**Adoption : Issues and Challenges**



The legal status, issues and challenges of adoption law in three South Asian (SAARC Countries) countries.

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***Abstract***

**“Adoption is complicated, but it is also rich with narratives of strength.” — Jillian Lauren**

Until recently, it was accepted in the world that marriage was a relationship between a man and a woman. But in the concept of gay marriage, is an opportunity to break free from those traditional ideas. The concept of adoption is important for such individuals to have the opportunity to become parents, for heterosexual but childless couples and parents with sexually transmitted diseases or other illnesses, and for single parents who wish to become single parents. The world and the various conventions accept the right to be parent. Adoption is simply the legal transfer of all parental rights from one person or couple to another person or couple. Here adoptive parents have the same rights as natural parents. Different types of adoptions can be identified. The most common forms of adoption are local adoption, adoption and international adoption. The study reveals that each of these adoption types has its own advantages, disadvantages, problems, challenges and different steps required to complete the process. As mentioned earlier, adoption can also be classified by family type. That is, adoption by single parents, gay couples, step-parents, and grandparents. Thus, adoption is a complex concept as well as a social necessity.

In today’s world, the concept of adoption has evolved over time and has evolved into many disciplines, including law, medicine, economics and politics. It is also important to study this concept, which is now recognized as a social need. The main purpose of this article is to discuss the legal status, issues and challenges of adoption law in several South Asian countries.

***Introduction***

Adoption is simply defined as the legal transfer of all parental rights from one person or couple to another person or couple. In today's world of adoption beyond adoption, adoption is a very important concept and can be described as a social necessity. At present, different countries deal with adoption under different legal conditions. The focus will be on the South Asian SAARC countries of India, Bhutan, Maldives, Sri Lanka, Pakistan, Afghanistan, Nepal and Bangladesh. It focuses on identifying the legal status, challenges and issues related to the adoption of the trinity between **India, Sri Lanka and Nepal.**

* ***Adoption of children in India***

Adoption laws are common throughout India. But there are certain adoption guidelines and documentation requirements that may vary from state to state. In India, a multi-religious, multi-cultural state, adoption from an orphanage under the Guardians and Wards Act 1890 is subject to court approval. In this case, the adoptive couples are guardians, not adoptive parents. Under this Act, Christians can only adopt a child under foster care, and the foster child is free to break all ties with the guardians after becoming a Major. Hindu, Jain, Buddhist or Sikh Indian citizens are allowed to adopt a child formally, and adoption is done in accordance with the Hindu Adoption and Maintenance Act of 1956, which was enacted as part of the Hindu Code Bill. The Juvenile Justice (Care and Protection of Children) The 2015 Act governs the adoption of abandoned, conquered or abused children.

There are different types of adoption in India. They are Open Adoption, Semi - Open Adoption, Closed Adoption, Intrafamily Adoption/Relative Adoption, Domestic Adoption and International Adoption. When focusing on adoption in India, Indian law provides that an Indian couple should not be allowed to adopt any child unless they have been in a stable marriage for at least 2 years. A person can adopt regardless of whether he or she has a biological son or daughter. Adoptive parents (PAPs) need to be physically, mentally, and emotionally stable as well as financially capable. There should be no life-threatening medical conditions at the time of adoption. In India, a single girl can adopt a child of any gender but a single man is not eligible to adopt a girl. Spouses with three or more children are not considered for adoption. But "children with special needs", "difficult to have children" and "adoption by relatives and adoption by parents" are not relevant here.

In addition to resident and non-resident Indians, foreign nationals and even foreign parents in India can adopt children from abroad, as a unique case of adoption in India. Currently, there is no specific law governing the adoption of children by foreign nationals or NRIs in India but it is governed under the 2015 Adoption Control Guidelines. In the absence of a specific Act for International Adoption, the Guardians and Wards Act 1890 is followed. Must be 45 years old, single parent. For adoption of a child over four years of age, the maximum combined age is 100 years for a couple and 50 years for a single parent. The maximum age for adoption of a child between the ages of eight and 18 is 110 for a couple and 55 for a single parent.[[1]](#footnote-1) The adoptive child may be an orphan, abandoned or submissive, a child declared "legally free to adopt by the Child Welfare Committee" or a child of a spouse's adopted by biological parents for adoption from a previous marriage. A person can adopt a child of a relative as defined under sub-section 52 of section 2 of the Juvenile Justice Act, 2015. The minimum age difference between the child and the adoptive parents should not be less than 25 years. However, this does not apply to relative or parental adoption.

