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# **INTER-COUNTRY ADOPTION: INTERRELATION OF LAW AND SOCIETY AND NEED OF A LEGISLATION IN INDIA**

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## **INTRODUCTION:**

In simple words law is a set of rules and it includes rules, enactments, precedents and legislations. There are various jurists who defined law and explained the merits and demerits of law. Thus, it is difficult to define law through one definition. But a count can be given to Salmond and Austin's definitions of law. According to Salmond, "Law is the body of principles recognized and applied by the State in the administration of justice,"<sup>1</sup> according to the above definition; law is a collective body or body which includes certain principles which are necessary to regulate the affairs of the society and they are recognized and applied by the State for the purpose of administration of justice. On the other side Austin has considered four main elements of law in his definition. According to Austin, "Law is a command of Sovereign backed by sanction" herein the four elements are sovereign, command, duty to obey the command and sanction. Where there is disobedience of law by any person, there is a sanction that is punishment for the same. Law controls the economy and also shapes the behavior of the people of the society.

In present day society, legislation is necessary to promote peaceful revolution in social change and restructuring the enterprises. Today law is an agency of powers being an instrument of Government and centralized in the State, appears as a law of the State and therefore can bring the social transformation. Bosselmann notes that 'while a legal system cannot on its own initiate and monitor social change, it can formulate some parameters for the direction and extent of social

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<sup>1</sup>Infra (footnote3 page no.4)

change.<sup>2</sup>Therefore law is the most important instrument of social change or social transformation. Law is a mean and social transformation is a goal which means that there should be a law to achieve the social transformation. Although, there are many other indicators of the society through which the social change can be achieved. One of the important groups of the society is women and children and there are several issues and problems relating to their rights. One of such emerging issue related to children is inter-country adoption. There is no legislation regulating the inter-country adoption in India.

The Hague Convention of 1993 functioning through a system of National Central Authorities reinforced the UN Convention on the Rights of the Child (Art.21). This convention was fruitful in creating international laws for the protection of children and their families against the risks of illegal, irregular, premature or ill-prepared adoptions abroad. India signed this Hague Convention on inter-country adoption in 2003 and ratified the same with a view to strengthening International Cooperation and Protection of Indian Children placed in inter-country adoption.

To streamline the process of inter-country adoption, the Center Adoption Resource Agency (CARA) was formed in India in 1986. The primary role of CARA is to monitor and regulate the entire adoption process. The guidelines developed by CARA for inter-country adoption has led to more transparency but cannot have a character of a legislation therefore researcher through this research study has examined some of the aspect of the guidelines and a need of legislation on inter-country adoption.

### **Research Question:**

How the absence of legislation governing inter-country adoption leads further oppression and exploitation of children in India?

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<sup>2</sup>Andrea Ross, 'Modern Interpretations of Sustainable Development', <<https://www.jstor.org/stable/40206877> Accessed: 12-August 2019>.

## CHAPTERIZATION:

### CHAPTER 1:

#### Law As An Instrument Of Social Change:

A good starting point for law-society discourse is to address into the purpose of law. Thomas Aquinas said. "Law, strictly understood, has as its first and principal object the ordering of the common good."<sup>3</sup> Thus, the purpose of law is to bring social order, social welfare in the society. Law is very important phenomenon as it has a binding power and people are obligated to follow the law. As a regulator of both social life and individual behaviour through its distinct institutions and practices, and as a body of doctrines that have immense social dimension, law cannot afford to be a dormant or static instrument because of its vital social role and linkage with various facets of human life.<sup>4</sup> Law has to change according to the changing society, as the purpose of the law is to achieve justice in the society. Law is a means to reach to the end and justice is the end. Law is an effective instrument which brings a social change in the society. One can understand the social structure of the society from the law prevailing in such society.

There is a famous saying on this point that, "Tell me the law in country and I will tell you the social structure of that country."<sup>5</sup> The social change is a change in the norms or conduct of the society. It is a change in the behavioral patterns of the society. Earlier the society was based on morals. The present society is based on the sanction of the state. If we want to change any custom or a behavioral pattern predominant in the society we have to depend on law. Without law, we cannot bring an effective change in the society, therefore, law is an instrument of social change in the society.

