

LAW COMMISSION OF INDIA

**ONE HUNDRED FIFTY THIRD
REPORT**

ON

INTER – COUNTRY ADOPTION

1994

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Dear Prime Minister,

I am glad to forward herewith Law Commission's 153rd Report on "Inter-Country Adoption" (10th Report of the 13th Law Commission).

This Report deals with the matters relating to adoption of Indian children by foreigners. In our country, about 18 million destitutes and orphan children are being looked after in various orphanages. Each year, about fifty thousand children become destitute as they are abandoned by the helpless parents and unwed mothers. Hundreds of them die from malnutrition and disease due to lack of clean water and inadequate sanitation. Since children constitute the Human Resource of our country and they are supremely important national asset, it is the duty of the State and the society to take effective steps to secure and safeguard their welfare and to provide opportunities to them to grow and develop their personality in a healthy atmosphere. A number of Indian children are being adopted by foreigners, sometimes, such adoptions have given rise to malpractices, as under the garb of adoption, Indian children are taken abroad for domestic service and unscrupulous exploitation. There is, however, no law to regulate Inter-Country Adoption.

The Commission felt that there was need to regulate Inter-Country Adoption of children by law; it therefore, took up the matter *suo motu* for study. The Commission has, after an indepth study and empirical research, prepared draft of a Bill on Inter-Country Adoption which is annexed as Appendix 'A' to the Report. The proposed draft Bill has been prepared keeping in view the guidelines laid down by the Supreme Court and the principles laid down by the various International Conventions, Declarations and Instruments.

(ii)

We hope, the Government will take immediate steps to implement the recommendations contained in this Report as that would alleviate the sufferings of children and prevent the malpractices in adoption of abandoned and orphaned children.

With regards,

Yours sincerely,

(Sd/)-
(K. N. SINGH)

HON'BLE SHRI P. V. NARASIMHA RAO,
Prime Minister &
Minister for Law, Justice & Company Affairs,
NEW DELHI

CONTENTS

CHAPTER	PAGES
1 Introduction	1
2 Present Legal Position	4
3 Legislative efforts on Adoption Law	6
4 The International Law on Adoption	9
5 Judicial Guidelines on Inter-Country Adoption	14
6 The Role of the Child Welfare Agencies	20
7 Recommendations	24

APPENDIX

'A'	The Inter-Country Adoption Bill 199	27	
'B'	Adoption of Children Bill, 1980	34	
'C'	Home Study Report	35	
'D'	On the Documents, Certificates and Supreme Court Judgement (1984)	Declarations as mentioned in the	37
'E'	Child Study Report	38	
'F'	Law Commission of India's Letter to the Institutions	39	
'G'	List of Agencies recognised for doing Inter-Country Adoption of Children to whom Letters at Appendix 'F' were addressed	40	
'H'	List of Agencies recognised for doing Inter-Country Adoption of Children who responded to the Letter at Appendix 'F'	44	
'I'	Practical working experience of the Child Welfare Agencies	47	
'J'	As per the Data reported by Recognised Indian Social/Child Welfare Agencies during the years 1989, 1990 and 1991	50	
'K'	Placement Agency-wise Data relating to Children Adopted by Foreigners	55	

CHAPTER 1

INTRODUCTION

1.1. This report is undertaken *suo moto* to deal with the problem of inter-country adoption of Indian children by foreigners. Since there is no law to regulate the Inter-Country Adoption an effort has been made to prepare a draft of the proposed legislation.

1.2. The Constitution gives paramount consideration to the welfare of children. Clause (3) of Article 15 enables the State to make special provisions for children. Article 23 prohibits traffic in human beings and forced labour. Article 24 provides that no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment. Clauses (e) and (f) of Article 39 provide that the State shall direct its policy towards securing, *inter alia*, that the tender age of children is not abused, that children are not forced by economic necessity to enter avocations unsuited to their age and strength and that they are given facility to develop in a healthy manner and in conditions of freedom and dignity and childhood and youth are protected against exploitation and against moral and material abandonment.

1.3. It is shocking that a staggering number of about 18 million destitute and abandoned children in India are lying in several orphanages scattered all over the country. It is estimated that each year 50,000 children become destitute and get abandoned by the helpless parents and unwed mothers in our country. Hundreds of them die from malnutrition and disease, due to lack of clean water and inadequate sanitation. Population explosion in our country has immensely contributed to the children's problems. We are the second largest populated country in the world next to China. The 1991 Census places the population of our country at 846.3 million out of which about one third population is living below poverty line. India ranked 134 among 173 countries in 1993 in terms of the Human Development Index (HDI) of the UNDP. Poverty and illiteracy are age-old historical problems rooted in our social and cultural set up. Their impact is now felt and experienced by a large number of children. Elimination of poverty and education to all would take some years but in the meanwhile the abandoned children cannot be allowed to live in the lurch.

1.4. Moral sense of society compels us to search a solution to the problems of the abandoned children. In principle, every child has a right to love and be loved and children are a "supremely important national asset" and the future well being of a nation depends on how its children grow and develop. In our country destitute or abandoned children are the shocking reality. There is a wide gap between the principle and the reality as far as the welfare of destitute children are concerned. This gap is abridged to some extent with adoption of such children. Adoption is of great help in alleviation of the misery of the destitute children. For abandoned Children Adoptive parents are the next best substitute for the biological parents.

1.5. Appalling conditions of children of the third world apply, by and large, to children in India and therefore if it is not possible to provide to them in India decent family life where they can grow up under the loving care and attention of parents and enjoy the basic necessities of life such as nutritive food, health care and education and lead a life of basic human dignity with stability and security, moral as well as material, there is no reason why such children should not be allowed to be given in adoption to foreign parents.

1.6. Where the parents want to give their child in adoption or if the child is abandoned, it would be in the interest of the child to give in adoption. However, effort must be made first to find adoptive parents for the child within the country because such adoption would ~~steer~~ clear of any problem of assimilation of the child in the family of the ~~adoptive~~ parents. If it is not possible to find suitable adoptive parents for the child within the country, it may

become necessary to give the child in adoption to non-resident Indians, failing which to foreign parents rather than allow the child to grow up in an orphanage where it will have no family life and no love and affection of parents and quite often, in the socio-economic conditions prevailing in the country, it might have to lead the life of a destitute, half-clad, half-hungry and suffering.

1.7. In India adoption is not popular and the adopter generally chooses a healthy and fair male child. Girls are not usually taken in adoption. Foreigners on the other hand, do not have any reservation about sex, colour of the skin or state of the child's health. There have been innumerable cases of handicapped children who have been adopted, successfully treated and looked after by foreign families. During the last four years, the number of children given to foreign adoptive parents were 1272 in 1990, 1190 in 1991, 990 in 1992 and 1134 in 1993.²

1.8. However, adoption of Indian children by foreigners has given rise to malpractices. Under the garb of adoption, Indian children are taken abroad for domestic services and unscrupulous persons exploit the situation by encouraging child trafficking to the West. Judicial cognisance of these aspects was taken by the Gujarat High Court in 1992.³ The Court while dealing with adoption of Indian children by foreigners observed that this entire movement is not fool-proof. "It is not free from abuse and aberrations. The possible existence of an international racket trading in such children and selling them at profit into slavery or prostitution cannot be altogether ruled out." The Supreme Court of India⁴ also took cognisance of the problem on the basis of a letter addressed by an advocate, complaining of malpractices indulged in by social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. The letter alleged that not only Indian children of tender age are under the guise of adoption exposed to long horrendous journey to distant foreign countries at great risk to their lives but in cases where they survive and where these children are not placed in the shelter or relief homes, they in course of time become beggars or prostitutes for want of proper care from their alleged foster parents.

1.9. To put an end to such child exploitation, the Supreme Court⁵ has laid down specific principles and norms and provided the procedure to be followed for adoption of Indian children by foreign parents. We will discuss the same in detail in chapter 5 of this report.

1.10. Inter-country adoption is the most sensitive, controversial and complex aspect of adoption. It involves a variety of principles and procedures over migration, citizenship, the socio-economic situation of adoptive parents, matching parents with the child and acceptance of the child in a different community and culture. It requires the participation of the adoption agencies or authorities in the overseas countries. Similar views have been expressed by the New South Wales, Law Reform Commission on Inter-Country Adoption.⁶

1.11. In the interest of child, it is necessary to regulate inter-country adoption by legislation and by strict collaboration between qualified and authorized state and social authorities. It is hoped that as a result adoption will not be merely based upon legislative arrangement but also facilitate the creation of an environment in which the child can grow in health and happiness and be really integrated in the society of its adoption.

1.12. A considerable corpus of law, on adoption and guardianship relevant for the purpose of this report is available. It consists of national enactments and international—private law and public law— instruments. The Guardians and Wards Act, 1890 and the Hindu Adoption and Maintenance Act 1956 are carefully examined and the relevant international instruments are analysed duly. Besides the judicial pronouncements concerning the subject have received a special consideration in this report.

1.13. In order to elicit responses on the present legal, procedural, administrative, institutional, supervisory and other relevant safeguards and protections on adoption of Indian children by foreign parents, the Law Commission of India had undertaken empirical study.⁷ It issued a questionnaire to

social and child welfare agencies/organisations, and the Central Adoption Resource Agency established under the directives of the Supreme Court¹ and working under the control of the Ministry of Welfare, Government of India. The replies and suggestions received by the Law Commission have been scrutinised and analysed. Due weightage has been accorded to the suggestions while formulating the recommendations.

1.14. The Report is structured not only on the guidelines laid down by the Supreme Court but it is based on empirical investigations. Further the report has utilised the relevant primary and secondary source materials available and the practical work experience gained by the child welfare agencies over the last more than a decade or so in the field of inter-country adoption.

FOOTNOTES—CHAPTER 1

1. *Economic Survey 1993-94* : Government of India; Chapter 9 : Social Sectors, pp. 146-159
2. *Annual Report, 1992-93*, Ministry of Welfare, Govt. of India, New Delhi (Hindi Edn) p.71, Annexure 40.
3. *Re : Rasiklal Chhaganlal Mehta, AIR 1982 Gujarat 193.*
4. *L. K. Pandey v/s UOI* (1984) 2 SCR 795.
5. *ibid.*
6. *Review of the Adoption of Children Act, 1965 (NSW)*, Issues paper 9, P. 67, para 10.2.
7. *L.K. Pandey v/s UOI* (1984) 2 SCR 795.

CHAPTER 2

PRESENT LEGAL POSITION

2.1. There is no enactment on inter-country adoption as such in India. However, a large number of Indian children have been adopted by foreign parents belonging to different countries as mentioned earlier.

2.2. The Law Commission of India had incidentally considered¹ the question of appointment of guardian residing out of India for a person living in India. The general consensus at that time was that the matter was in the discretion of the court and there was no rigid rule prohibiting appointment of foreign person as a guardian under Section 7 of the Guardians and Wards Act, 1890. No recommendation suggesting amendment to the Act was made and the question of appointment of institution as guardians was deferred.

2.3. Presently, inter-country adoptions are regulated and supervised by the principles, norms and procedure laid down by the Supreme Court.² Earlier, the Gujarat High Court grappled with the question and laid down guidelines governing adoption of Indian children by foreigners.³ While doing so the Court relied upon the Full Bench decision in *Marggarate Maria v. Dr. Chacko*.⁴

2.4. In R.C. Mehta's⁵ case District Judge of the Rajkot granted permission under section 9(4) of the Hindu Adoption and Maintenance Act, 1956 for giving a minor female child for adoption to a West German couple. The order was issued on the basis of adoption deed executed for the purpose, although it did not mention that the child was to be taken away by the adopted parents to West Germany. Pursuant to the District Judge's order the adopted parents applied for issue of passport for the child but the same was refused on the ground that the order of the District Judge did not contain any direction for taking the child outside the country. The adopting parents made an application to the District Judge for issue of an order directing the Passport Authorities to issue the passport. In the meantime a writ petition was filed in the High Court for quashing the order of the District Judge. The writ petition was referred to Division Bench but on the date of hearing of the petition, permission for withdrawal of the petition was sought as it was realised that proper procedure would be to make an application to the competent authority under the Guardians and Wards Act, 1890. The Court permitted withdrawal.

Another matter relating to adoption of Indian child by foreign parents was considered by the Supreme Court. The Supreme Court in the absence of any law regulating the inter-country adoption referred to Articles 15, 34 and 39 of the Constitution and Sections 7 to 9 of Guardians and Wards Act, 1890 in issuing directions to regulate adoption of children by foreign parents.

These cases illustrate as to how the provisions of the Guardians and Wards Act, 1890 which was never intended to be used for adoption of children by foreign parents was put to useful purpose in the absence of a law regulating such adoptions.

2.5. Basically the Guardians and Wards Act, 1890 hereinafter referred to as 'the 1890 Act', provides for appointment of guardian of minor children and it does not regulate the adoption of children by foreigners or by Indians. But its provisions have been pressed into service to facilitate adoption of children by foreigners. Where a foreigner desires to adopt an orphan child he makes an application before the District Court for appointing him as guardian of that child and after such appointment the foreigner takes away the child to his country with the permission of the Court.

2.6. As already mentioned there is no enactment having direct bearing on regulating adoption of Indian children by the foreigners. There is also no

explicit provision in the Guardians and Wards Act, 1890 providing for inter-country adoption of Indian children. However, the courts in their discretion have put to useful purpose the Act, 1890 and regulated the inter-country adoptions.

FOOTNOTES—CHAPTER 2

1. *83rd Report*, 1980, on the Guardians and Wards Act, 1890 and provisions of the Hindu Minority and Guardianship Act, 1956
2. *L.K. Pandey v. UOI* (1984) 2 SCR 795
3. *In re : R.C. Mehta*, AIR 1982 Guj 193
4. AIR 1970 Ker. 1
5. AIR 1982 Guj. 193

CHAPTER 3

LEGISLATIVE EFFORTS ON ADOPTION LAW

3.1. In the past, efforts have been made to formulate a comprehensive law relating to adoption in India but on account of one or the other criticism the efforts could not succeed.¹ The last attempt to codify the law, on the subject was made in December 1980, when Adoption of Children Bill was introduced in Lok Sabha. This did not apply to Muslims. This Bill too was criticised in some quarters and it also lapsed. Since then no efforts have been made to introduce the Adoption of Children Bill in order to reform and modernised law in our country.

