

International Perspectives on Crime and Justice

International Perspectives
on Crime and Justice

Edited by

K. Jaishankar

**CAMBRIDGE
SCHOLARS**

P U B L I S H I N G

International Perspectives on Crime and Justice, Edited by K. Jaishankar

This book first published 2009

Cambridge Scholars Publishing

12 Back Chapman Street, Newcastle upon Tyne, NE6 2XX, UK

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

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ISBN (10): 1-4438-0198-4, ISBN (13): 978-1-4438-0198-0

*To my Mother, late K. Rukmani,
who had a vision for my higher education
and my Father, K. Karuppannan,
who sacrificed his basic comforts for my education*

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CHAPTER TWENTY

INTER-COUNTRY ADOPTION AND HUMAN RIGHTS VIOLATIONS IN INDIA

DEBARATI HALDER AND K. JAISHANKAR

Abstract

Adoption in India is synonymous with numerous laws and guidelines explaining safer and legal ways to relocate orphans, remanded, or deserted children to their new homes and families. But the issue of transnational or inter-country adoption still cries for attention in matters of both the parents (both biological and foster parents) and the child's violation of rights. Unlike the regular in country adoption laws, very few laws or guidelines have been created to protect the interests of the children, their natural and adoptive parents. It was only after the Public Interest Litigation was filed by Mr. Laxmikant Pandey regarding inter-country adoption rules that the Supreme Court drafted certain guidelines to protect the interest of the children and the parties involved. This led to the formation of the Centre for Adoption. The resource authorities' guidelines are the only available compact guidelines that are regulating the inter-country adoption in India. Questions concerning a safer environment for the adopted child when taken abroad, exploitation, disaffirmation, discrimination, inheritance rights, and safeguards against illegal trafficking still need to be looked at in depth. In spite of such noble efforts by the law makers as well as the courts, the picture is not very satisfactory. As a result the plight of foreign adoptive parents is also pitiful. Foreign parents are often victimized by unnecessary delays caused by long proceedings which cause unwanted harassment. Sometimes they even become innocent targets of national as well as international political situations. The authors analyse the laws regulating transnational adoption in India, find out the loopholes which encourage various human rights violations in the name of inter-country adoption and suggest some solutions to check the growing violation of human rights involved in this issue.

Introduction

Inter-country Adoption (ICA), began primarily as an ad hoc humanitarian response to children orphaned by the Second World War, who could not find a family to care for them in their own country. However, now it is a complex social phenomenon that has lent itself to serious abuse (Krishnakumar, 2005). Adoption has a three tire meaning, namely:

- Taking up all legal and social duties and responsibilities of a non biological child as the adopter's own child,
- Statutory process of terminating a child's legal rights and duties towards the natural parents (Ghosh, 2006) and
- Replacing the child in the family of foster parents in its foster home.

While in country adoptions in India have become much easier with the already existing Hindu Adoption and Maintenance Act of 1956, Guardianship and Wards Acts of 1890, Juvenile Justice Act of 1986, Juvenile Justice Care and Protection Act of 2000 and 2006 (Amended). Inter-country adoptions still require the establishment of universal laws. The draft guidelines on adoption of Indian children prepared by the Central Adoption Resource Agency (CARA), Ministry of Child and Women Development, can throw little light on the problems of inter-country adoption. In spite of the carefully drafted guidelines, researches, newspaper reports and innovative new coverage's by media have discovered the existence of a huge amount of child right violation in inter-country adoptions in India. Along with these violations, the parental rights are also being violated in the name of adoption. Numerous red tapes, domestic as well as international formalities, international treaties, human rights laws make anxious adoptive parents opt for illegal ways, such as "buying children" in an attempted "legalized" manner which most often results in risking the safety of both the child as well as the adoptive parents.

This chapter analyses the provisions made by CARA in context to inter-country adoption and finds out the various human rights violations in the name of transnational adoption in India. The chapter concludes with certain suggestions to combat the problem from both legal as well as criminological perspectives.

