

Adoption under Juvenile Justice (Care & Protection of Children) Act 2000 as amended in 2006

For information of Lawyers, adoption agencies and
prospective adoptive parents)



CARA

CENTRAL ADOPTION RESOURCE AUTHORITY

Ministry of Women & Child Development

Govt. of India

BACKGROUND

In pursuance of its constitutional mandate, the Government of India has evolved a National Policy for the Welfare of Children (1974). The thrust of this policy is summed up in the following words:

"The Nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. Children's programme shall find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skills and motivations needed by society. Equal opportunities for development to all children during the period of growth should be our aim, for this would serve our larger purpose of reducing inequality and ensuring social justice."

Supreme Court of India in L.K.Pandey vs. Union of India (WP NO 1171 of 1982 and its subsequent judgements), the "United Nations Declaration of the Rights of the Child" adopted by the General Assembly of the United Nations in 1989 as well as "The Hague Convention on Inter-country Adoption of 1993" (both ratified by India) clearly lay down that the best interest of the child without a family is served by providing it an opportunity to be placed with a family within its own socio-cultural milieu. Thus every child has a right to be considered for placement with a family belonging to its own national and cultural background within the country. Inter-country adoption is therefore, to be seen as an option, which is to be considered only when the above is not possible. This is also prescribed in the Guidelines notified by Govt. of India from time to time on matters related to adoption of orphan, abandoned and surrendered children

The Central Adoption Resource Authority (CARA) is the national level nodal body under the Ministry of Women & Child Development for all matters relating to adoption.

Government of India considers adoption as the best non-institutional support for rehabilitation of orphan/ abandoned/ surrendered children. Institutional care is considered as the last rehabilitation priority for such children. Adoption undoubtedly offers an important avenue for the care and protection of an orphan or abandoned or surrendered child in a family setting and provides an atmosphere of happiness, love and understanding for the realization of his/her talents and potentials.



Sec. 2 (aa) of Juvenile Justice (Care & Protection of Children) Act 2000 amended in 2006

"Adoption" means the process through which the adopted child is permanently separated from his biological parents and becomes the legitimate child of his adoptive parents with all rights, privileges and responsibilities those are attached to the relationship.

Sec 40 of the Act:

Process of Rehabilitation & Social Integration

The rehabilitation and social reintegration of a child shall begin during the stay of the child in a children's home or special home and the rehabilitation and social reintegration of children shall be carried out alternatively by (i) adoption, (ii) foster care, (iii) sponsorship, and (iv) sending the child to an after-care organization.

Model Rule 33 (1) & (2)

- (1) The primary aim of adoption is to provide a child who can't be cared for by his biological parents with a permanent substitute family,
- (2) For all matters relating to adoption, the guidelines issued by the CARA and notified by the Central Government under sub-section (3) of section 41 of the Act, shall apply.

Sec 41 of the Act

- 1) The primary responsibility for providing him care and protection to children shall be that of his family.
- 2) Adoption shall be resorted to for the rehabilitation of the children who are orphan, abandoned or surrendered through such mechanism as may be prescribed.
- 3) In keeping with the provisions of various guidelines for adoption issued from time to time, by the State Government, or Central Adoption Resource Agency (Authority) and notified by the Central Government, children may be given in adoption by a Court after satisfying itself regarding the investigation having carried out, as are required for giving such children in adoption.



- 4) The State Govt. shall recognize one or more of its institutions or voluntary organizations in each district as specialized adoption agencies in such manner as may be prescribed for the placement of orphan, abandoned or surrendered children for adoption in accordance with the guidelines notified under sub-section (3).

PROVIDED that the children's homes and institutions run by the State Government or a voluntary organization for children in need of care and protection who are orphan, abandoned or surrendered, shall ensure that these children are declared free for adoption by the Committee (CWC) and all such cases shall be referred to the adoption agency in that district for placement of such children in adoption in accordance with the guidelines notified under sub-section (3).

