India is often lengthy and cumbersome. Prospective adoptive parents sometimes struggle to obtain essential documents, such as the No Objection Certificate (NOC), within a limited timeframe. Recognizing this challenge, the Ministry of Women and Child Development has introduced new guidelines and issued directions to CARA in an effort to streamline the process and reduce unnecessary delays.

Illegal practices

Unfortunately, there are instances where individuals with malicious intentions seek to adopt children. In such cases, once the child is taken abroad, they may become victims of illegal activities such as exploitation, child labour, or human trafficking. To ensure the safety and protection of children, the government must ensure that adoption procedures are carried out only after a thorough investigation and completion of all required legal proceedings.¹⁵

Post-adoption identity problems

Transnational adoption procedures are generally complex and time-consuming. It is essential for adoptive parents to complete the entire adoption process in both the child's country of origin and their own country, adhering to all relevant regulations. When adoptive parents fail to complete the foreign country's procedures after taking the child abroad, it can lead to serious identity and legal issues for the child. Therefore, child protection authorities, CARA, and

¹⁴ *Id.*, Reg. 41(17), 74, 65, 67, 68.

¹⁵ "Human Trafficking FAQ", *UN Office of Drug and Crime*, available at: <https://www.unodc.org/unodc/en/human-trafficking/faqs.html> (last visited January 5, 2024).

Indian diplomatic missions must be vigilant and work together to ensure the long-term safety and legal status of adopted children.¹⁶

Post-adoption negligence

In cases of inter-country adoption, it is particularly difficult to monitor the welfare of the child on a regular basis. This creates the possibility of neglect by adoptive parents. To mitigate this, the Indian government requires recommendations from recognized child welfare or social agencies in the adoptive parents' country of residence, ensuring that the child will be placed in a secure and supportive environment.¹⁷

Post-adoption follow-up

Follow-ups after inter-country adoptions are often complex and insufficient. CARA's policies emphasize the need for active involvement by Indian authorities, the use of international monitoring tools, and the role of skilled social workers to ensure that adopted children are not neglected or mistreated. However, CARA has only allowed a limited number of agencies to conduct such follow-ups, which further complicates the monitoring process.

Legal complications in property inheritance

Post-adoption, legal complications can also arise in matters of inheritance. For instance, if a person leaves a will in favour of their adoptive child and passes away, disputes may emerge if other heirs challenge the will. In such cases, the matter is governed by the laws of the adoptive parent's country. If the local court invalidates the will, the adopted child may be left with no inheritance rights. Unfortunately, India has not signed any international agreements or treaties to address such issues, leaving adopted children vulnerable in legal disputes.¹⁸

Desire to know one's roots

Many adopted children eventually develop a strong desire to understand their origins. Legal

¹⁶ "Inter-country adoption in India", *Knowledge Bank*, <https://restthecase.com/knowledge-bank/inter-country-adoption-in-india>, Nov. 28, 2022, <https://restthecase.com/knowledge-bank/inter-country-adoption-in-india> (last visited January 5, 2024).

¹⁷ "Legal Challenges in Inter-Country Adoption: Indian Perspective", *Aishwarya Sandeep Partnering & Law*, Dec. 9, 2023, <https://aishwaryasandeep.in/legal-challenges-in-inter-country-adoption-indian-perspective/> (last visited January 6, 2024).

¹⁸ Riju Mehta and Shambhavi Mehrotra, "Inheritance and legal estate rights of five categories of children", *The Economic Times*, Nov. 17, 2021, available at: <https://economictimes.indiatimes.com/wealth/legal/will/inheritance-and-legal-estate-rights-of-five-categories-of-children/adopted-children/slideshow/87764247.cms> (last visited January 6, 2024).

conflicts regarding the birth family may further frustrate adoptees seeking information about their roots, leading to emotional distress and identity issues.¹⁹

Conclusion

Inter-country adoption, though developed as a humanitarian and child welfare-centric measure, continues to pose considerable legal, procedural, and ethical challenges in India. The foundational judgment in *Laxmi Kant Pandey v. Union of India* and the country's later accession to the Hague Convention were critical steps in formalizing adoption practices and reinforcing legal safeguards. The establishment of CARA as a statutory body has further institutionalized adoption procedures, making them more structured and accountable.

However, the implementation of these frameworks remains uneven. Despite clear regulations under the JJ Act, 2015 and the Adoption Regulations, various systemic issues persist. Lengthy processes, inconsistent international cooperation, and challenges related to post-adoption monitoring and integration are just a few hurdles. Legal ambiguities concerning property rights, access to original identity, and the jurisdictional limitations of Indian courts once a child leaves the country highlight a pressing need for harmonization between domestic and international adoption laws.

Moreover, cultural and psychological aspects, such as the child's assimilation into a new environment and their eventual search for biological roots, must be approached with sensitivity and transparency. With an increasing number of inter-country adoptions involving Indian children, it is imperative for India to not only strengthen its internal monitoring and legal systems but also actively engage in diplomatic and cross-border legal collaboration.

To ensure that every inter-country adoption truly serves the best interest of the child, India must strive to enhance procedural efficiency, uphold ethical standards, and foster international cooperation rooted in child-centric principles. Future reforms must prioritize post-adoption support, legal continuity, and the holistic well-being of the child, bridging the gap between legislative intent and lived reality.

¹⁹ "Adopted Children and Their Need to Know Their Origins", *Exploring Your Mind*, <https://exploringyourmind.com/adopted-children-and-their-need-to-know-their-origins/> (last visited January 8, 2024).