

REVISED GUIDELINES TO REGULATE MATTER RELATING TO ADOPTION OF INDIAN CHILDREN (1994)

Aims and Objects

1.1 The objective of the present guidelines is to provide a sound basis for adoption within the framework of the norms and principles laid down by the Supreme Court of India in the series of judgments delivered in *L.K. Pandey vs. Union of India and Others* between 1984 and 1991.

1.2 Adoption undoubtedly offers an important avenue for the care and protection of an abandoned, destitute or neglected child in a family setting and provides an atmosphere of happiness, love and understanding for the realisation of his/her talents and potentials. It carries with it all the emotional, physical and material security necessary for the proper development of the child and also serves as the most reliable means of preventing situations associated with the abuse, exploitation and social maladjustment of abandoned, destitute and neglected children.

1.3 The Government of India, in pursuance of its constitutional mandate, has evolved a National Policy for the Welfare of Children. 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 should 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 large purpose of reducing inequality and ensuring social justice."

1.4 There has been equally great concern for the welfare of children at the international level culminating in the Declaration of the Rights of the Child, adopted by the General Assembly of the United Nations on 20th November, 1989. Thereafter, in various international fora conferences and seminars, this subject of child welfare has continued to be constantly debated.

1.5 The National Policy for the Welfare of Children also stresses the vital role which the voluntary organisations have to play in the field of education, health, recreation and social welfare services for children and declares that it shall be the endeavour of the state to encourage and strengthen such voluntary organisations.

Need for Family Support for the Development of the Children

1.6 It is an accepted fact that the balanced development of a child-emotional, physical and intellectual, can be best ensured within the family, or where this is not possible, then in familial surroundings. The responsibility for providing care and protection to children including those who are orphaned, abandoned, neglected and abused rests primarily with the family, the community and the society at large. However, since many traditional institutions including the family structure are undergoing vertical as well as horizontal social changes on account of urbanisation, industrialisation and the general process of development, family support to a child is not always available. It, therefore, becomes the responsibility of the community, of the society and of the state to provide both institutional and non-institutional support to

destitute children. Government of India considers adoption as the best non-institutional support for rehabilitation of children.

Traditionally, our society has been providing support through charitable institutions and non-institutional activities like adoption, guardianship and foster care. Due to rapid changes in the social structure and other related factors, the number of children who need care, protection and rehabilitation is on the increase. It is, therefore, necessary not only to expand both institutional and non-institutional facilities for the nurture of such children, but also to regulate and monitor all programmes so as to ensure minimum standards in all child welfare activities. Among non-institutional modes, the interest of the child can best be served through adoption in a family. Further, it is also an accepted fact that the child develops best in his or her own cultural and social milieu. Thus, placement of a child through adoption in an indigenous setting would be ideal for his or her growth and development. Inter-country adoption, i.e. adoption of Indian children by adoptive parents residing abroad, should be resorted to only if all efforts to place the child with adoptive parents residing in India prove unsuccessful. Generally, in all matters concerning adoption whether within the country or abroad, the welfare and interest of the child shall be paramount. Therefore, private adoptions of abandoned, destitute and surrendered/relinquished children conducted by unauthorised individuals, agencies or institutions should be discouraged and it should not be open to any individual agency or institution whether owned or run by the Government or not to process an application from a foreigner for taking a child in adoption. It should be the endeavour of Government to facilitate in-country adoption and to regulate inter-country adoption of Indian children.

Review of Adoption Procedure

1.7 In pursuance of the Supreme Court directives, the Ministry of Welfare vide its resolution dated 4-7-1989 formulated a set of guidelines to regulate, monitor and supervise programmes pertaining to adoption. That laid down the existing procedure and practices. The existing procedure and practices followed in the case of inter-country adoption were thoroughly reviewed by the Supreme Court in their subsequent judgments dated 19th September, 1989, 14th August, 1991, 29th October, 1991, 14th November, 1991 and 20th November, 1991 respectively, in Writ Petition (CRL) No. 1171/1982 by Shri L.K. Pandey vs. Union of India and others. The Ministry of Welfare after a careful study of all the judgments of the Supreme Court of India and existing laws of the land and after taking into account the experience of the concerned governmental as well as voluntary agencies and the changing social realities, decided to modify these guidelines. In this direction, the Ministry of Welfare constituted a Task Force consisting of members representing various voluntary placement agencies under the chairmanship of Mr. Justice P.N. Bhagwati (The former Chief Justice of India).