3.2. At this stage, it would be appropriate to briefly refer to the salient features of the 1980 Bill to the extent relevant for the purpose of this Report. The 1980 Bill proposed that—

- (a) Any person who is below 18 years and who is not already adopted or married could legally be adopted by any person of sound mind who is at least 25 years old.
- (b) An adoption order of the District Court or the City Civil Court could be necessary. Otherwise, the adoption would be illegal.
- (c) A single person, or a married couple jointly, can adopt. There must be a difference of at least 21 years in the age of the child and the adopting parent or parents unless the Court otherwise permits.
- (d) An illegitimate child could be adopted by its parents, either alone or jointly with the spouse.
- (e) A female cannot be adopted solely by a male unless he is her father or there are other 'special circumstances' which justify an adoption order.
- (f) The consent of both parents or guardian or the persons managing the institution of the child care to be given in adoption is necessary. The consent of the father of an illegitimate child is not required. The consent can also be dispensed with by the Court if the parents or parent cannot be found or are or is guilty of neglect or ill-treatment of the child.
- (g) The Court must be fully satisfied that the effect of the adoption order is understood by both sets of parents.
- (h) The wishes of the child, if grown up enough to understand his interest, will be an important factor.
- (i) The welfare of the child will be the paramount consideration.
- (j) The Court can impose suitable conditions in the adoption order in the best interest of the child. The Court can intervene if an adopted child is ill-treated.
- (k) Any person aggrieved by an adoption order can appeal to the High Court.
- (l) The legal effect of an adoption order is to sever all the ties of the child in the family of its birth and give it the status of a child born in lawful wedlock to the adoptive parents.
- (m) A licensing authority for adoption institution for each state is to be set up by law. One half members of such licensing authority will be women. No institution will be permitted to function without a licence from the authorities.

- (n) The Bill contained two specific and material clauses 23 and 24 for adoption of an Indian child by a foreigner. These clauses will be discussed later.

3.3. It is significant to note that the 1980 Bill gave equal rights to a married woman to adopt a child jointly with her husband. It also required the consent of both parents and it further allowed an unmarried woman to adopt a child. The welfare of the child was the paramount consideration for adoption of a child under the 1980 Bill.

3.4. Incidentally it is relevant to note that the Law Commission² had made recommendations, on the Removal of Discrimination against women in matters relating to guardianship and custody of minor children and elaboration of the Welfare Principle with a view to facilitate guardianship of an adopted son or daughter to 'erase the injustice to the woman' in obeisance to the letter and spirit of the Constitution. The report dealt with the Welfare principle and emphasised the welfare of minor should be the paramount consideration in the appointment of any person as guardian of a Hindu minor by a Court, be it a male or female.

3.5. We now proceed to discuss the principles contained in clauses 23 and 24³ of the 1980 Bill as they are material provisions directly relevant for the purpose of regulating the inter-country adoption:

- (a) Clause 23 makes the taking or sending of an Indian child outside India for purposes of adoption punishable except where the child is so sent or taken out under the authority of a provisional adoption order passed by a District Court under Clause 24.
- (b) Clause 24 empowers the District Court to make a provisional adoption order permitting a person who is not domiciled in India and who wants to adopt under the law of the country of his domicile a child residing in India, to take the child out of India for the purpose. This introduces the element of 'provisional adoption order' as distinguished from 'adoption order'.
- (c) Adoption being a 'legal fiction', the aforesaid clause introduced a deeming provision to the effect that a child in respect of whom an adoption order is made shall be deemed to be as the child born to that adopter or the adopters in lawful wedlock for all purposes and all the ties of the child in the family of his birth shall be deemed to be severed and replaced by those created by the adoption order in the adoptive family.
- (d) In respect of a provisional adoption order, the elements present are—
(1) an applicant, a person who is not domiciled in India, intends to adopt a child under the law of the country in which he is domiciled; (2) for the purpose of intended adoption the applicant desires to remove the child from India to his country; (3) the Court in this situation may make a provisional adoption order authorising the applicant to remove the child for intended adoption; (4) the Court gives the care and custody of the child to the applicant pending his adoption in country of his domicile.
- (e) A certificate by the Central Government to the effect (i) that the applicant is in its opinion a fit person to adopt the child; (ii) that the welfare and interest of the child shall be safeguarded under the laws of the country of the domicile of the applicant; and (iii) that the applicant has made proper provision to enable the child to be repatriated to India, if necessary, is to be submitted before a provisional adoption order is passed by the District Court.
- (f) The child remains in custody of the applicant until eventual adoption within the foreign country of the applicant takes place.

3.6. In view of the above discussion, especially as there is no codified law on inter-country adoption, there is imminent necessity to have **enactment** regulating inter-country adoption.

FOOTNOTES—CHAPTER 3

1. A Bill on the subject was first introduced in Parliament by an independent member, Jayshree Raaji in 1955. It was withdrawn at that time as the then Law Minister wanted a smooth passage for the Hindu Adoptions and Maintenance Bill. Later on two other Bills were introduced in 1967 and 1970 but both these bills also lapsed. Then the Adoption of Children Bill 1972 was introduced in the Rajya Sabha and was withdrawn on account of the stormy opposition by the Muslim Members of the Parliament on the ground that it would affect the tenets of their personal laws.
2. *133rd Report, 1989* on Removal of Discrimination Against Women in matters Relating to Guardianship and Custody of Minor Children and Elaboration of the Welfare Principle.
3. Appendix 'B'

CHAPTER 4

THE INTERNATIONAL LAW ON ADOPTION

4.1. A radical shift from the ancient laws and practices to the contemporary laws and practices on adoptions in most states in the world has caused profound impact on the International Law on adoption. A brief statement on such development is therefore pertinent and necessary at the outset of this part of report. It is because the International Law like state law does not operate in vacuum but responds to the problems which centre around the gravity of social and cultural developments in the comity of nations.

4.2. Adoption is so widely recognised that it can be characterised as an almost worldwide institution with historical roots traceable into antiquity.

Continuity of male line in a particular family, the welfare of the adopter in this world and the next was the primary concern of ancient adoptions. Little attention was paid to the welfare of the child adopted.

In contrast, contemporary laws and practices aim to provide child welfare and are regarded as one facet of the state's general programme to its children. Although the desire to continue a family line is still the personal motive for adoption, society's interest now centres more on the creation of a parent-child relationship between a married couple and a child. This attitude developed primarily in the period following World War I, when vast numbers of illegitimate births increased. In the latter part of the 20th century, a decline in the number of children available for legal adoption stimulated changes in traditional restrictions like placements across religious and ethnic lines. Single parent adoptions are now accepted in many states.¹

4.3. The development as discussed above has been reflected in the international efforts in protecting the children from exploitation and advancing their welfare as the paramount consideration and these efforts have been manifested in the international instruments. These are as under :

- (1) The Geneva Declaration of the Right of the Child of 1924.
- (2) Declaration of the Right of the Child adopted by U.N. General Assembly on November 20, 1959.
- (3) Draft Guidelines of Procedure concerning Inter-Country Adoptions formulated by Expert Group and adopted by the Economic and Social Council of the United Nations in its 20th Session.
- (4) The Hague convention of 15th November, 1956 adopted by the Hague conference on the Private International Law.
- (5) The United Nations Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to foster placement and adoption nationally and internationally adopted by UN General Assembly on 3rd December, 1986.
- (6) Report of the Special Commission of the Hague Conference on the Private International Law Resolution 14 of 1988.
- (7) The UN Convention of the Rights of the Child of November 20, 1989.
- (8) Preliminary Draft Convention on International Co-operation and Protection of Children in respect of inter-country adoption drawn up by the Special Commission of the Hague conference on the Private International Law, February, 1992.
- (9) Private International Law Convention on Protection of Children and Co-operation in respect of inter-country adoption, Final Act, at the Hague Conference, 29th May, 1993.

4.4. These instruments, inter alia, regulate the inter-country adoption and therefore are directly relevant for the purpose of this report. It is not necessary to discuss each of the aforesaid International Instruments in detail. The salient features as deduced from the aforesaid Instruments are briefly summarised as under :

- (a) The child shall be entitled from his birth to a name and nationality.
- (b) The best interest of the child shall be the paramount consideration.
- (c) A child of tender years shall not, save in exceptional circumstances, be separated from his mother.
- (d) Society and the public authorities shall have the duty to extend particular care to children without a family.
- (e) The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.
- (f) The child shall be protected from practices which may foster racial, religious and any other form of discrimination.
- (g) The primary aim of adoption is to provide the child with a permanent family and appropriate environment.
- (h) If a child cannot be placed in an adoptive family in his own country, inter-country adoption may be considered as an alternative means of providing the child with a family.
- (i) Persons responsible for foster adoption should have professional training.
- (j) Inter-country adoption should be made through competent authority or agency with adequate safeguards and no improper financial gain should be involved and legal and social interests of the child should be secured.
- (k) It must be ensured that the child is legally free for adoption, can migrate to join the prospective adoptive parents and obtain their nationality.
- (l) Governments should establish policy, legislation and effective supervision for the protection of children involved in inter-country adoption and further that inter-country adoption should wherever possible, only be undertaken where such measures have been established in the state concerned.
- (m) The consent of biological parents should be free and without duress and preferences to their wishes for the religious upbringing of the child should be given.
- (n) The child study report, a family study report and such other investigation should be given due importance.
- (o) Reimbursement of cost incurred on a child be made.
- (p) Profiteering and trafficking in children shall be prevented

4.5. The Convention on the Rights of the child adopted in 1989 is an important convention for the purpose of this report, we would therefore consider the same in detail.

Article 21 is the pivotal provision which contains the principles governing inter-country adoption, it runs as under :

“Article 21: State parties that recognise and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and the State shall—

- (a) ensure that the adoption of a child is authorised only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information

that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

- (b) recognise that *inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin.*²
- (c) ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;
- (d) take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;
- (e) promote, where appropriate, the objectives of the present Article by concluding bilateral or multilateral arrangements or agreements and endeavour within this frame work, to ensure that the placement of the child in another country is carried out by competent authorities or organs."

This convention has recognised inter-country adoption as an alternative means of child's care when he cannot be adopted in the country of his origin and it emphasises that *objectives of inter-country adoption are to be promoted where appropriate, by bilateral or multilateral agreements.*³

4.6. The Hague Conference on Private International Law had adopted convention on 15th November 1965 on jurisdiction, applicable law and recognition of decrees relating to adoptions. However, the report of the Special Commission of the Hague Conference on Private International Law of January 1988 discussed two possible strategies open to the Conference, either a limited instrument to be elaborated within the Conference only, or an instrument in the elaboration of which non-member countries having a direct interest in the matter would also be invited and then expressed that—

"All participants agreed that international adoption was posing at present very serious problems, of a kind or degree different from those existing when the Hague Convention of 15 November 1965 was drawn up."

It is this seriousness of problem of inter-country adoption that finally led the Special Commission to decide in favour of retaining the topic—

"*Inter-country adoption on the condition that non-member states concerned express a willingness to participate in the work.*"

This decision was taken in spite of doubts expressed as to whether the Hague Conference on Private International Law was the appropriate forum to deal with the matter. The Hague Conference since then has been engaged in co-ordinating inter-Governmental and non-Governmental organisations in international work on inter-country adoption.

4.7. The draft report of February 1992 was considered by the Hague Conference on Private International Law in its Seventeenth Session and adopted as Final Act on 29th May, 1993. It may be mentioned that India is a signatory to the Final Act as a non-member country of the Hague Conference.

The Preamble of the Final Act takes into account the principles set forth in the UN Conventions on the Rights of the Child of 20th November 1989 and the UN Declaration on Social and Legal Principles relating to the protection and Welfare of children, with special reference to Foster Placement and Adoption Nationally and Internationally.⁴ Secondly, it has recognised that inter-country adoption offers the advantage of permanent family to a child who cannot in any suitable manner be cared for in his country of origin. Thirdly, it expresses

concern about the necessity to take measures to ensure that inter-country adoptions are made in the best interests of the child and with respect of the child and with respect for his fundamental rights and to prevent the abduction, the sale of or traffic in children. It has sought to establish a system of cooperation amongst contracting States to ensure that the safeguards provided therein are respected and inter-country adoptions are made in accordance with the Convention.

4.8. Article 4 of the Final Act lays down the specific mandatory safeguards as under—

- (1) The child is to be adoptable;
- (2) Placement of the child within the state of origin have to be given due consideration;
- (3) An inter-country adoption is in the best interest of the child;
- (4) The persons, institutions and authorities whose consent is necessary for adoption have been duly counselled and duly informed of the effects of their consent and of the adoption;
- (5) Their consent is given free and unconditional in the required form and in writing;
- (6) Their consent have not been induced by payment or compensation;
- (7) Their consent is irrevocable;
- (8) The consent of mother, where required, has been given only after the birth of the child;
- (9) The consents have been given in full knowledge of the effects of the adoption in the receiving state.

4.9. Article 4 provides some optional safeguards depending upon the age and degree of maturity of the child. These optional safeguards are as under—

- (1) The child is counselled and duly informed of the effects of the adoption;
- (2) The child's consent, if required, is obtained;
- (3) Consideration is given to the child's wishes and opinions.
- (4) The child's consent, if required, has been given freely and unconditionally in the required legal form and in writing;
- (5) The child's consent is not induced by payment or compensation of any kind.

With regard to adoptive parents, convention has laid down that the competent authorities of the receiving state must determine that—

- (1) the prospective adoptive parents are eligible and suited to adopt, and
- (2) the child is or will be authorised to enter and reside permanently in the receiving state.

4.10. As regards the transfer of the child to the receiving state, it is declared that the child would be transferred out only if the competent authorities of both states have verified that no bar exists to the adoption under the laws of their states and have agreed that the child should be entrusted to the prospective adoptive parents.

4.11. It has also provided for Central Authorities and accredited bodies to discharge duties and to take appropriate measures to provide information, statistics and standard forms and eliminate any obstacles for inter-country adoption. The Central Authority can grant accreditation to such voluntary body which are professionally competent to undertake administrative and social task

entrusted to them. An accredited body must pursue only non-profit objectives and staffed by persons specially qualified by their ethical standards and by training or experience to work in the field of inter-country adoption and will be subject to supervision by competent authority of state as to their composition, operation and financial situation.

