

Inter-Country Adoption Laws - Ensuring the Welfare of Children

Adoption procedure in India has undergone considerable change, with the recent amendments in The Juvenile Justice (Care and Protection of Children) Act, 2015 and the Adoption Regulations, 2022, after directions issued by the Hon'ble Delhi High Court to the authorities to frame appropriate guidelines to aid and enable ease of obtaining certifications for inter-country adoptions. The directions were issued in wake of the petitions¹ filed by adoptive parents who are settled abroad, and the challenges faced by them in the movement of the child abroad, including in obtaining passports and visas for the adopted children.

Adoption Laws in India

Adoption gives rise to a parent-child relationship which takes place through a legal and social procedure, and wherein the child so adopted becomes the legitimate child of his adoptive parents, with all the rights, privileges, and duties that come with being a biological child.

In India, for a very long time there were only personal laws to regulate the process of adoption. **Rasiklal Chhaganlal Mehta, AIR 1982 Guj. 193**, was the first case in which the Inter-country adoption was discussed and later in **Laxmikant Pandey v. Union of India, (1984) 2 SCC 244** the Hon'ble Apex Court formulated certain guidelines in these cases as prior to these cases there were no laws and regulations on the said subject. Thereafter, to regulate, govern and safeguard the in-country and inter-country adoptions, Central Adoption Resource Authority (CARA) was formulated in June 1990.

Adoption in India is governed by three laws: i) The Hindu Adoption and Maintenance Act 1956, applies to Hindus, Buddhists, Jains, and Sikhs; ii) The Guardian and Wards Act of 1890, governs adoption for Muslims, Parsis, Christians, and Jews; and iii) The Juvenile Justice (Care and Protection of Children) Act 2015, applies to all Indian citizens irrespective of the religion. Section 2(2) of 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".

Inter-Country Adoption

Inter-country adoption, also known as international, overseas, or cross-border adoption, encompasses the transfer of children across border into a new country that embraces a different race, culture and language. The term “Inter-Country Adoption” as defined at the European Seminar on Inter-Country Adoption, May 1960, “*represents an adoption in which the adopters and the child do not have the same nationality as well as in which the habitual residence of adopters and the child is in different countries.*” Inter country adoption is one of the most sensitive and complex aspects of adoption as it involves a variety of principles and procedures over migration, citizenship, and socio-economic situation of adoptive parents with child and acceptance of child in different community and culture.

India is a signatory to the international conventions including the Convention on the Rights of the Child (CRC) and Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption, 1993, which deal with the procedure, guidelines with respect to the inter-country adoption. In each case paramount consideration is given to the child’s welfare and best interest.

Adoption Regulations, 2022

In India, all the intercountry adoptions take place as per the procedure laid down by the Adoption Regulations 2022 which are formulated in exercise of the powers conferred by section 68(c) read with section 2(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015. These Regulations apply to all inter-country adoptions under HAMA, both amongst relatives and non-relatives. These regulations have amended previous Adoption Regulations, 2017. An eligible non-resident Indian (NRI) or overseas citizen of India (OCI) or persons of Indian origin (PIO) shall be given priority in inter-country adoption of Indian children.

Central Adoption Resource Authority (CARA) is a statutory body of the WCD (Women and Child Development) ministry that serves as the nodal agency and is responsible to promote in-country adoptions and to facilitate and regulate inter-country adoptions. CARA maintains a database of children and registration of prospective parents on a centralised Child Adoption Resource Information and Guidance System (CARINGS). Indian prospective adoptive parents living in India can apply to a Specialised Adoption Agency, which files an application with the District Magistrate of the district through District Child Protection Unit where the child is located, for obtaining the adoption order, in the manner as provided in the adoption regulations.

In case of inter-country adoption of Indian children, the prospective adoptive parents need to apply for the same to an authorised foreign adoption agency, or Central Authority or a concerned Government department in their country of habitual residence, which shall prepare the home study report of such prospective adoptive parents and will sponsor their application for adoption of a child from India. As per the regulations, on receiving the adoption order from the District Magistrate, CARA shall intimate about the adoption to the immigration authorities of India and the receiving country of the child, and passport and visa shall be issued to the child. A relative living abroad, who intends to adopt a child from his relative in India needs to obtain an order from the District Magistrate and apply to CARA which issues no objection certificate under intimation to the immigration authority of India and of the receiving country of the child. Post-adoption follow-up reports on a half-yearly basis will be obtained from the concerned authority in the foreign countries.

CARA in compliance of the order of the Hon'ble High Court of Delhi has taken the following steps to aid and enable ease of obtaining NOCs and certifications for inter-country adoptions -

- CARA has created a help desk which is available both physically and online. The help desk has a 24-hour helpline, due to the time differences in different jurisdictions. This would enable adoptive parents to contact CARA as per their convenience.
- Further, CARA has allowed the lawyers and advocates to appear as authorized representatives to coordinate and facilitate the various formalities during the process. This will aid the parties in obtaining fast and hassle free adoption order as the advocates understand the technicalities better and the parties will get the professional advice on how the process has to be followed.
- Also, CARA will update the party concerned as well as their authorized representatives regarding its communications with foreign authorities or District Magistrates or any other parties over e-mail. Thus, the progress of the adoption application is within the knowledge of the parties. This will lead to transparency and the parties are aware about the status of their adoption process.

The Adoption Regulations, 2022, is a welcome step and an initiative to timely and easily complete the legal process of adoption without any delay so that the adoptive parents and the child can start their new life.