Part I. Introduction to CARA guidelines

Considering the need for a regularized body to look after adoption procedures in India the Central Adoption Resource Authority (CARA) was established in 1990 under the aegis of the Ministry of Welfare in pursuance of Cabinet decision dated 9.5.1990. After the CARA became an autonomous society in 1999 the government designated it as the Central Authority on 17.7.2003 to present the Hague Convention on Protection of Children and Cooperation in respect to inter-country Adoption (1993). The guidelines for in country adoption were introduced in 2004 but it took a little longer time to set up the guidelines for inter-country adoption, which was finally drafted in 2006. These guidelines are nothing but a follow up of various directions given by the Supreme Court of India in L.K. Pandey vs. Union of India (WP No 1171 of 1982 and other cases). These guidelines are at par with the Juvenile Justice Care and protection (Amendment) Act, 2006, and are amended and updated from time to time keeping in mind the welfare of such child (CARA, 2008).

The policies regarding trans-national adoption are embedded in Part II, in Para 2.4., Part III, in Para 3.4, Part IV in Para 4.10 and 4.11, Part V in Para 5.4. The procedure for such adoption is depicted in Part VI, Para 6.5. Part II. The CARA guidelines depict in the beginning that it encourages in country adoption rather than inter-country adoption and only where the child finds no suitable home in the country, trans-national adoption would be considered. The next section of the chapter discusses various provisions regarding agencies, suitable child, procedure and the rights that are described in the CARA guidelines.

The proper channel

CARA guidelines repeatedly depict that individual adoption efforts for in country as well as inter-country are not recognized. All adoptions must take place through specialized agencies. The specialized adoption agency shall work under the overall supervision of State Adoption Resource Agency. In absence of such agency in any state, the concerned State Government Department shall carry out all its functions. All Child Care Institutions (CCI) must be registered under the provisions laid down under the Juvenile Justice (Care and Protection of Children) Amendment Act, 2006 as per Section-34 (3). The State Government shall recognize suitable CCI's as specialized adoption agencies under Section 41(4) of the Juvenile Justice Amendment Act, 2006. The specialized adoption agencies can turn into agencies for inter-country adoption only when they have proper

infrastructure for normal adoptable children as well as children with special needs, and have quality child care services. In addition to these, they must comply with all the requirements of CARA, such as proper registration, aim and objectives of the agencies, standards of childcare as provided under the JJ Act and also rules framed by Government of India or her respective States. These include proper communication facilities, regular health checkups for the children and many more. These specialized agencies can apply for recognition by CARA through the State Government concerned. Once recognised, the agency becomes a Recognized Indian Placement Agency (RIPA) and is duly recognised by the CARA as the only agency for transnational adoption. CARA shall develop a set of standards or model accreditation criteria for RIPAs as envisaged under the Hague Convention of 29 May 1993 on Protection of Children and Cooperation in respect to inter-country adoption. Until then, as an interim measure, the RIPAs will be treated as accredited agencies for placing Indian children in inter-country adoption.

The specialized adoption agencies look after the rehabilitation of the adoptable children for inter-country adoption from the domestic side. However, a foreign social/child welfare agency/accredited agency desirous of sponsoring applications of foreign adoptive parents for adopting an Indian child can also make an application for authorization to CARA through its central authority/competent authority and the Office of the Indian Diplomatic Mission in that country. Foreign agencies recommended for the purpose by the Indian Diplomatic Mission may be considered by CARA for authorization. No authorization is required for Central Authorities. But such foreign adoption agencies can be recognized only when it is duly registered under the relevant law of the concerned country. Thus, it should be recognized/ licensed by the appropriate authority of that country to undertake inter-country adoption. It also has to be duly accredited by the Competent Authority under the Hague Convention on Inter-country Adoptions, 1993 (wherever applicable). These are:

- It has submitted its memorandum, mission statement, copies of registration status.
- Latest license issued by the concerned Government authority to undertake international adoptions.
- List of board/executive members and list of countries it is working with.
- It should be a child welfare agency with an established standing and must be staffed with qualified social workers who have experience in the field of adoption.

- It should submit the activities of the organization, annual reports for the last 5 years, list of staff with their qualifications and accounts for the last three years.
- Such agencies should run on a non-commercial and non-profit basis and should provide an annual statement on payment made to the Indian agencies.
- It has to give an undertaking that in case of any trouble caused to the child by maltreatment or abuse, it will inform the concerned Child Protection Services/Government Department, Indian Diplomatic Mission, CARA and the concerned RIPA immediately with full details and immediate action will be taken to protect the child.
- Additionally rehabilitation efforts must be communicated to all concerned.
- Finally the head/chief executive of the organisation should be willing to sign a written undertaking to follow the guidelines and to send progress reports as required.