4.12. Concerning procedure, it lays down that person wishing to adopt a child should apply to the Central Authority in the state of his habitual residence. The Central Authority on satisfaction that the applicant is eligible and suited to adopt shall prepare a Home Study Report which shall also include the characteristics of the child for whom they would be fit to adopt. The report prepared shall then be transferred to the Central Authority of the state of origin of the child.

4.13. The Central Authority of the State of origin if satisfied that the child is adoptable then it shall prepare a Child Study Report and obtain consent of the persons, institutional and authorities whose consent is necessary and determine whether the envisaged placement is in the best interest of the child. The report prepared by the Central Authority of the State of origin shall then be transmitted to the Central Authority of the state of the applicant.

The functions of a Central Authority for the aforesaid purposes may be performed by public authorities or bodies to the extent permitted by the law of its state.

4.14. Other relevant provisions contained in the Final Act have laid down that the Central Authorities of both states shall take necessary steps to obtain permission for the child to leave the state of origin and to enter and reside permanently in the receiving state and transfer takes place in secure circumstances and they shall keep each other informed about the adoption process and progress of the placement if a probationary period is required.

4.15. A provision for recognition of adoption made and certified by the competent authority of the state of adoption by the state of origin permits the refusal of recognition if adoption is manifestly contrary to its public policy and to the best interest of the child. It has also dealt with costs and expenses.

4.16. It is emphasised that improper financial and other gain from an activity related to an inter-country adoption shall not be desired by any person and only direct and indirect costs and expenses, including reasonable professional fees of persons interested in the adoption, may be charged and paid. It also prohibits directors, administrators and employees of bodies involved in adoption from receiving unreasonably high remuneration in relation to services rendered.

4.17 International conventions do not operate as law unless the legislature enacts law incorporating the principles laid down therein. Since India is a signatory to the final Act, it is under an international obligation to enact law with respect to inter-country adoption to give effect to the international conventions. Apart from the principles laid down by the international conventions, our courts have also laid down certain guidelines regulating inter-country adoption. Any legislative exercise should consider both these set of principles.

FOOTNOTES—CHAPTER 4

1. *The New Encyclopaedia Britannica*: Volume 1 Micropædia, Ready reference: 1987 1-A-ak Bayes; p. 105.

2. Emphasis supplied

3. Emphasis supplied

4. General Assembly Resolution 41/185 of 3rd December 1986.

CHAPTER 5

JUDICIAL GUIDELINES ON INTER-COUNTRY ADOPTION

5.1. The Supreme Court on a letter addressed to it in public interest took cognisance of malpractices indulged in by social organisations and voluntary agencies engaged in the work of offering Indian children in adoption to foreign parents. The letter sought to restrain Indian based private agencies "from carrying out further activity of routing children for adoption abroad" and it also sought direction to the Government of India, the Indian Council of Child Welfare and the Indian Council of Social Welfare to carry out their obligations in the matter of adoption of Indian children by foreign parents.

The landmark judgment which laid down guidelines was followed by other eight orders issued from time to time either in clarification, substitution or for giving effect to the earlier ones on certain points involving inter-country adoption.¹

5.2. The Supreme Court has, while laying down the normative and procedural safeguards on inter-country adoptions of Indian children relied upon Articles 15, 24 and 39 of the Constitution and sections 7 to 9 and 11 of the Guardians and Wards Act, 1890 and the International Conventions. The judicial creativity of the Court filled in the gap by the guidelines, where there were none before.

5.3. Earlier attempt made by the Gujarat High Court² for laying down guidelines was not comprehensive. However, the decision had resolved the question of adoption of Indian children by foreign parents with reference to the Guardians and Wards Act, 1890, and excluded application of the Hindu Adoptions and Maintenance Act, 1956.

5.4. Incidentally it may be mentioned that the procedure to be followed by the court in disposing of applications for adoption of Indian children by foreigners was laid down by the High Court of Bombay³ and the High Court of Delhi⁴ under rules and instructions and by the High Court of Gujarat⁵ by certain observations made for the same purpose.⁶

5.5. Before we proceed to summarise normative and procedural safeguards, it must be mentioned that the Supreme Court in its judgment has emphasised at the very outset that a family environment is the best for a child and the adoptive parents would be the next best substitute for the biological parents. But when a child is to be given in adoption, then, every effort must be made first to find adoptive parents for it within the country and only after such efforts have failed, it may become necessary, to give the child in adoption to a foreigner rather than allow the child to grow up in an orphanage.

5.6. It is in the context of this care and concern shown by the Supreme Court to the abandoned children, we will proceed to summarise briefly the normative safeguards first and the procedural safeguards afterwards.

The normative safeguards can be classified as under :

- (1) when a child is adoptable;
- (2) when children are living with their biological parents;
- (3) when children are destitutes or abandoned;
- (4) when a foreigner desires to adopt an Indian child; and
- (5) the role of the Central Authorities and recognised organisations in process of inter-country adoption.

In inter-country adoptions two countries are involved. One, the state of origin or sending state and, two, the receiving state. Therefore, there are two Central Authorities of two states which are necessary contracting parties for inter-country adoptions. These Central Authorities grant or require to grant

recognition to voluntary organisations or agencies on certain stipulations and conditions on the basis of the work experience, professional skills and integrity in the field of adoption of children by foreigners. Of course, even the diplomatic missions of both countries are also involved in the process. These are some important aspects which are taken into consideration in classifying the normative safeguards in inter-country adoptions.

Now we proceed to summarise the normative safeguards as under :

When a child is adoptable

5.7. The first and foremost condition for giving a child in inter-country adoption is that the child must be free and legally available for the adoption.

Firstly, if the consent of biological parents is given, it must be without duress or inducement and in the best interests of the child or when the parents have relinquished the child for adoption and there is a document of surrender, duly attested by the necessary witnesses, the child must obviously be taken to be free for adoption.

Secondly, where a child is an orphan or destitute or abandoned child and is living in a social or child welfare agency and it has not been possible for the concerned agency to trace its parents or where the child is committed by a juvenile court to an institution, centre or home for committed children and is declared to be a destitute by juvenile court, such a child must be regarded as free and legally available for adoption.

The child living with biological parents

5.8. Where a child is living with his biological parents, they would be the best persons to decide whether to give their child in adoption to foreign parents.

When the parents decide to give their child in inter-country adoption, there should be following safeguards:

- (1) The biological parents should not be induced or encouraged or even permitted to take a decision in regard to giving of a child in adoption before the birth of the child or within a period of three months from the date of birth of the child.
- (2) Proper counselling should be given to the biological parents before a decision about relinquishing the child for adoption is taken.
- (3) The counselling should be done by social or child welfare agency to which the child is being surrendered and relinquished.
- (4) Before a decision is taken by the biological parents, they should be helped to understand all implications of adoption including the possibility of adoption by foreign parents.
- (5) The biological parents should be specifically told that in case of the child is adopted, it would not be possible for them to have any further contact with the child.
- (6) The biological parents should not be subjected to any duress in making a decision about relinquishment of the child.
- (7) Even after the biological parents have taken a decision to relinquish the child for giving in adoption a further period of about three months should be allowed to them to reconsider their decision.
- (8) But once the decision is taken and not reconsidered within a further period of three months, it must be regarded irrevocable.
- (9) In order to eliminate any possibility of mischief and to make sure that the child has in fact been surrendered by its biological parents, it is necessary that the social or child welfare agency to which the child is being surrendered by the biological parents, should take from the biological parents, a document of surrender duly signed by the biological parents and attested by at least two responsible persons.

- (10) Such surrender document should not only contain the names of the biological parents and their addresses but also information in regard to the birth of the child and its background, health and development.
- (11) The procedure for giving the child in adoption to a foreigner can then be initiated without any further reference to the biological parents by filling an application for appointment of the foreigner as guardian of the child under the Guardians and Wards Act, 1890.
- (12) Thereafter, there would be no necessity to consult the biological parents again as to whether they wish to give the child in adoption or they want to take it back.
- (13) If the biological parents have stated a preference for the religious upbringing of the child, their wish should as far as possible be respected and given effect accordingly.
- (14) However, the biological parents should be informed that the child may be given in adoption even to a foreigner who professes a religion different from that of the biological parents as ultimately the best interest of the child alone should be the sole guiding factor and paramount consideration for giving to the child in adoption to the foreigner.

Destitute or abandoned child

5.9. Where the child is an orphan, destitute or abandoned and parents are not known, the social or child welfare agency in whose care the child has come, must try to trace⁹ the biological parents of the child:

- (a) If the biological parents can be traced and if it is found that they do not want to take back the child, then the same procedure as outlined for the children living with their biological parents discussed earlier should be as far as possible be followed.
- (b) But, if for any reason, the biological parents cannot be traced, then there can be no question of taking their consent or consulting them.
- (c) Then, in a class of cases under (b) as above, the consent of the child or social welfare agency involved in the field of inter-country adoption is primarily necessary. This institutional consent is to be ultimately guided by the sole factor and paramount consideration of the best interest of the child.

When a foreigner desires to adopt an Indian child

5.10. Great care has to be exercised in permitting the child to be given in adoption to foreign parents. It must be ensured that inter-country adoptions do not lead to abuse or exploitation of children. The possibility of profiteering and trafficking in children must be eliminated.

An application from a foreigners with a home study report¹⁰ must, therefore, be sponsored by a Social Welfare Agency recognised by the Government of the country in which the foreigner is domiciled and should be accompanied by such certificates, declarations and documents¹¹ as are necessary.¹¹

It must be ensured that there is no impediment in the way of child entering the country of the prospective adoptive parents. The travel documents for the child are obtained at the appropriate time, the law of the country of the prospective adoptive parents must permit legal adoption of the child and the child should acquire the same legal status and rights of inheritance as a natural born child and he should become a citizen in the country of adoption.

The Role of the Central Authority and the recognised institutions

5.11. Every effort must be made by the recognised child welfare agency to find placement for the child in adoption in an Indian family. It is only if no Indian family comes forward to take a child in adoption within a maximum

period of two months that the child may be regarded as available for inter-country adoption. However, if the child is handicapped or is in a bad state of health needing urgent medical attention, the recognised social welfare agency need not wait for a period of two months and it can and must take immediate steps for the purpose of giving such child in inter-country adoption.

All private adoptions conducted by unauthorised individuals or agencies should be stopped.¹³ Any application for taking a child in adoption should be processed only through a child welfare agency recognised by the Government of India in order to ensure¹³:

- (a) Elimination of the possibility of profiteering and trafficking in children.
- (b) Proper and satisfactory home study report on which court can rely and decide whether a foreigner would be suitable as a parent for the child and would be able to handle trans-racial, trans-cultural and trans-national problems likely to arise from such adoption.
- (c) Authority or Agency in the country of the foreigner who could be made responsible for supervising the progress of the child and ensuring that the child is adopted at the earliest in accordance with the law grow up in the atmosphere of warmth and affection with moral and material security assured to it.

On receiving an application from a foreigner for adoption of an Indian child, the recognised agency must send the photograph and child study report of a suitable child who fit into the environment and community of the prospective adopter for the purpose of obtaining approval to the adoption of such child from the foreigner wishing to adopt Indian child. The practice of accepting a general approval of the foreigner to adopt any child should not be allowed.

A child study report¹⁴ containing legal and social data in regard to the child is prepared by the recognised social welfare agency.

5.12. The procedural safeguards as laid down by the Court may be briefly summarised as under:

- (1) An adoption application proceedings should be completed¹⁵ by the Court expeditiously and as far as possible within a period of two months from the date of filing of the application for the guardianship of the child.
- (2) The proceedings on the application of guardianship should be held in camera¹⁶ and they should be regarded as confidential and as soon as an order is made on the application, the entire proceedings including the paper and documents should be sealed.
- (3) When an order appointing guardian of a child is made by the Court, the immediate intimation¹⁷ of the same shall be given to the Ministry of Welfare, Government of India and to the Ministry of Social Welfare of the Government of the State in which the Court is situated.
- (4) It is desirable¹⁸ that a child is given in inter-country adoption as far as possible before it completes the age of 3 years. It does not mean that children above the age of three years should not be given in inter-country adoption. Even children above the age of 7 years may be given in inter-country adoption but their wishes may be ascertained if they are in a position to indicate any preference.
- (5) The child not having any permanent place of residence would be ordinarily resident in the place where it is in the care and custody of social welfare agency or individual. In such event, the Court within which jurisdiction the child is ordinarily residing will exercise its jurisdiction on an application of guardianship made by the recognised social welfare agency for the foreigner wishing to adopt the child.¹⁹

- (6) In order to eliminate trading in children in the name of inter-country adoptions, the child welfare agency may legitimately receive from prospective adoptive parents maintenance expenses,²¹ from the date of selection of the child by the foreigner until the date the child leaves for getting to its new home as also medical expenses including hospitalisation charges, if any, actually incurred by such social welfare agency for the child.
- (7) A foreigner is not prevented from making voluntary donation²² to any social or child welfare agency but no such donation from him shall be received until after the child has reached his country.

Central Adoption Resource Agency

5.13. The Supreme Court directed the Government of India to set up a *Central Adoption Resource Agency*²³ (hereinafter to be referred to as 'CARA') with regional branches at a few centres which are active in inter-country adoptions. Such CARA is expected to act as a clearing house of information in regard to children available for inter-country adoption and all applications by foreigners for taking Indian children in adoption can then be forwarded by the social or child welfare agency in the foreign country to CARA and the latter can in its turn forward them to one or the other of the recognised social or child welfare agencies in the country.

5.14 The court laid down conditions²⁴ for recognition of the child welfare agencies are as under:

- (a) An agency should have proper staff with professional social work experience.
- (b) It is only an organisation which is engaged in the work of child care and welfare which should be regarded eligible for recognition, since the inter-country adoption must be looked upon not as an independent activity by itself, but as part of child welfare programme so that it may not tend to degenerate into trading.
- (c) An agency should maintain proper accounts which shall be audited by a chartered accountant at the end of every year.
- (d) It should not charge from the foreigner, wishing to adopt a child, any amount in excess of that actually incurred by way of legal or other expenses including such reasonable remuneration or honorarium for the work done and trouble taken in processing, filing and pursuing the application as may be fixed by the Court.

5.15. The duties²⁵ of the recognised agency would be as under:

- (a) It must maintain a register of the names and particulars of all children to be given in inter-country adoption.
- (b) It must prepare a child study report through a professional social worker so as to enable the foreigner to come to a decision on adoption of the child.
- (c) It must also advise the foreigner in coming to a decision whether it will be for the welfare of the child to be given in adoption to the foreigner.