1.8 The revised guidelines as contained hereinafter have emerged from the Task Force recommendations.

Procedures/ Functions of Adoption Agencies and CARA

Role of Government of India

2.1 In the Government of India all matters relating to adoption shall be dealt within the Ministry of Welfare. The Central Adoption Resource Agency (CARA) set up on 28-6-1990 under the aegis of the Ministry of Welfare in pursuance of Cabinet decision dated 9-5-1990 and when the Central Adoption Resource Agency is set up under these guidelines, then such Central Adoption Resource Agency shall deal with all matters concerning adoption as specified hereinafter.

2.2 The Government of India, Ministry of Welfare shall, from time to time, frame rules and guidelines and issue instructions to State Governments, voluntary agencies and voluntary coordinating agencies as well as to scrutinising agencies to facilitate and promote in-country adoption and to regulate inter-country adoption of Indian children.

List of Recognised Foreign Agencies for Adoption

2.3 The Central Adoption Resource Agency, shall maintain a list of all recognised foreign agencies for adoption enlisted by the Government of India. Copies of the lists of these agencies shall be supplied by the Central Adoption Resource Agency to the various High Courts in India, all the State Governments, all recognised Indian agencies, all voluntary coordinating agencies, all scrutinising agencies and all Indian missions abroad as well as all passport offices once every year.

List of Recognised Indian Agencies for Adoption

2.4 The Central Adoption Resource Agency shall also prepare a list of all recognised Indian agencies for adoption. It shall publish once a year the list of these agencies operating in each State in three leading newspapers having wide circulation in the State, one in the English language, one in the Hindi language and the third in the regional language of that State. The list shall also be sent to all the High Courts in the country for circulation to the District Courts in each State, all the State Governments, all recognised Indian placement agencies, all foreign enlisted agencies, all Indian Missions abroad, all voluntary coordinating agencies and all scrutinising agencies.

Liaison with Indian Diplomatic Missions

2.5 The Central Adoption Resource Agency shall maintain liaison with Indian diplomatic missions abroad in order to safeguard the interests of children of Indian origin adopted by foreign parents against neglect, maltreatment, exploitation or abuse and to maintain an unobtrusive watch over the welfare and progress of such children, For this purpose, the Central Adoption Resource Agency shall inform every Indian diplomatic missions concerned whenever an Indian child is taken in adoption or for the purpose of adoption, by foreign parents. The names, addresses and other particulars of such children and their adoptive/prospective adoptive parents shall be supplied to the Indian diplomatic missions as early as possible and in any case before the end of every quarter.

Meeting of Agencies Involved in Adoption

2.6 The Central Adoption Resource Agency shall arrange every year a meeting of all recognised placement agencies, voluntary coordinating agencies and scrutinising bodies for discussing matters of mutual interest and such other matters as are considered necessary and expedient.

Role of the Central Adoption Resource Agency (CARA)

2.7 As per the directions of the Supreme Court of India in Writ Petition (CRL) No. 1171/82 and on the basis of a Cabinet decision dated 9-5-1990, the Government of India in the Ministry of Welfare vide Resolution No. 1-10/88-CH(AC) dated 28th June, 1990 published in the Gazette of India No. 166 dated 3rd July, 1990 has set up a Central Adoption Resource Agency (CARA) to act as a clearing house of information in regard to children available for in-country and inter-country adoption and to regulate, monitor and develop programmes for the rehabilitation of children through adoption.

Headquarters and Regional Office of CARA

2.8 Central Adoption Resource Agency (CARA) shall have its headquarters in New Delhi. Branches/Regional Offices of Central Adoption Resource Agency (CARA) may, however, be set up at such places as may be considered appropriate.

