

A Series on Alternative Care

# *Adoption*





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# *Adoption*



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# Preface

The year 2015 was a significant year in the history of child rights in India with the enactment of the Juvenile Justice (Care and Protection of Children) Act, 2015. Globally also, this was the same year when members of the United Nations adopted the Sustainable Developmental Goals to end poverty and ensure prosperity for all. With these developments, the post-2015 framework for child protection in India has attained a strong rights-based orientation. Against this backdrop, Udayan Care is conscious of the fact that protecting the rights of out-of-home care children is critical in the overall scheme of child protection. The number of children in need of care and protection is continuously on the rise and adoption rate in India is still very low. It is estimated that the number of such children is likely to be 24 million by 2020. Thus, India faces a humongous task of caring and protecting a large number of out-of-home care children and giving them the opportunities to grow to their full potential. A robust system on Alternative Care that works to restore, protect and reintegrate them needs to be a priority with all stakeholders.

Awareness of the prescriptions of laws and policies is a prerequisite for a robust system of Alternative Care. However, we often witness gaps in the knowledge of people working in the domain of child care with respect to the latest laws and policies. This at times can result in deficiencies of services or compromises with child care, thus putting the rights of children to a back seat. The issue of Alternative Care is still an evolving subject in India. Keeping this gap in view, Udayan Care felt the importance of developing a set of information, education and communication material on different aspects relating to Alternative Care. This publication, **A Series on Alternative Care**, containing four booklets, viz., Standards of Care in Child Care Institutions, Foster Care, Adoption and Aftercare, is an attempt in the above direction. These booklets cover the latest legal and policy framework on Alternative Care in India, which has been presented in an easy-to-understand style so that they can be used as an effective reference material by all the stakeholders. All the four booklets in the Series have been updated according to the Juvenile Justice (Care and Protection of Children) Act, 2015, the Juvenile Justice (Care and Protection of Children) Model Rules, 2016, and the latest guidelines on foster care and adoption issued by the Government of India. The relevant provisions of the Convention on the Rights of the Child and the UN Guidelines for the Alternative Care of Children (UNGACC) 2009 have also been kept in view while preparing the booklets.

The booklets contain no complicated legal jargons. The purpose is to make people in the field of child protection comprehend the scope and basic facts on the four thematic areas. All the four booklets follow a similar style of presentation, first introducing the concept, then a chapter on legal and policy instruments, followed by a chapter on practices in India and some other select countries. Each booklet also has a listing of references for those who are interested in further reading on the given subject.

These booklets have been written for child care practitioners, those working in the government offices, members of District Child Protection Units, Child Welfare Committees and Juvenile Justice Boards, social workers, caregivers, staff and management at child care institutions, State agencies as well as by beginners and volunteers in the field of Alternative Care. However, it is pertinent to note that the booklets are not the replacement of any law. For any further understanding of the law, reading of relevant Acts and Rules are strongly recommended.

This publication on Alternative Care would not have been possible without the support of UNICEF. Udayan Care is immensely thankful to them for the support.

We highly appreciate the invaluable inputs provided by several experts including Tannistha Datta, UNICEF, Delhi; Swagata Raha, Centre for Child and the Law, National Law School of India University (NLSIU), Bengaluru; Premoday Khakha, Assistant Director, Integrated Child Protection Scheme, Government of NCT of Delhi and Ian Anand Forber Pratt, National Program Director, Centre of Excellence in Alternative Care of Children, India.

Needless to say, the hard work of the entire team at Udayan Care has indeed ensured the completion of this project successfully.

**Udayan Care**



# Acronyms and Abbreviations

AFAA	Authorised Foreign Adoption Agency
AR, 2017	Adoption Regulations, 2017
CA	Central Authority
CARA	Central Adoption Resource Authority
CARINGS	Child Adoption Resource Information and Guidance System
CCI	Child Care Institution
CWC	Child Welfare Committee
DCPU	District Child Protection Unit
E.g.	For example
GW Act, 1890	Guardians and Wards Act, 1890
HAM Act, 1956	Hindu Adoption and Maintenance Act, 1956
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome
HSR	Home Study Report
ID	Identity Document
INA	Immigration and Nationality Act
JJ Act, 2015	Juvenile Justice (Care and Protection of Children) Act, 2015
NRIs	Non-Resident Indians
OCI	Overseas Citizens of India
PAPs	Prospective Adoptive Parents
SARA	State Adoption Resource Agency
SAA	Specialised Adoption Agency
UK	United Kingdom
USA	United States of America
US	United States



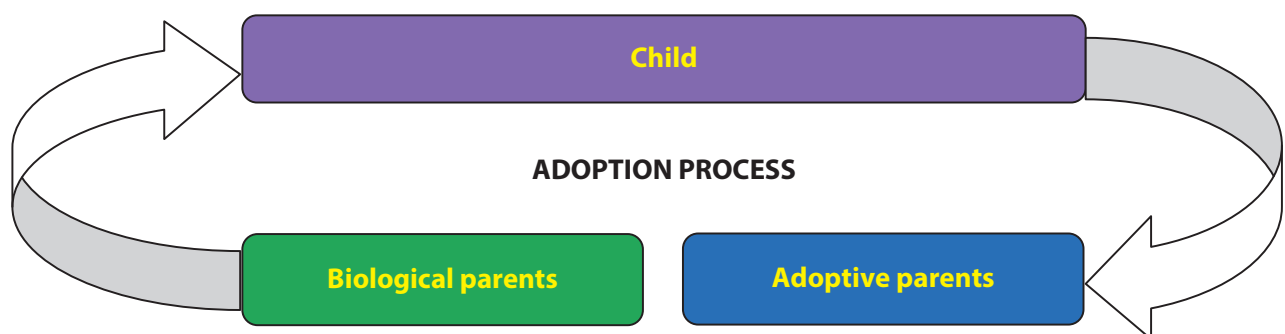
# The Concept

Adoption is a process for legally changing parental responsibilities from biological parents or the persons or institutions that act as caregivers of children to the adoptive parents, thereby providing the child the care and warmth of a family. While the best interest of the child remains at the core of adoption, it also provides an opportunity to people to become parents. There are also parents who want to do some good by adopting a child. Although the system of adoption has been in existence since ancient times, the concept attained increasing importance in modern times.

The Juvenile Justice (Care and Protection of Children) Act, 2015 defines adoption as “the process through which the adopted child is permanently separated from his biological parents and becomes the lawful child of his adoptive parents with all the rights, privileges and responsibilities that are attached to a biological child”. [Section 2(2)]

Adoption is considered as a key rehabilitation and social reintegration measure for children in need of care and protection, as it provides the children family-based non-institutional child care. There are also parents and guardians who voluntarily put up their children for adoption. A child, once adopted legally, comes under the parental care of the new adopted parent(s) and enjoys all rights, privileges and responsibilities as a result of the new family ties from the date of the adoption. In other words, the adopted child is not entitled to legal benefits in matters like property, inheritance etc., from the family or the entity that gave him or her up for adoption. However, only one exception remains with regard to property vested in adopted child immediately before the date on which the adoption order becomes effective. Such property shall continue to be vested in the adopted child, and the child shall fulfill the obligations attached to such property, including obligations, if any, to maintain relationship with biological family. (Section 63, JJ Act, 2015)

The concept of adoption is depicted in the chart below.



## Takeaway

Adoption is an important family-based rehabilitation and social reintegration measure that legally allows permanent change of parental responsibilities from biological parents or carers to adoptive parents, so that children are provided with care and warmth of family.