Agencies that would follow the above guidelines would be recognized by CARA for sponsoring applications of foreign prospective adoptive parents. Prospective parents could be NRIs (Non Residential Indians), OCIs (Overseas Citizens of India), PIOs (People of Indian Origin) or international citizens.

Who are adoptable for inter-country adoption?

As per CARA and the Juvenile Justice Care and Protection (Amendment) Act 2006 guidelines, only three types of children are recognized as adoptable. These include children who are orphans and are already under the care of some specialized adoption agency, abandoned and those who are surrendered. In case of an abandoned child below two years, such declaration shall be done within a period of sixty days from the time the child is found. For an abandoned child above two years of age, such a declaration shall be done within the period of four months. In case of a surrendered child, two months reconsideration time shall be given to the biological parent or parents after surrender before declaring the child legally free for adoption.

The procedure

CARA guidelines have given a compact procedure for the inter-country adoption. Let us briefly examine these procedures.

The first step is the registration of the prospective adoptive parents who are desirous of adopting Indian children with the nearest Authorized Foreign Adoption Agencies (AFAA) or Central Authority/Government Department dealing with adoption matters. The applicants should obtain the permission of the competent authority of their country for adopting a child from India wherever required.

In the second step a home study report of the prospective parents should be prepared by a professional social worker of the AFAA or Central Authority/Government Department dealing with adoption matters in their country of habitual residence which should remain valid for 2 years only. Each application should indicate any preferences the PAP(s) might have about the child's age, sex, physical/medical condition, or location within India.

In the third step the AFAA/CA/concerned Government Department of the receiving country shall submit one attested/notarized copy of the adoption application along with the requisite documents directly to CARA for approval. The AFAA/CA/concerned Government Department of the receiving country may indicate their preference of a particular RIPA(s), if any. On approval of the application by the CARA, the adoption case would be opened and a suitable recognized Indian placement agency would be identified by the CARA to meet all the demands of the adoption.

In the fourth step the RIPA shall make every effort to match a child according to the choice given by the PAP(s) and shall forward a copy of the CSR and MER of the matched child to the AFAA/CA/concerned Government Department of the receiving country along with a letter of introduction about the child. This process is commonly called a "referral for adoption". The RIPA shall not transmit this information to the PAP(s) directly. Once the matching information has been received and discussed by the AFAA/CA/concerned Government Department of the receiving country with the PAP(s), the PAP(s) may then visit the child in India.

On acceptance of the child by the PAP(s), the AFAA/CA/concerned Government Department of the receiving country shall send back the original copy of the "referral for adoption" to RIPA, within four weeks of receipt of the referral, along with the following documents: CSR and MER duly signed by PAP(s) as well as notarized/ attested, and power of attorney in favour of the official/social worker of RIPA for filing the case in the court. The AFAA/CA/concerned Government Department of the receiving country shall send a copy of the "referral for adoption" to CARA along with all relevant documents.

In this step the concerned RIPA shall send to CARA the following documents for issuance of the No-Objection Certificate:

- Copy of the CSR and MER duly signed by the PAP(s)
- Release Order from CWC
- Clearance Certificate, where ever required.

After scrutiny of the relevant documents, CARA shall expeditiously issue No objection certificate (NOC) for the placement of a particular child in inter-country adoption, ensuring that due procedures have been followed and the placement is in the best interest of the child. CARA would then mail the copies of the NOC to RIPA, SARA, AFAA/CA/concerned Government Department of the receiving country following which the concerned Central Authority shall act promptly to conclude an Article 17(c) of the Hague convention on inter-country adoption agreement with CARA and notify the CARA, AFAAs, RIPA and the PAP(s) accordingly. Only after such procedure is completed, a decision to entrust the child to the PAP(s) can be taken.

This step concerns filing of the petition in a competent court with all required documents by the RIPA to get an appropriate order on the placement of the child with the PAP(s) and allowing the child to travel along with the PAP(s) to their country of habitual residence. After the issuance of the court order, the child has to be given required passport and visa to leave for the habitual residence of his/ her adoptive parents. The guidelines clearly mention that the child must be accompanied by the adoptive parents. The adoptive parents are also required to come and stay with the child in India for a minimum one week so that they get a chance to get acquainted with each other.