Central Adoption Resource Agency

2.8A The Central Adoption Resource Agency (CARA) shall function under the overall policy guidance of a Steering Committee consisting of the following:

- (i) Chairman (Non-Official).
- (ii) Secretary (CARA)-Member Secretary cum Executive officer.
- (iii) One representative from Indian Council for Child Welfare (parent body).
- (iv) One representative from Indian Council for Social Welfare (parent body).
- (v) Four representatives of recognised placement agencies, one from each region, doing at least more than 50 per cent in-country adoption.
- (vi) One representative from among voluntary coordinating agencies.
- (vii) One representative from the Ministry of External Affairs.
- (viii) One representative from the Department of Women and Child Development.
- (ix) One representative from the Ministry of Information and Broadcasting.

The tenure of the members representing recognised placement agencies and voluntary coordinating agencies shall be for a period of two years on rotational basis. On the expiry of the tenure, the members shall not be eligible for renomination for the next succeeding period of two years.

The appointment of the Chairman would be in an honorary capacity. The Member Secretary cum Executive Officer of Central Adoption Resource Agency (CARA) would be an official of the rank of Deputy Secretary/Director in the Government of India who would enjoy a reasonable tenure, preferably five years.

2.9 The Central Government may pay to the Central Adoption Resource Agency (CARA) such sums of money as may be considered necessary for the performance of its functions under this Resolution.

2.10 The accounts of the Central Adoption Resource Agency (CARA) shall be maintained and audited in such manner as may, in consultation with Comptroller and Auditor-General of India, be specified by the Central Government.

2.11 The Central Adoption Resource Agency (CARA) shall, subject to the approval of the Central Government, frame its own regulations and bye-laws for discharging its functions in consonance with its aims and objectives.

2.12 The Central Adoption Resource Agency (CARA) shall have the power to constitute a Committee which will exclusively look into matters pertaining to promotion of in-country adoption and advice CARA on suitable policies and programmes for this purpose.

Functions of CARA

2.13 The functions of the Central Adoption Resource Agency (CARA) shall be as follows:

- (1) To act as a clearing house of information in regard to children available for inter-country adoption as well as for in-country adoption;
- (2) To receive applications or copies of applications alongwith requisite documents (as prescribed by the Supreme Court of India in CRL (WP) 1171/1982 in the matter of Shri Laxmi Kant Pandey vs. Union of India and others) of foreigners desirous of taking Indian children in adoption through a recognised social or child welfare agency in the foreign country or through an organisation owned or operated by the Government in that country.
- (3) Whenever such applications are received directly by Central Adoption Resource Agency (CARA) to forward such applications to one of the Indian social or child welfare agencies recognised by CARA for processing applications of foreign parents for adoption in the competent court;
- (4) To receive names and particulars of children available for adoption who are under the care of Indian social or child welfare agencies recognised by CARA and to maintain a register containing the names and other particulars of such children;
- (5) To receive periodical data from all Indian social or child welfare agencies recognised by CARA about the children admitted to their Children's Home and the Children given in adoption in-country as well as inter-country in a proforma prescribed by CARA;
- (6) To monitor and regulate the working of Indian social or child welfare agencies recognised by CARA consistently with their independent and voluntary functioning;
- (7) To inspect Indian social or child welfare agencies recognised by CARA and to report to the Central Government on the working of such agencies;
- (8) To call for annual audited statements of account from Indian social or child welfare agencies recognised by CARA;
- (9) To receive data from competent courts about children whose guardianship has been awarded in favour of foreign adoptive parents and/or who have been adopted by Indian nationals, both residents and non-residents;