The idea of social justice is recent in origin, it is a product of the modern social and economic developments. There are two types of concepts of justice that are, traditional idea of justice and modern idea of social justice.

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<sup>3</sup>P. Ishwara Bhat, 'Law and Social Transformation', (1<sup>st</sup>Edn. 2009, reprinted 2012, Eastern Book Company)

<sup>4</sup> Ibid

<sup>5</sup>Dr.ShailaDawre, 'Lecture on Law and Social Transformation', ILS Law College on 1<sup>st</sup> August 2019

The traditional idea of justice was primarily concerned with the virtues benefiting a man for enhancing his moral worth; it consisted in the performance of his duties attached to his status determined by the prevalent notions of morality, law social customs and mode of thought. The modern idea of social justice, on the other hand, is concerned with evolving a social order which could secure suitable rights and advantages for the different sections of the society, particularly for the vulnerable and under privileged sections.<sup>6</sup> This principle can be applied to the concept of adoption. The history of adoption in India talks about the adoption of a male child only to designate him as their legal heir, the purpose of adoption was very narrow. It was a private arrangement between two parties. But now the concept of adoption is wider. The adoption in present society has originated in the time when there are children who became orphan due to the abandonment, poverty, etc. so the need was felt to look for the wellbeing of these children. Thus, there was a shift in the concept of adoption as traditionally the purpose of adoption was personal and family interest and in present society it is for the welfare of the society. Then the new concept of inter-country adoption has been introduced.

Before 1970 not many Indians wanted to adopt an unrelated, child whose parentage was unknown. The parents who adopted kept it as a family secret due to the social stigma involved in barrenness and adopting an unrelated child. This prejudice and social stigma in the Indian family and social system created an opportunity for inter-country adoption to gain momentum in the 1960's. Financial affordability by foreign adoptive parents made inter-country adoption an attractive proposal to the Indian adoption agencies. Absence of a uniform law in India and caste prejudices made inter-country adoption more popular than domestic adoption. For nearly two decades from the 1960's to the mid 1980's there was a progressive increase in inter-country adoptions and they were not reliably documented.<sup>7</sup> Therefore, inter-country adoption can be a choice for the betterment of the child. In India, the Central Adoption Resource Authority streamlines the process of adoption, which at some point has made the transparency in the process of adoption but there are certain problems which needs to be addressed.

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<sup>6</sup>O.P. Gauba, 'Dimensions of Social Justice', (1<sup>st</sup> published 1983, National)

<sup>7</sup>Infra, (footnote 13-page no. 10)

## CHAPTER 2:

### **Present Mechanism Governing Inter-Country Adoption In India:**

#### **Origin:**

The General Assembly of the United Nations adopted the Convention on the Rights of the Child On 20th November, 1989. This Convention comprehensively dealt with the rights and entitlements available to a child. Article 21 of the Convention referred to adoption. It specified that in matters of adoption, the best interest of the child is the most important factor. Article 21(a) provides that adoption of the child must be undertaken through competent authorities in order to preserve the sanctity of the adoption process. Article 21(b) dealt with inter-country adoption. It provided that inter-country adoption must be allowed when no one is willing to take care of the child and an adoptive family could not be found in the child's home country. Articles 21(c), 21(d) and 21(e) specified that, sufficient safeguards must be in place in order to protect a child who is given in intercountry adoption. India consented to this Convention on 11th December, 1992.

The most important international convention on inter-country adoption which determined on 29th May, 1993 at The Hague, Netherlands, is the existing Convention on Protection of Children and Co- operation in respect of Inter-Country Adoption, Its Article 1 states that the purpose and aim of the Convention is to preserve the best interest of the child and to ensure recognition of inter-country adoption between contracting states. Articles 4 and 5 provide for the circumstances in which an adoption can be said to be within the scope of the Convention. Article 6(1) provides that in a Contracting State, a Central Authority must be created to perform the duties imposed by the Convention. Articles 14 to 21 relate to the manner in which inter-country adoption can be undertaken and the role of the Central Authority in that regard. Article 23 provides that when the competent authority of a state certifies that the adoption has taken place as per the Convention, the certification should be recognized in the other Contracting States. India signed this Convention on 09th January, 2003 and ratified it on 06th June, 2003. India is the signatory to this convention.<sup>8</sup>