The last step is the progress reports stage where the AFAA/CA/concerned Government Department of the receiving country shall keep CARA informed about the progress of the placement through half-yearly post placement reports for a period of two years in all such cases where adoptions are finalized in India. Cases where adoptions are finalized in the receiving country, the AFAA/CA/concerned Government Department of the receiving country shall transmit a copy of the adoption order/citizenship certificate to CARA at an early date.

Duties of the government in case of abuse of the child

The Indian diplomatic missions are envisaged with the duty to ensure safeguards of children of Indian origin adopted by foreign parents against neglect, maltreatment, exploitation or abuse. Whenever a report is received on disruption of adoption of an Indian child by a foreign/PIO/NRI/OCI couple, the Embassy should contact the local central authority and other concerned authorities to ensure that the interest of the child is looked after.

A report in this regard shall also be sent to CARA at the earliest. In a disruption case where the child is required to be returned to India, the Embassy may render necessary help and facilitate the repatriation of the child in consultation with the local authorities, agency and CARA.

Rights of the adoptive parents and the adopted child

The CARA guidelines have carefully drafted rights for adopted children and the parents, both adoptive and biological. Such rights include right to a family life, education, health, a dignified life and over all the right to know about their biological parents. The adoptive parents are also offered equal rights, such as right to choose the sex, age of the child, right to know the medical background, biological parents and proper legal procedures from the domestic side.

CARA has also highlighted the rights of the biological parents in beautiful terms. The guidelines have stated in compassionate terms that biological parents should be treated fairly and with respect, they should be encouraged to inform the authorities about the proper birth dates, medical histories and reasons for surrendering the child. Their religious preferences for their child's upbringing are also noted. Unwed mothers are guaranteed secrecy by this guideline as well. Finally biological parents shall not be coerced into making any commitment to an adoption plan prior to the birth of the child. CARA guidelines have also mentioned about the counselling of the child as well as the parents to get adjusted to each other. However, these guidelines fail to protect the interests of the child as well as the parents involved in the inter-country adoption. This is discussed in the next part.

Part 2. Types of violation of human rights

Adoption is the legal relocation of an abandoned, deserted or dejected child in lawful methods. But right from the period when a child is marked as ready for adoption, he or she and the parents, both biological and adoptive are subjected to various types of violation of human rights in India. At first we would discuss about child right violations and then the parental rights violations.

Child trafficking in the guise of transnational adoption

The biggest threat to the child in inter-country adoption is becoming a victim of child trafficking racket. While for in country adoption, there are

strict rules and guidelines prescribed in the Hindu Adoption and Maintenance Act, 1956, Guardian and Wards Act, 1890, the Juvenile Justice Care and Protection, Act (Amended) 2006, India lacks universal law for inter-country adoption. After the domestic procedure for adoption by the foreign adopting parents is over, it becomes more a question of international law and international treaties to look after the well being of the child. Moreover, the lack of awareness regarding the legal procedures for inter-country adoption has given rise to many fake adoption agencies. Children are sold abroad by providing false information about them, falsifying documents, and making use of loopholes in the adoption guidelines prescribed by the Supreme Court. Some agencies also make bargain offers to adoptive parents for the wholesale purchase of babies, while some others seem to blackmail those who refuse to increase the purchase price of babies. International placement agencies collect payment far in excess of the actual adoption costs, sharing a portion of this with the Indian adoption agencies (Krishnakumar, 2005). The lure of easy money tempts agencies to dodge ethical norms. Despite the child maintenance amount and lawyers fees being stipulated, they (adoption agencies) sell the child (in the guise of receiving donations) to foreigners who are desperate to parent (Santhanam, 1999).

Studies have shown that many child racketeers come in disguise as adoptive parents to use the child for different purposes like child prostitution, begging and even organ trade (Dixit, 2001). Frontline, a leading magazine for social causes in its various issues, in 2005, revealed a multi-billion-dollar, countrywide racket in inter-country adoption of children, run by private adoption agencies that exploit the loopholes in the rules. The investigation pointed out that states like Andhra Pradesh and Tamil Nadu have hundreds of adoption agencies who are running child trafficking business successfully. These agencies gain license from the government but use the loopholes in the rules and regulations to sell children under the disguise of lawful adoption.