- (10) To send periodical data to Indian's Diplomatic Missions abroad in a proforma prescribed by CARA in respect of Indian children taken abroad;
- (11) To receive periodical reports about the children taken by foreign parents for the purpose of adoption in a proforma prescribed by CARA from all recognised social or child welfare agencies in foreign countries through India's Diplomatic Mission in the country where such agency is located;
- (12) To obtain periodical progress reports of children from foreign adoptive parents as well as from recognised social or child welfare agencies in foreign countries, to examine such reports and to take such follow-up action as deemed necessary;
- (13) To organise and arrange periodical meetings of VCAs working in the field of adoption for discussing matters of common interest.
- (14) To arrange sponsorship of children through community support by means of publicity and awareness programmes;
- (15) To mobilise community opinion and community resources in furtherance of adoption of children in the country itself and take all other measures necessary for the promotion of in-country adoption of children as well, as welfare of children generally;
- (16) To arrange training programmes for social workers and others engaged in child welfare activity specially in the rehabilitation of children by means of adoption, and also to bring about standardisation of training courses conducted by the voluntary agencies;
- (17) To assist the courts to cross-check or re-verify the information furnished to them by various sources including the placement agencies and scrutinising agencies or to provide an independent advice in matters relating to adoption of children;
- (18) To initiate action on any other activity relating to adoption of children within the country and abroad.

Procedure to be followed

2.14 After careful consideration the Supreme Court of India has laid down that the following requirements should be insisted upon so far as a foreigner wishing to take a child in adoption is concerned. Every application from a foreigner desiring to adopt a child must be sponsored by social or child welfare agency recognised or licensed by the Government of the country in which the foreigner is resident and enlisted by CARA, Ministry of Welfare, Government of India.

No application by foreigner for taking a child in adoption should be entertained directly by any social child welfare agency in India working in the areas of inter-country adoption or by any institution or centre or home to which children are committed by the Juvenile Court.

The original application alongwith original documents as prescribed by the Supreme Court of India would be forwarded by the foreign enlisted agency to a recognised

placement agency in India. The foreign enlisted agency shall also send a copy each of the application as well as all the prescribed documents including Home Study Report enclosed with it to the Central Adoption Resource Agency (CARA) duly Notiorised by Notary Public whose signature would be duly attested either by an officer of the Ministry of External Affairs or Justice or Social Welfare of the country of a foreigner or by an Officer of the Indian Embassy or High Commission or Consulate in fr that country. A list of required documents is given at Annexure 'A'.

The Home Study Report being a crucial document should broadly include the following information:

- (a) Social Status and family background;
- (b) Description of Home;
- (c) Standard of living as it appears in the Home.
- (d) Current relationship between husband and wife;
- (e) Current relationship between the parents and children (if any children);
- (f) Development of already adopted children (if any).
- (g) Current relationship between the couple and the members of each other's family;
- (h) Employment status of the couple;
- (i) Health details such as clinical test, hear condition, past illness etc. (medical certificate etc.)
- j) Economic status of the couple;
- (k) Accommodation for the child;
- (l) Schooling facilities;
- (m) Amenities in the Home;
- (n) Reasons for wanting to adopt an Indian child;
- (o) Attitude of grant-parent and relatives towards Adoption;
- (p) Anticipated plans for the adoptive child;
- (q) Legal status of the prospective adoptive parents.

The sponsoring agency should carefully get the Home Study Report prepared by the professional social worker broadly on the basis of the above information.

The receipt of the original application as well as original documents would not entitle the placement agency to proceed with the case. It pan proceed only after getting 'NO OBJECTION CERNFICATE' from the Central Adoption Resource Agency (CARA), Ministry of Welfare.

Therefore, no recognised placement agency can process the application in the competent court for inter-country adoption without having "NO OBJECTION CERTIFICATE" issued by the Central Adoption Resource Agency (CARA), Ministry of Welfare, Central Adoption Resource Agency shall however ensure that such certificate should as far as possible be issued within a reasonable period of time say 5 weeks from the date of receipt of the certified copies of the application and other documents from them. In case Central Adoption Resource Agency (CARA) rejects the application, it may specify the reasons for such refusal to the Indian recognised placement agency.