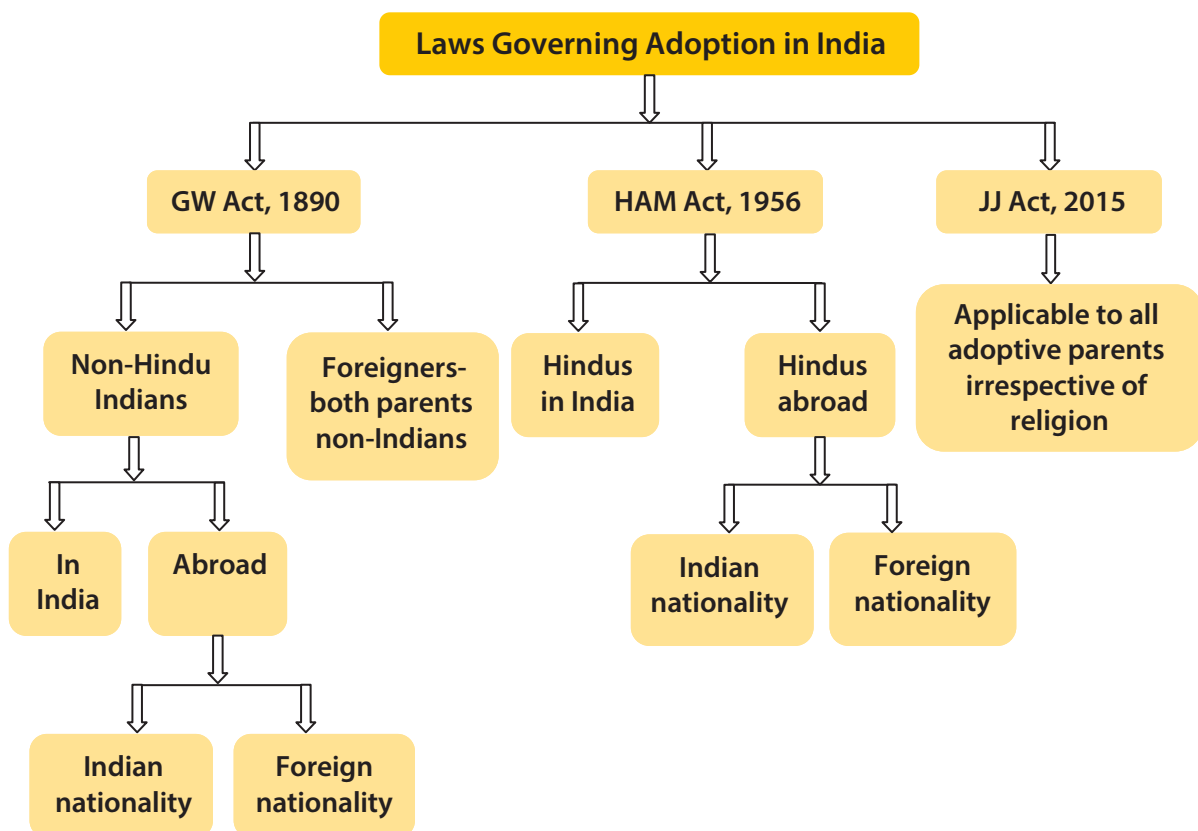


# Laws Governing Adoption in India

The following three laws govern adoption of children in India:

- Guardians and Wards Act, 1890 (GW Act, 1890)
- Hindu Adoption and Maintenance Act, 1956 (HAM Act, 1956)
- Juvenile Justice (Care and Protection of Children) Act, 2015 (JJ Act, 2015)

The chart below explains the respective population coverage under the above three laws.



## Takeaway

The three laws that govern adoption in the country together cater to Hindus, Non-Hindus, non-Indians and parents irrespective of their religious status.

# Adoption under the GW Act, 1890 and the HAM Act, 1956

## Adoption under the GW Act, 1890

The Guardian and Wards Act, 1890 deals with guardianship of a child, and except the State of Jammu and Kashmir, it is applicable to the whole of India. A guardian is a person who is in charge of guardianship of the person or property of a minor. Besides foreigners, Indian nationals who are Muslims, Parsis, Christians and Jews are covered under this Act, as their personal laws do not allow for full adoption.

Application for guardianship is made by “the person desirous of being, or claiming to be, the guardian of the minor, or any relative of friend of the minor, or the Collector of the district or other local area within which the minor ordinarily resides or in which he has property, or the Collector having authority with respect to the class to which the minor belongs” (Section 8). Guardianship may be removed by the court. The grounds of such court action include, *inter alia*, abuse of trust, incapacity to perform duties, ill-treatment of ward, disregard of provisions of GW Act or court order, conviction for offence implying defect in character, having an interest adverse to faithful performance of duties, and ceasing to reside within the jurisdiction of the court. The Act, however, focuses more on guardianship rather than parenthood, which implies its inadequate emphasis on right of children to a caring family.

## Adoption under the HAM Act, 1956

The Hindu Adoption and Maintenance Act, 1956 deals with the legal process of adoption of a child by Hindus, and with a broader connotation by Buddhists, Jains and Sikhs, and anyone who is not a Muslim, Christian, Parsi or Jew. While a Hindu man with sound mind, and who is not a minor, can take a son or a daughter in adoption with the consent of his living wife; a Hindu woman can adopt a son or a daughter if she is of sound mind, not a minor and is not married. According to the Act, only father or mother or guardian of a child is capable of giving the child in adoption. According to Section 10 of the Act, a child can be adopted if he/she is a Hindu, and has not been adopted, married and completed 15 years of age.

For all purposes, an adopted child becomes the child of his/her adopted father or mother from the date of adoption. The child's ties with the family of his birth stands terminated with effect from the date of adoption.

### Takeaway

The HAM Act allows adoption by Hindus and all others who are not Muslims, Christians, Parsis or Jews; and the child adopted under the law becomes the child of his/her adopted parents. The GW Act, 1890, on other hand, covers Indian Muslims, Parsis, Christians and Jews; but the children covered under the Act do not receive the status of children, as they are called the wards.



# Adoption under the JJ Act, 2015

The Juvenile Justice (Care and Protection of Children) Act, 2015 deals with various aspects of adoption of orphaned, abandoned and surrendered children. Adoption of such children is in consonance with the emphasis on right to family of every child in need of care and protection. The provisions of this Act do not apply to adoptions made under the Hindu Adoption and Maintenance Act, 1956.

The following sections deal with the provisions of the JJ Act, 2015 on adoption. The Adoption Regulations, 2017 (AR, 2017) has also been referred to appropriately in order to ensure holistic understanding of the processes of adoption.

## Procedures for Declaring a Child Legally Free for Adoption

Section 38 of the JJ Act, 2015 deals with the procedures for declaring a child legally free for adoption. The responsibility for making such a declaration lies with the Child Welfare Committee of the district. The procedures to be followed in this regard for different categories of children are given in the table below.

**Orphan:** A child who is without biological or adoptive parents or legal guardian, or whose legal guardian is either unable or unwilling to take care of the child.

**Abandoned:** A child deserted by his biological or adoptive parents or guardians, and who has been declared as abandoned by the Child Welfare Committee (CWC) following due inquiry.

**Surrendered:** A child who has been relinquished by the parent or guardian to the CWC due to physical, emotional or social factors that are beyond their control, and declared as such by the CWC.

*Source: JJ Act, 2015*

For Orphan and Abandoned Child	For Surrendered Child
<p>CWC first tries to trace the parents and guardians of the child. If status of the child as an orphan or abandoned is finally established, CWC declares the child legally free for adoption.</p> <p>For children up to two years, the declaration should be made within two months from the date of production of the child; and within four months, if the child is above two years of age.</p>	<p>The institution where surrendered child has been placed by the CWC, brings before CWC immediately on completion of the period* specified in Section 35 of JJ Act 2015, for declaring the child legally free for adoption.</p> <p style="text-align: right;">*Parents or guardians are given two months time, after surrendering the child, to reconsider their decision.</p>

A child of a mentally retarded parent or an unwanted child of victim of sexual assault can be declared legally free for adoption by following the above procedure.

The decision to declare a child legally free for adoption should be taken by at least three members of CWC. Section 38 (5) of JJ Act, 2015 requires CWC to send data on number of children declared free for adoption and number of pending cases to CARA and State Adoption Resource Agency (SARA) every month.

## Fundamental Principles Governing Adoption

According to Regulation 3, AR, 2017, the following basic principles govern adoption:

- The best interests of the children should be the primary concern while processing cases of adoption.
- Preference should be given for placement of children in adoption by Indian parents.
- As far as possible, a child should be placed in adoption in his or her own socio-cultural environment.
- All adoptions should be registered on Child Adoption Resource Information and Guidance System (CARINGS), and CARA should keep these details confidential.

## Eligibility Criteria for Prospective Adoptive Parents

According to Regulation 5 of Adoption Regulations, 2017 (AR, 2017), the eligibility criteria for prospective adoptive parents (PAPs) are the following:

- PAPs should be physically fit, financially sound, mentally alert and emotionally stable; and should not have any life threatening medical condition.
- Consent of both the spouses is required in case of couples willing to adopt.
- A single female can adopt a child of any gender.
- A single male is not eligible to adopt a girl child.
- In case of a couple wishing to adopt a child, the couple should have at least two years of stable marital relationship.
- Age of child and prospective adoptive parents to determine eligibility for adoption.