Post adoption negligence

When the adoption is in country, the voluntary coordination committees, various child rights activists and the adoption agency may have an access to find out the post adoption status of the child in its foster home. In this way, child exploitation, the securities of health and nutrition, mental development of the child can be taken care of. But when the child is given for inter-country adoption, post adoption follow-ups become increasingly difficult. Ramamurthy (The Hindu, Sat, 23rd December,

2003) brought to attention the case of M. Cynthia who was abandoned by her German adoptive parents after five years of adoption. They sent her back to a friend's house in Chennai in September 2000 because of adjustment problems. The adoption agency had no idea that she was back in India or that she had been facing problems with her adoptive parents. They also had no clue that she was being treated as a hired help by the family in Chennai. Such cases point out the fate of children who return to the orphanage again and continue to live a life without any future. Even though CARA guidelines outline the role of the Indian diplomatic missions, foreign accredited agencies and professional social workers in protecting a child from post adoption maltreatment, it has virtually not helped anyone.

Post adoption domestic succession

Even though adoption severs a child from its biological family, in some cases when any relative of the biological family leaves any material property for the adopted child, it becomes a matter of great concern over the domestic as well as private international law. In many cases such succession is swiftly covered up by the other probable heirs on the pretext of “adoption”, while in other cases the domestic government fails to recognize the rights of the successor because he or she is a “non entity” in the mother land after inter-country adoption. The smooth succession for any inter-country adopted child thus remains a Herculean task. Once the testator dies after bequeathing the property in the name of the child who had been given in adoption, the identity of the child has to be proved. In cases where there is a challenge to the succession by other survivors, the procedure becomes even tougher. The country of residence will take the matter as per the laws of domicile and if such succession becomes legally void due to any unfortunate mistake, the adopted child would never be able to claim legal rights of the property and there by has to suffer great financial, physical and emotional agony. Unfortunately India has not entered into any agreement or treaties to solve such succession matters. The British law still rules the courts in such cases. Every adopted child develops a strong inclination to know his/ her roots at some point of time. Such legal turmoil over successions from the biological family may even leave the adoptee in great frustration.

Violation of parental rights

Religious discrimination

Religious discrimination is a border line violation of basic rights for both the parents as well as the child.

Prior to the amendment of Juvenile Justice Care and Protection Act (Amended), 2006, adoption procedures in India were not secular. The Hindus were guided by Hindu Adoption and Maintenance Act, 1956 and the non Hindus including Muslims, Christians, Parsis, were covered by Guardians and Wards Act, 1890. As such the old laws discriminated the needy child as well as their prospective parents. The Hindu Adoption and Maintenance Act, 1956 extends only to the Hindus, which are defined under Section-2 of the Act. Under this Law only Hindus could adopt babies who are raised or sheltered in Hindu homes. Minority castes such as Christians, Muslims or Parsis did not recognize adoption hence the adoptive parents had to remain as guardians to their adopted children as per the Guardian and Wards Act, 1890.

The amended Juvenile Justice Care and Protection Act of 2006 eradicated the problem of racial discrimination to a certain extent. The present Act amended Sec 41 of the previous Act and in Sec 21, Clause (ii), states that the court may allow a child to be given in adoption to a person irrespective of marital status or to parents of same sex, irrespective of the number of living biological sons or daughters, or to childless couples.

Unfortunately, there is no uniform rule regarding inter-country adoption. Hence the adoptive parents from overseas have to become guardians to their adopted children first as per the Guardians and Wards Act, 1890 irrespective of their religion. The adoption finalises only when the country of residence of the adoptive parents grants a final nod for adoption according to their laws. It is indeed tedious for a prospective parent as well as the child to be in the half adopted situation unless the adoptive parents are finally getting the adoption order from the respective country. As per CARA guidelines, in case of surrendered children, the biological parents can put their preferences about the religious upbringing of the child. Ironically this enhances the chances of the child being victimized in his / her adoptive home overseas.