* ***Adoption procedure in India***

Parents wishing to adopt a child are required to register online with CARA, where they can express their preferences and upload documents, according to its official website. Upon registration, parents can choose a specialized adoption agency from their place of residence for a home study conducted through a social worker. The report is valid for three years and confirms the parents' eligibility to adopt a child. Once they find out they are eligible and eligible, they will be given free child referrals for adoption. Parents wishing to adopt must reserve a child who has been referred to them within 48 hours. An appointment will then be made with the adoption committee of the agency for adoptive parents with the appropriate child. Also, according to CARA (Medium Adoption Resources Authority), your minimum average income is Rs. If it is 3000 then there is the possibility of adoption. Also, if you have other assets such as a home or a strong support system, a lower income can be considered.

* ***Adoption of children in Sri Lanka***

The Adoption Ordinance No. 24 of 1941 governs the Adoption law in Sri Lanka. But in addition to that we can see different ways under special laws.

Any person under the 'Adoption Ordinance No. 24 of 1941' can submit such an applicant or child adoption application to the district court where the child resides, after which the district court will issue an adoption order. The child is under 14 years of age must. If the child to be adopted is over 10 years of age, the child's consent is required for adoption. The child must also be a resident of Sri Lanka. Applicant must be at least 25 years of age or 21 years older than the applicant child.[[2]](#footnote-2) However, if those restrictions do not apply,

1. The child is a direct descendant of the applicant.

2. The brother or sister of the applicant who is of full or partial blood or descended from such brother or sister.

3. A child of the applicant's wife or husband by another father or mother.

Accordingly, a sister, brother, uncle or aunt can apply to adopt their cousin.

Must be adopted by foreigners. Under the provisions of the Adoption (Amendment) Act No. 38 of 1979, a foreigner can adopt a child. Foreigners may only adopt Sri Lankan children between three months and 14 years of age.[[3]](#footnote-3) Anyone not residing in Sri Lanka can apply or adopt a child residing in Sri Lanka if there is no other Sri Lankan. The resident has applied to adopt the child. The court may not allow the adoption of a girl child unless there is reason to justify such an application if the only applicant in the adoption by the spouse is a man. An unmarried biological father of a child can be raised as a single adoptive parent. If the adoptive parents are married, they cannot adopt a child without the consent of their spouse. However, there are times when the court may allow an adoption application. That is, if such a marriage is dissolved by a proper court or the spouse is unable to be found or the mind is restless, the court may grant an adoption application.

* ***Adoption under special laws of Sri Lanka***

When it comes to adoption under Kandyan law, Kandyan Sinhalese can adopt a child under the Kandyan Law Ordinance or the Adoption Ordinance. A child who is properly adopted under Kandyan law is considered a legal child. However, there are certain customs and regulations under the Thesawalamei law of adoption. As a result, even though the Muslim Divorce Act is silent, Muslims can still have children. (Muslim Marriage and Divorce Act, 1951) There are a number of special cases in the Sri Lankan legal system regarding adoption under these special laws.

* ***The Adoption procedure in Sri Lanka***

The District Court has jurisdiction to make an adoption order as the High Trustee. Upon receipt of the adoption application by the district court, the court will appoint a probation officer from the Department of Probation and Child Care Services as a guardian to protect the child's interests and the court will consider the child's welfare.

The court may postpone the adoption order and issue an interim injunction granting the applicant custody of the child for a period of two years. All parties to the adoption must appear in the court on both days of summoning and hearing. With the adoption order, the court can give the child the surname of the adoptee.