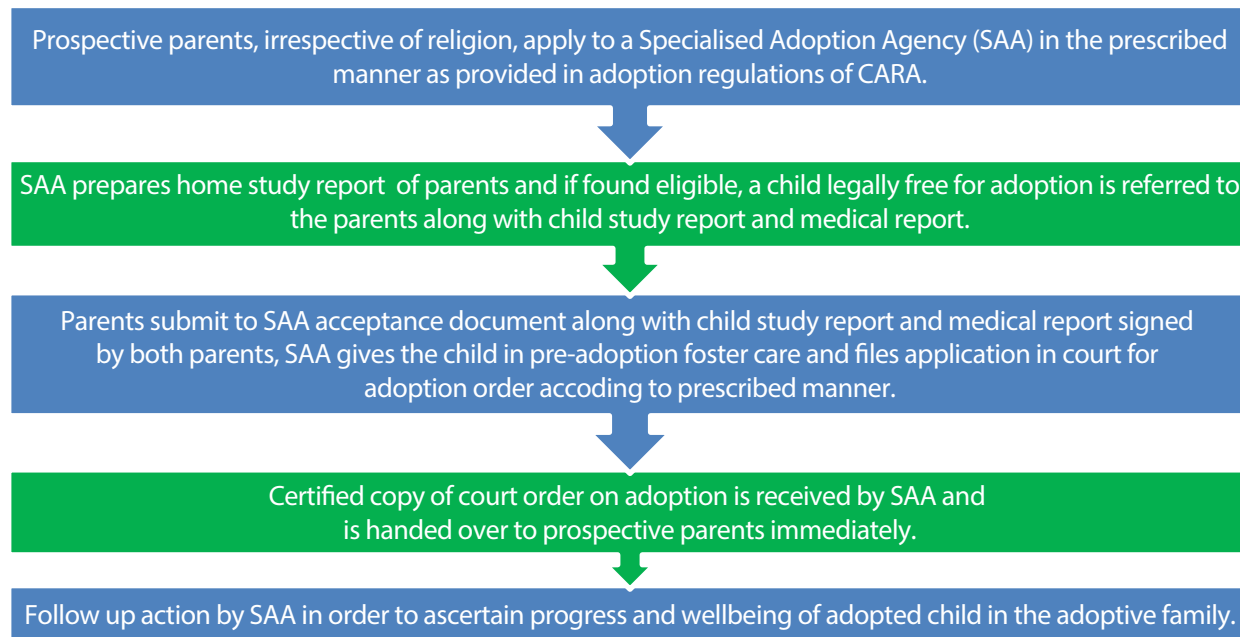
Age of the child	Maximum composite age of PAPs (couple)	Maximum age of single PAP
Up to 4 years	90 years	45 years
Above 4 up to 8 years	100 years	50 years
Above 8 up to 18 years	110 years	55 years

- The minimum age difference between the child and either of the prospective adoptive parents should not be less than 25 years.
- Age criteria for PAPs shall not be applicable in case of relative adoption and adoption by step-parent.
- Couples with three or more children are not eligible for adoption, except in case of special needs children, hard to place children, relative adoption and adoption by step-parent.





## Procedure for Adoption by Indian Parents Living in India (Section 58, JJ Act, 2015)



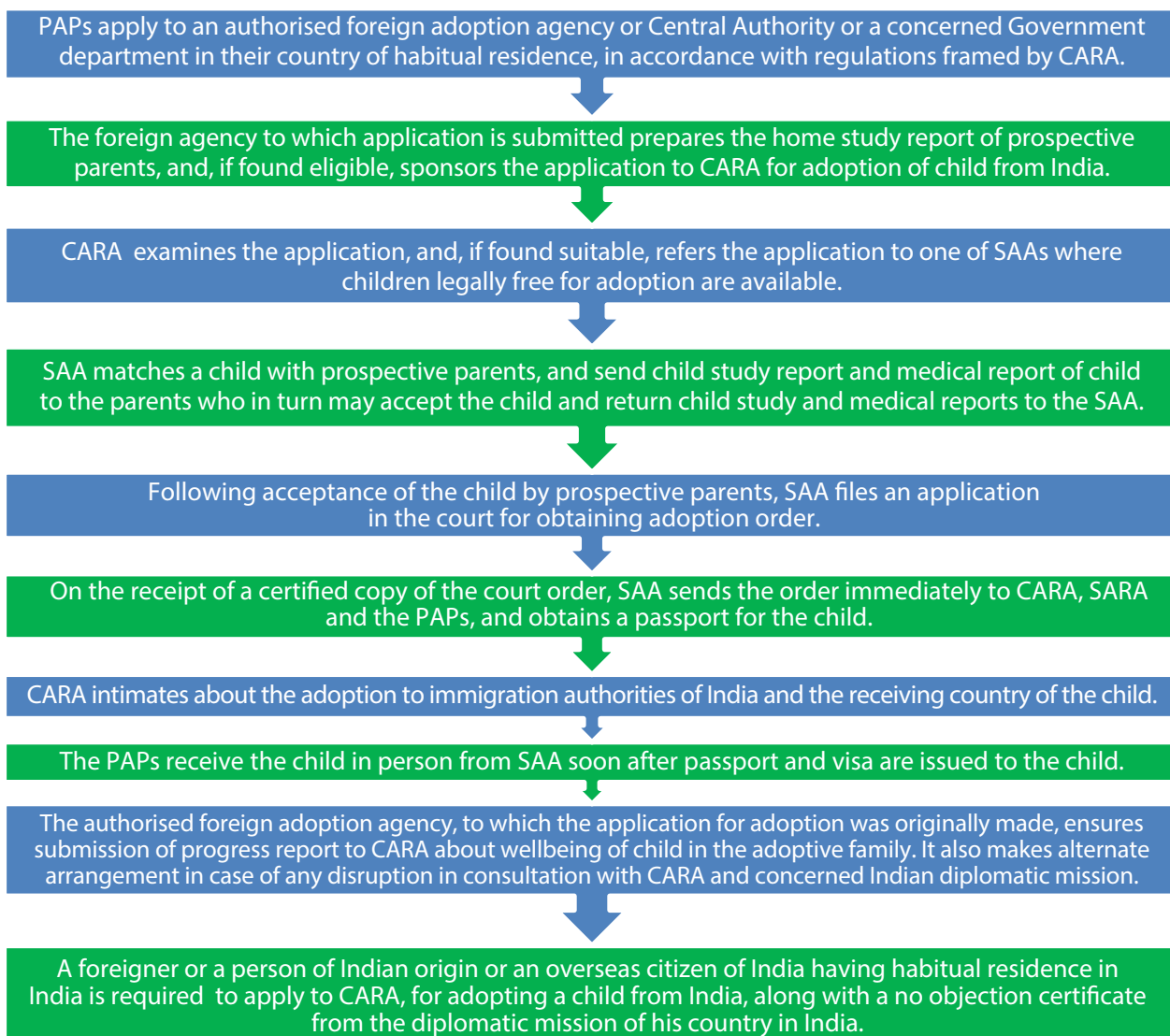
Practitioners may refer to the enabling Regulations 9 (registration and home study of PAPs), 10 (referral of a child from a SAA through Child Adoption Resource Information and Guidance System to PAPs), 11 (pre-adoption foster care), 12 (legal procedure) and 13 (follow up of progress of adopted child) of AR, 2017 that govern adoption by resident Indians.

## Procedure for Inter-country Adoption (Section 59, JJ Act, 2015)

Inter-country adoption is meant for orphan, abandoned or surrendered children who could not be placed with Indian or non-resident Indian adoptive parents within 60 days from the date on which such children are declared legally free for adoption. Section 59 (1) of JJ Act, 2015 further states that children with physical and mental disability and siblings and children above five years of age may be given preference over other children while considering inter-country adoption.

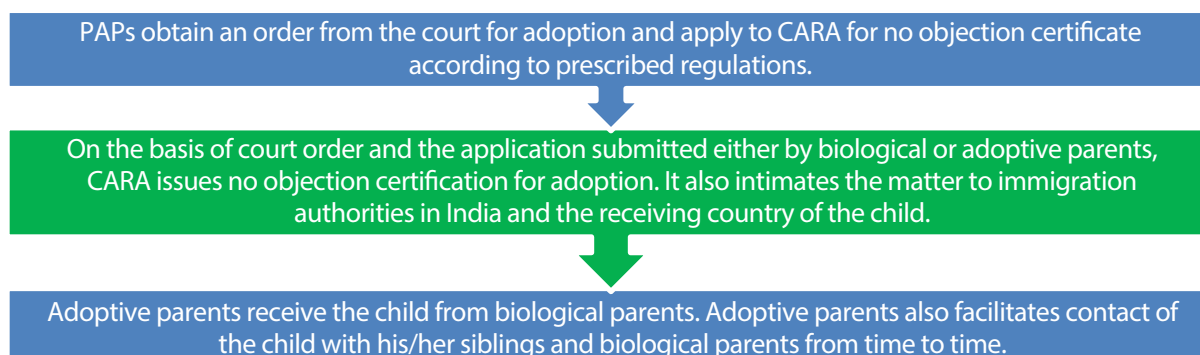
Preference is also given to adoptive parents who are non-resident Indians or overseas citizens of India or persons of Indian origin. In regard to inter-country adoption, a prospective parent is either a non-resident Indian or overseas citizen of India or person of Indian origin or a foreigner, irrespective of their religion.

Practitioners may refer to the following enabling Regulations of AR, 2017 in regard to inter-country adoption: Regulations 15 (registration and home study report for PAPs for inter-country adoption), 16 (no objection certificate of Authority and pre-adoption foster care), 17 (legal procedure), 18 (passport and visa, intimation to immigration authorities, conformity certificate, birth certificate etc.), 19 (follow up of progress of adopted child by non-resident Indians, overseas citizens of India and foreign PAPs), 20 (adoption by overseas citizen of India, foreign national of Hague Adoption Convention ratified countries living in India), 21 (adoption procedure in case of overseas citizen of India or foreign national of Hague Adoption Convention ratified countries living in India), 22 (procedure for adoption of a child from a foreign country by Indian citizens), 56 (no objection certificate of CARA) and 57 (issue of conformity certificate).



## Procedure for Inter-country Relative Adoption (Section 60, JJ Act, 2015)

The procedure explained below is meant for inter-country adoption involving relatives (E.g. a relative living abroad intends to adopt a child of a relative living in India).