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<sup>8</sup>Extract from the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, PETER H. PFUND, *The 1993 Hague Convention: Its Purpose, Implementation, and Promise*, <<https://www.jstor.org/stable/25739969>>, 08 August 2019

## Meaning:

Inter-country adoption means adoption of a child or children by persons having status of Non-Resident Indians or Overseas Citizens of India or Persons of Indian Origins or Foreign Nationals.<sup>9</sup> . The term "Inter-Country Adoption" as defined at the European Seminar on Inter-Country Adoptions, May 1960 "represents an adoption in which the adopters and the child do not have the same nationality as well as in which the habitual residence of adopters and the child is in different countries." Inter-country adoptions are generally of two kinds. One, where reciprocity of recognition exists, that is to say, an adoption having taken place in one country is, by virtue of an international treaty, recognized in the other country/countries. An adoption in any member country of the Hague Convention represents this kind of inter-country adoption.<sup>10</sup>The child, for the complete 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.<sup>11</sup> And therefore, the inter-country adoption is an important phenomenon as a child may get all the love and care he deserves from a family. In India, prior to 1984, there was no legislation governing the procedure for inter-country adoption. In 1984, the Supreme Court in a case of **Lakshmi Kant Pandey vs. Union of India**<sup>12</sup> has given a landmark judgement. In this case some important directions were given regarding the issue of inter-country adoption as there was no legislation in India governing the issue.

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<sup>9</sup>Guidelines Governing the Adoption of Children, 2011

<sup>10</sup> Vibha Sharma, 'INTER-COUNTRY ADOPTIONS IN INDIA - AN APPRAISAL', Journal of the Indian Law Institute, Vol. 45, No. 3/4, Family Law Special Issue (July-December 2003), pp. 543-554 < <https://www.jstor.org/stable/43951880> Accessed on 02 August 2019>

<sup>11</sup> Extract from the preamble of the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, PETER H. PFUND, 'The 1993 Hague Convention: Its Purpose, Implementation, and Promise', < <https://www.jstor.org/stable/25739969>>, 08 August 2019

<sup>12</sup>*Laxmi Kant Pandey v. Union of India*, AIR 1984 SC 469

## **Constitution And Framework Of The Central Adoption Resource**

### **Authority (CARA):**

Adoption is the establishment of a parent-child relationship through a legal and social process other than the birth process. It is a process by which a child of one set of parents becomes the child of another set of parents or parent<sup>13</sup>. When there is no one to care and protect the child then the next best choice for the child is to give him in adoption as he can get all the love and affection which is necessary for him in his tender age. Therefore, adoption is an important agency where the best interest of a child and his welfare is considered. There are several laws in India which deal with the process of adoption. Such as Hindu Adoption and Maintenance Act, 1956, The Juvenile Justice (Care and Protection of children) Act, 2015, Guardians and Wards Act, 1890. Presently the CARA is the regulatory body to deal with the inter-country adoption in India. The writ petition was filed by an advocate practicing in the Supreme Court in the form of a letter against the malpractices conducted by the social organizations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. A regulatory body that is, Central Adoption Resource Agency was recommended and accordingly setup by the Government of India in the year 1989.

Inter-country adoption in India is regulated by the Central Adoption Resource Authority (CARA), an autonomous body under the Ministry of Women and Child Development, Government of India. It is a prerequisite for parents to register with CARA ([www.cara.nic.in](http://www.cara.nic.in)) for adopting a child. The Central Adoption Resource Authority (CARA) has been deemed to be constituted under Section 68 of the Juvenile Justice Act. The function to regulate inter-country adoption has been given in Clause (b) of section 68<sup>14</sup> and clause (c) give the power to frame regulations on adoption and related matters.