5.16. The government of India with the assistance of the Government of State was directed to prepare a list²⁶ of recognised social or child welfare agencies with their names, addresses and other particulars and send such list to the appropriate department of the Government of such foreign country where Indian children are ordinarily taken in adoption so that the social or child welfare agencies licensed or recognised by the Government of such foreign country for inter-country adoptions, would know which social or child welfare agency in India they should approach for processing an application of its national for taking an Indian child in adoption. Such list shall also be sent to the Government of India to each High Court with a request to forward it to the district courts

within its jurisdiction so that the High Courts and the district courts in the country would know which are the recognised child welfare agencies operating in India in the area of inter-country adoption.

5.17. The Central Government was directed to prepare a list²⁶ of social or child welfare agencies recognised for inter-country adoption by the Government of each foreign country where children from India are taken in adoption, and supply copies thereof to the various High Courts and to the recognised child welfare agencies operating in India in the area of inter-country adoption.

5.18. The Central Government is further required to send the aforesaid list²⁷ to the Indian Embassy or High Commission in the country of the prospective adoptive parents from time to time with a request to keep watch over the welfare and progress of such children in order to safeguard against any possible maltreatment, exploitation or use for ulterior purposes and to immediately report any instance of negligence or exploitation to the Government of India for suitable action.

5.19. The guidelines laid down by the Supreme Court in its judgment and several orders are comprehensive. The Law Commission is of the opinion that it is desirable to bear in mind these judicial guidelines in codifying law as these are directly relevant for the purpose of the intercountry adoption.

FOOTNOTES--CHAPTER 5

1. The guidelines are laid down in *Laxmi Kant Pandey v/s UOI* (1984) 2 SCR 795 and were elucidated in *Laxmi Kant Pandey v/s UOI*, AIR 1987 SC 232 and *Laxmi Kant Pandey v/s UOI JT* 1991 (3) SC 582. Also in re: *Jay Kevin Salerno* AIR 1988, Bombay 139; SC Order: 6th August, 1993 etc.
2. In re: *R.C. Mehta*, AIR 1982 Guj. 193
3. The High Court of Bombay has issued a Notification on 10th May 1972 incorporating Rule 371-B in Chapter XX of the Rules of the High Court of Bombay (Original Side), 1957.
4. The High Court of Delhi has also issued instructions (1984) 2 SCR, 795
5. In re: *R.C. Mehta*, AIR 1982 Guj. 193
6. *L. K. Pandey v/s UOI* (1984) 2 SCR pp. 826-828.
7. *Ibid* - pp. 835, 836, 848
8. *Supra* p. 838
9. Appendix C
10. Appendix D
11. *L.K. Pandey v/s UOI* (1984) 2 SCR pp. 833-834
12. *Supra* p. 837
13. *Supra* p. 832
14. Appendix E
15. *Supra* p. 845-847
16. *Supra* p. 847
17. *Supra* p. 847
18. *Supra* p. 845
19. Miscellaneous Petition No. 178 of 1982 quoted in *L.K. Pandey* (1984) 2 SCR, p. 795, 843
20. *Supra* p. 841
21. *Supra* p. 842
22. *Supra* pp. 839-840
23. *Supra* pp. 837-838
24. *Supra* p. 838
25. *Supra* p. 839
26. *Supra* p. 839
27. *Supra* p. 848

CHAPTER 6

THE ROLE OF THE CHILD WELFARE AGENCIES

6.1. Only those child welfare agencies as are recognised by the Government can undertake the work of inter-country adoption, for the purpose of which no specific statutory law is in force in our country. Therefore, the Supreme Court in its landmark judgment¹ on the subject had to rely upon the Guardians and Wards Act, 1890² and the International conventions and Declarations³ for laying down the necessary guidelines for regulating inter-country adoption, reference to which has already been made in the earlier Chapters.

Pursuant to the court judgment, the Central Government issued guidelines on adoption of Indian children by foreigners for the information and guidance of general public, voluntary agencies as well as all other concerned with the subject matter.⁴

6.2. The guidelines issued by the Central Government are binding on the child welfare agencies recognised and working for inter-country adoption. The role of such voluntary agencies is determined, regulated and supervised under the guidelines issued, which are based on the Supreme Court Judgment.

These guidelines also deal with the role of foreign agencies engaged in adoption of Indian children. Foreign agencies are required to apply to India's adoption of Indian children. Foreign agencies are required to apply to India's are protected.

6.3. In order to elicit information, the Law Commission addressed communication⁵ to the 41 child welfare agencies which are recognised⁶ by CARA for the purpose of placing children in inter-country adoption. In all 31 agencies⁷ responded to the communication. The responses received by the Law Commission disclosed the practical working experiences gained and the actual role played by the child welfare agencies in inter-country adoption under the guidelines issued by the Government of India.

6.4. It is to be noted at the outset that all recognised child welfare agencies working in the field for inter-country adoption have shown willingness and ability to follow the guidelines laid down by the Supreme Court. Institutional backgrounds and value commitments of the responding agencies have been reflected in their respective responses. These agencies are running children's homes for crisis-affected babies who are brought to them by the police or abandoned by unwed mothers. They believe that society must value its children and solve the problem of their destitution.

6.5. Various child welfare agencies working in the field of inter-country adoption had in their responses highlighted the working of the scheme relating to the adoption of Indian children by foreign agencies. Those agencies have faced a number of problems and they have made suggestions for the removal of those problems and also for facilitating the smooth functioning of the entire scheme to provide inter-country adoption. We have gone through the responses and the various suggestions made therein. The Commission expresses its deep appreciation of the commendable work being done by the voluntary organisations in this field. The details of the responses are contained in Appendix I. On a close scrutiny and analysis of the responses, we find that the experience gained by agencies shows a remarkable phenomenon that contrary to general belief Indian children adopted by foreign parents are looked after well and they have full opportunities for their development. In our opinion, this should be an eye opener to those who express apprehension or spread disinformation against adoption of Indian children by foreigners. All this has been possible due to the implementation of the guidelines laid down by the Supreme Court and also on account of the special interest taken by the Welfare Ministry of the Central Government.

The valuable opinions and suggestions as contained in the responses have been taken into consideration in formulating our recommendations and also in drafting the proposed legislation. We do not, therefore, consider it necessary to express our view in detail on the responses. Some of the suggestions are not practicable and as such we have not recommended for their implementation.

6.6. The problems faced and suggestions made, by the Child Welfare agencies, being relevant for the purpose of this report, are summarised as under :

1. Law on adoption should be "child centred" and look after the interests of children on a priority basis.

2. There is no statutory law providing for adoption of children in India except the personal law of Hindus and there is a need to have a secular law which should be enabling and permissive in order to encourage adoption so that the home to the needy child is provided.

3. Prior to placing a child with a foreign family, every effort should be made to locate an Indian family for the child. Should a family for a particular child be unavailable with the placement agency, then assistance through the Voluntary Coordinating Agency (V.C.A.) within each state should be sought and utilised. In this way suitable Indian families from other adoption agencies can be located. It is through strengthening the local VCAs that the task of inter-agency coordination can be accomplished.

The V.C.A. should comprise personnel not involved in the placement of children for foreign adoptions. Only those children who are not placeable in our own country should be placed in foreign adoption. Specific time schedule should be prescribed by law for the placement of child within the country failing which the child should be considered free for foreign adoption.

4. A wife or a husband who has been deserted by other spouse for more than one year should be allowed to relinquish, if necessary, the child below 5 years, to the orphanages legally. This will help to prevent child abuse. The spouse, having custody of a child, should be considered a sole guardian of such child for surrendering it to the orphanage.

5. Once an agency applies to CARA for clearance certificate for the proposed inter-country adoption of a child and no reply is received within 15 days, the permission should be deemed to have been given in the interest of the child to provide him love and warmth of a family life at the earliest.

The handicapped children should be exempted from requirement of clearance from CARA for placement abroad, as such children need special care, attention and treatment including surgery; and there are families from abroad who may be willing to take such children but due to the time factor involved in clearing applications finally do not wish to pursue the matter.

It is, therefore, suggested that CARA should only be a monitoring body and keep a check on the various agencies through the quarterly reports that are being regularly sent to it and by holding inspections through its organs in the states.

6. The first priority is to locate Indian family, in India, for adoption failing which the next best is an Indian family abroad and only thereafter consideration in the last should be given to the foreign families.

For placing children with Indian families abroad, it is not compulsory that their applications be routed through foreign agencies that are recognised by the Government of India. The NRI applications should be routed through Indian agencies recognised by Government of India to maintain a watch through follow up reports.

7. Adoptive parents must enjoy the same facility of child care leave at par with paid maternity leave. This is essential to help the child's emotional adjustment and physical development.

8. An adopted child must have the right to birth certificate with the name of the adoptive parent as his parents. It is because it becomes degrading for a child to function with an affidavit which gives the circumstances of its birth and abandonment.

It is informed by a social welfare agency operating in Goa, where adopted child is regarded illegitimate from older times. There has been a practice of bringing up illegitimate children to serve as servants of the house and were referred to as adopted loosely.

It is suggested that this can be mitigated to a certain extent if the adoptive parents names are inserted as parents in the birth certificate of the child adopted.

9. In Sweden there is no concept of illegitimate child and, therefore, the child is not looked down upon by its society due to his birth status. It is the duty of the society as well as of the state to save the child from the stigma of illegitimacy for no fault of his.

In the circumstances, the concept of illegitimacy of children should be removed by law.

10. It is observed that the Courts delay considerably to settle adoption cases by foreign nationals despite the guidelines of the Supreme Court to dispose them expeditiously. Because of this delay, sometimes foreign adoptive parents become so impatient that they start looking for another child from some other country for adoption.

Though adoption is a low priority area, yet there has been months at a stretch when no judge was available at some places to hear adoption cases thereby causing great anxiety to waiting parents and children. Therefore, guardianship applications should be disposed of by the family courts who understand emotional aspects of a family life.

11. Although the passport to the child proposed to be given in inter-country adoption be issued within a week under the Supreme Court guidelines, the passport authorities even then take months together to issue passport. It is suggested that the passport should be issued within two weeks.

12. The limit of the security bond to be furnished by the foreign agency is required to be curtailed to some reasonable limit from rupees five laks as laid down by the guidelines now.

13. The licence given for agencies doing inter-country adoption should be for three years instead of one year at present. This would be helpful in a continuous process of placement of Indian children in foreign adoption.

14. That guidelines with respect to increasing the quota in in-country adoption should be laid down only after bringing a uniform law of adoption for all communities in India.

15. The Indian Child Welfare agencies should be given opportunities to make on the spot study of the adopted children and bring the firsthand information to be shared with all interested parties about the life of these children living with their adoptive parents abroad.

16. Although adoption by Indian parents is growing in number, yet the families normally go around selecting babies of their choice. As such, babies who are ill-nourished, very dark in complexion, handicapped, having medical problems or special need do not find homes in India. If we cannot find the family life for these children in our country, it is suggested, we must not hesitate to select foreign families for them.

17. The children suffer trauma and set back in life due to parental poverty, neglect, abuse and for having too many children to be looked after. A suggestion is, therefore, made that family planning should be encouraged by law providing for a smaller family unit and non-discriminatory social status for the girl child.

18. In Goa children are given in guardianship under the Portuguese Code which applies to all communities in Goa. Though the general civil laws, in force in Goa, do not permit adoption the Hindus adopt children under the law of Usages and Customs, but only from a close family member, preferably the second issue of the adoptive father's brother. However, considering the present trend of having small families, it was becoming increasingly difficult to find a child to adopt as permitted under the usages and customs and, therefore, many Hindus could not adopt but only take in guardianship as is done by the other communities in Goa. People in Goa ask "How do you expect us to adopt when there is no law of adoption."

19. In India, we must have a uniform and secular adoption law for in-country and inter-country adoptions.

20. The capable parents should be allowed to adopt more than one child at a time even if they are not siblings and may have a living child, male or female, of their own.

21. All children including the adopted children in a family should get equal property share.

6.7. It is noticed that certain Diplomatic Missions in Delhi had flouted inter-country adoption directives. The letter had alleged, inter alia, that "it is a matter of great concern that unsuspecting foreign nationals are misguided and misled by vested interests of the lawyers, private nursing homes or individuals." It is alleged that adoption application to the hospital by foreign parents having three older children of their own was in response to an advertisement in an "In-house" magazine of foreign mission. It is said that the advertisement in question was itself questionable.

6.8. The above discussion shows that there is need for Inter-Country Adoption law. The Child Welfare Agencies have suggested for a uniform and secular law on adoption. The Law Commission is however of the view that since the scope of this report is confined to Inter-Country Adoption, it is not possible to express any opinion on this subject.

FOOTNOTES—CHAPTER 6

1. *Laxmi Kant Pandey v/s UOI* (1984) 2 SCR, 795.
2. *Supra*
3. *Supra*
4. Resolution of July 1989
5. Appendix F
6. Appendix G
7. Appendix H
8. A letter dated 26th August, 1992 addressed by the President of Delhi Council for Child Welfare to the Joint Secretary, Government of India, Ministry of Welfare was forwarded to the Law Commission.

CHAPTER 7

RECOMMENDATIONS

7.1. In the earlier chapters of this Report we have discussed various aspects of the problem of inter-country adoption. The position which finally emerges is that there is a demand for a uniform law regulating adoption in general, particularly regulating the demand for adoption of abandoned children by foreign parents. It is, therefore, necessary to enact appropriate legislation regulating such adoptions as the existing practice and procedure contained in the Guardians and Wards Act, 1890 are inadequate to regulate the inter-country adoptions. The proposed law should regulate matters relating to adoption of Indian children by foreign parents with a view to eliminating profiteering and trafficking in children and preventing abuse and exploitation of children by foreign parents and above all ensuring the welfare of the child proposed to be given in adoption.

7.2. The Commission is of the view that biological parents provide the best family environment for the full growth and development of a child. But such environment is not available to an abandoned child placed in an orphanage. Therefore, adoption of such a child is the best substitute for the biological family. While considering the question of giving a child in adoption, the first preference should be given to Indian parents, the second choice should be given to non-resident Indian parents and if none of these are available, the child should be given in adoption to the foreign parents. Such child may or may not be abandoned child.

7.3. The proposed legislation should provide that after an adoption order is passed, the foreigner should be guardian of the child and he should thereafter be free to take away the child to his country.