Cheating the adoptive parents

Parental rights violation often also happens when the adoptive parents are done with the adoption procedures and leave for their respective homes. They are often cheated by the law enforcement officers, in context

to the viability of inter-country adoption where the country itself may not have been in the convention list, or the adoptive parents do not qualify as per the Indian adoption Act. As a result they become victims of protest by human rights groups. The case of celebrity pop singer Madonna can be cited as a glaring example.

The pop singer had adopted a 13 month old Malawian baby boy, David in 2006 (Oprah.com, 2006).

When she came back to London with the baby with appropriate court orders within two weeks, all hell broke loose. Controversy started blowing up questioning the legality of the adoption, the intention of the adoption and even the usage of celebrity status of the adoptive parents to “buy the baby” in place of adoption.

Malawi is an African nation, with more than one million orphan children, most of whom are malnourished and AIDS affected. The country did not have any proper law or treaty for inter-country adoption. The domestic adoption procedure requires an 18 month wait before the final adoption. But Madonna and her family were given two weeks temporary custody of the child during their stay in the country by the judge who was handling the adoption case. During the immigration, no one questioned the legality of the adopted boy. When they returned home, questions of illegal adoption procedure stemmed up and various child rights activists demanded that the adoption be revoked. The adoptive parents were in total shock and the child had to suffer great mental agony as their family privacy was invaded by the media and human rights groups. All peace was restored after many international discussions and parliamentary debates and the baby was permanently placed in the celebrity family’s care (para 10).

Such cases leave foreign parents reeling as they are only attempting to give the child a better future. Following the media attention that the Madonna case received many prospective foreign parents have changed their minds on adopting children from less developed countries. One of the primary examples is another celebrity couple, Brad Pitt and Anjelina Jolie who planned to adopt their fourth child from India. But the Madonna adoption controversy made them to change their mind as they didn’t want to be put through the same turmoil as the pop star (Staff Reporter, 2006).

Cheating the biological parents

As per Indian laws and regulations, a child can be adopted in two ways:

1. Through the voluntary coordination agencies who put up a list of local adoption agencies and help abandoned, orphan or deserted children find a new home abroad, and,

2. In cases where the biological parents are willing to surrender their children for adoption. A "child relinquishing letter" has to be obtained from the biological parents ensuring and informing them of the child's future security. This gives the biological parents 30 days to reconsider their decision.

In cases where biological parents are present it is often seen that they are cheated or forced to give up their child in lieu of a handful amount of money.

Krishnakumar (2005) has shown typical cases where parents are cheated or forced to give up their new born. This also includes vulnerable mothers from poor families, unwed or single. The pressure may be exerted before birth, or at the maternity clinic/hospital, or in the adoption agency, which may house the mother till delivery. Such pressure is also reinforced by free pre- and post-natal care. For example, a children's home in a Chennai suburban area runs a short-stay home for deserted, destitute and abandoned women. It takes particular interest in rehabilitating unwed mothers who give away their children in adoption. Another way is by falsely informing the mother that her baby was stillborn or died shortly after birth so as to take away the infant. According to the findings of an inquiry conducted by the Delhi government, many agencies operate from within the hospital premises in New Delhi (Krishnakumar, 2005).

There have been many such cases of buying children from the Lambada tribes in Andhra Pradesh in Andhra Pradesh (Krishnakumar, 2005). Accepting financial or material rewards from the adoption agency in exchange for children is another way. This seems a common practice amongst some agencies, as is clear from the letters sent to Indian officials by foreign adopters. Another heinous way is offering desperate women financial incentives to conceive a child specifically for adoption abroad and luring them to sell their babies.

Part 3. Reasons behind violation of human rights in inter-country adoption

The reasons behind the gross violation of human rights in inter-country adoption are mainly, lack of a proper universal law and the existence of weak rules and regulations.

As far as India is concerned, the country lacks a uniform secular law for adoption in general. As has been mentioned in the CARA guidelines, the existing rules and regulations are conglomerations of various Indian Acts, judicial precedents, international treaties and agreements. The main acts influential for drafting CARA guidelines are the Hindu Maintenance

Act, 1956, Guardianship and Wards Act 1890, Juvenile Justice Care and Protection (Amendment) Act, 2006. The aims, objectives and principles of the CARA guidelines are reflective of the Supreme Court guidelines in the landmark case of *Laxmikant Pandey vs. Union of India* [AIR1984 SC469]. Moreover CARA guidelines were taken from the Hague convention on protection of children and cooperation in context to inter-country adoption, 1993. The draftsmen adopted best of all these rules but the guidelines itself became highly inconvenient to follow due to the incompatibility of the basic rules. The following criticisms of the laws and guidelines related to adoption will best explain our reason.