Practitioners may refer to enabling Regulations 53 (inter-country relative adoption), 54 (prior approval for inter-country relative adoption from CARA) and 55 (legal procedure), 56 (no objection certificate of CARA) and 57 (issue of conformity certificate) of AR, 2017 that govern inter-country relative adoption.



## Other Key Procedural Requirements (Sections 61 and 62, JJ Act, 2015)

- The conditions that the court must satisfy itself before issuing adoption order are the following:
  - ✓ The adoption is for welfare of the child.
  - ✓ Wishes of the child are duly considered which is in consonance with the child's age and level of understanding.
  - ✓ None of the parties involved in the process of adoption namely adoptive and biological parents, SAA and parent or guardian in case of relative adoption has received or agreed to receive any payment or reward other than the one permitted under the adoption regulations
- Adoption proceedings in court are held in camera.
- The court should dispose of an adoption case within a **period of two months** from the date of filing.
- Documentation and procedural matters must be in accordance with the regulations framed by CARA.
- A case of adoption is disposed of by SAA **within four months** from the date of receipt of application.
- Particulars of adoption orders passed by the concerned courts are forwarded to CARA on monthly basis.

## Adoption of Children Residing in Institutions not Registered as Adoption Agencies

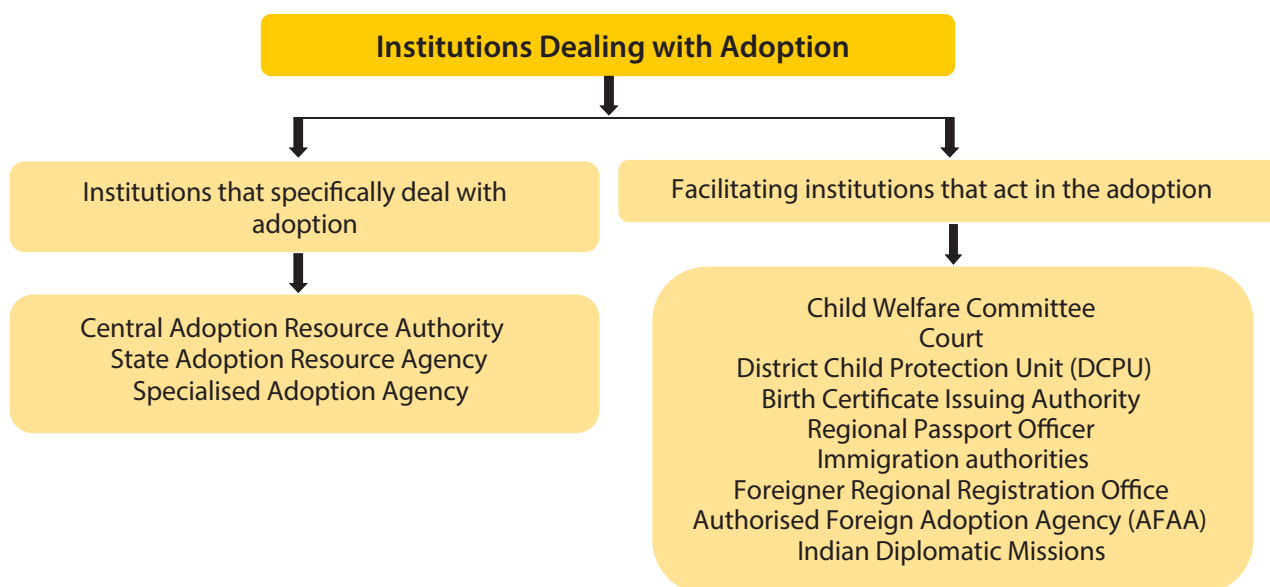
The procedures noted below are applicable to orphan, abandoned and surrendered children who are residing in institutions registered under the JJ Act, 2015, but not recognised as Specialised Adoption Agencies. (Section 66, JJ Act, 2015)

- These institutions are required to report and produce the children before the CWC as per Section 38 of the JJ Act, 2015 in order to enable the CWC to declare the children legally free for adoption.
- The above-referred institutions establish formal linkages with nearby SAA and submit to the latter details of children who are legally free for adoption.
- Following this, the children are placed in adoption by the SAA.

## Institutional Structures Dealing with Adoption

The institutional structures dealing with adoption can be divided into **two broad categories** namely **institutions that specifically deal with adoption** and **facilitating institutions** that play different roles in the process of adoption as specified in the JJ Act, 2015 and AR, 2017. While the chart below shows institutions dealing with adoption, brief notes on key institution have been given below the Chart.

CARA is a statutory body of the Ministry of Women and Child Development, Government of India. As the nodal authority, it deals with adoption of orphan, abandoned and surrendered children, and monitoring and regulation of in-country and inter-country adoptions. It is also designated as the Central Authority to deal with inter-country adoptions under provisions of the Hague Convention on Inter-country Adoption, 1993 which was ratified by Government of India in 2003.



## Central Adoption Resource Authority (CARA)

The key functions of CARA, as stated in Section 68 of JJ Act, 2015, are to:

- Promote in-country adoptions and to facilitate inter-State adoptions in co-ordination with State Agency
- Regulate inter-country adoptions
- Frame regulations on adoption and related matters from time to time as may be necessary
- Carry out the functions of the Central Authority under the Hague Convention on Protection of Children and Cooperation in respect of Inter-country adoption

## State Adoption Resource Agency (SARA)

SARA, set up the State governments, deals with adoption issues at the state level under the guidance of CARA. (Section 67 of JJ Act, 2015).

## Specialised Adoption Agency (SAA)

Set up by the State governments or by voluntary or non-governmental organizations, SAA are meant for housing orphan, abandoned and surrendered children for the purpose adoption. According to Section 65 of the JJ Act, 2015, the State government recognizes SAA in each district, furnishes their details to CARA, inspects each SAA at least once in a year and take remedial measures, as necessary.

## Authorised Foreign Adoption Agency

Authorised Foreign Adoption Agency refers to a social or child welfare agency of another country that is authorised by CARA on the recommendation of their Central Authority or Government department of that country for sponsoring the application of non-resident Indian or overseas citizen of India or persons of Indian origin or foreign PAPs for adoption of a child from India.



## CARINGS and Other Important Regulations on Adoption

- **CARINGS:** Child Adoption Resource Information and Guidance System (CARINGS) is **an online information system used by CARA for facilitating, guiding and monitoring the adoption programme in India.** The process of adoption has become digital, right from submitting an application for adoption to choosing the child. Under the new system, PAPs will have to register online on CARINGS on the website of CARA (<http://www.cara.nic.in/>) and select the preferred adoption agency and upload relevant documents as stated in Schedule VI of AR, 2017. There is no provision of registration fee for online registration on CARINGS.
  - ✓ The PAPs shall have to opt for their desired State or States at the time of registration. Registration on CARINGS would be deemed as registration in all SAA of the State or States for which a PAP has opted for.
  - ✓ Seniority of PAPs would be maintained from the date of registration and uploading of documents on CARINGS.
  - ✓ NRIs would be treated at par with resident Indians in terms of priority for adoption of Indian orphan, abandoned and surrendered children.
  - ✓ All adoptions (in-country or inter-country) shall take place through CARINGS, and adoption outside CARINGS is strictly prohibited.
  - ✓ For registration on CARINGS, PAPs are required to submit various documents. The table below contains names of documents required for different categories of adoption.

Category	Documents to be uploaded at the time of registration
<b>In-country adoption</b>  <b>(Resident Indian parents)</b>	Current family photograph/photograph of person adopting a child; Permanent Account Number of the PAPs issued by Income Tax Department; proof of residence (Aadhar card/voter ID/passport/driving licence/current electricity bill/telephone bill); proof of income of last year (salary slip/income certificate issued by government department/income tax return; copy of marriage certificate and photograph; divorce decree/declaration from the court or affidavit on oath pertaining to divorce in case divorce is governed by personal law where decree of divorce is not mandatory/death certificate of spouse, if applicable; copy of birth certificate/proof of date of birth of PAPs; certificate from a medical practitioner certifying that the PAPs do not suffer from any chronic, contagious or fatal disease and they are fit to adopt
<b>Inter-country adoption</b>  <b>(NRI/OCI/ Foreigner living abroad)</b>	Photograph of applicant(s); Home Study Report of OCI and foreign PAPs residing in India; passport; OCI card, if applicable; birth certificate; proof of residence; proof of income of last year (salary slip/income certificate issued by government department/income tax return; certificate from a medical practitioner certifying that the PAPs do not suffer from any chronic, contagious or fatal disease and they are fit to adopt; police clearance certifying antecedents of PAPs; marriage certificate, in case of couple; copy of divorce decree/Declaration from the competent court or affidavit on oath pertaining to divorce in case of divorce governed by personal law where decree of divorce is not mandatory/death certificate of spouse, if applicable; undertaking from relative in case of single spouse; in case of OCI/foreign PAPs living in India, a copy of No Objection Certificate from Embassy/High Commission for adoption and assurance for post adoption follow up in