If the child is over 10 years of age, the child's will be noted by the court, so the court will consider the child's will. However, depending on the child's maturity, the court may consider the consent of such a child under 10 years of age. If the court finds that the adoption is not in the best interests of the child, the applicant will obtain the child's consent, but the court will not issue an adoption order as a guardian. When the child is illegitimate, the consent of the mother (sole guardian) is required and the consent of the biological father is not required. However, if the court is satisfied, the court may disregard such consent. That is, if the person to whom his consent is to be obtained has abandoned or abandoned the child, if not found etc. In other cases.

Following an adoption order by a court in Sri Lanka, it grants the adopted child the status of a child born out of a legal marriage of the adoptee. The adopted child acquires the rights, entitlements and interests of any of the adoptive parents and is entitled to the successor's successor. The rights, duties and responsibilities and responsibilities of biological parents regarding future custody, maintenance and education are vested in the adopter. Following the adoption, the adopted child has the right to request maintenance from the adoptive parents under the provisions of Section 22 of the Maintenance Act, 1999.

* ***Adoption of children in Nepal***

Nepal is one of the least developed countries in the world and It is unfortunate that about 60% of the population lives below the poverty line. In many cases, infants are abandoned by their parents due to extreme poverty and difficulty in caring for them. There these little children enter an orphanage. Then they wait until someone who loves and cares for them arrives. Nepali law guarantees adoption from a childless family. The Nepalese government adopts adoption laws that allow couples, single women, widows, and even divorcees who have been barren for four years to adopt a child. In case of unmarried, single parents, divorced, a letter of guarantee should be submitted by the Government of his / her country or his / her embassy in Nepal confirming that he / she is taking the child for adoption. The law states that only a boy (son) who has only daughters (daughters) in his family can be adopted. Similarly, only daughters (daughters) who have an only son (male) can be adopted. If a person has a daughter and a son of his own, he / she cannot adopt a boy and a daughter. Only one child of each sex, except twins, is allowed to adopt. When adopting in Nepal, the age difference between the adoptive child and the parents should not be less than 35 years and not more than 55 years.[[4]](#footnote-4)

* ***The Adoption procedure in Nepal***

The Ministry of Women, Child and Social Welfare charges a $ 3,000 fee for the adoption of an orphan from Nepal. There is a $ 5,000 fee for orphanages. Many parents report that orphanages charge extra, unexpected fees after their parents arrive in Nepal. An application must be submitted to adopt a son or daughter in Nepal. For married couples, the application should include a report of infertility, marriage certificate, family and economic status, health, character certificates, copies of passports and visas, and a letter of consent to adopt a Nepali child authorized by the Nepalese official.[[5]](#footnote-5)

In Sri Lanka, India and Nepal, the concept of adoption takes place as above, and although it is a social need, there are challenges and problems in the concept of adoption.

* **Challenges and issues**

Adoption of a child in India must be under 18 years of age. In Nepal, the child must be 16 years old. Children between the ages of 18 and 16 are at a level where they can make their own decisions and it is problematic to adopt such children without consulting them. Some solution to that challenge can be found in adoption in Sri Lanka. That is, the child must be under 14 years of age at the time of adoption in Sri Lanka. Also, if the child is 10 years old, the consent of the child is required for adoption. This can be seen as a progressive point regarding the concept of adoption. It is noteworthy that in every country there is an age limit between the adoptive child and the parents. In particular, it provides an opportunity to ensure the safety of the child and to avoid any problems that may arise during adoption.

And also, In Sri Lanka, the child cannot be obtained by giving money or property to the child’s biological parents. Attorney fees only apply. Under CARA rules in India, adoption in India must cost more than Rs 46,000. That is, Rs. 1,000 for registration, Rs. 5,000 for the home study process and Rs. 40,000 for the agency's official child care corpus fund. Also, there is a separate, higher fee structure for adoptions by non-Indian parents.[[6]](#footnote-6) Adoption of an orphan from Nepal costs $ 3,000. There is also a $ 5,000 fee for orphanages. The Ministry of Women, Children and Social Welfare manages these situations. The situation in Sri Lanka is somewhat fair when it comes to charging in other states in this way. There is a problem with charging this way. This is because of the question of how humane it is to give money to a child in this way, as well as the loss of adoption opportunities for people with limited assets.