7.4. The inter-country adoption law is recommended in order to regulate matters relating to adoption of Indian children by foreign parents with a view to eliminating profiteering and trafficking in children and preventing completely abuse and exploitation of children adopted by foreign parents and ensuring the welfare of the child proposed to be given in adoption to foreign parents.

7.5. The proposed law should regulate adoption of a child with the consent of the biological parents or in the case of an abandoned child with the consent of the child welfare agency recognised for the purpose of inter-country adoption. The consent given should be free from duress or inducement and after the proper counselling in the case of the biological parents with regard to the implications of their consent for adoption of their child. When a child has rational understanding, the consent of the child after proper counselling should be obtained.

7.6. It should be ensured that on adoption of the child the authorities will issue a birth certificate to the child indicating the adoptive parents as his or her parents.

7.7. A passport to a child should be issued within two weeks to enable him to go out of India to join his proposed adoptive parents.

7.8. The proposed legislation should provide a mechanism to ensure for the welfare of the child in the country of the adoptive parents.

7.9. The proposed law should provide that the progress reports of the child should be submitted by the sponsoring foreign agencies for a period of 5 years or till the child attains the age of 12 years, whichever is later. The reports sent should be quarterly in the first two years, six monthly in the next three years and thereafter yearly, if required, till the child attains the age of 12 years.

7.10. The proposed law in our opinion should permit adoption by a foreigner only if the child can be eventually adopted under the corresponding law of his country. In other words if the law of the foreigner's country does not provide for adoption, then he should not be entitled to adopt Indian child.

7.11. A provision in the proposed legislation should be made to ensure that in case the proposed adoption by foreign guardian is disrupted because of certain unforeseen circumstances, the child should either be placed with some other suitable adoptive family with the concurrence of the Government of India or of some other agency designated by it, or is repatriated back as the last resort, to the placement agency in India.

7.12. The proposed legislation should have a provision that the sponsoring foreign child welfare agency may have its representative in India who may be an Indian citizen, with professional qualifications and experience in child welfare work. The representative should not act for more than one foreign child welfare agency and have the right to open and operate account in any Indian Bank for and on behalf of such foreign child welfare agency with the permission of the Reserve Bank of India.

7.13. When there is a family court, the matter of adoption under the proposed law should be seized and decided by the family court, or when there is no family court, a district court having jurisdiction over the place where a child ordinarily resides shall be the competent court.

7.14. In view of the importance of the matters under the proposed law, it is necessary that the proceedings in the court are disposed of at the early date. It is recommended that the court should not take ordinarily more than three months in disposing of an application for inter-country adoption and it is desirable that the proceedings are held in camera.

7.15. With the passage of time, there will be heavy demands as to the efficacy and promptness of the role of the Central Adoption Resource Agency (CARA) which has been established by the Government of India. The present CARA appears to be a weak organization in terms of its composition, man power and working conditions. There is a need to make CARA an effective organization with its regional branches at appropriate places.

7.16. A provision with regard to fund in order to enable CARA to perform its functions under the proposed law should be made.

7.17. A provision ensuring accountability of CARA to Parliament through annual reports reflecting its true and full activities each year should be made in the proposed law.

7.18. The proposed law should prescribe conditions for recognition of foreign and Indian child welfare agencies and also for their derecognition in appropriate cases.

7.19. In order that inter-country adoptions work smoothly and effectively it would be desirable for the Central Government to enter into bilateral treaties with the countries where the Indian children are taken out under the court orders for their eventual adoptions in accordance with the laws of those countries.

7.20. As far the question of legislative competence is concerned, Parliament has power to make law on the subject of inter-country adoption under Articles 246(1) and 253 read with Entry 14 in List I Union List in the Seventh Schedule. Article 246(1) confers exclusive power on Parliament to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule. Article 253 gives Parliament exclusive power to make laws for giving effect to international agreements treaties and conventions. Entry 14 of the Union List reads as under—

“ 4 *Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries.”

As noted earlier, India is a signatory to International conventions and declarations governing the inter-country adoption of children. Effect to the conventions can be given only by laws enacted by Parliament.

Moreover, under Article 246(2), Parliament has concurrent power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule. Adoption, which can be both in-country and inter-country, is the subject included under Entry 5. Therefore, Parliament has power to make law on inter-country adoption under Article 246(2) read with Entry 5 in the Concurrent list in the Seventh Schedule. Such law when enacted will foster respect for international law and treaty obligations as envisaged under Article 51(c) of the Constitution of India.

7.21. In view of the above discussion the Law Commission recommends that law should be enacted to regulate inter-country adoption and for the purpose of legislative convenience a Draft of the proposed enactment is annexed as Appendix 'A' to the Report.

The Law Commission hopes that the Government will take immediately effective steps to implement the Report and enact the law in order to safeguard the interests of children.

Sd/-

(JUSTICE K. N. SINGH)
Chairman

Sd/-

(PROF. D. N. SANDANSHIV)
Member

Sd/-

(CH. PRABHAKARA RAO)
Member-Secretary

Sd/-

Sd/-

(P. M. BAKSHI)
Member (Part-Time)

(M. MARCUS)
Member (Part-Time)

APPENDIX 'A'
The Inter-Country Adoption Bill 199

Bill No..... of 199

A Bill to provide for the Inter-Country Adoption and matters connected therewith.

CHAPTER I
PRELIMINARY

Be it enacted by Parliament in the Forty.....Year of the Republic of India, as follows:—

1. Short Title, Extent and Commencement.—(1) This Act may be called the Inter-Country Adoption Act, 199 .

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by Notification in the Official Gazette, appoint.

2. Definition.—In this Act, unless the context otherwise requires—

(a) 'adoption' means inter-country adoption;

(b) 'adoption order' means an order made under section 4;

(c) 'child' means a person who is a citizen of India of either sex, who, on or before the date on which an application for an adoption order in respect of such person is made has not completed the age of eighteen years;

(d) 'court' means the family court established under the Family Court Act, 1984 and where no such court has been established a District Court;

Provided that the Government may, by Notification in the Official Gazette, empower, subject to such conditions and restrictions as may be specified in the notification, any other civil court to exercise the power and discharge the functions and duties of the court in respect of all or any of the matters dealt within this Act and the court so empowered shall be deemed to be a court for the purposes of this Act in respect of the matters and subject to the conditions and restrictions as may be specified in the notification.

(e) 'foreigner' means (i) a person who is not a citizen of India; or (ii) who is a citizen of India but not domiciled in India;

(f) 'Government' means Central Government of India;

(g) 'institution' means an institution recognised under Section 23;

(h) 'inter-country adoption' means adoption of a child by a foreigner;

(i) 'notification' means a notification published in the Official Gazette;

(j) 'Prescribed' means prescribed by rules made under this Act.

CHAPTER II

ADOPTION ORDER : CONDITIONS AND EFFECT

3. Inter-country Adoption.—No Inter-country adoption shall be made except in accordance with the provisions of this Act and any adoption made in contravention of such provisions shall be void.

4. Power to make Adoption Order.—Subject to the provisions of this Act, the Court may, upon an application made in the prescribed manner by a foreigner or institution acting on his behalf make an adoption order.

5. Conditions for Adoption Order.—If upon an application made by or on behalf of foreigner, the court is satisfied that the applicant intends to adopt a child under the law of or within the country in which he is domiciled, and for that purpose desires to remove the child from India either immediately or after an interval the court may make an adoption order authorising the applicant to remove the child for the purpose aforesaid and giving to the applicant the care and custody of the child pending his adoption as aforesaid:

Provided that no application shall be entertained unless it is accompanied by a certificate by the Government to the effect that—

- (i) the applicant is in its opinion eligible and suited to adopt the child;
- (ii) the welfare and interests of the child shall be safeguarded under the law of the country of domicile of the applicant;
- (iii) the applicant has made proper provision by way of deposit or bond or otherwise in accordance with the rules made under this Act to enable the child to be repatriated to India, should it become necessary for any reasons;
- (iv) law of the applicant's country provides for adoption and the applicant undertakes to adopt the child in accordance with law of his country;
- (v) the child shall be treated as if he was born to adopters in lawful wedlock for all purposes with effect from the date of adoption in the foreigner's country.

6. Effect of Adoption Order.—On the making of an adoption order under Section 4 of this Act, the child shall be in the custody of the foreign applicant who will be deemed to be the guardian of the child from the date of making of the adoption order by the court till the child is eventually adopted according to the law of the applicant's country.

CHAPTER III

ADOPTION OF INDIAN CHILDREN BY FOREIGNERS

7. Who may Adopt.—(1) Subject to sub-section (2) and (3), a foreigner who has completed the age of twenty-five and is of sound mind may adopt a child under this Act.

Explanation : In the case of adoption of a child by spouses the requirement as to age under this Sub-section shall be deemed to have been satisfied if either of the spouses has completed the age of twenty-five years.

(2) A foreigner who is married shall not be entitled to adopt a child himself or herself alone but the husband and wife may jointly adopt a child.

(3) A foreigner who is not married seeking to adopt a child shall be older than the child by at least twenty-one years:

Provided that the court may dispense with the requirements of this sub-section, if it is satisfied that there are any special circumstances which render it necessary to do so.

(4) Notwithstanding the provisions of this section, the mother or father of a child not born in lawful wedlock may, either alone or jointly adopt such child whether or not such mother or father of the child—

- (a) has completed the age of twenty-five years; or
- (b) is older than the child by twenty one years.

8. Adoption of a Female Child.—No adoption order shall be made in respect of a female child if the foreign applicant is the unmarried male, unless the court is satisfied that there are special circumstances to justify the making of an adoption order.

9. Consents.—(1) No adoption order in respect of a child shall be made except with the consent of the parents of the child or the institution having care of the child.

(2) Where the child has rational understanding as to the act of adoption, the court shall ensure that the child has been counselled and informed of the effect of adoption and has freely consented to it.

(3) The manner in which the consent referred to in sub-section (1) and (2) may be obtained shall be such as may be prescribed.

CHAPTER IV

JURISDICTION, POWERS AND PROCEDURE OF THE COURT

10. The Court having jurisdiction to entertain applications.—Application for making an adoption order shall be made to the court having jurisdiction over the place where the child to be adopted ordinarily resides on the date of the application.

11. Powers and Procedure of the Court.—(1) Subject to any rules that may be prescribed in this behalf and principles of natural justice, the court may follow such procedure as it may think just and fair in hearing each application for adoption order.

(2) The court may receive as evidence any report, statement, document, information or matter that may in its opinion assist it to deal with the application.

(3) In proceedings under this section, any report by an Indian Counsellor Officer or an Indian diplomatic officer or a deposition made before an Indian Counsellor Officer or an Indian diplomatic officer and authenticated under the signature of that officer shall be admissible as evidence of the matters stated therein, and it shall not be necessary to prove the signature or official character of the person who appears to have signed any such report or deposition.

(4) The Court shall ordinarily dispose of an application for making an adoption order within a period of three months.

12. Proceedings to be held in Camera.—Proceedings under this Act shall be held in camera if the Court thinks it necessary or if either party so desires.

13. Matters to be Considered in making Adoption Order.—(1) The Court, before making an adoption order shall satisfy itself:

(a) that the person or the institution whose consent is required under this Act, and if such consent has not been dispensed with, has given consent after due counselling, with regard to the nature and effect of the adoption order.

(b) that the inter-country adoption shall be in the best interest of the child.

(c) that efforts made for adoption of the child in India have been unsuccessful;

(d) that no person has made or offered or agreed to make or give any payment or other reward in consideration of the adoption except such as the court may sanction.

(2) In determining whether adoption order, if made will be for the welfare of the child, the court shall have regard to social, financial and marital status and the health of the applicant.

(3) The court in making adoption order may impose such conditions as it may think fit, and in particular, it may require the foreigner by bond or otherwise to make for the child such provision as in the opinion of the court is just and proper, for the security of the child as may be prescribed.

(4) An adoption Order made by the Court under Section 4 shall be final.

CHAPTER V

RESTRICTIONS, PROHIBITIONS, CONTRAVENTIONS AND PUNISHMENT

14. Restrictions on Removal of a Child for Adoption Outside India.—

(1) Except under the authority of an order under Section 5, it shall not be lawful for any person to take or send out of India a child to any place outside India with a view to the adoption of the child by a foreigner.

(2) Any person who takes or sends a child out of India to any place outside India in contravention of sub-section (1) or makes or takes part in any arrangements for transferring the care and custody of a child to any person with a view to adoption by a foreigner shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

15. Prohibition of certain payments.—(1) Subject to the provision of this section it shall not be lawful for any person or organization to receive any payment from a foreigner in consideration of—

- (a) the adoption of a child; or
- (b) the consent given in connection with the adoption of a child; or
- (c) the care and custody transferred of a child with a view to the adoption;
- (d) making any arrangements for the adoption of a child.

(2) Sub-section (1) shall not be applicable if the payment to an institution by a foreigner is sanctioned by an adoption order of the court in respect of expenses incurred by the institution in connection with the child.

16. Restrictions on advertisements.—Except with the leave of the court, it shall not be lawful to publish any advertisement indicating that a foreigner desires to adopt a child or a child is available for adoption.

17. Punishment.—Any person who contravenes any provision of this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

CHAPTER VI

BIRTH CERTIFICATE AND PASSPORT

18. Issue of Birth Certificate.—Wherein respect of any child an adoption order is made and particulars relating to the birth of the child have been registered before the adoption order under any law, the authority for the time being empowered to give certified extracts of such particulars shall, upon an application made on behalf of the child and upon being satisfied that the adoption order in respect of the child has taken effect, issue or cause to be issued a provisional certificate of such particulars setting out the names of the adoptive parents in place of the names of the natural parents of the child.

19. Issue of Passport.—(1) In case the adoption order is made under Section 4 of the Act, the institution shall be entitled to obtain a passport for the child for whose benefit the order has been made from the passport authority under the Passport Act, 1967.

(2) Subject to Section 5 of the Passport Act, 1967, on receipt of an application under sub-section (1) of this section, the passport authority shall ordinarily issue the passport within two weeks.

CHAPTER VII

THE CENTRAL ADOPTION RESOURCE AGENCY: COMPOSITION, POWERS AND FUNCTIONS

20. Setting up of Central Adoption Resource Agency.—(1) The Central Government shall constitute a Central Adoption Resource Agency within six months from the commencement of this Act.