	<p>case the PAPs relocate from India; two Reference Letters from two respected members of the society; consent of older child/children in the family who are more than five years old; consent of older child to be adopted; permission of the receiving country as per Article 5 or 17 of the Hague Adoption Convention, applicable in case of Hague ratified country; in case of PAPs residing abroad, undertaking from PAPs to allow personal visits by the representative of the AFAA or CA or concerned government department or Indian Mission, as the case may, for follow up of progress of the child as required under the Adoption Regulations; in case of OCIs/foreign PAPs living in India, undertaking from concerned SAA to provide post-adoption follow up; in case of OCIs/foreign PAPs living in India, undertaking to allow personal visits of the representative of the SAA or DCPU or SARA at least for period of two years from the date of adoption; undertaking from the AFAA to provide progress report of the child for a period of two years and make alternative arrangement in case of disruption.</p>
<b>Inter-country relative adoption</b>	<p>All the documents noted above for inter-country adoption. Following other documents are required to be uploaded after referral:</p> <p>Consent of older child/children in biological family who are above five years old; consent of the older child to be adopted; permission of the receiving country as per Article 5 or 17 of the Hague Adoption Convention (applicable in case of Hague ratified country); relationship of PAPs to the relative child (family tree); recent family photographs of the child, adoptive parents and biological parents; consent of the biological family as stated in Schedule XIX of AR, 2017; permission from the CWC to the legal guardian to surrender the child in adoption with the relative as stated in Schedule XXII of AR, 2017, if applicable; family background report by DCPU as stated in Schedule XXI of AR, 2017</p>
<b>In-country relative adoption</b>	<p>Proof of residence of the PAPs; consent of the older child of the PAPs in case the child is more than five years old; consent of biological parents, as stated in Schedule XIX of AR, 2017; permission from the CWC to the legal guardian to surrender the child in adoption with the relative as stated in Schedule XXII of AR, 2017, if applicable; affidavit by PAPs in support of their relationship, financial and social status as stated in Schedule XXIV of AR, 2017; adoption order from court</p>
<b>Adoption by step-parent</b>	<p>Proof of residence of biological parent and spouse adopting the child/children along with the proof of their status as legally wed; consent of biological parent(s), spouse adopting the child/children as stated in Schedule XX of AR, 2017; documents as required to be attached with Schedule XX of AR, 2017, if applicable; adoption order from court</p>

- **Adoption of children with special needs:** Regulation 48 of AR, 2017 deals with adoption of these children. An illustrative list of such children is given in Schedule XVIII of AR, 2017. The list can also be checked in the website of CARA at [www.cara.nic.in](http://www.cara.nic.in). The children with special needs have been classified under three main categories namely physical, mental and neurological.
- **Adoption of older children and siblings:** Regulation 49 of AR, 2017 deals with adoption of these children. According to the regulation, an older child is one who has completed five years of age.
- **Adoption of hard to place children:** Regulation 50 of AR, 2017 deals with adoption of these children. According to the regulation, hard to adopt children are the ones who are not getting any referral for a long time through CARINGS.



- **Adoption by step-parent:** Regulation 52 of AR, 2017 deals with adoption by step-parent. The couple (step-parent and one of the biological parents) shall register in CARINGS and comply with requirements in regard to consent for adoption, custody and adoption according to prescribed formats.
- **Adoption Fee:** Under Regulation 46 of AR, 2017, the expenses for adoption, as prescribed by CARA from time to time, shall be borne by the PAPs. Since this is a dynamic element, it is necessary for practitioners and PAPs to contact CARA for up-to-date information, as and when necessary.

According to AR, 2017, adoption fee may be received by SAA and CARA directly from the PAPs in case they are living in India; and through Authorised Foreign Adoption Agency or Central Authority or the Government Department, as the case may be, in cases of inter-country adoptions. The SAA is not permitted to accept any donation in cash or kind, either directly or indirectly, from PAPs other than the prescribed adoption fee. The adoption fee shall be shared between SAA and CCI in the ratio, as prescribed by CARA.

## Challenges to Adoption

- Online application process and use of English language pose difficulties for people with no or inadequate access to internet and lack of knowledge of English.
- Biases and prejudices of PAPs for particular type of children, with key determinants being colour, physical features and health condition lead to delay in adoption.
- Long waiting period, which sometimes stretches up to four years, is a manifestation of huge gap in number of children available for adoption and the number PAPs. For example, Haryana has 169 waitlisted PAPs for every two infants in the 0-2 year age group available for adoption. For 20 such children in West Bengal, there are 597 PAPs; and in Delhi, the figures are 12 infants for 750 PAPs.<sup>1</sup>

### Takeaway

The JJ Act, 2015 deals with adoption of orphaned, abandoned and surrendered children irrespective of religion; and the child on successful completion of adoption process becomes the child of his/her adopted parents.

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<sup>1</sup> Sengupta, Ananya, "Adoption Wait Grows as Kid Numbers Drop", *The Telegraph* (21 January 2015). Retrieved from [http://www.telegraphindia.com/1150121/jsp/nation/story\\_9481.jsp#.Vrojzh97IU](http://www.telegraphindia.com/1150121/jsp/nation/story_9481.jsp#.Vrojzh97IU)

# Adoption Procedures across the World

This chapter deals with the salient procedural aspects of adoption in some randomly selected countries in order to broaden the reader's worldview on the issue of adoption.

## Australia

### Domestic/Local Adoption

Each state and territory in the country has its own legislation governing domestic/local adoption which is administered by concerned state or territory agency. The guardianship of a child to be adopted, and for whom general consents for adoption have been signed, remains with the department that handles adoption in the concerned state or territory. There are also approved non-government adoption agencies whose principal officers hold guardianship of the child.

This guardianship remains in force until:

- The adoption order is made or
- Consents for adoption are revoked or
- Certain specified event occurs (E.g. when a suitable and willing relative is able to care for the child).

An Australian can also adopt a child already known to him/her, which is called '**known child adoptions**'. These adoption cases are administered by the department responsible for adoption in each state and territory.

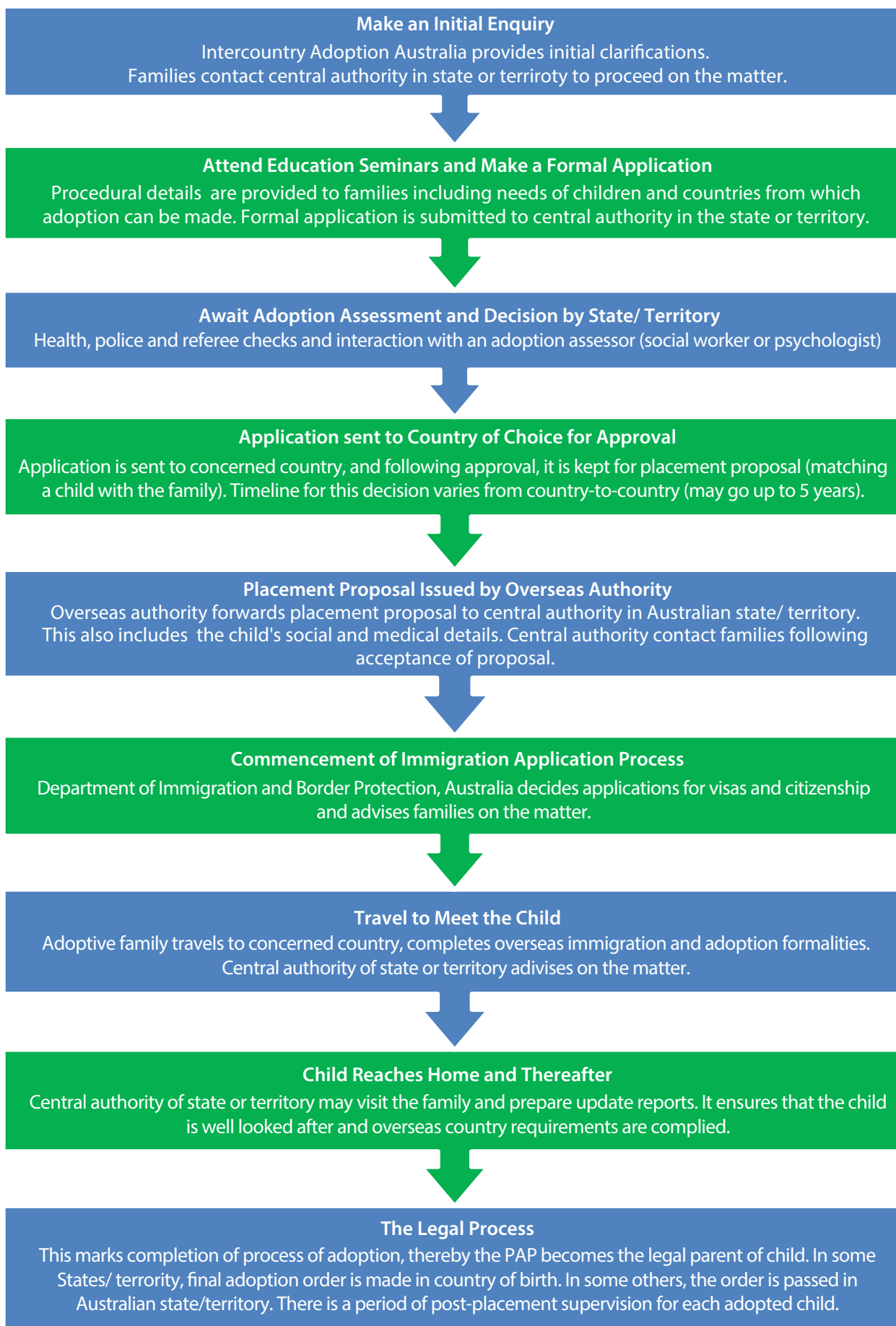
- Most of the known child adoptions are by step-parents or by long-term carers such as foster parents. These adoptions provide the child with a clear legal position, status and stability in a new family arrangement.
- Adoption by relatives other than step-parents is discouraged in Australia and is less common. This is allowed only under exceptional circumstances when welfare of a child is not ensured under parental responsibility order.