After the receipt of the original application and original documents from the enlisted foreign agency by the recognised Indian placement agency, the concerned placement agency will register the name of the prospective foreign parents in the register meant for them. The recognised placement agency shall carefully examine the Home Study Report of the prospective foreign adoptive parents and start the exercise in matching the Home Study Report with the Child Study Report. When they arrive at the conclusion that a child can be placed with that particular family then they will have to ensure that the concerned child is cleared by the VCA for inter-country adoption. Thereafter the recognised placement agency will send the Child Study Report, the photograph of the child and the medical report to the sponsoring foreign agency for the approval of the prospective adoptive parents. After obtaining the approval of the child by the prospective adoptive parents the concerned recognised placement agency will apply to CARA for getting a clearance of the child. At this stage, Central Adoption Resource Agency (CARA) shall have to ensure that the recognised placement agency has put in adequate efforts for finding an Indian family for the said child, and the clearance by the VCA to that effect is also enclosed. CARA after going through the information furnished by the recognised placement agency and VCA will immediately give the clearance to the agency. The recognised placement agency thereafter will process the case with the competent court for awarding the guardianship of the child to the foreign prospective adoptive parents. At this stage the scrutinising agency has to scrutinise all the documents and advise the competent court that the said inter-country adoption is in the best interest of the child. The competent court within the stipulated time as laid down by the Supreme Court of India awards the guardianship of the child to the foreign parents. On the basis of the Guardianship order of the court, the recognised placement agency is to apply in the Regional Passport Office for obtaining an Indian Passport in favour of the child. Thereafter the visa issued by the concerned Embassy/ High Commission of the concerned country for the child. The child leaves the country alongwith the prospective adoptive parents or with the escort, whatever the case may be to the country of prospective adoptive parents i.e. child's future country of residence.

The requirement of obtaining "NO OBJECTION CERTIFICATE" from Central Adoption Resource Agency will also apply in case of handicapped children, children needing urgent medical attention which the social or child welfare agency looking after the child cannot provide within the country, siblings and also children above the age of 6 years. The recognised placement agency, soon after the admission of such child without waiting for locating foreign prospective adoptive parents, shall make an application alongwith information of such child to CARA for issue of "NO OBJECTION CERTIFICATE". CARA shall ordinarily issue "NO OBJECTION CERTIFICATE" in case of handicapped/special needs children etc., within a period of one week from the date of receipt of information of such child from the Indian recognised placement agency. Simultaneously, the recognised Indian placement agencies would be allowed to send the referral of such children to foreign agencies of its choice and after the approval of the child by any foreign parents the concerned placement agency could follow the procedure as laid down in the judgment of the

Supreme Court of India. At this stage the scrutinising agency should carefully examine all the documents furnished by the foreign agencies in this regard and advise the competent court in coming to the conclusion whether it would be in the interest of the child to be given in adoption to the foreigner. However, the recognised Indian placement agency shall obtain a certificate in this regard from the concerned Chief Medical Officer of the Government hospital prior to processing the case concerning to handicapped children and the children needing urgent medical attention for record. Details of such children together with a copy (each) of the certificate(s) issued by the CMO, where required, shall be sent at the end of each month to CARA by the concerned Indian placement agency.

2.15 Where there is no recognised foreign agency in any country, the concerned Government Department/Ministry of that country may forward the applications and related documents of the prospective adoptive parents to CARA. CARA will examine and send those papers to the recognised Indian placement agencies indicated in the application or, if there is no such indication, then to any of the recognised Indian placement agencies for further processing the case. The procedure to be adopted thereafter shall be the same as indicated in the fore-going paragraph.

The procedure for inter-country adoption at a glance may be seen at Annexure 'B'.

2.16 The recognised placement agencies should provide to the Central Adoption Resource Agency a list of the enlisted foreign agencies with which they are working or proposing to work. Where any application is originally received by the Central Adoption Resource Agency from a recognised foreign agency/Govt. Department or an Indian agency or Indian parents, the Central Adoption Resource Agency would on the basis of information available to it, send the application to any placement agency for processing it bearing in mind the operational relationship, if any, between the foreign agency and any particular placement agency. If the placement agency is unable to entertain such case, it shall promptly inform the Central Adoption Resource Agency giving reasons for not accepting the request. -The Central Adoption Resource Agency may thereafter either send such case to any other recognised placement agency or even return the application to the foreign source.

2.17 The placement agencies must at the end of every quarter provide information on the number of children given in in-country adoption, the number given in inter- country adoption and the number awaiting adoption, to the Central Adoption Resource Agency.