(2) The Central Adoption Resource Agency shall consist of a Chairman and six members having special knowledge or experience in regard to matters relating to child welfare and administration of child welfare institutions:

Provided that not less than one-half of the members shall be women.

(3) The term of office of the Chairman and Members, meetings, validity of proceedings and other matters relating to the effective functioning of the Central Adoption Resource Agency may be prescribed.

(4) The Central Adoption Resource Agency may have its branches at such places as it may consider necessary.

21. Powers and Functions of the Central Adoption Resource Agency.—

(1) The Central Adoption Resource Agency shall act as a clearing house of information of the children available for inter-country adoption and of the foreign adoptive parents.

(2) The Central Adoption Resource Agency may provide information to the central authority set up by the Government of the foreign country concerning adoption and such other information relating to the welfare of the child as may be prescribed.

(3) The Central Adoption Resource Agency shall—

- (a) collect, preserve and exchange information about the child and the adoptive parents to the extent it is necessary for the adoption;
- (b) maintain the list of recognised foreign welfare institutions;
- (c) obtain child progress report from the centre authority of the country of the adoptive parents as may be prescribed;
- (d) facilitate, follow and expedite adoption proceedings; and
- (e) perform such other functions as may be prescribed.

22. Fund of the Central Adoption Resource Agency.—The Central Government may, after due appropriation made by Parliament by law, in this behalf, make in each financial year such contribution to the Central Adoption Resource Agency as it may think necessary to enable the Central Adoption Resource Agency to perform its functions under this Act.

23. Annual Report.—The Central Adoption Resource Agency shall prepare once every year, in such form and at such time as may be prescribed, an annual report giving a true and full account of its activities during the previous year; and copies thereof shall be forwarded to the Central Government and the Government shall cause the same to be laid before both Houses of Parliament.

24. Recognition of Institutions for Inter-country Adoption Work.—The Central Adoption Resource Agency may recognise any institution for the purpose of inter-country adoption of children.

25. Conditions for Recognition of Institutions.—Before the recognition to an institution is given the Central Adoption Resource Agency shall satisfy itself that the institution:

- (a) pursues only non-profit objectives;

- (b) is managed by persons having training or experience in the field of inter-country adoption; and
- (c) satisfy such other conditions as may be prescribed.

26. De-recognition of Institutions.—The Central Adoption Resource Agency may, for reasons to be recorded in writing, de-recognise an institution:

Provided that no such order shall be made without affording opportunity of hearing to the institution.

27. Appeals against Orders of Central Adoption Resource Agency.—(1) Any institution aggrieved by an order of the Central Adoption Resource Agency de-recognising it may, within such time as may be prescribed prefer an appeal to the Government.

- (2) The decision of the Government on such appeal shall be final.

CHAPTER VIII

BILATERAL AGREEMENTS

28. Agreement with Foreign Countries.—The Central Government may enter into agreement with the Government of any foreign country to ensure the welfare of Indian Child adopted by foreign parents, with special reference to matters hereinafter stated:

- (a) for determination of eligibility and suitability of an applicant of that country for adoption of a child from India;
- (b) for completing an early adoption of child under the corresponding law of adoption in force in that country;
- (c) for monitoring the welfare of child in that country and for periodical reports;
- (d) for enabling the child to be assimilated in the environment of that country;
- (e) for the prevention of exploitation, discrimination and abuse of child or investigation of cases relating to such acts and punitive actions under the law in force in that country;
- (f) for securing equal rights and status to the child as if he was born to the adopters in lawful wedlock for all purposes;
- (g) for enabling the child to be adopted by alternative eligible and suitable parents or repatriated to India, should it become necessary for any reason; and
- (h) for the recognition of the child agencies working in that country for child welfare.

29. Countries with which no agreement Exists.—Where an adoption order is made under this Act and the country to which the foreign parents belong has not entered into agreement, the Central Government may take appropriate steps to ensure the welfare of the child including the repatriation of the child, should it become necessary.

CHAPTER IX

POWER TO REMOVE DIFFICULTIES AND TO MAKE RULES

30. Power to Remove Difficulties.—If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty:

Provided that no order shall be passed after two years from the commencement of this Act.

31. Power to Make Rules.—(1) The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), such rules may provide for—

- (a) the manner in which an application for adoption order shall be made under section 4;
- (b) proper provision by way of deposit or bond in order to enable the child to be repatriated under proviso (iii) of Section 5;
- (c) the manner in which consent may be obtained to the adoption of a child and other matters relating to such consent under sub-section (3) of Section 9;
- (d) the procedure which may be followed in the Court in the proceedings under sub-section (1) of Section 11;
- (e) the terms of office and quorum for the meetings of the Central Adoption Resource Agency and the procedure to be followed by it under sub-section (3) of Section 20;
- (f) exchange of information under sub-sections (2), 3(c) and (e) of Section 21;
- (g) the form and manner in which the annual reports are to be prepared under Section 23;
- (h) the conditions for recognition in respect of an institution under sub-section (d) of Section 25;
- (i) the grounds for derecognition of an institution under Section 26;
- (j) the form, manner and the period within which an appeal may be preferred to the Government under Section 27;
- (k) any other matter for which provision has to be made or may be made by rules.

(3) Every rule made by the Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that rule should not be made, the rule shall thereafter have effect only in such modified form or be of an effect, as the case may be; however, that any such modification of annulment shall be without prejudice to the validity of anything previously done under that rule.

APPENDIX 'B'

Adoption of Children Bill, 1980

(*Clauses 23 and 24*)

23. Restriction on removal of Child for Adoption Outside India.—

(1) Except under the authority of an order, under section 24, it shall not be lawful for any person to take or send out of India child who is a citizen of India to any place outside India with a view to the adoption of the child by any person.

(2) Any person who takes or sends a child out of India to any place outside India in contravention of sub-section (1) or makes to take part, in arrangements for transferring the care and custody of a child to any person for that purpose shall be punishable with imprisonment for a term which may extend to six months or with fine, or with both.

(3) In any proceeding under this section a report by an Indian consular officer or an Indian diplomatic officer or a deposition made before an Indian consular officer or an Indian diplomatic officer and authenticated under the signature of that officer shall be admissible as evidence of the matters stated therein, and it shall not be necessary to prove the signature or official character of the person who appears to have signed any such report or deposition.

24. Provisional Adoption by Person domiciled out of India.—

(1) If upon an application made by a person who is not domiciled in India, the district court is satisfied that the applicant intends to adopt a child under the law of or within the country in which he is domiciled, and for that purpose desires to remove the child from India either immediately or after an interval, the court may make an order (in this section referred to as a provisional adoption order) authorising the applicant to remove the child for the purpose aforesaid and giving to the applicant the care as aforesaid:

Provided that no application shall be entertained unless it is accompanied by a certificate by the Central Government to the effect that—

- (i) the applicant is in its opinion, a fit person to adopt the child;
- (ii) the welfare and interests of the child shall be safeguarded under the law of the country of domicile of the applicant;
- (iii) the applicant has made proper provision by way of deposit or bond or otherwise in accordance with the rules made under this Act to enable the child to be repatriated to India, should it become necessary for any reason.

(2) A provisional adoption order may be made under this section in case where an adoption order could be made in respect of the child under this Act but shall not be made in any other case.

(3) The provisions of this Act relating to an adoption order shall, as far as may be, apply in relation to a provisional adoption order made under this section."

APPENDIX 'C'
Home Study Report

1. **Source of referral.**
2. Number of single and joint interviews.
3. Personality of husband and wife.
4. **Health details such as clinical tests, heart condition, past illnesses etc. (medical certificates required sterility certificate required, if applicable).**
5. **Social status and family background.**
6. Nature and adjustment with occupation.
7. Relationship with community.
8. **Description of home.**
9. Accommodation for the child.
10. Schooling facilities.
11. Amenities in the home.
12. Standard of living as it appears in the home.
13. Type of neighbourhood.
14. Current relationship between husband and wife.
15. (a) Current relationship between parents and children (if any children)
(b) Development of already adopted children (if any) and their acceptance of the child to be adopted.
16. Current relationship between the couple and the members of each other's families.
17. If the wife is working will she be able to give up the job?
18. If she cannot leave the job, what arrangements will she make to look after the child?
19. Is adoption considered because of sterility of one of the marital partners?
20. If not, can they eventually have children of their own?
21. If a child is born to them, how will they treat the adopted child?
22. If the couple already has children how will these children react to an adopted child?
23. Important social and psychological experiences which have had a bearing on their desire to adopt a child.
24. Reasons for wanting to adopt an Indian child.
25. Attitude of grand-parents and relatives towards the adoption.
26. Attitude of relatives, friends, community and neighbourhood towards adoption of an Indian child.
27. **Anticipated plans for the adopted child.**

28. Can the child be adopted according to the adoption law in the adoptive parents country?
Have they obtained the neccssary permission to adopt? (Statement of permission required.)
29. Do the adoptive parents know any one who adopted a child from their own country or another country? who are they? From where did they fail to get a child from that source?
30. Did the couple apply for a child from any other source? If yes, which source?
31. What type of child is the couple interested in? (sex, age, and for what reasons.)
32. Worker's recommendation concerning the family and the type of child which would best fit into this home.
33. Name and address of the agency conducting the home study Name of Social worker, qualification of social worker.
34. Name of a agency responsible for post placement, supervision and follow up.

APPENDIX 'D'

On the Documents, Certificates and Declarations as mentioned in the Supreme Court Judgement (1984) 2 SCR P. 795; To be annexed with an Application of Inter-Country Adoption

- (a) A Home Study Report.
- (b) A recent photograph of the family.
- (c) A marriage certificate of the foreigner.
- (d) A declaration concerning health together with a certificate regarding medical fitness duly certified by medical doctor.
- (e) A declaration regarding financial status along with supporting documents including employer's certificate, where applicable, income-tax assessment orders, bank references and particulars concerning the properties owned.
- (f) A declaration stating that they are willing to be appointed guardian of the child.
- (g) An undertaking that they would adopt the child according to the law of their country within a period of not more than two years from the time of arrival of the child in their country.
- (h) An undertaking that they would give intimation of such adoption to the Court appointing them as guardian as also to the social or child welfare agency in India processing their case.
- (i) An undertaking that they would maintain the child and provide it necessary education and upbringing according to their status.
- (j) An undertaking that they would send to the Court as also to the social or child welfare agency in India reports relating to the progress of the child along with its recent photograph, the frequency of such progress reports being quarterly during the first two years and half yearly for the next three years.
- (k) A power of attorney in favour of an officer of the social or child welfare agency in India which is requested to process the case and such power of attorney should authorise the attorney to handle the case on behalf of the foreigner in case the foreigner is not in a position to come to India.
- (l) The social or child welfare agency sponsoring the application of the foreigner must also certify that the foreigner seeking to adopt a child is permitted to do so according to the law of his country.

APPENDIX 'E'

Child Study Report

- (1) Identifying information, supported where possible by documents.
- (2) Information about original parents, including their health and details of the mother's pregnancy and birth.
- (3) Physical, intellectual and emotional development.
- (4) Health report prepared by a registered medical practitioner preferably by a paediatrician.
- (5) Recent Photograph.
- (6) Present environment—category of care (own home, foster home, institution etc.) relationships, routines and habits.
- (7) Social worker's assessment and reasons for suggesting inter-country adoption.

APPENDIX 'F'

385931 No. 6(3) (15)/92-LC(LS)

18 Sep 92 and
23 Sep 92.

To

Secretaries of the
Institutions mentioned at
Appendix 'D'

Sir,

I have the pleasure to inform you that the Law Commission of India has decided to make a study on the aspect of adoption of Indian children by foreigners with a view to find out unscrupulous elements, if any, crept in it and to make recommendations to the Government of India to enact an effective law to check illegal trading in Indian children under the disguised inter State adoptions. It has come to the notice of the Law Commission that your society is one of the esteemed societies, which is involved in rehabilitation of abandoned children to provide them with a family atmosphere and put in the best efforts for adoption of these children by Indian as well foreign parents. It is also understood that your society has given certain children in adoption to the foreigners and is aware of various difficulties/problems related to such adoptions.

With a view to accomplish the object of making recommendation to the Government of India for enacting an effective law, I am directed to take this opportunity and to request you to make us aware on the following points:

- (a) How many children have been given in adoption to foreign parents by your society so far? If possible, please send the details of adoption by the foreign parents, country-wise, sex-wise, religion-wise etc.
- (b) Do you have some monitoring mechanism to ensure that the child growth, physically, emotionally, intellectually, spiritually etc.? Whether goes into the right family which would provide an atmosphere of full such monitoring is through the Government of the country of the adoptive parents or social welfare agencies operating therein?
- (c) Whether any discrimination, exploitation, abuse or misuse of the adopted child by the foreign adoptive parents has come to your notice? If so, details thereof.
- (d) Any other information(s) related to above said issue.

You are requested also to send your suggestions which you feel should be kept in mind while making recommendations to the Government of India to enact law so that the welfare of the child becomes the prime concern of the inter-country adoption.

You are further requested to send a copy of the constitution of your society to enable us to know about the objectives and working system of your institution.

Yours faithfully,

(Sd/-)
(Dr. SANTOKH SINGH)
Assistant Law Officer

APPENDIX 'G'

List of Agencies recognised for doing Inter-Country Adoption of Children to whom letters at Appendix 'F' were addressed

Andhra Pradesh

1. Guild of Service (Seva Samajam)
Balika Nilayam, 10-3-561/3
Vijaya Nagar Colony,
Hyderabad-500 457.
2. Indian Council of Social Welfare
(Red Hills, Inside Cancer Hospital)
Hyderabad-560 004.
3. Action for Social Development,
1-3-183/40/46/6.
Gandhi Nagar,
Hyderabad-500 038.

Delhi

4. S.O.S. Childrens Village of India,
Kailash Colony-110 048.
5. Missionaries of Charity, Nirmala
Shishu Bhawan, 12, Commissioner Lane,
Delhi-110 054.
6. Delhi Council for Child Welfare
Qudsia Garden,
Yamuna Marg, Civil Lines-110 054.
7. Church of North India Shishu Sangopan Greh,
St. Michel's Compound Hospital Road,
Jangpura-110 014.
8. Holy Cross Social Service Centre,
34, Dr. Mukherjee Nagar West,
New Delhi-110 009.
9. Welfare Home for Children,
68, Raja Garden-110 015.