The Supreme Court Judgment

The process of adoption was a well known legal process to fill up the absence of biological children in India since ages. The process got modern legal accreditation with the passage of Hindu Maintenance and Adoption Act, 1956 which still rules any adoption related issues for Indian Hindus. But the inter-country adoption still remained in a confusing state till the Supreme Court's decision in case of *Laxmikant Pandey vs. Union of India* [AIR1984 SC469].

CARA guidelines were born through the landmark judgment of the Supreme Court in this case. The case was instituted on the basis of a letter addressed to the court by Lawyer Laxmikant Pandey alleging that social organisations and voluntary agencies engaging in the work of offering Indian children to foreign parents are indulging in malpractices. The Supreme Court pointed out all probable minute problems of the inter-country adoption and framed certain rules and principles which were adopted in the CARA guidelines. The Supreme Court pointed out that since there was no statutory enactment in our country then for adoption of a child by foreign parents or laying down the procedures which must be followed in such a case, decision had to be taken by the guidelines provided by the Guardian and Wards Act, 1890, for the purpose of felicitating such an adoption.

The Guardianship and Wards Act, 1890

The biggest draw back of the Guardianship and Wards Act, 1890, is that it does not provide the child the same status as a child born biologically to the family. Unlike a child adopted under the Hindu Adoption and Maintenance Act, 1956, here the child cannot become their own, take their name or inherit their property by right. This act confers

only a guardian-ward relationship which exists until the child completes 21 years of age. Foreigners, who seek to adopt an Indian child, do so under this Act to assume legal guardianship of the child, after giving an assurance to the court, that they would legally adopt the child as per the laws of their country, within two years after the arrival of the child in their country (Agrawal & Agrawal, 2007).

Juvenile Justice Care and Protection (Amendment) Act, 2006

It was mainly the Juvenile Justice Care and Protection (Amendment) Act, 2006 which influenced the CARA guidelines. Section 4 of the new Act amended the internal meaning of adoption and states that "adoption" means the process through which the adopted child is permanently separated from biological parents and become the legitimate child of his adoptive parents with all the rights, privileges and responsibilities that are attached to the relationship thereby bringing equality to all the communities adoption procedures in India. Furthermore, the new Act made adoption more child centric, for both in country and inter-country adoption. It amended section 41 of the principal Act in section 21 of the new act and stated that:

- Adoption shall be resorted for the rehabilitation of children who are orphan, abandoned or surrendered through procedures prescribed,
- In keeping with the provisions of the various guidelines for adoption issued from time to time, by the State Government, or the Central Adoption Resource Agency and notified by the Central Government, children may be given in adoption by the court after satisfying investigations have been carried out.
- The State Government shall recognise one or more of its institutions or voluntary organisations in each district as specialised adoption agencies in such manner as required for the placement of orphaned, abandoned *or* surrendered children for adoption in accordance with the guidelines notified under sub-section (3)
- The children's homes and the institutions run by the State Government or voluntary organisations for children in need of care and protection, who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the Committee. All such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines notified under sub-section (3).

The new Act specifies that a child can be adopted by any individual, irrespective of his/her marital status, by parents who wish to adopt a child of same sex irrespective of the number of living biological sons or daughters, or by couples who have no children of their own.

It could be seen that, the Juvenile Justice Care and Protection (Amended) Act, 2006, has made adoption a simpler and universal law than the traditional laws. It ensures a child's right to have a safer future and home, domestic or international. But the law neither mentions the after care procedures of the adopted child nor does it mention anything about the status of the child in inter-country adoptions.

The law is still tricky in case of inter-country adoptions as prospective foreign parents still have to first take the role of guardians and take the child to their country. The process has to be finished there as neither the new law nor any existing law specifically mentions a procedure in cases of overseas adoption. Once the child becomes ready for overseas adoption, the international law needs to recognise Indian adoption procedure and the child is adopted according to the laws of the country of adoptive parents' residence. The child becomes the ultimate sufferer unless the "guardians" turn real parents as per the law of his new residence.