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<sup>13</sup>SarasBhaskara, Rene Hoksbergena ,Anneloes van Baara , SubasiniMothiramb , and Jan terLaak, 'Adoption in India - the Past, Present and the Future Trends', <<https://www.researchgate.net/publication/236005514>>

<sup>14</sup>68. The Central Adoption Resource Agency existing before the commencement of this Act, shall be deemed to have been constituted as the Central Adoption Resource Authority under this Act to perform the following functions, namely: —

- (a) to promote in-country adoptions and to facilitate inter-State adoptions in co-ordination with State Agency;
- (b) to regulate inter-country adoptions;
- (c) to frame regulations on adoption and related matters from time to time as may be necessary;

The guideline further provides for the important principles governing adoption: a) child's best interests shall be of paramount consideration, while processing any adoption placement; (b) preference shall be inclined to place the child in adoption with Indian citizens and with due regard to the principle of placement of the child in his own socio-cultural environment, as far as possible; (c) all adoptions shall be registered on Child Adoption Resource Information and Guidance System and the confidentiality of the same shall be maintained by the Authority.

### **Procedure:**

Any orphan or abandoned or surrendered child, declared legally free for adoption by the Child Welfare Committee. The parent needs to register online with CARA Adoption System – CARINGS and upload required documents as per their status. The Specialized Adoption Agency (SAA) nearest to the parent's address will conduct their Home Study. The parent will become eligible for receiving a profile of the child only after the Home Study report (HSR) is uploaded in CARINGS. The parent will be offered profiles of 3 children in one or more referrals, as per availability of the children according to their preferences. The parent can see the entire profile and medical history of the child in the referral. The Parent can then choose to Reserve or Not Reserve a child within 48 hours of the referral (online only). Upon reserving, the child has to be accepted within 20 days. Parents who do not accept the child in the above period will go to the bottom of the wait list. Parents who do not accept any of the 3 profiles will go to the bottom of the wait list. However, their registration shall continue to be valid, with revalidation of the Home Study Report in every three years. A fee of Rs. 46,000 is payable to the SAA. The fee includes expenses for home study, legal services etc. and no other sum is payable by the parent.<sup>15</sup>

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(d) to carry out the functions of the Central Authority under the Hague Convention on Protection of Children and Cooperation in respect of Inter-country Adoption;

(e) any other function as may be prescribed.

<sup>15</sup>Adoption Regulations, 2017.

## **CHAPTER 3:**

### **Absence of legislation governing inter-country adoption and exploitation of children: Effect on social transformation-**

In a civilized society the welfare of a child is of utmost importance. The same cannot be ignored. As children are the important asset of the nation and the wellbeing of the society is depending on their growth and development. The great poet Milton admirably put it when he said that: “child shows the man as morning shows the day”.<sup>16</sup> The children of tender age need protection and care as they are mentally immature and unable to take care of themselves. Therefore, the children must be brought up in an atmosphere where they can get all the love and affection by their parents to acquire the self-confidence.

Social transformation is not just a matter of affecting any kind of social change, but a process of bringing about a new social order according to the vision of just society. Insofar as the society and individual are related, it also implies the transformation of the individual, which in fact is the ultimate goal<sup>17</sup>. Thus, the transformation of the individual of the society is also important. Children are the important part of the society and hence the transformation of the children is necessary as it will ultimately transform the society. In the case of inter-country adoption there is no legislation governing it, and because of it the children are being exploited. The issues like child trafficking, child prostitution, etc. are increasing, which is violation of the rights of the children. Children being the future of the nation should get protection against such offences and therefore, there is an immense need of a legislation containing strict provisions in the case of inter-country adoption.

Some of the children who became orphan due to the poverty, war, and abandonment created the reason to look the authorities into the matter of their wellbeing. The need was felt by the authorities to govern the matter. Traditionally the personal and family interest was considered that is, there was a practice in which the child had been included in the family of either side. Now in present society, if there is no relative to take care of the child then giving him in adoption is the next best choice in the interest of the child. This shift from the personal interest of the families to the interest

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<sup>16</sup>Supra (footnote 12-page no. 9)

<sup>17</sup>Victor. S. D'souza, 'SOCIOLOGY AND SOCIAL TRANSFORMATION IN INDIA. THE NEGLECT OF THE IDEA OF FRATERNITY', <<http://www.jstor.org/stable/23619276>> Accessed: 22 July 2019

of child welfare has created a pathway for social transformation. Similarly, if there is an enactment of legislation governing the inter-country adoption the best interest of the child welfare would be considered as there will be a control on the malpractices prevailing against such children in the society. Section 80 of the Juvenile Justice Act talks about the punishment against the procedure only and not against the offences against children.