Requirement Before the Court

2.18 Where an application is made to the Court by the parents proposing to take a child in adoption or by a placement agency on behalf of such parents for appointment of such parents as guardians of the child with a view to taking the child in adoption, the certificate of no objection by the Central Adoption Resource Agency shall be produced alongwith the application and if no response has been made by the Central Adoption Resource Agency to the application for taking the child in adoption, within the time limit specified in these guidelines, the application shall be accompanied by an affidavit to be made by the placement agency stating that the requirements of the guidelines have been fulfilled in regard to obtaining certificate of no objection from the Central Adoption Resource Agency.

ROLE OF THE STATE GOVERNMENTS, UNION TERRITORY ADMINISTRATION

List of Children's Home

3.1 The State Governments (the term "State Government" shall include Union Territory Administration wherever applicable) shall maintain a list of all children's homes being run for the maintenance of destitute, abandoned, orphaned, delinquent or neglected children by voluntary/private organisations which are registered, recognised or licensed under various laws.

List of Adoption Agencies

3.2 The State Government shall also separately maintain a list of all agencies handling in-country and inter-country adoption of children and shall identify those institutions/ agencies which have children who are legally free for adoption.

3.3 The State Governments shall recognise Indian adoption agencies for in-country adoption as per the procedure laid down herein and shall forward applications of Indian agencies seeking recognition for inter-country adoption to the Central Adoption Resource Agency after proper verification according to the criteria laid down in these guidelines.

Each State Government shall also:

- (i) monitor the adoption programme within its jurisdiction and coordinate the activities of placement agencies and VCAs and scrutinising agencies;
- (ii) encourage and promote placement of eligible children on adoption or guardianship with families within the country;
- (iii) enforce the Orphanages and other charitable homes (Supervision and Control) Act, 1960 and/or formulate suitable alternate rules in order to maintain certain minimum standards for child care and child welfare institutions;
- (iv) inspect organisations which have applied for recognition for inter-country adoption to the Central Adoption Resource Agency and after considering whether the applicant agency fulfils all the requirements as laid down, forward the application to the Central Adoption Resource Agency with its comments, and this process shall be completed within a period of 60 days. If no response is received from the State Government within this period, the Central Adoption Resource Agency shall immediately take up the matter at an appropriate level in the State and if no response is received within a further period of 30 days, it shall presume that the State Government has no objection to the grant of recognition, if the State Government is of the view that the applicant agency should not be recognised, it shall give relevant reasons for taking this view and forward the same to the Central Adoption Resource Agency with its comments;
- (v) form an Advisory Committee on adoption which shall have the following as members:
 - (a) Secretary, Women & Child Development/Social Welfare/
Panchayat Raj Chairman

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| (b) | Director, Welfare/Social Welfare/
Women & Child Development | Member |
| (c) | Two representatives of placement
agencies, VCAs and scrutinising
agencies operating under the State | Member |
| (d) | Three experts in the field of
Social and Child welfare. | Member |

The Committee shall meet periodically to discuss child welfare measures, specifically ways and means to promote in-country adoption of children. The State Government may also set up an Adoption Cell in the Directorate of Social Welfare to coordinate, regulate and develop the work of adoption and render all assistance to the advisory form on adoption. The tenure of such committee shall be three years.

Inspection of Adoption Agencies

3.4 The State Government shall periodically and at least once a year, inspect or cause to be inspected, all agencies and institutions handling in-country and inter-country adoption as also their papers, documents and activities connected with the service of children, generally, in order to verify:

- (i) that adoption as activity is being pursued by the organisation as a welfare measure in the interest of children and not as a commercial activity;
- (ii) that proper records are being maintained for children admitted to the homes;
- (iii) that the children admitted are provided with basic minimum facilities for their care, at least education and development;
- (iv) that lists of persons interested in adopting a child or taking a child under guardianship are being maintained by the organisation regularly;
- (v) that the accounts of the organisation are being maintained and audited annually without delay and that the auditor's reports confirm that the accounts are fair and accurate; that any organisation which is in receipt of foreign funding is duly registered with the Ministry of Home Affairs and has otherwise complied with the provisions of the Foreign Contributions (Regulations) Act, 1976;
- (vi) that the organisation is receiving regular progress reports about the well-being of children given in adoption;
- (vii) that qualified staff having social work experience are employed by the agency organisation to take care of the children or they have access to such staff.