CARA guidelines

While the guidelines had adopted separate procedures for in country adoption and inter-country adoption there are no separate chapters dealing with this issue only. Besides these set of rules most often lack the force of law. Hence the parties never really remain obliged to follow the guidelines or even the Indian law in case the habitual resident belongs to a country which is not a member or has relinquished its membership from the convention.

The CARA guidelines should have included and implemented constitutional provisions of Right to life (Article 21 of Indian Constitution) in a broader and firm manner. The guidelines fail to ensure the health, safety and adjustment of the child after he/she has left India. Furthermore licensing procedure should have shown that the prima facie interest should be child centric and not merely business. The guidelines also do not provide for moral policing system checking each adoption procedure. It should be noted that as the numbers of adoptions increase, the number of regulations followed are lesser. The guidelines should have put a maximum number of adoption procedures a month, by each adoption agency so that social workers, the authorities, and voluntary coordination committees would not be overburdened. Lack of proper control leads to

misuse of the power and neglecting the core principals for adoption procedure. Also due to lack of regular checks at the adoption agencies and the manner in which they operate can also lead to many problems.

A series of scandals uncovered in Andhra Pradesh and Tamil Nadu over the past few years have laid bare the inter-country adoption network throughout the country. Since the CARA guidelines mention nothing about any penal actions against unrecognized adoption agencies, child trafficking in the name of inter-country adoption has gotten an easy way out. Thus, it can be seen that CARA guidelines for inter-country adoption has increased legal confusion even more than before.

Suggestions

Inter-country adoption has to be dealt with great care as it often opens up floodgates of child trafficking, child exploitation, sexual harassment of children and finally may even cause deaths of innocent children due to long and tedious legal procedure. The authors feel certain suggestions may help eradicate such problems. The suggestions are:

- Creation of an Universal Adoption Law
- CARA guidelines should have two chapters separately dealing with in country and inter-country adoptions.
- The guidelines should be given immediate legal status.
- Penal offences must be included in case of any sort of failure by the agencies to comply with the rules and regulations.
- Professional counselling must be done by a team consisting of recognized child psychologists, professional social workers and legal practitioners who are familiar with the international law of the receiving country.
- Neither the CARA guidelines, nor any other laws dealing with inter-country adoption mentions about linguistic help towards the children. Children must be accompanied by a compassionate translator during the meetings with prospective adoptive parents.
- The immigration procedure for the adopted child must be done carefully in order to prevent child trafficking.
- The guidelines must make provisions to monitor the child's growth through unbiased professional social workers of the receiving country and the Indian embassies till he/she reaches adulthood in order to save him/her from any kind of sexual or racial abuse by his/her adoptive family as well the new community.

- Before the adoption case is opened it should be mandatory to check the bilateral relationship of the receiving country with India.
- In case the biological parents demand to know about the prospective adoptive parents, they must be informed thoroughly before surrendering their child.
- In country and inter-country adoption should be treated separately for different legal procedures
- If possible prospective adoptive parents should be given the status of foster parents in India and international treaties should be entered accordingly.
- CARA principles should be made stricter to inspect even minor adoption agencies.
- Licensing procedure for the adoption agencies should be made stricter.
- Awareness programmes should be arranged for the poor, needy women and parents in case both the parents want to give their child up for adoption, to go through the correct legal procedures rather than becoming the victims of touts.
- Arrangements should be made to follow up the well being of the child by CARA for at least 10 years after the inter-country adoption.
- The adoptive parents must be made to inform the Indian agency about the child's well being.

Conclusion

Inter-country or transnational adoption may become the best option for orphan children to start a fresh life in a new country. But when the country of domicile for these children does not have any proper law to show them their destiny, violation of their rights is very much expected right from the time, they are listed as ready for adoption for overseas. The country desperately needs better laws and guideline for inter-country adoption. The authorities need to ensure thorough checks of every adoption agency to ensure that they are protecting the child's rights as has been provided in the constitution and the Juvenile Justice Care and Protection Act, 2006. Every child has a right to life, home and education. It is essential that the authorities not only make laws to provide safer transnational adoption to the children but also to ensure safety of the child even abroad.

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