### **Problems persisting in inter-country adoptions:**

#### *Child trafficking:*

Child trafficking is one of the most serious problems as far as the inter-country adoption is concern. The biggest threat to the child in such transnational adoption is to become a victim of child trafficking racket. Once the domestic adoption process is over and the child is sent with the foreign parents it becomes a question of international law to look after wellbeing of the child. The question of jurisdiction also arises in case where such offence is committed against the child. Therefore, measures should be there to resolve such issue.

#### *Lack of awareness of the legal procedure:*

Another issue regarding the inter-country adoption is there is lack of awareness regarding the legal procedures for inter-country adoption. This has given a rise to many fake adoption agencies. There should be a check on such adoption agencies by the government. Children are being sold abroad by providing false information about them, falsifying documents, and making use of loopholes in the adoption guidelines prescribed by the Supreme Court<sup>18</sup>.

#### *Post adoption follow-ups:*

After giving a child for inter-country adoption the post adoption follow-ups become an issue. The CARA guidelines provide the guideline<sup>19</sup> for the follow-up of progress of adopted child. According

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<sup>18</sup>Palak Jain, 'Inter-country Adoption', <[www.lawoctopus.com](http://www.lawoctopus.com)>, Accessed: 22 July 2019

<sup>19</sup>13. Follow-up of progress of adopted child. - (1) The Specialized Adoption Agency which has prepared the Home Study Report, shall prepare the post-adoption follow-up report on six monthly bases for two years from the date of pre-adoption foster placement with the prospective adoptive parents, in the format as provided in Schedule XII and upload the same in Child Adoption Resource Information and Guidance System along with photographs of the child.  
(2) In case the adoptive parents relocate, they shall inform the agency which has conducted their home study and the District Child Protection Unit of the district where they relocate.

to the guideline the Specialized Adoption Agency (SAA) which has prepared a home study report shall prepare the follow-up report on six monthly bases for two years. But it does not suffice the purpose as there can be no further follow-up of the child after two years. The PAPs can give misleading statements to the authority.

*Succession issue after adoption:*

Section 63<sup>20</sup> of the Juvenile Justice (Care and Protection of Children) Act, 2015 deals with the effect of adoption. The section provides that when the order is passed by the court in respect of the child given in adoption shall legally become a child of the adoptive parents for all the purposes which include intestacy. The proviso of Section 63 provides that any property which has vested in the adopted child will continue to be vested in the adopted child.

The question here is that whether this provision is applicable to inter-country adoption or not? As per the provision the effect is given to adoption and it does not expressly include inter-country adoption. If the testator has bequeathed the property in the name of the adopted child then identity of the child has to be proved. Another question is if the provision of the section is applicable to the inter-country adoption and if the other survivors challenge the same then the procedure of succession will become tougher. The succession will govern by the laws of the country in which the child resides after adoption and if the succession becomes void due to any non-fulfillment of the

(3) The District Child Protection Unit of the district of the current residence shall prepare the post-adoption followup report and upload the same in Child Adoption Resource Information and Guidance System.

(4) The Specialised Adoption Agency or the District Child Protection Unit as the case may be, shall arrange for counselling the adoptive parents and adoptee by social worker or link them to the counseling center set up at the Authority or State Agency, whenever required.

(5) In case the child is having adjustment problem with the adoptive parents, the Specialised Adoption Agency shall arrange the required counseling for such adoptive parents and adoptees or link them to the counseling center set up at the Authority or State Agency, wherever required.

<sup>20</sup> 63. A child in respect of whom an adoption order is issued by the court, shall become the child of the adoptive parents, and the adoptive parents shall become the parents of the child as if the child had been born to the adoptive parents, for all purposes, including intestacy, with effect from the date on which the adoption order takes effect, and on and from such date all the ties of the child in the family of his or her birth shall stand severed and replaced by those created by the adoption order in the adoptive family:

Provided that any property which has vested in the adopted child immediately before the date on which the adoption order takes effect shall continue to vest in the adopted child subject to the obligations, if any, attached to the ownership of such property including the obligations, if any, to maintain the relatives in the biological family.

requisite then the child has to suffer. Unfortunately, India has not entered into any treaty to solve such succession matters<sup>21</sup>.