Gujarat

10. Shri Kathiawar Nirashrit Balashram,
Malviya Road,
Rajkot-360 002.

Goa

11. Caritas Goa,
Paco Patriacial,
Altinha Panaji-403 001.
Goa.

Karnataka

12. Ashraya,
Jawan's Quarters, BDA Park,
Double Road, Indira Nagar-I
Bangalore.
13. Shishu Mandir,
17/11, Cambridge Road,
Ulsoor,
Bangalore-560 038.
14. St. Michel Home,
Old Madras Road,
Indira Nagar,
Bangalore-560 038.
15. Society of Sisters of Charity
St. Genosa Convent
Bal Velero Angelore
Mangalore-560 003.

Kerala

16. Kerala State Council for Child Welfare
Thycaud
Thiruvananthapuram-695 014.
17. Dinasevanasabha
Snehaniketan Social Centre
Pattuvam,
Cannanore,
Kerala.
18. Founding Home (Sisu Bhawan)
Padapuram P.O. Via Karukuthy
Ernakulam District,
Kerala.
19. Holy Infants Mary's Girl Home
53, District Wayanad,
Kerala.

Maharashtra

20. Hindu Women's Welfare Society
Sharadhanand Mahilashram,
Sharadhanand Road, Matunga,
Bombay-400 019.
21. Bal Anand World Children Welfare Trust India
Sai Krupa, 93, Ghatla Village, Chembur,
Bombay-400 071.
22. St. Catherine's Home,
Veera Desai Road, Andheri West,
Bombay-400 058.
23. Shejar Chhaya,
Deodal, Kaman PO. Teluka Vasai
Thane-401 202.

24. Bharatya Samaj Seva Kendra,
No. 5, Koregaon Road,
Pune-411 001.
25. Indian Association for Promotion of Adoption,
RNA House, 1st Floor, Veer Nariman Road,
Fort, Bombay-400 034.
26. Family Service Centre,
Euchavistic Congress Building-III
No. 5, Convent Street, Bombay-400 039.
27. Balwant Kaur Anand Memorial Welfare Society,
Preet Mandis, 18, Dr. Coyasi Road,
Pune-400 001.
28. The Society of Friends of Sassoon Hospital
Pune (Maharashtra).

Orissa

29. Subhadra Mahtab Seva Sadan
At/PO G. Udayagiri
Phulbani District
Orissa.
30. Basundhara (At Chamba Tara)
Khatri Home
Cuttack-753 001
Orissa.

Punjab

31. Anath Sewa Society
Gulab Devi Hospital Road,
Jallandhar-144 008.

Pondicherry

32. Cluny Children's Home
Cluny Sisu Illam;
Pouonnier St. Joseph
No. 8, Romain Rolland Street,
Pondicherry-605 001.

Tamil Nadu

33. Institute of the ~~Franciscan~~ Missionaries of Mary Society No. 3,
Holy Apostles Convent
St. Thomas Mount Babies Home
St. Thomas Mount
Madras-600 016.
34. S.O.S. Children's Villages of India,
Chathnath Homes, Karna Prayag,
Reception-cum-Adoption Centre,
12A, Nageswara Road,
Nungambakkam,
Madras-600 034.

35. Grace Kenett Foundation,
34, Kennetts Road,
Madurai-625 010.
36. Family for Children
(Kuzhanthaikal Kudumpam),
Sunshine House,
93, Mettur Main Road,
Podanur-641 023.
37. Congregation of the Sisters of the Cross of Vhavanod
P.O. Bag No. 395, Tappakulam
Old Goods Shed Road,
Trichinappali-620 002.

West Bengal

38. Society of Indian Children's Welfare
22, Col. Biswas Road,
Ballygunge,
Calcutta.
39. Missionaries of Charity,
54/A, Lower Circular Road,
Calcutta-700 016.
40. Indian Society for Rehabilitation of Children,
No. 112 B, Kankulia Road,
Calcutta-700 029.

Non-Placement Agency

1. Indian Council for Child Welfare,
4, Deen Dayal Upadhyaya Marg,
New Delhi-110 022.

APPENDIX 'H'

List of Agencies recognised for doing Inter-Country Adoption of Children who responded to the letter at Appendix 'F'

Andhra Pradesh

1. The Secretary,
Guild of Service (Seva Samajam)
Balika Nilayam, 10-3-561/3
Vijay Nagar Colony,
Hyderabad-500 457.
2. Indian Council of Social Welfare
(Red Hills, Inside Cancer Hospital)
Hyderabad-500 038.

Delhi

3. S.O.S. Children's Village of India
Kailash Colony
New Delhi-110 048.
4. Missionaries of Charity,
Nirmala Shishu Bhavan,
12, Commissioner Lane,
Delhi-110 054.
5. Delhi Council for Child Welfare
Qudsia Garden,
Yamuna Marg,
Civil Lane,
Delhi-110 054.
6. Church of North India Shishu
Sangopan Greha,
St. Michel's Compound Hospital Road,
Jangpura,
New Delhi-110 014.
7. Holy Cross Social Service Centre,
34, Dr. Mukherjee Nagar West,
New Delhi-110 009.
8. Welfare Home for Children,
68, Raja Garden-110 015.

Gujarat

9. Shiv Kathiawar Nirashrit Balashram,
Malaviya Road,
Rajkot-360 002.

Goa

10. Caritas Goa
Paco Patriacal
Althinho
Panaji-403 001.
Goa.

Karnataka

11. **Ashraya**
Jawan's Quarters, BDA Park,
Double Road, Indira Nagar-1
Bangalore.
12. **St. Michel Home**
Old Madras Road,
Indira Nagar
Bangalore-560 038.

Kerala

13. **Dinasevanasabha**
Snehaniketan Social Centre,
Pattuvam
Cannanore
Kerala.
14. **Founding Home (Sisu Bhavan)**
Padapuram P.O., Via Karukurthy,
Ernakulam District
Kerala.

Maharashtra

15. **Bal Anand World Children Welfare Trust India**
Sai Krupa, 93,
Chatla Village, Chembur,
Bombay-400 071.
16. **St. Catherine's Home,**
Veera Desai Road, Andheri West,
Bombay-400 058.
17. **Shejar Chhaya**
Deodal, Kaman P.O., Taluka Vasai,
Thane-401 202.
18. **Bharatya Samaj Seva Kendra,**
No. 5, Koregaon Road,
Pune-411 001.
19. **Indian Association for Promotion of Adoption,**
RNA House,
1st Floor, Veer Nariman Road,
Fort, Bombay-400 034.
20. **Family Service Centre**
Eochavistic Congress Building-III,
No. 5, Convent Street,
Bombay-400 039.
21. **Balwant Kaur Anand Memorial Welfare Society,**
Preet Mandire, 18, Dr. Coyasi Road,
Pune-411 001.

22. The Society of Friends of Sassoon Hospital,
Pune (Maharashtra).

Orissa

23. Subhadra Mahtab Seva Sadan,
At/PO G. Udayagiri,
Phulbani District,
Orissa.

Punjab

24. Anath Sewa Society,
Gulab Devi Hospital Road,
Jallandhar-144 008.

Pondicherry

25. Cluny Children's Home,
Cluny Sisu Illam,
Pouonnier St. Joseph,
No. 8, Romain Rolland Street,
Pondicherry.

Tamil Nadu

26. Grace Kennett Foundation,
34. Kennetts Road,
Madurai-625 010.
27. Family for Children,
(Kuzhanthaikal Kudumpam)
Sunshine House,
93, Mettur Main Road,
Podanur-641 023.

West Bengal

28. Society for India Children's Welfare,
22, Col. Biswas Road,
Ballygunge,
Calcutta.
29. Missionaries of Charity,
54/A, Lower Circular Road,
Calcutta-700 016.
30. Indian Society for Rehabilitation of Children,
No. 112B, Kankulia Road,
Calcutta-700 029.

Non-Placement Agency

1. Indian Council for Child Welfare,
4, Deen Dayal Upadaya Marg,
New Delhi-110 002.

Note: Letter was also sent to the Central Adoption Resource Agency, Ministry of Welfare, Government of India, New Delhi.

APPENDIX 'T'

Practical Working Experience of the Child Welfare Agencies

The practical working experience gained by the child welfare agencies can be summarised as under:—

(1) When the adoption dossier is received from foreign organisation, it is screened by professional social workers of the recognised child welfare agency. When approval is accorded by Indian agency then such agency, which has approved the adoption dossier, files the case for guardianship in local family court, where such court exists or in a district court.

The Indian Council of Social Welfare screens the family documents of the foreigner and, accordingly, makes a recommendation to the court. The judge gives his order if he is satisfied with the case. Thus that every family applying for adoption from overseas is screened by a series of authorities for their character, motivation, stability, mental and physical health, employment and income and life style.

After such screening there have been no cases of misuse or abuse and the problems which have come to light concern the common problems of teenagers and family situations rooted in the child's sense of rejection by his birth parents.

(2) By and large the children placed in inter-country adoption are those who are either relinquished or abandoned. Hence, the religion of the child has not been determined by the child welfare agencies.

(3) That most of the foreign adoptive couples are Christians and they prefer to adopt even a handicapped child and an ugly looking girl-child, which might not be acceptable to Indian adoptive parents, and the children adopted by them receive the best possible medical and emotional care.

(4) Those who are old enough for employment were selected for the job on the basis of their aptitude and did not face any discrimination. Though they are brought up by white parents, yet the adopted children are totally assimilated into the family net-work and the social fabric. They are not looked upon as immigrants or refugees.

(5) Occasional instances relating to problems of adjustment faced by the children and the family are handled and resolved delicately through counselling by the social Work Agency. To facilitate the child's adjustment some agencies abroad have now organised 'support groups for adoptees'. In these meetings, adoptees are able to discuss and come to terms with various issues on adoption.

(6) Some of the Indian agencies observed that adoptive parents tend to be over indulgent and excessively proud of and grateful for their adopted children.

(7) In some countries agencies through which Indian agencies are making adoptive placements in the foreign country organise social get-togethers at Christmas time or summer time. Some of them also organise 'India Day' celebrations.

(8) The Indian Embassies and High Commissions abroad monitor adoptions of Indian children by foreign parents. Post-placement reports are filed in the relevant Indian courts for 5 years. Such reports of the child are sent quarterly during the first two years and half-yearly for the subsequent three years until the adoption is effectuated.

Occasional reports about the welfare and progress of the child are also received from the adoptive parents by the Indian child welfare agencies.

(9) Every year there are visits to India of some foreign adopted children with their adoptive parents. The children are every keen to discover their roots and to know about their country of origin.

(10) Some Indian agencies's workers are visiting the adopted children and their families abroad and sometime conduct social gatherings of these children there in order to get a clear idea about the welfare and progress of the children.

(11) That most of the Indian child welfare agencies have developed close association with foreign child welfare agencies through their work of inter-country adoption. This facilitates better monitoring of the welfare and progress of the Indian children adopted by the foreign parents.

(12) There are some factors which entail the involvement of foreign government officials in the inter-country adoption. Firstly, one of the documents required for inter-country adoption is the 'approval of the country's Government'. This is a document which endorses the validity of the foreign adoption applicants and consequently grants permission for the adopted child's entry into the foreign country. The approval is given after the careful scrutiny of the adoptive parents by their country's government officials/immigration department.

Secondly, the factor requiring foreign government involvement is that all inter-country adoption documents prior to their acceptance need to be notarised and the notarised signature is authenticated by either the Ministry of External Affairs or Justice or Social Welfare of the Country of the foreigner or by an officer of the Indian Embassy/Consulate or High Commission in that country.

Thirdly, the overall monitoring of adoption process and wellbeing of children adopted, with full status, as citizens having equal rights like others is the responsibility of foreign governments.

(13) Generally social welfare agencies do not restrict placement of children to any one country or agency, excepting few of them who restrict their activity to the selected few countries.

(14) In Sweden when a couple applies for adoption the Government established social welfare committee gives an approval of the family checking out their record as citizens of Sweden. Thereafter, a social worker, who is a Swedish Government employee, conducts the 'home study' interviews, visits the home, screens the family for suitability for adoption of a foreign child.

Then the family registers for adoption of a child from India with a licensed adoption agency in Sweden. This agency is also recognised and listed by the Ministry of Social Welfare of the Indian Government. It is this agency which forwards the documents to the Indian recognised child welfare agencies and is fully responsible for the placement of the child in case of any problem and also undertakes to do post placement reporting as per the requirement of the Indian Courts.

When the child goes to Sweden under the custody of the guardian appointed by the Indian court, the child is legally adopted under Swedish law. The law of adoption in Sweden confers absolutely equal rights upon the adopted child.

In Sweden, the children enjoy all social security measures including free education, health, unemployment benefits, old-age care etc.

The adoptive parents get one year paid maternity/paternity leave to take care of the child. They have the option to return to only part time work after this leave period is over. The child is offered free day foster-care with a foster parent who will now go to work.

Sweden has a governmental apex body called NIA to monitor inter-country adoption. In case any adoption agency or adoptive family has any serious problem, it can take action on the same. NIA holds an annual conference of child welfare policy makers, governmental social workers and members of the Swedish Parliament at which they discuss issues concerning inter-country adoption. At this meeting they also invite people involved in child care activities in India. In this way adoption in Sweden is thoroughly monitored.

(15) In USA where Indian children are placed for adoption, it being a federal state, laws differ from state to state.

Some Indian agencies work with a few selected agencies which are licensed for adoption by their state government as well as recognised by the Indian Government for processing and doing follow up work of Indian children placed in adoption. For example, society of Friends of the Sassoon Hospital, Pune, work with the Wide Horizons for Children Inc. in Boston State and Hold International Children's Service in Oregon State.