- 5) No child shall be offered for adoption
- (a) until two members of the Committee declare the child legally free for placement in the case of abandoned children
 - (b) till the two months period for reconsideration by the parent is over in the case of surrendered children, and
 - (c) without his consent in the case of a child who can understand and express his consent.
- 6) The court may allow a child to be given in adoption -
- (a) to a person irrespective of marital status; or
 - (b) to parents to adopt a child of the same sex irrespective of the number of living biological sons or daughters, or
 - (c) to childless couples.

PROCEDURE FOR ADOPTION

The procedure for adoption as per CARA Guidelines is as under:



In-country Adoption

- Firstly, prospective adoptive parents should register themselves with the Special Adoption Agency (SAA) or Adoption Coordinating Agency. The couple's interest in adoption, and its decision to adopt is ascertained at this stage.
- A home study of the prospective adoptive parents is prepared by the social worker of the agency. To allay the fears and apprehensions of the prospective adoptive parents, pre-adoptive counseling sessions are undertaken by the social worker during the process of home study. Assessing the ability of a couple to parent a child not born to them is of crucial importance in a successful adoption. Therefore, the couple's suitability to care for an unrelated child is ensured through this home study.
- Subsequently, the prospective adoptive parents submit the documents related to their financial and health status to the agency.
- A child is then shown to the parents. The agency takes care to match a child with the description, if any, desired by the parents
- Once a successful matching has been done, the agency then files a petition in the court for obtaining the necessary orders under HAMA or any other relevant Act. The child may also be placed in pre-adoption foster care with the prospective adoptive parents pending court order.
- Fees, as prescribed, will be charged by the recognized agency for the cost of caring for the child and the legal procedures.
- There are regular follow-up visits and post adoption counseling by the social worker till the child adjusts in his/her new environment.

Inter-country Adoption

Inter-country adoption is possible with the involvement of authorized agencies/authorities in both the sending and receiving countries. There can be no direct adoption by any foreign/ PIO/ NRI/ OCI parent/s. For details, please see CARA Guidelines available at www.adoptionindia.nic.in

CRITERIA FOR CHILDREN AND PAPS

Please see CARA Guidelines (www.adoptionindia.nic.in)

DOCUMENTS REQUIRED TO BE FILED IN THE COURT

Please see CARA Guidelines (www.adoptionindia.nic.in)

PROCESSING OF APPLICATIONS

In case of domestic adoptions: Specialized Adoption Agencies including RIPAs can process cases of Indians PAPS residing in India.

In case of inter-country adoptions: Only RIPAs can process applications of NRI/OCI/PIO/foreign PAPS and in this regard NOC from CARA is mandatory

WHICH COURT SHALL ENTERTAIN ADOPTION MATTER?

In case of adoption under the Juvenile Justice (Care & Protection of Children) Act 2000 amended on 2006, the petitions can be filed under section 41 of the Act. Since the Act does not define the expression "court", the definition under the Model Rules (2007) framed by the Central Govt. under Sec.68 of the Act shall apply for dealing with adoption matters.

- According to Rule 33 (5) of the Central Rules under the said Act, the "Court" implies a civil court, which has jurisdiction in matters of adoption and guardianship and may include the court of District Judge, Family Court and City Civil Court.
- In the case of Manuel Theodore D'Souza [II (200) DMC 292], the Bombay High Court also observed that the right to adopt being a fundamental right, must be capable of enforcement through the civil court as it falls within the ambit of Sec. 9 of Civil Procedure Code. It was also opined that the District Court or the High Court has the jurisdiction to deal with the question relating to adoption as the court normally deal with the disputes regarding custody, guardianship etc.
- Similar conclusion has been drawn by the Hon'ble High Court of Kerala in the case of Andrew Mendez & others v. State of Kerala (2008). It minutely interpreted the jurisdiction of the Family Court as mentioned in the Central