*Guidelines lack force of legislation:*

The CARA<sup>22</sup> guidelines which contain the transparent provision regarding the procedure of inter-country adoption but those are the guidelines which doesn't have characteristics of a statute. Therefore, the parties remain disinclined to follow the guidelines. In some cases, it may happen that a habitual resident of the country which has relinquished its membership of the convention may avoid following the Indian Laws and thus the guidelines have the less binding force than a statute. Also, the guidelines do not contain any penal provisions.

Another issue is neither the Act, 2015 nor the Guidelines, 2017 provide for any mechanism when Indian parents, who have already got themselves registered for in-adoption acquires the foreign citizenship. The issue was dealt by the Supreme Court in the case of **Union of India and Another v. Ankur Gupta and Others**.<sup>23</sup> The appeal was filed by the Union of India and CARA questioning the judgment given by Division Bench. The Court held that, "Mere fact that Act or Guidelines does not provide for any mechanism to upload any further information in first registration cannot alter the legal position and consequences of acquiring the foreign citizenship by an Indian. The consequences of obtaining US citizenship of respondent Nos.1 and 2 shall take its effect immediately."

In the case of Master **Divyansh Arora Minor, through his Next Friend Raj Kumar Arora v. Union of India**<sup>24</sup> writ Petition was filed by the petitioner to seek the direction through writ of mandamus to direct the respondents to issue the direction to respective visa issuing authority that the No Objection certificate is not mandatory from the Central Adoption Resource Authority (CARA) in view of the order of the competent court under Hindu Adoption and Maintenance Act, 1956 and to issue direction to Ministry of External Affairs to issue a passport to the petitioner. The petitioner was adopted by his paternal uncle and aunt. Formalities and ceremonies for adoption were performed. A registered Adoption Deed was executed. The adoptive parents, who were

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<sup>21</sup>Supra (footnote 19 Page No. 15)

<sup>22</sup> Adoption Regulations, 2017

<sup>23</sup> Union of India and Another v. Ankur Gupta and Others, AIR 2019 SC 262

<sup>24</sup>Master Divyansh Arora Minor, through his Next Friend Raj Kumar Arora v. Union of India, 2017 SC Del 11646, W.P. (C) 6759/2016

married since, did not have any child despite undergoing various medical procedures. The adoption of the petitioner was ratified by the Court of District & Sessions Judge (West), Tis Hazari Courts, Delhi. The adoptive parents of the petitioner are German citizens with Overseas Citizen of India (OCI) and lives in Germany. It was contended the Juvenile Justice Act is not applicable to adoption of children made under the provisions of Hindu Adoption and Maintenance Act, 1956 Act. The court held that, adoption taken place under the Hindu Adoption and Maintenance Act, 1956 was complete and CARA should grant the NOC to the parents.<sup>25</sup>

Another issue rose in the case of **Smt. Anokha v. State of Rajasthan and Other**,<sup>26</sup> was of the direct adoptions by the biological parents of the children. Baby Alka Singh is the daughter of Smt. Anokha and Sumer Singh Yadav. Sumer Singh Yadav was a taxi driver. The Respondents no.2 and 3 are Italian nationals. During their frequent visits to India either singly or jointly for the last 20 years, they used Sumer Singh's taxi to tour the country. About three years ago, Sumer Singh died as a result of an accident which took place after he had dropped the respondents no.2 and 3 at their destination. After Sumer Singh's death, the respondents no.2 and 3 who at that point of time had no children of their own wanted to adopt one of the girls. Smt. Anokha agreed.

A petition was filed by the respondents no.2 and 3 under the Guardians and Wards Act, 1890 in the Court of District Judge, Alwar in which it was stated by them that, they are capable of taking proper care of the child. The court held that since the respondents are foreign couple the guidelines governing inter-country adoption should be followed. Further, in the appeal of High Court the decision given by District Court was upheld. The court held that, the guidelines do not apply in this case as it does not contain the provision relating to the adoption of child by his biological parents voluntarily. The guidelines cannot take away the rights of the parents to give their children in adoption when they are satisfied and have known the prospective adoptive parents closely.<sup>27</sup>

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<sup>25</sup>Ibid.