Monitoring of Performance

3.5 The State Government shall call for information and data every quarter from all agencies engaged in adoption in order to monitor the functioning of these agencies. The data shall be called for in a performa to be prescribed by the Central Adoption Resource Agency.

3.6 The State Government shall take all such measure as are deemed necessary to actively encourage in-country adoption of children in preference to inter-country adoption. Special care/efforts shall be made for rehabilitation of children in orphanages through placement by adoption.

ROLE OF RECOGNISED INDIAN AGENCIES FOR ADOPTION

Listing with Authorities

4.1 Every institution and child welfare agency engaged in care and custody of children or in adoption work or any other activity related to orphan, abandoned, destitute, neglected or relinquished children shall immediately be listed by the concerned State Government and such list shall be forwarded to CARA.

Only Recognised Agencies could undertake Adoption.

4.2(i) No agency shall engage in placement of or promotion of in-country adoption unless it is recognised by the State Government and in case of agency engaged in placement work, it should be a child welfare agency. Any Indian agency desirous of undertaking inter-country adoption work shall apply for recognition to the Central Adoption Resource Agency, the State Government concerned and only such agencies as are recognised by the Central Adoption Resource Agency, shall be entitled to undertake inter-country adoption work. Such agencies shall be termed "recognised placement agencies" of adoption. The agencies which are not doing placement work but are involved in promotional work of Indian adoption shall also be recognised by CARA.

(ii) No agencies except those recognised by the State Government concerned shall engage in in-country adoption. Rules and guidelines for this purpose may be formulated by the State Government.

Emphasis on Child Welfare

4.3 Only such voluntary agencies as are primarily engaged in child welfare programmes for the growth and development of children and which undertake adoption as a part of their total activities may apply for recognition for inter-country adoption to the Central Adoption Resource Agency.

List of Prospective Adoptive Parents

4.4 Every social child welfare organisation recognised for placement work in adoption shall regularly maintain a list of all prospective adoptive parents containing their names, addresses and data on the basis of which they have approached the organisation for taking a child in adoption and other relevant details.

Priority to In-country Adoption

4.5 When a recognised Indian agency receives a child its first responsibility is to trace place the biological parents and restore the child to them failing which as far as possible to place the child in adoption with Indian families. It would be desirable that an Indian recognised placement agency should place annually more than 50 per cent of the total number of children given in adoption with Indian families. However, the

handicapped children, children above 6 years of age and siblings will be excluded from this calculation. The placement agencies are required to adhere the following order of priority while considering the adoption of Indian children:

1. Indian families in India.
2. Indian families abroad.
3. One parent of Indian origin abroad.
4. Totally foreign.

Every recognised placement agency shall also give full details of the child to the prospective adoptive parents except the names and addresses of the biological parents, where known to the agency. It is only when all efforts to place the child within the country fail then the child would be cleared for inter-country adoption. These efforts should include contracting the VCA within the area of operation. A clearance certificate should be taken from VCA in this regard. Such clearance certificate shall be given by VCA. If within 60 days from the date the application to VCA, VCA is unable to send suitable Indian parents who are willing to take the child in adoption, intimation of making of the application to VCA shall be given to the Central Adoption Resource Agency forthwith. The Central Adoption Resource Agency will prepare a uniform proforma for clearance certificate to be issued by all voluntary coordinating agencies.

4.6 Adoption of Indian children placed with Indian living abroad will be treated as in-country placement. However, such Indian would have to follow the same procedure of sending their applications, documents etc. through an enlisted foreign agency in that country as in the case of inter-country adoption.

Record of Promotion Efforts

4.7 Every recognised agency shall keep a complete record in chronological order of the efforts made by it for locating an Indian parent for the adoption of a child and shall specifically note the reasons for any case of non-placement of a child in in-country adoption with any particulars of Indian parents.