APPENDIX 'J'

As per the Data Reported by Recognised Indian Social/Child Welfare Agencies during the years 1989, 1990 and 1991

No.	Name and address of the organisation	Years 1989		Years 1990		Years 1991	
		Foreign Adop-tion	Indian Adop-tion	Foreign Adop-tion	Indian Adop-tion	Foreign Adop-tion	Indian Adop-tion
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Andhra Pradesh							
1.	Guild of Service (Seva Samajam) Balika Nilayam, 10-3-561/3 Vijaya Nagar Colony, Hyderabad-500 457	4	10	11	15	4	6
2.	Indian Council of Social Welfare (Red Hills, Inside Cancer Hospital Compound) Hyderabad-560 004	20	21	23	14	16	7
Delhi							
3.	S.O.S. Children's Villages of India, A-38, Kailash Colony, New Delhi-110 048	3	19	4	33	2	41
4.	Missionaries of Charity Nirmala Sishu Bhawan 12, Commissioner Lane, Delhi-110 054	137	54	126	60	111	78
5.	Delhi Council for Child Welfare, Qudsia Garden, Yamuna Marg, Civil Lines, Delhi-110 054	22	41	29	43	28	52
Goa							
6.	Society for Child Development House No. 630, Caranzelom Goa-403 002	3	2	12	7	16	9
7.	Caritas Goa Paco Patriarcel Altinho Panjim Goa-403 001	13	6	12	6	6	4
Gujarat							
8.	Shri Kathiawar Nirashrit Balashram Malviya road Rajkot-360 002	3	11	5	24	8	5
9.	Mahipatram Rupam Ashram Opposite Raipur Gate Ahmedabad-380 022	27	5	9	15	23	10
Haryana							
10.	Haryana State Council for Child Welfare Bal Vikas Bhawan 650, Sector 16 D Chandigarh-160 016	6	1	—	—	—	—
Karnataka							
11.	Canara Bank Relief & Welfare Society 27th Cross, Panashankari 2nd Stage Bangalore-560 070	5	6	14	2	6	16
12.	Ashraya Jawan's Colony, B.D.A. Park Double Road, Indira Nagar 1st stage, Bangalore-560 038	15	1	16	19	9	10

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
13	St. Michael's Home Old Madras Road, Indira Nagar, Bangalore -560 038	10	10	8	8	4	10
14.	Society of Sister's of St. Joseph of Tarbes 47, Promenade Road, Bangalore-560 005	4	—	6	17	Not renewed	
15.	Shishu Mandir 1341, 10th Cross Indira Nagar, 2nd Stage Bangalore-560 038	—	—	—	—	8	2
Kerala							
16.	St. Joseph's children's Home Kummannoor, Cherpunkal P.O. District Kottayam	38	13	21	15	18	19
17.	Foundling Home (Sisu Bhawan) Padupuram P.O. via Karukutty District Eranakulam	2	17	11	8	7	9
18.	Kerala State Council for Child Welfare, Thucaud Trivandrum-695 014	—	—	—	—	Not renewed	
Maharashtra							
19.	Balwant Kaur Anand Memorial Welfare Society, Anand Corner, 18 Dr. Coyaji Road, Pune-411 001	10	11	9	19	3	1
20.	Indian Association for Promotion of Adoption, RNA House, 1st Floor, Veer Nariman Road, Fort, Bombay- 400 034	—	—	—	15	—	43
21.	Children of the World (India) Trust, 501, Arun Chamber Tardeo, Bombay- 400 034	17	8	16	17	14	20
22.	Pushpawadi Founding Home Nagpur House of Mary Immaculate Providence School compound Civil Lines Nagpur-440 001	14	4	17	7	8	8
23.	Bharatiya Samaj Seva Kendra 5, Koregaon Road, Pune-411 001	41	56	45	68	38	11
24.	Mahila Sewa Mandal 25/20 Karve Road Pune - 411 004	3	6	3	3	9	14
25.	Family Service Centre Eucharistic Congress Building-II No. 5, Convent Street, Bombay-400 039	5	33	10	43	5	5
26.	Maharashtra State Women's Council Rescue home, Asha Sadan Marg, Umerkhadi Bombay-400 009	15	20	34	36	27	27
27.	Vivekanand Bala Sadan Seth Daga, Dharamsala Opp. Railway Station Kampte, Nagpur-411 002	3	—	5	6	2	6

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
28.	Hindu Women's Welfare Society Sharadhanand Mahilashram, Sharadhanand Road, Matunga, Bombay-400 019	8	52	11	45	16	32
29.	W.B.N. Balakashram 431 Navi Peth Pandharpur District Sholapur	10	9	7	5	7	5
30.	Missionaries of Charity Nirmala Shishu Bhawan, Church Road, Ville Parle (West) Bombay-400 056	55	50	70	70	53	24
31.	Matru Sewa Sangh (Founding Home) Institution of Social Work Bajaj Nagar Nagpur-411 010	6	19	4	19	9	1
32.	St. Crispin's Home FR-10, CTS-12, Karve Road Barabdwane Pune-411 010	1	1	1	1	Not renewed	
33.	Bal Anand World Children Welfare Trust, 93, Ghatla Village Chembur Bombay-400 071	47	33	44	40	Not renewed	
34.	St. Catherine's Home Veera Dosei Road Andheri (West) Bombay-400 059	25	13	19	17	Not renewed	
35.	Holy Cross Home for Babies C/o Holy Cross Convent Amravati (Camp)-444 602	—	—	—	2	6	3
36.	Kuan Vin Charitable Trust 91, Advent, 12-A, General Bhondac Road, Bombay-400 021	—	—	26	8	Not renewed	
Orissa							
37.	Manoj Manjari Shishu Bhawan AT/P.O. Keonjhargarh District Keonjargarh Pin-738 001	15	1	3	3	—	3
38.	Subhadra Mahtab Seva Sadan AT/P.O/PS Udayagiri District Phulbani-762 100	—	—	—	—	3	—
39.	Besundhara AT. Dhrubatara Khalasi Lane	—	—	—	—	10	6
Pondicherry							
40.	Cluny Children's Home (Cluny sisu Ilam) Pouponnier St. Joseph 8. Romain Rolland Street Pondicherry-605 001	5	—	13	7	8	7
Tamil Nadu							
41.	Guild of Service (Central) 28, Casa Major Road Egmore Madras-600 008	6	7	36	5	17	3
42.	Congregation of the Sisters of the Cross of Chavanod P.B. No. 395, Old Goods Shed Road Teppakulam, Tiruchirappalli-620 002	16	12	11	9	28	20

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
43.	Institute of the Franciscan-Missionaries of Mary Society No. 3, Holy Apostles Convent St. Thomas Mount Babies Home St. Thomas Mount Madras-600 016	—	—	11	11	5	6
44.	Concord House of Jesus (Home for Helpless Kids) 10, Venkatamma Samati Street Purasaiwalkam Madras-600 008	4	2	22	2	18	5
45.	Grade Kennett Foundation 34, Kennett Road, District Madurai Madurai-625 010	10	2	14	11	13	25
46.	Families for Children (Kuzhanthaigal Kudumpam) 107, Vellore Road Podanur District Coimbatore Podanur-641 023	2	2	5	2	7	2
47.	SOS Children's Villages of India, Chatnath Homes Karan Praya Reception-cum-Adoption Centre 1st Main Road, Thambaram East Madras-600 059	—	—	—	6	Not renewed	
Uttar Pradesh							
48.	Uttar Pradesh Council for Child Welfare Moti Mahal, Rana Pratap, Lucknow	—	—	3	—	Not renewed	
West Bengal							
49.	Missionaries of Charity 54/A Lower Circular Road Calcutta-700 016	171	96	203	97	150	27
50.	Society for Indian Children Welfare 22, Col. Biswas Road Ballygunge Calcutta	73	11	51	33	35	32
51.	Indian Society for Spon. & Adoption, 1 Palace Court, 1 Kyd St. Calcutta- 700 016	34	18	37	23	28	26
52.	International Mission of (India) Society 2, Nimak Mahal Calcutta-700 048	—	—	17	30	150	27
53.	Indian Society for Rehab. of Children 112-B, Kankulia Road, Calcutta-700 029	55	7	29	13	Not renewed	
54.	Shri Shraddhanand Anathalaya Shraddhanand Peth Nagpur	64	20	53	36	66	35
55.	Child Welfare & Rehabilitation Society Akashwani Road, Raja Bazar Patna-800 014	8	4	3	3	Not renewed	
56.	Society of sisters of Charity St. Georges convent Bangalore	19	6	32	18	18	9
57.	Society of Sisters of Charity Holy Angels Convent Bangalore	19	8	18	12	28	6

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
58.	Welfare Home for Children 68, Raja Garden New Delhi	23	8	25	13	24	18
59.	Holy Cross Home for Social Service 34, Mukherjee Nagar, New Delhi	12	6	22	12	21	13
60.	M/s Church of North India Jangpura, New Delhi	33	25	36	29	33	35
61.	Action for Social Development Administrative Office 1-3-183/40/46/6, Gandhi Nagar Hyderabad-500 380	—	—	—	—	—	—
62.	Society of the Friends of the Sassoon Hospital Poona. C/o Medical Social Workers Departments, Room No. 80, Sassoon General Hospital, Pune-411 001	—	—	—	—	17	8
63.	Dinasevanasabha Sneheniketan Social Centre Pattuvam District Cannanore	24	6	6	7	8	11
64.	Shejhar Chhaya Deodal Karan P.O., Taluka Vasai Distt. Thana Maharashtra	—	—	—	—	10	7
65.	Anath Sewa Society, Gulab Devi Hospital Road Jallandhar, Punjab	—	—	—	—	—	—
66.	Holy Infants Mary's Girls Home Vythiri District-Wynad Kerala	18	7	28	10	15	21
GRAND TOTAL		1213	757	1272	1075	1190	936

1989 Foreign adoptions—1213

Indian adoptions—757

1990 Foreign adoptions—1272

Indian adoptions—1075

1991 Foreign adoptions—1190

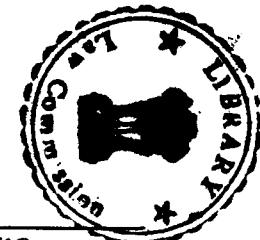
Indian adoptions—936

Source : Central Adoption Resources Agency (Ministry of Welfare) Letter No. 3-53/92-C&A
17/7 dated 25th November, 1992.

NOTE.— Central Adoption Resources Agency not only responded to our communication, but the Joint Secy. Incharge of CARA was very helpful in providing necessary information promptly as requisite inputs Personal interactions with him were quite useful.

APPENDIX 'K'
Placement Agency-wise Data relating to Children Adopted by Foreigners

Sl. No.	Name of the Agency	Number of Children given in Adoption during												Total	Remarks	
		1988		1989		1990		1991		1992		1993				
		(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M+F)		
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	
1.	Bharatya Samaj Seva Kendra, Pune.	—	—	—	—	—	—	—	—	—	—	—	—	304 (M=66; F=238)	No year-wise break-up given.	
2.	Caritas Goa, Panjim.	—	—	—	—	—	—	—	—	—	—	—	—	87 (M=39; F=48)	Data given from 1986 to 1991	
3.	Cluny Children's Home, Pondicherry.	—	—	—	—	—	—	—	—	—	—	—	—	415 (M=98; F=317)	Data given from 1968 to 1992	
4.	Delhi Council for Child	6	17	8	18	2	25	3	25	—	25	—	—	569 (M=158; F=411)	Data given from 1978 to 1992	
5.	Dinasevanasabha, Pattuvam, Cannanore, Kerala.	—	—	—	—	—	—	—	—	—	—	—	—	185 (M=77; F=48)	No break-up and year mentioned	
6.	Families for Children, Podanur, Coimbatore.	—	—	—	2	1	5	6	3	3	—	—	—	20 (M=10; F=10)	—	
7.	Family Service Centre, Bombay.	2	6	1	8	—	7	1	4	—	—	—	—	88 (M=25; F=63)	Since 1975	
8.	Grace Kennet Foundation, Madurai.	1	2	—	10	4	12	5	9	—	9	—	—	77 (M=14; F=63)	Since 1985 to 1992	
9.	Indian Society for Rehabilitation of Children, Calcutta.	63	—	39	—	28	—	15	—	—	—	—	—	206	No sexwise break up given; from 1985 to 1992 (Oct.)	
10.	Missionaries of Charity, Calcutta.	—	—	—	—	—	—	—	—	—	—	—	—	2358	No sex-wise break up given and data from 1960 to 1991	
11.	Missionaries of Charity, Delhi.	2	23	7	9	—	—	—	—	—	—	—	—	41 (M=9; F=32)		



(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
12.	Pingla Ghar, Jalandhar City.	—	—	—	—	—	—	—	—	1	—	—	—	1 (F)	
13.	Preet Mandir, Pune.	3	6	—	11	—	8	—	3	1	3	—	—	62 (M=5;F=57)	Since 1987.
14.	Shejor Chhaya, Thana, Maharashtra.	—	—	—	—	—	—	—	—	—	—	—	—	28 (M=5; F=23)	No year-wise break up given
15.	SOFOSH; Pune.	1	13	1	12	1	5	1	11	—	—	—	—	92 (M=10;F=82)	Since 1985
16.	SOS, Children's Villages of India, Kailash Colony, New Delhi.	1	4	1	4	—	2	—	3	—	—	—	—	27 (M=8;F=19)	Data from 1984 to 1991
17.	Shisu Sangopan Griha, Jangpura, New Delhi.	—	—	—	—	—	—	—	—	—	—	—	—	241 (M=64;F=177)	No year-wise break up given; Since 1985 to 1992 (Oct.)
18.	Society for Indian Children Welfare, Calcutta.	—	—	—	—	—	—	—	—	—	—	—	—	941 (M=364;F=577)	Data from 1979 to 1991
19.	St. Catherine's Home, Andheri (W), Maharashtra.	24	15	10	17	9	11	3	8	3	2	—	—	237 (M=116;F=121)	No year-wise break up given
20.	Sisu Bhaban, Sister of Nazareth, Poduapuram, Kerala.	—	—	—	—	—	—	—	—	—	—	—	—	232 (M=99;F=133)	Till October, 1992
21.	St. Michel's Home, Bangalore.	—	—	—	—	—	—	—	—	—	—	—	—	237 (M=95;F=142)	Data given from 1954 onwards. No year-wise break up given
22.	Subhadra Mahtab Seva Sadan, Ganjam, Orissa.	Till the date of issue of this receipt processing has been going for six children for the clearance in court of law for adoption.	—	—	—	—	—	—	—	—	—	—	—	—	
23.	World Children Welfare Trust India, Bombay.	—	—	—	—	—	—	—	—	—	—	—	—	338 (M=95;F=243)	Till September 1992; No year-wise break up given
24.	Welfare Home for Children, New Delhi.	—	—	—	—	—	—	—	—	—	—	—	—	76 (M=22;F=54)	Since 1980 to Oct. 92

Source: 30 recognised social/child welfare agencies responded to the communication of the Law Commission (Appendix F), but the above mentioned 24 agencies supplied data relating to foreign adoption.