<sup>26</sup> Smt. Anokha v. State of Rajasthan and Other, AIR (2004) 1 SCC 382

<sup>27</sup>Supra (Footnote 25 Page No. 17)

## **CONCLUSION AND SUGGESTIONS:**

Adoption is a process for legally changing parental responsibilities from biological parents or the persons or institutions that act as caregivers of children to the adoptive parents, thereby providing the child the care and warmth of a family. While the best interest of the child remains at the core of adoption, it also provides an opportunity to people to become parents. There are also parents who want to do some good by adopting a child. Although the system of adoption has been in existence since ancient times, the concept attained increasing importance in modern times.<sup>28</sup> There is emergence of legal adoption at international level. Legal adoption is necessary for the betterment of the child. Legal adoption is binding and provides an extended security environment for the adopted child. It safeguards the status of the child in the adoptive family. Therefore, law is necessary to achieve the welfare of the child as well as to regulate the process of inter-country adoption.

Inter-country adoption being an emerging phenomenon needs more focus, because the child is going to place in completely new culture and atmosphere. The subsidiary principle is the key to making inter-country adoption a service for children rather than for prospective adopters. It prioritizes care of the child in the family of origin before all other arrangements and relegates inter-country adoption by unrelated cares behind appropriate care in the child's home.<sup>29</sup>

Child trafficking, child prostitution, etc. are some of the offences which are being committed against the child. Children being a vulnerable class of the society need more focus. Such offences can make a negative impact on society as the children are the asset of the society. Law having a binding force can change the situation and the best interest of the child can be achieved.

The objective of CARA guidelines is to give a comprehensive and precise framework for the inter-country adoptions. The guidelines provide a sufficient mechanism to govern the inter-country adoption to achieve its objects, but there are some lacunas in it. Therefore, the researcher wants to highlight some points which need focus. The guidelines do not have much force as the law. Therefore, the procedure given in the guidelines can be overlooked by the foreign agencies, prospective parents, Indian agencies, etc. Therefore, there should be a legislation governing the

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<sup>28</sup>Udayan Care, UNICEF 'Adoption', < [www.udayancare.org](http://www.udayancare.org) > Accessed: 08 August 2019

<sup>29</sup>Judith Masson, ' Intercountry Adoption: A Global Problem or a Global Solution?', <<https://www.jstor.org/stable/24357675>> Accessed: 08 August 2019

inter-country adoption. The legislation can serve the best interest of the child as it is having the binding force on the society. As we have seen that, the CARA guidelines lack in provisions regarding penalty in case of any mischief to the child. Therefore, it is necessary to incorporate penal provisions. Awareness programmes should be arranged for the people who want to give their child in adoption or who want to adopt a child but do not have any knowledge about the legal procedure for the adoption.

The Supreme Court has given some measure to be taken in case of inter-country adoption. "CARA should consider the option of appointing a panel of Psychologists, Lawyers as well as NGOs in all the States so that the Child Study Report and Home Study Reports in the case of domestic adoptions, if applicable, in India are prepared scientifically in a time bound manner. The local police as well as Anti Trafficking Unit of the Ministry of Home Affairs should be asked to give their response to the Adoption application within a strict time frame. If response is not received from statutory/government authority within the time-frame prescribed, it should be presumed that said authority has no objection to the adoption."<sup>30</sup>

Strict provisions for the post adoption status of the child should be strict. It is not that the objective of welfare is being criticized but that it will not be achieved by the manner in which the government is currently pursuing it. The state is laboring under the carefully constructed illusion that the only method by which welfare can be achieved is by placing the child in its own socio-cultural milieu. The ground norm of welfare of child has been replaced by this construct called socio-cultural milieu.<sup>31</sup> Thus, the researcher through this research study has aimed to examine and explain the relationship between law and society; its effect on the social transformation focusing on the emerging need to regulate the inter-country adoption by enacting a legislation.

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<sup>30</sup>Supra (footnote 23-page no.17)

<sup>31</sup>S. Aarthi Anand and Prema Chandra, 'Adoption Laws: Need for Reform',  
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