

INTER COUNTRY CHILD ADOPTION

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Introduction

Child adoption has become a very profound and welcomed concept all over the world in recent years.

The United Nations Convention on the rights of the Child defines a 'child' as a person below the age of 18, except the rulings of the precise state lay down the lawful maturity scale for adulthood. These are non-discriminatory regulations which apply on every child in whatever country, region and culture he is in, without the disposition of race, color and creed.

Overview

The concept of adoption is deep rooted and well knitted into every society east or west. Over the year different social contexts had mirrored this

concept into many different dimensions. The unsurpassed and paramount wellbeing and welfare of the children have got to be the most important apprehension in constructing the pronouncements and legislation regarding them. Every grown-up person ought to accomplish that is most excellent for children kids. While they are making resolutions, end product of their resolutions should be seen in the light how they will affect children. This predominantly pertain its effects on everything like on policy making and on legislation through law makers. Thinking of the word adoption with reference to a child, the first motive that comes to mind is for a couple who is childless followed by the proposition of welfare. But Kerry O'Halloran, in his book, *The Politics of Adoption: International Perspectives on Law, Policy & Practice* has elaborated more than these two concepts. In his view Adoption can involve many motivations for example;

- Legacy Motive
- Relationship and Association Motive
- Adherence Motive
- 'Extra Pair of Hands' Motive
- Welfare and Well-being Motive
- Childless Couple Motive

Terminology of “Adoption”

Black's Law Dictionary

Black's law dictionary defines child adoption as a legal action of an adult person to take someone else's kid into his own family unit, treating him as his own. This is a creation of obligation on himself towards all the duties/rights as towards his real (biological) child. The dictionary also

defines adoption as a “Judicial Act” between two persons that is a certain relation, purely civil of paternity and filiations. It is taking a child or a minor in parental custody giving rise to all the parental rights and obligations including right to inherent from parents in few jurisdictions.

Tomlin Committee report (Cmnd 2401), 1925

Kerry O'Halloran, in his book *The Politics of Adoption: International Perspectives on Law, Policy & Practice* (Springer Publisher, Second Edition 2009) at p.8 adopted a definition given by Tomlin Committee report (Cmnd 2401)(1925) that defined adoption 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...”

Or more directly the same author adopted another definition to define adoption from Houghton Committee's Report of the Departmental Committee on the Adoption of Children (Cmnd 5107), HMSO, London, 1972, which defines adoption as

“... providing homes for children who need them is its primary purpose.”

Pediatric Oncall

Pediatric Oncall defines child adoption as a process of permanent change in status when a person takes on responsibility of parenting for a minor who is not a kin, and in this process all the rights from already existing guardians (biological parents or legal guardians) are permanently transfers to him. It further elaborates adoption as an action that requires undeviating social acknowledgment and identification through legal or religious sanction. Adoption is making a child one's own or in other words taking the custody of a child into a family through legal means and raising the kid as one's own.

NOLO Dictionary

Nolo dictionary defines adoption as “A judicial or a court action through which an adult person converts into a legal guardian or parent to a minor person who is not his own biological child”.

Legal information institute USA

Legal information institute of Cornell University Law School defines adoption as “Adoption identifies to an act which makes an adult an officially custodian of a kid and invites all the privileges and tasks of a blood relation. At the termination of the prescribed course of action, a lawful correlation between youngster and custodian is created. The lawful association consequences in the adoptee fitting as an authorized beneficiary of the adopter and concludes whichever lawful privileges subsequently in continuation among the biological parents”.

US Legal

US Legal defines adoption as “A legitimate process, by which a “legal parent-child” relationship, between persons who are not biologically related.

Adoption is also defined as it is gratuitous transfer of a gift (child being adopted) bestowed by the biological parents upon the parents adopting the child through independent agencies this can not involve any kind of consideration what so ever.

Adoption under Common Law:

When adoption is conducted being within the permissibility of allowed public policy without bringing in the ambit of statutory frame work of law it is deemed to be called “Adoption under Common Law”. Adoption under common law brings in the role play of traditional and customary practices under the order of the high

court, as explained earlier, without anything or action going against national or public policy foundation.

Expression “Inter-Country Child Adoption”

Inter country child adoption is such a radical legal order that changes the fundamental status of the child on permanent level. This concept has an absolute effect on such a wider scale that involves generations to come. Same is advocated by Christine Adamec and William L(1991) in Encyclopedia of Adoption who defined the concept as a process by which a child having citizenship of one country is adopted by the parents that are citizens of a diverse nation state. Adoption has a huge practical implication in the life of the individual being adopted. Generally speaking it is moving of a child from one family circle to another within a society. But when we invoke the jurisdictional idea of inter country adoption here we are talking about total migration of a child from one regional jurisdiction to another. Here we can find a lot of discussion regarding inter country adoption being against the fundamental rights of children as they lose their true identity etc but at the same page we will also find quite a voices that will propagate the qualities and what good the concept of inter country adoption has served to the world at large.