### Inter-country Adoption

An Australian citizen or a permanent resident of the country can adopt a child from overseas through the concerned authority in Australian state or territory, and in accordance with the principles and standards of the Hague Convention.

The steps of inter-country adoption, which may have some local variations in the state or territory, are narrated below in the flow chart.

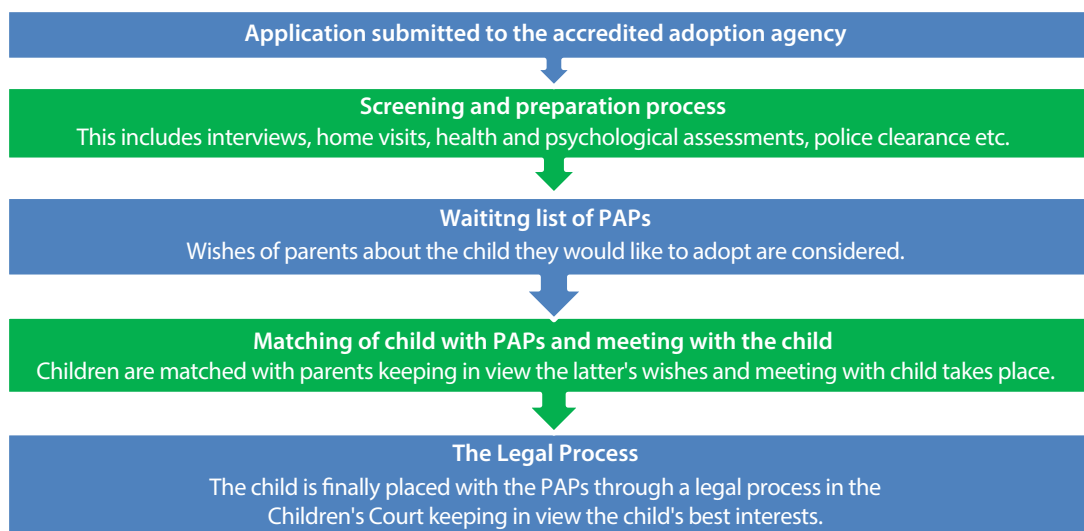




## South Africa

### National Adoption

Adoption in South Africa is done either by an accredited adoption agency or with the help of an adoption social worker functioning within the statutory accredited adoption system. The process of adoption involved the steps explained in the chart below.



### Inter-country Adoption

Inter-country adoption in South Africa is regulated by the provisions of the Children's Act 38 of 2005 (Chapter 18). As the country is a signatory to the Hague Convention, it is also guided by the prescription of the Convention. The following are the conditions under which inter-country adoptions are made:

- Inter-country adoptions should take place within the framework of a working agreement between two partner organizations, one in the receiving country and one in the country of origin. These agreements should be approved by both the South African Central Authority and the Central Authority of the receiving country.
- Non-South African Citizens, having residence in South Africa can adopt if they have been living in the country for a minimum period of five years.
- A South African citizen temporary living abroad will have to contact South Africa's Central Authority for more information.
- A South African citizen now permanently living abroad will have to follow the first conditions noted above.

The South African Central Authority is the nodal agency for matters concerning adoption.

## United Kingdom

Some of the important aspects of adoption in the UK are presented in the following sections.

### Conditions Applicable for Children

- The child must be under the age of 18 years when the adoption application is made.
- The child must not be (or have never been) married or in a civil partnership.





## The Child's Birth Parents

Consent of both birth parents for adoption is necessary under normal circumstances. This is, however, not required, if

- The parents can't be found.
- They are incapable of giving consent, like mental disability.
- The child would be put at risk if they weren't adopted

## Eligibility Conditions of PAPs

Anyone aged 21 years or over (there's no upper age limit) and conform to any of the following conditions can adopt a child:

- Single
- Married
- In a civil partnership
- An unmarried couple (same sex and opposite sex)
- The partner of the child's parent

## Citizenship

British citizenship is not mandatory for adopting a child in the county. But the following necessary conditions will have to be fulfilled.

- Adoptive parents (or partner, if PAP is a couple) must have a fixed and permanent home in the UK, Channel Islands or the Isle of Man.
- Adoptive parents (or partner, if PAP is a couple) must have lived in the UK for at least one year before starting of the application process.

## United States of America

### Domestic Adoption

Domestically, adoption cases are handled either by private and public adoption agencies or independently by attorneys, as explained in the table below.

<b>Public Adoption Agencies</b>	<p>These agencies help in adoption of children under US foster care. The government-affiliated website <a href="http://www.aboutuskids.org">www.aboutuskids.org</a> shares information about children under foster care with PAPs.</p> <p>The following are steps involved in adoption from US foster care:</p> <p><b>Step 1:</b> The process of adoption starts with PAPs undergoing <b>pre-service training</b>. It starts either before or at the time of application process. The pre-service training, spanning over 4 to 10 sessions, makes the parents understand the child better which in turn helps in integrating the child with family.</p> <p><b>Step 2:</b> The second step is the <b>application process</b> during which PAPs provide letters of reference from employer and known people, criminal record check, proof of meeting minimum age criterion and verification of income.</p>
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	<p><b>Step 3:</b> The <b>adoption home study</b> report is prepared by case worker. The report contains family background, statements, and references, education and employment, relationships and social life, daily life routines, parenting experiences, details about PAPA's home and neighborhood, readiness and reasons for seeking adoption, and approval and recommendation of children the family can best parent.</p> <p><b>Step 4:</b> PAPA's receive <b>approval to adopt</b>.</p> <p><b>Step 5:</b> This is known as <b>envisioning family</b> during which PAPA's decide about the type of child they would like to adopt like older child, siblings, children of different race etc.</p> <p><b>Step 6:</b> During this step, PAPA's are <b>being matched with child</b>.</p> <p><b>Step 7:</b> Known as <b>receiving adoptive placement</b>, this step culminates with physical placement of child in family of PAPA's.</p> <p><b>Step 8:</b> This step is called <b>legalizing adoption</b> that takes place several months after adoptive placement. During this period, post-placement supervision is conducted by case workers with regular reporting to a court. The process ends with the court legalizing adoption and PAPA's receiving the child forever.</p>
<p><b>Private Adoption Agencies</b></p>	<p>These agencies generally help in adoption of infants.</p>
<p><b>Independent Adoptions</b></p>	<p>These adoptions involve newborn children and are facilitated by attorneys. Except five States namely Colorado, Connecticut, Delaware, Massachusetts and North Dakota, all other States permit independent adoptions. The following are the salient aspects of this system:</p> <ul style="list-style-type: none"> <li>• It is a flexible system that allows birth and adoptive parents to interact freely with both sides taking initiatives in meeting and making the right choice. Under the system, the child can go to the home of its adoptive parents immediately after birth.</li> <li>• The birth mother is allowed to select the adoptive parents keeping in view their religion, age, employment, length of marriage etc.</li> <li>• Like other forms of adoption, home study is conducted in independent adoptions.</li> <li>• Consent of birth mother is essential for independent adoption.</li> </ul>