Grief, separation, and loss are inherent challenges associated with adoption policy, and many adoptive children experience traumatic and bereavement-related feelings of adoption when new parents find it difficult to understand their children. Problems with self-esteem and identity can also be seen in children who have been adopted. Adoption can present some challenges, especially for adolescents in the identity card process. Ignoring, abusing, and managing postpartum adoption issues are also problematic. The study reveals that adoptive children and their parents can have adoption problems at any time, and that there are problematic situations in the adoption process in each country.

* ***Conclusion***

In conclusion, there are many ethical challenges, cultural challenges, emotional challenges, health challenges, Intercountry challenges, legal and financial challenges around the adoption. The adoption policy which can be considered as a social need, It is important to activate the adoption policy dismissing above challenges.

**References,**

* **Acts,and Ordinances**
* ‘Adoption of Children Ordinance’ NO: 24, of 1941 – Sri Lanka
* ‘Adoptions and Maintenance Act’ of 1956 – India
* ‘Ratification Protocol to the Convention on the Rights of the Child on a

communications procedure’

* **Books**
* ‘Adoption Law and Human Rights’ by Kerry O'Halloran
* Every Adoptive Parent) by Lois Ruskai Melina
* ‘Raising Adopted Children’, (Revised Edition: Practical Reassuring Advice for
* ‘The law of adoption’ by Margaret C. Jasper
* **Websites and Blogs**
* Child Adoption in Nepal, Adoption Law in Nepal, Nepal Legal Service, Last visited: 11th Feb 2022
* Helen, About India - What do you know about India?, Best answer: Is Adoption hard in India? (Accessed 25th Feb 2022, 12.05 PM) [Best answer: Is Adoption hard in India? - About India (pdmmc.com)](https://pdmmc.com/what-to-see/best-answer-is-adoption-hard-in-india.html)
* Mahak Arora, https://indianexpress.com/article/parenting/family/childadoption- cara-india-girl-all-you-need-to-know-6153189/, Last visited: 11th Feb 2022
* Nepal Child Adoptions, government rules, regulations, orphanage and application information - VisitNepal.com, Last visited: 11th Feb 2022
* [Sri Lanka Intercountry Adoption Information (state.gov)](https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/SriLanka.html), Last Visited:12th Feb 2022
1. Mahak Arora, Adoption in India: Rules, Process and Laws , parenting.firstcry.com , ( Last visited: . Feb 11 ,2022, 09.18 PM) , [https://indianexpress.com/article/parenting/family/childadoption- cara-india-girl-all-you-need-to-know-6153189/](https://indianexpress.com/article/parenting/family/childadoption-%20cara-india-girl-all-you-need-to-know-6153189/) [↑](#footnote-ref-1)
2. travel.state.gov , [Sri Lanka Intercountry Adoption Information (state.gov)](https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/SriLanka.html) ( Last Visited: Feb 12,2022). [↑](#footnote-ref-2)
3. travel.state.gov , [Sri Lanka Intercountry Adoption Information (state.gov)](https://travel.state.gov/content/travel/en/Intercountry-Adoption/Intercountry-Adoption-Country-Information/SriLanka.html) ( Last Visited: Feb 12, 2022). [↑](#footnote-ref-3)
4. Legal Zoom and Research Nepal, [Child Adoption in Nepal, Adoption Law in Nepal, Nepal Legal Service](https://www.nepallegalservice.com/adoption-in-nepal/) (Last visited: Feb 11, 2022). [↑](#footnote-ref-4)
5. Adopting a Child in Nepal , [Nepal Child Adoptions, government rules, regulations, orphanage and application information - VisitNepal.com](http://www.visitnepal.com/nepal_information/nepal_child_adoptions.php) (Last visited: Feb 11, 2022). [↑](#footnote-ref-5)
6. Helen, Is Adoption hard in India, pdmmc.com,

(Accessed 25th Feb 2022, 12.05 PM)  [Is Adoption hard in India? - About India (pdmmc.com)](https://pdmmc.com/what-to-see/best-answer-is-adoption-hard-in-india.html) [↑](#footnote-ref-6)