The development and amendments of inter country adoption were the aftermath of world war when there were great numbers of orphans and war effected children waiting to be cared of and to be pampered. The history is evident that with every passing moment the patterns of development and amendments have changed from time to time according to the prevailing needs of that time. Over the years unlike custodianship, adoption has proved its permanence against all family law related issues. Inter country adoption as envisioned, sustained its hard core reputation in all this evolution of its construction and amendments as “a legal contract” taking care of the interests of all the three parties involved.

Inter country adoption saturates and shapes its roots from “contract”. The concept re-defines and re-elaborates the legal participation of the three parties involved. Inter country adoption is an enduring and unalterable structure of a contract, which usually bears and undergo on unqualified origin. Precedents and “Present Day” need of prevailing times, when the amendment is or was undergoing played important role, while fitting the legislation in jigsaw of inter country adoption process. They serve as hallmarks to lay down the foundations. For instance;

- **Unauthorized** removal of the child in question being adopted from its original area of jurisdiction is not allowed.
- **Same** as all the very foundation of a contract, inter country adoption is an expression for commitment or a promise to adopt a particular course of process for which evidence of promise and free consent is prime.
- **Courts** strictly guard the sanity of a contract by ensuring the propriety of the contract that dictates that there can't be the involvement of any kind or form of financial reward.

Any kind of derivation from these concepts accounts as in child trafficking. Recently the world have witnessed a 90 degree transformation in the legal weighting of the contractual reputation and terms in redefining the roles of biological mother or biological unmarried parents either father or mother and the legal interests of the adopted child involved as being subject of the contract.

Confidentiality: The process of adoption is termed as mere matter of private family law over the years, making it mainly “clandestine” of all family laws involved proceedings. The very basic of contract plays its role here too, as the contract is kept a very private and undisclosed affair. For case in point:

Assurances of secrecy are given:

- To the parents adopting the child,
- To the biological parent or parents
- And there is no access allowed to the agency files of the adopted children at all. For the above all purposes the children as identified with serial numbers in the court.

But this cover of confidentiality has been lifted for the parents progressively in recent years for the purpose of facilitating adopting the child for the matter of identity information of the children.

Undeviating and Binding: Adoption as a fundamental process retained its strict legality in lieu of its obligation. This commitment retains its face till the maturity of the child. This structure of family unit status in till present day is not able to be forfeited.

Exclusive Distinctiveness: Adoption a legal process a very exclusive and distinctive relationship. As a principle puts a permanent end to all parental rights and duties towards and in regards to biological and natural parents, and similarly engages the adoptee parents to take in all the rights and responsibilities in question. This constitutes an unconditional and inclusive break between the biological parent and the child adopted. This in all means effects extensive family network resulting in re-distribution and re-definition of relationships with in a family unit.

Inter country adoption so far in all means have met its legislative intents. In result of all these developments the process of adoption has become more unwrapped and clear. The center of the adoption process is always a child. His needs and there convenience and acquirement is the ultimate goal of all this process. Courts in the process always require a self governing opinion of the child's welfare in question. In most of the societies and legal systems the concept of Inter country adoption has

taken a very precise legal position. Roles of the parties involved are well defined and mediated with law. Though the adopter parent share everything with the adopted child from home to the assets, but this relationship in its core is artificial fundamentally, scooping around child-care essentially with legal bindings around its sphere.

Rutstein, S.O. and I.H. Shah (2004) in an article “Infecundity, Infertility, and Childlessness in Developing Countries” (DHS Comparative Reports) noted down that an estimate done by the population division of United Nations calculated that approximately there are nine hundred and twenty three million (923 m) women, who are aged forty years (40 years) around the world. In this estimation around seventy one million (71 m) women do not have children Among half of these nine hundred and twenty three million women who are the residents of developed countries, infertility is also quite common. This is quite a figure to address that more than one hundred and eighty six million women in developed countries who are married (one out of four married women) in their productive age are sterile. Keeping this estimation in mind if we suppose that even if a very small portion of this sterile ad infertile population tends to adopt the ratio of adoption will be quite a number.

In estimation by population division of United Nation it was approximated that around two hundred and sixty thousand kids are taken on for adoption in the world every year. Rutstein and Shah (2004) estimated that this number is very small in the context that there are round about 2.2 billion kids who are under age (less then eighteen years), and in this number every year less than twelve in every 100,000 kids are consumed in the process of adoption. Among Bulgaria, the countries with huge number of adoption are Mongolia, Samoa and the United States. These countries are the countries that are very actively involved in the process of adoption in comparison with rest of the world.

This research work, will explore the general principal involved and governing laws advocating the concept of inter country child adoption.

Role of Human Rights Law in Child Adoption

On May 29, 1993 in Hague, Netherlands a Convention was held addressing the issue of “Protection of Children and Co-operation in Respect of Inter country Adoption”. This convention eventually shaped into a multilateral treaty. Multiple countries are signatories to this convention. More than seventy five countries have adopted the Convention of “Protection of Children and Co-operation in Respect of Inter Country Adoption”. Along with other core motivations the Convention, promotes to reinforce security for kids, biological parents, and potential adoptive parents in the adoption process. The Convention also endow with an agenda to toil collectively to guarantee that the adoption process under goes in the preeminent worth of adopted child to avoid any misuse of inter country adoption for example the unlawful seizure, transaction, or trafficking of children. Refine language (discuss the CRC provision regarding best interest of the child

In coming chapters we will look into detail how human right laws collectively deal with the issues relating to inter country adoption.