## Inter-country Adoption

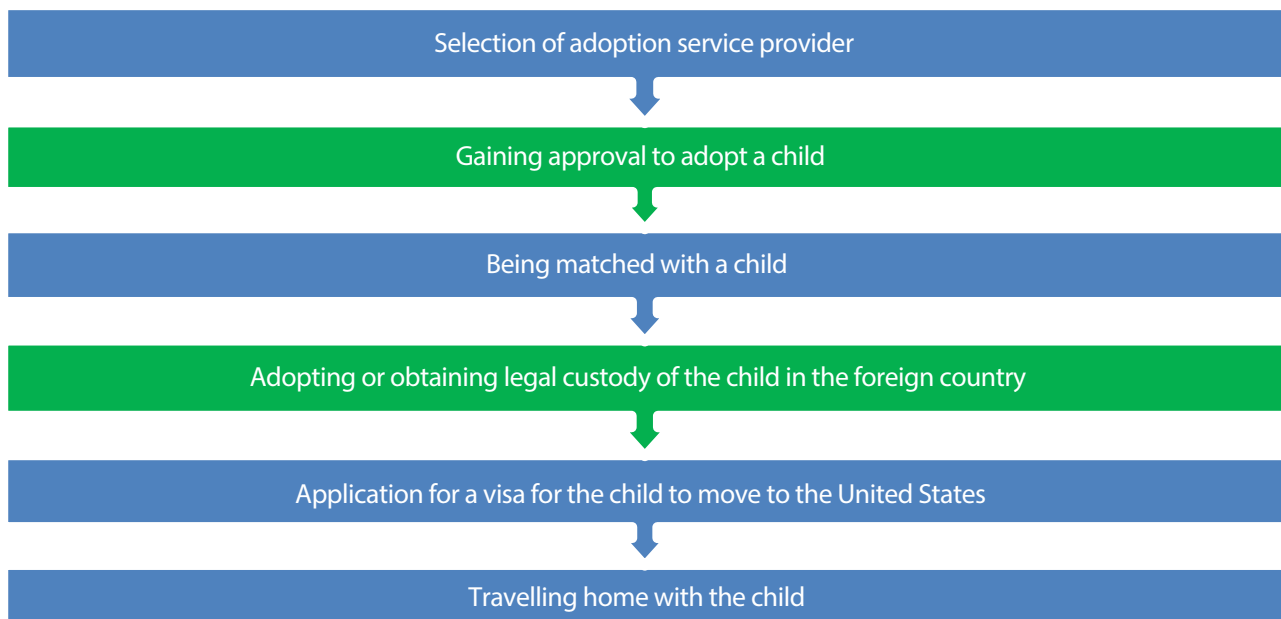
Inter-country adoption in the USA takes place under two processes namely the Hague Convention process (if the other country involved is a party to the Hague Convention) and the non-Hague Convention process (if the other country involved is not a party to the Hague Convention). The first process covers adoptions from 90 countries including India. Under the second process, children of non-Convention countries must meet the definition of orphan under the Immigration and Nationality Act (INA).

According to US law, the adopted child must have the same status and relationship to adoptive parents as a child by birth. Therefore, adoption is more accurately considered as guardianship under US law, especially for immigration purposes.



**Definition of Orphan under the INA:** A child may be considered an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents. The child of an unwed mother or surviving parent may be considered an orphan if that parent is unable to care for the child properly and has, in writing, irrevocably released the child for emigration and adoption. The child of an unwed mother may be considered an orphan, as long as the mother **does not marry** (which would result in the child's having a stepfather) and as long as the child's biological father has not legitimated the child. If the father legitimates the child or the mother marries, the mother is no longer considered a sole parent. The child of a surviving parent may also be an orphan if the surviving parent has not married since the death of the other parent (which would result in the child's having a stepfather or stepmother).

The steps involved in inter-country adoption process are the following:



**Takeaway**

The examples of Australia, South Africa, UK and USA show that adoption procedures deal with both adoption within the country and inter-country adoption.

# Do's and Don'ts for Adoptive Parents

## Do's

- Adoption of children is a legal process. Therefore, it is important for PAPs to follow the prescriptions of law of the country.
- PAPs should approach the right agency for the purpose of adoption as prescribed by the law.
- Information required for adoption process should be provided accurately at all times.
- Payment, if required to be made, should be made in the manner as prescribed in the adoption guidelines.
- Assistance, if necessary during the process of adoption, should be obtained from authorized representatives.

## Don'ts

- PAPs should not approach hospitals, maternity homes, nursing homes, unauthorized institutions or individuals for adoption.
- Do not make payment other than the one required under the adoption regulations.
- Do not compromise with the best interests of your adopted child as it would cause irreparable damages to the child's future.
- Do not let your personal preferences or prejudices come in the way of prudent decision making. It may further delay the process of adoption.

### Takeaway

Prospective adoptive parents should focus on the best interests of adopted child, and therefore should follow the legally mandated procedures for adoption.





# Annexure 1: Role of State Adoption Resource Agency

The State Adoption Resource Agency shall function as the executive arm of the State Government for promotion, facilitation, monitoring and regulation of the adoption programme in the State, and its functions shall include to:

- (a) recommend for recognition to one or more of the Child Care Institutions as Specialised Adoption Agencies in each district;
- (b) publish the contact details of Specialised Adoption Agency in the State at least once in a year;
- (c) recommend renewal of recognition to Specialised Adoption Agency every five years subject to satisfactory performance;
- (d) conduct meetings of Specialised Adoption Agencies on quarterly basis for addressing issues related to adoption and uploading the minutes of such meetings in the Child Adoption Resource Information and Guidance System;
- (e) inspect and monitor adoption programme and activities of all Specialised Adoption Agencies within its jurisdiction;
- (f) identify Child Care Institutions which are not recognised as Specialised Adoption Agencies and link them to Specialised Adoption Agencies for enabling and facilitating adoption of eligible children in such institutions, in pursuance of the provisions under Section 66 of the Act;
- (g) enforce standards and measures for the adoption of orphan, abandoned and surrendered children, as envisaged under the Act or the rules made thereunder and these regulations;
- (h) identify Specialised Adoption Agencies or Child Care Institutions which have the capacity to provide quality care and treatment on a long term basis to special need children including children affected or infected by HIV/AIDS and mentally or physically challenged children, and facilitate transfer of such children to these agencies;
- (i) expedite de-institutionalisation of children through adoption and other non-institutional alternatives;
- (j) take measures that are required for expansion of the adoption programme in the State, such as, strengthening the knowledge base, research and documentation, strengthening child tracking system, training and

capacity building activities, publicity and awareness activities, advocacy and communication, monitoring and evaluation;

- (k) validate the data furnished online in the Child Adoption Resource Information and Guidance System by the Child Welfare Committees in the State, in pursuance of the provisions of Sub-section (5) of Section 38 of the Act;
- (l) ensure furnishing of correct adoption data and documents in the Child Adoption Resource Information and Guidance System by the Specialised Adoption Agency, in the format and periodicity as specified in these regulations and validating the same;
- (m) furnish or update in the Child Adoption Resource Information and Guidance System, the profile of the Specialised Adoption Agency as required under Sub-section (2) of Section 65 of the Act;
- (n) update the contact details of the District Child Protection Units, Child Welfare Committees and State Adoption Resource Agency online in the Child Adoption Resource Information and Guidance System on regular basis;
- (o) maintain a State-specific database in Child Adoption Resource Information and Guidance System of adoptable children, prospective adoptive parents, children given in in-country and inter-country adoptions;
- (p) ensure that all adoption placements in the State are done in accordance with the relevant provisions of the Act, rules made thereunder and these regulations;
- (q) maintain a panel of professionally qualified or trained social workers and set up a counselling centre with the support of Authority at State-level to assist District Child Protection Unit, Specialised Adoption Agency or Child Care Institution, wherever required, for:
  - (i) counselling and preparation of the Home Study Report of the prospective adoptive parents;
  - (ii) preparation of the Child Study Report and counselling of older children, wherever required;
  - (iii) preparing post-adoption follow-up report, wherever required;
  - (iv) preparing family background report in cases of inter-country relative adoptions;
  - (v) post adoption counselling to adopted children and adoptive parents;
  - (vi) assisting and counselling older adoptees in root search.
  - (vii) carry out such other functions as assigned by the Authority from time to time







## Annexure 2: Functions of Specialised Adoption Agency

The Specialised Adoption Agency shall perform the following functions, in addition to those assigned to them under these regulations, to facilitate placement of orphan, abandoned and surrendered children in adoption, namely:

- (1) Function towards children: Every Specialised Adoption Agency shall:
  - (a) be responsible for the care, protection and well-being of every child in its charge and shall cater to their health needs; emotional and psychological needs; educational and training needs; leisure and recreational activities; protection from any kind of abuse, neglect and exploitation; social mainstreaming and restoration or as the case may be and follow-up;
  - (b) report all cases of admissions, restorations, transfers, death and adoption of children, as well as about children missing from the institution, if any to the Child Welfare Committee, District Child Protection Unit, State Adoption Resource Agency and the Authority through Child Adoption Resource Information and Guidance System, designated portal for missing child and police;
  - (c) submit the status of every orphan, abandoned and surrendered child on the Child Adoption Resource Information and Guidance System, which is accessible on the website [www.cara.nic.in](http://www.cara.nic.in);
  - (d) shall upload the certificate, issued by the Child Welfare Committee, declaring the child legally free for adoption in Child Adoption Resource Information and Guidance System within forty-eight hours from the receipt of such certificate;
  - (e) prepare the Child Study Report of all orphan, abandoned and surrendered children, through its social worker, and upload them in Child Adoption Resource Information and Guidance System, within seven days from the date such children are declared legally free for adoption by the Child Welfare Committee;
  - (f) arrange medical tests, as provided in Schedule IV, for all children admitted into its home and prepare the Medical Examination Report through its pediatrician or doctor for uploading the same in Child Adoption Resource Information and Guidance System, within seven days from the date such children are declared legally free for adoption by the Child Welfare Committee;
  - (g) prepare individual care plan for each child following the principle of the best interests of the child and the care options in the following order of preferences:
    - (i) restoration to the biological family or legal guardian;
    - (ii) in-country adoption;
    - (iii) inter-country adoption;

