

## INTER COUNTRY ADOPTION

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Adoption has been one of the most recognize concepts in Hindu law. The ancient view have emphatically asserted that if one is sonless person, one must try to have a son through the process of adoption (Duttak) Because it is essential to have a son for the maintenance of the constant tradition of the family for presentation name and fame of the family. The Hindus have attached the importance to the religious rituals after the death and a son is a sinquanon for the performance of such ritual. Thus Manu has said that adoption is essential for- fi.Mksnd fØ;k gsrq ukZe ladhrZuk;A

Adoption is legal procedure which permanently terminates the legal relationship between a child and his or her biological parents and initiates a new parent-child relationship<sup>1</sup>. This definition indicates the transfer of the child from old kinsmen to the new. The child ceases to be member of the family to which he belongs by birth. The child losses all rights and is divested of all duties with regard to his natural parents and kinsmen. In the new family, the child is like a natural born child with all the right and liabilities of a native born member.<sup>2</sup>

The Encyclopedia Britannica describes adoption as a family experience. It is a way of conferring, “The privileges of parents upon the childless and advantages of parents upon the parentless.”<sup>3</sup> According to Manu adoption is the “Taking of a son, as a substitute for the failure of a male issue.” Thus it is a transplantation of a son from the family in which he is born to another family where he is given by the natural parents by way of gift. The adopted son is thus taken as having been born in the new family. He acquires all the rights and status

in the new family and his ties with the old family come to an end. Manu says, “He whom his father and mother give to another as son, provided that the donee have no issue if requires be of the same class, and affectionately disposed, is considered as a son given the gift been confirmed by pouring water.<sup>4</sup> The religious motive behind the adoption is evident from Baudhayan’s text which reads as follows- “I take thee for fulfillment of my religious duties. I take therefore to continue the line of my ancestors<sup>5</sup>.”

The Hindu Adoption and maintenance Act, 1956 has simplified the traditional Hindu Law of Adoption. Some of the old rules have been retained, but it was submitted, the adoption has been completely secularized, this would be evident from a cursory perusal of the provisions of the Act.

The Hindu adoption and Maintenance Act 1956 has now completely codified the law of adoption and has materially modified it. These changes correspondent the needs of dynamism of Hindu society. How after the enforcement of this act, every adoption shall be made in accordance with the provision of the Act. Any adoption made in contravention of the provision of this Act, 1956 shall be void.

Hindu adoptions and Maintenance Act, 1956 prescribed the following essential for a valid adoption.<sup>6</sup>

1. The person adopting has the capacity to take in adoption.
2. The person giving in adoption has the right to give in adoption.
3. The person to be adopted is capable of being adopted.
4. Formalities and other procedure for adoption is observed.

This section enumerates the requirements of valid adoption.

1. The person adopting must have the right take and be lawfully capable of taking as son or daughter in adoption<sup>7</sup>.
2. The person giving in adoption must be lawfully capable of doing so<sup>8</sup>.
3. The person adopted must be lawfully capable of being taken in adoption<sup>9</sup>.

4. The condition related to adoption including actual giving and taking of the child with intention of transferring the child from the family of its birth to the family of its adoption must be complied with.<sup>10</sup>

Failure of compliance with any of these requirements will renders the adaption null and void. This section is of a mandatory character.

The Inter Country adoption connotes the idea of adoption from countries with different cultures. It is a well known fact, that the international communities have began to realize the importance of child welfare and children being regarded as supreme national asset. It is also said that the physical and mental health of the nation is dependent upon the manner in which its children one brought up.

The inter country adoption is an extremely sensitive issue. The social and psychological aspect of the child is to be taken into account and to foster this view the inter country adoption has come to play an important role.

The U.N. Declaration on the Right to child<sup>11</sup> has immensely prevailed upon the process of Inter country adoption is to provide family to children who need it outside the native country and that such adoption should be based solely on the principle that adoption must, Paucity the child and those abandoned in the society should be given protection and support. The United Nation also adopted the resolution on 3<sup>rd</sup> Dec. 1986 in this regard to as the United to be loved and to grow up in an atmosphere of love and affection. This is available of the child's biological parents however, of it is not possible, and the child is abandoned the adoptive parents must be searched out and of they are not available in the child's country must be searched outside the native land of the child.

Inter country adoption of children may be accepted as one of the best means available to protect the interest and safeguard the welfare of the children who are abandoned or orphans<sup>12</sup>. Such a means should be adopted for a bonafide and noble purpose as has been considered by the court of India, Not only the government but also other agencies like<sup>13</sup> and other involved in the child welfare activities and the Human Rights activities should give proper attention and care for the real implementation of the provisions of law and directions of the Judiciary relating to Inter country adoption of children particularly during his time when all the countries including the United Nations have become moreover and encouraged on the rights of the Child.

The term “Inter Country Adoption as defined at the European seminar on Inter country Adoptions, May 1960,” representations an Adoption in which the adopters and the child donot have the same nationality as well as in which the national residence of adoptions and the child is in different countries.

The Adoption of children from other countries i.e. Inter Country Adoption began to develop on a large scale at the end of Second World War. Adoption from countries with different cultures and development always result from the same cases. The following are the main causes<sup>14</sup>.

1. Presence of foreign troops resulting in the increase in the number of illegitimate children.
2. War causing economic collapses of a country, poor families finding difficult to survive, sometimes have to offer their children for adoption.
3. Excessive population and large families also lead to abandonment of children because of precarious economic conditions.
4. Prejudices against unwedded mother are rejected, if they keep an illegitimate child.
5. Sometimes, national disasters such as earthquakes, volcanic eruption, flood etc, leave behind a number of orphans available for adoption.

On the other hand, the following factors in developed countries have also encourage the transitional adoptions, they are:

- a) A steady improvement in the status of unmarried mothers in recent decades. In developed Countries, today, unmarried mothers are socially accepted and can live well. The unmarried mother is recognized as the head of the family and benefits from all the forms of financial assistance provided by the state like social security, family allowance, etc.
- b) The decrease in the number of adoptable children available in developed countries because of family planning and generally high standard of living (use of contraceptives and abortion) couples who cannot have a child in their own country, search for a child abroad at any price.
- c) The rapid circulation of information and the easy means of communication and travel help the foreigners to adopt the child from India and other under developed countries.

The rationale for Inter country adoption is simple- “Every child deserves a home at his own,”<sup>15</sup> If it is in the child’s interest that it has to be taken out of the country.”

In India, we have no legislation that deals with inter country adoption. This short coming was noted by the Supreme Court in the case of Laxmi kant pandey Vs Union of India<sup>16</sup>, Where the court laid down principles governing the rules for Inter country adoption.

“In the first place, every application from a foreigner to adopt a child must be sponsored by social or child welfare Agency recognized or licensed by the government of the country in which the foreigner is a resident.”

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