Historic Prospect of IC Adoption

The practice and concept of inter country adoption has always stayed cynical. Refine language It has been defined both ways to some it is a global problem and some advocate the inter country adoption as a global solution (Masson, 2001) it is termed by few as a global trade and some defined it also as a global gift (Triseliotis, 2000), but one thing is certain that adoption as a concept is a long established phenomenon with in local communities except its transformation and inclusion of other countries in respect of adoption is a novel model., that conventionally came up as a result of unanticipated trials of combats, natural catastrophes, etc. started by sending orphan and abandoned children in 19th and

20th century, from countries like UK and Ireland to Australia and Canada. In present culture inter country adoptions are momentous as an outcome of sterility and infertility. Diverse childless parents adopt such children from poor countries who require basic needs and necessities of life while totally breaking up of the child in question from his family and original ethnicity of origin though these adoptions are fairly fewer as the mainstream adoption process worldwide comprise domestic adoption activity. It developed as a result, when the child's best concerns in the native nation state have worn out due to many reasons including chronically poverty and war etc. The solution came out as inter country adoption to present a protected habitat to the deprived child and to salvage such children from further anguish. Briefly this exercise of inter country adoption shaped up for multiple purposes for example:

- To pick up the living standard of the underprivileged kids for the purpose of diminishing their torments
- To fulfill the requests of the child less parents. Whatever the motive be the ultimately the prime object is the wellbeing of the child involved.

SIGNIFICANCE OF THE STUDY

The development and amendments of inter country adoption were the aftermath of world war when there were great numbers of orphans and war effected children waiting to be cared of and to be pampered. The history is evident that with every passing moment the patters of development and amendments have changed from time to time according to the prevailing needs of that time. Not strictly speaking but by and large the overall general legislation that has been modified and done is not for biological parents nor for the child being adopted or involved but it mostly triggered the "third party interest" that is the pair or people adopting or assuming the responsibility of the adoptive child. Over the years unlike custodianship, adoption has proved its permanence against all family law related issues. Inter country adoption as envisioned sustained its hard

core reputation in all this evolution of its construction and amendments as a legal contract taking care of the interests of all the three parties involved. Further In this research we will dig into all the aspects of inter country adoption and analyze the prospects in light with human right laws in detail. This in turn can identify the loop holes if any. Though Pakistan's legislation in relation to inter country adoption is not the core of our study but we will also touch the subject to analyze the picture.

Summary

In a report submitted by Departmental Committee on the Adoption of Children in 1974 it is defined as an absolute dismissal of all the legal relationship including rights and duties imposed upon between biological parent and the adopted child and the establishment of a new relationship between the adopted child and his adoptive parents. The practice and concept of inter country adoption has always stayed cynical. It has been defined by few advocates as a global problem and few termed it as a global solution as mentioned by (Masson, 2001), it also took attention by being termed as a global trade and also took the focal importance as a global gift as defined by (Triseliotis, 2000). But one thing is certain that it is a long established phenomenon that conventionally came up as a result of unanticipated trials of combats, natural catastrophes, etc. Inter country adoption is a strict legal concept that has binding nature. As discussed in the start of the chapter it is gratuitous transfer of a gift (child being adopted) bestowed by the biological parents upon the parents adopting the child through independent agencies this can not involve any kind of consideration what so ever. Not strictly speaking but by and large the overall general legislation that has been modified and done is not for biological parents nor for the child being adopted or involved but it mostly triggered the "third party interest" that is the pair or people adopting or assuming the responsibility of the adoptive child. Briefly in regards to an issue where everyone agrees to join hands with, we know the whole philosophy of inter country adoption is the serving the purpose of serving

the most of the most helpless of humans, to help them grow in family surrounded by love, kindness, care. Paulo Barrozo in an article establishes that there exists a jurisprudential foundation for adopted children to have fundamental human rights to the homes that time and again can be initiated only by means of international adoption. It is important to mention that management and states have an accountability to acquire the entire accessible procedures to compose a certain and safe pattern for children's right and safety. It should be made sure that kids are appreciated, sheltered and satisfied to all possible level as a grown up person who can speak for his rights. As soon as the states and countries endorse and approve different the principles rules and conventions, they have the same opinion to evaluate their existing regulations and to create more harmonious laws for the safety of the children. This engrosses reviewing their community services, official physical conditions and learning arrangements, in addition to echelon of financial support for these systems. States are subsequently are appreciative to acquire every essential rung to make certain that the least amount of principles lay down by the legislatures in these vicinities are being full filled. States and governments have to assist family units look after children's rights and generate an atmosphere in which they have possibility to cultivate and attain their prospective development. In some instances, this may involve changing existing laws or creating new ones.