- (iv) foster care; and
  - (v) institutional care;
- (h) create a memory album, which shall include a photo album of the child, history and details of the child's life (details of surrendering parents not to be mentioned), and interests of the child, which shall be handed over to the adoptive family along with the medical history of the child at the time of handing over the child to the prospective adoptive parents in pre-adoption foster care;
  - (i) make efforts to place each child in adoption, who has been declared legally free for adoption by Child Welfare Committee;
  - (j) be responsible to complete referral process of a child to prospective adoptive parents and the legal procedure related to adoption as provided in these regulations;
  - (k) prepare every adoptable child psychologically for his assimilation with the adoptive family, wherever required;
  - (l) facilitate interaction of the child with prospective adoptive parents, wherever required;
  - (m) ensure that siblings and twins are placed in the same family, as far as possible;
  - (n) preserve adoption records in a manner, that such record is accessible to authorised persons only;
  - (o) facilitate root search by adoptees in the manner as mentioned in regulation 44.
- (2) Functions towards biological parents: Every Specialised Adoption Agency shall:
- (a) treat biological parents of a surrendered child with respect and dignity throughout the surrender process;
  - (b) maintain confidentiality of unmarried mother and biological parents;
  - (c) counsel the surrendering parents and inform them about a possible root search, in future by their child;
  - (d) encourage the biological parents surrendering a child to provide maximum information about the background and development of the child as well as their own health;
  - (e) explain to the parents implication of surrendering their child including possibility of intercountry adoption;
  - (f) ensure that the consent for surrender and adoption is given by the parents without any coercion or monetary or material consideration;
  - (g) have no commitment or agreement with biological parents regarding adoption of a child prior to his birth;
  - (h) inform the parents that they would have a re-consideration period of sixty days from the date of surrender during which they may take back the child.
- (3) Functions towards prospective adoptive parents: Every Specialised Adoption Agency shall:
- (a) treat prospective adoptive parents with respect and extend due courtesy, assistance and advice;
  - (b) facilitate registration of prospective adoptive parents in Child Adoption Resource Information and Guidance System in case they face any difficulty;
  - (c) counsel the prospective adoptive parents, through an authorised professional social worker or counsellor, to make them aware of the process of adoption and to ascertain the level of their preparedness for the same which include the following, namely:



- (i) acceptance of adoption as an alternative way of building their family;
  - (ii) preference for child to be adopted;
  - (iii) emotional readiness to adopt an unrelated child;
  - (iv) concerns about the social background of the child and genetic factors;
  - (v) attitude towards parenting and disciplining;
  - (vi) sharing the fact of adoption with the child, when the child grows up;
  - (vii) dealing with root search by the adopted child, when the child grows up;
  - (viii) any other issue that might emerge during the interactions;
- (d) complete the Home Study Report of prospective adoptive parents who have opted for the home study by them, within one month from the date of their registration and submission of required documents;
  - (e) continuously update the prospective adoptive parents of the current status and procedure to be followed during the entire adoption process after the child has been reserved by the prospective adoptive parents;
  - (f) provide video clips of the children to prospective adoptive parents and facilitate their video calls to children after referral;
  - (g) provide information to prospective adoptive parents about the medical history of the child and the health status of a special need child, if such a child is proposed for adoption;
  - (h) provide the immunisation record and recent diagnostic reports as well as any vital information relating to child including his food and social habits and memory album to the prospective adoptive parents;
  - (i) a copy of the adoption order from the court and the birth certificate or affidavit shall also be provided to the prospective adoptive parents as and when available;
  - (j) place a child in pre-adoption foster care on completion of referral and after observing necessary procedural formalities as laid down in these regulations;
  - (k) extend post adoption services including counselling to the prospective adoptive parents, if required;
  - (l) not receive any payment, other than as specified in the norms prescribed by the Authority from time to time;
  - (m) advise the prospective adoptive parents to contact adoptive families to understand the process of adoption.
- (4) Functions relating to counseling: The functions of the Specialised Adoption Agency in respect of counselling shall include the following, namely:
- (a) counselling of biological parents in case of surrender;
  - (b) pre-adoption counselling of prospective adoptive parents during preparation of Home Study Report and matching process and linking them to the counseling center at the Authority or State Adoption Resource Agency or District Child Protection Unit, wherever required;
  - (c) counselling of older children before and during adoption;
  - (d) counselling of adoptive parents whenever required;
  - (e) post-adoption counselling of the adoptees, when contacted by them in search of their roots.
- (5) Every Specialised Adoption Agency shall set up at its own home to receive abandoned children and may set up cradle baby points at primary health care centers, hospitals, nursing homes, short-stay and Swadhar Homes for Women.

- (6) Documentation and record keeping:
- (a) The Child Adoption Resource Information and Guidance System web portal of the Authority shall be the database and registration system which shall be mandatorily used by all State Adoption Resource Authorities, District Child Protection Units, Specialised Adoption Agencies and Child Care Institutions for the purpose of adoption.
  - (b) Every Specialised Adoption Agency shall prepare an individual care plan for each child, based on age and gender specific needs in respect of the following, namely:
    - (i) health and medical needs;
    - (ii) emotional and psychological needs;
    - (iii) educational and training needs;
    - (iv) leisure, creativity and play;
    - (v) attachments and relationships;
    - (vi) protection from all forms of abuse, neglect and maltreatment;
    - (vii) rehabilitation including reunion with family, adoption and other non-institutional care;
    - (viii) social mainstreaming; and
    - (ix) follow-up after rehabilitation or restoration.
  - (c) Every Specialised Adoption Agency shall keep the following documents in the case file of each child, namely:
    - (i) case history and social investigation report of the child;
    - (ii) interim care order as well as the order declaring the child legally free for adoption by the Child Welfare Committee and the Deed of Surrender in case of a relinquished child;
    - (iii) Child Study Report, Medical Examination Report and immunization record of the child;
    - (iv) photographs of the child taken at intervals of every six months;
    - (v) application form, documents and Home Study Report of the prospective adoptive parents;
    - (vi) adoption petition, adoption order and birth certificate of the child;
    - (vii) post-placement progress reports of the child.
  - (d) Every Specialised Adoption Agency shall maintain the following records namely:
    - (i) master admission register;
    - (ii) medical and development file of the child;
    - (iii) case file of the child;
    - (iv) attendance register of the children and staff;
    - (v) register of adopted children with details of adoptive parents (date of registration, date of Home Study Report, date(s) of referral of child or children, date of court order, date of handing over of the child to prospective adoptive parents, etc.);
    - (vi) vouchers, cashbook, ledger, journal and annual accounts;
    - (vii) grant and adoption fees receipt and utilization register;
    - (viii) stock register; and



(ix) record of minutes of meetings of the management committee and Adoption Committee (to be maintained separately).

(7) Other functions: Every Specialised Adoption Agency shall also:

- (a) organise training and orientation activities to spread awareness about adoption programme;
- (b) train its childcare and professional staff about the procedures provided in the provision of these Regulations; and
- (c) ensure that each case of inter-country adoption of prospective adoptive parents is disposed of within four months from the date of receipt of application with the assistance of Authorised Foreign Adoption Agency, Authority and State Agency as provided in Sub-section (2) of Section 62 of the Act.

# Resources List

Adoption Regulations, 2017

Guardians and Wards Act, 1890

Hindu Adoption and Maintenance Act, 1956

<http://cara.nic.in>

Integrated Child Protection Scheme, 2014

Juvenile Justice (Care and Protection of Children) Act, 2015

Mehta, Nilima, *Child Protection and Juvenile Justice System for Children in Need of Care and Protection* (Mumbai: Childline Foundation of India, 2008). Available at <http://www.childlineindia.org.in/pdf/cp-jj-cnccp.pdf>

National Policy for Children, 2013

*Report of the Working Group on Child Rights for the 12<sup>th</sup> Five Year Plan (2012-2017)*, Ministry of Women and Child Development, Government of India. Available at [http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wgrep\\_child.pdf](http://planningcommission.nic.in/aboutus/committee/wrkgrp12/wcd/wgrep_child.pdf)

Rules under the Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000) (as amended by the Amendment Act 33 of 2006), 26 October 2007

*Study on Child Abuse: India 2007* (Ministry of Women and Child Development, Government of India, 2007). Available at <http://www.childlineindia.org.in/pdf/MWCD-Child-Abuse-Report.pdf>

Sengupta, Ananya, "Adoption Wait Grows as Kid Numbers Drop", *The Telegraph* (21 January 2015). Retrieved from [http://www.telegraphindia.com/1150121/jsp/nation/story\\_9481.jsp#.Vrojzh97IU](http://www.telegraphindia.com/1150121/jsp/nation/story_9481.jsp#.Vrojzh97IU)

UN Convention on Rights of the Child, 1989

UN Guidelines for the Alternative Care of Children (UNGACC), 2009









Belonging to a family is a natural and vital component of life, and every child deserves to be a member of a loving and nurturing family.

**- Ronald Reagan,  
Former U.S. President and an adoptive father**



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