Case History

4.8 Every recognised Indian placement agency shall maintain a separate file for each child with the child's complete case history.

Quarterly Data to be Furnished to Authorities

4.9 Every recognised Indian placement agency shall furnish quarterly data to the Government of the State in which the agency is operating and a quarterly statement to the Central Adoption Resource Agency, in such proforma as may be prescribed by Central Adoption Resource Agency in respect of children given to Indians and others for adoption from time to time.

Intake of Children

4.10 All children admitted by a recognised agency should be entered in the admission register with all the available information in the format prescribed by the Central Adoption Resource Agency.

4.11 In the case of an abandoned child not received through Juvenile Welfare Board/Juvenile Court as the case may be or through direct relinquishment by biological parents, a first information report (FIR) should be filed by the concerned agency in the local police station within 24 hours of arrival of the child at the recognised agency's children's home. The nearest Juvenile Welfare Board or where it does not operate, the Juvenile Court or the District Collector should also be notified within 24 hours of arrival of the child at the agency's children's home.

4.12 The recognised agency should ensure that medical examination of the child is conducted within 24 hours of its arrival and appropriate treatment given where necessary.

Surrender of a Child

4.13 In the case of surrender of a child, the biological parents/ parent should be counselled and duly informed by the agency concerned of the effect of their consent for adoption and the alternative available for the care and maintenance of the child.

4.14 The surrender document should be executed at the freewill of the biological parents/parent with no compulsion, payment or compensation of any kind on the part of the agency. If the biological parents state a preference for the religious up-bringing of the child, their wish should be respected as far as possible. But ultimately the interest of the child alone should be the sole guiding factor before the child is placed in adoption.

4.15 The parents/parent should be informed/by the agency of his/her/their right to reclaim the child within 60 days from the date of surrender. He/She/They should be made aware that after the period of 60 days relinquishment deed will become irrevocable and the agency will be free to place the child in adoption or guardianship within or outside India.

4.16 Wherever possible the surrender document should be executed on stamped paper in the presence of two responsible witnesses whom the recognised agency should be able to produce, if necessity arises. The responsibility for the authenticity of the surrender document would be on the agency.

During the surrender process, the recognised Indian placement agency should ensure that:

- (i) If a legitimate child is surrendered, both parents sign the relinquishment document and in case one of the parents is dead, proof of death is furnished.
- (ii) In case of a child born out of wedlock the mother herself and none else, surrenders the child.
- (iii) If the surrender is effected by any person other than the biological parents/parent, the same procedure is followed as for an abandoned child.

Destitute or Abandoned Child

4.17 If a child is found abandoned or is picked up as a destitute then the procedure of going through the Juvenile Welfare Board/ Juvenile Court or the Social Welfare Department or the Collector would have to be adopted. As soon as an abandoned or destitute child is found by a social or child welfare agency or a nursing home or hospital or the police or anyone else a report should immediately be lodged with the local police

station alongwith a photograph of the child. The Collector of the District must be informed, who in turn must immediately inform the nearest recognised agency and VCA. The Inspector-General of Police, or the Commissioner of Police, as the case may be, should instruct every police station within his jurisdiction to immediately undertake an inquiry for the purpose of ascertaining and tracing the parents of the child in respect of which the report is made and such inquiry must be completed within one month of the report being lodged with the police station. Meanwhile, the social or child welfare agency which has found the abandoned or destitute child may make an application to the Juvenile Welfare Board and where it is not functioning, then the Juvenile Court or to the Social Welfare Department or the Collector, as the case may be, for a release order declaring that the child is legally free for adoption. Since the report of the enquiry to be made by the police has to be completed within a period of one month, it should be possible for the Juvenile Court or the Social Welfare Department or the Collector to make a release order declaring the child legally free for adoption within a period of six weeks from the date of making of the application in the case of children below the age of two years and three months, in the case of children above that age.

Birth Certificate

4.18 Every child must have a birth certificate. For issuing a birth certificate in respect of an abandoned or destitute child, the registration of whose birth is not available, the agency concerned must make an application to the local Magistrate alongwith any other material which the agency considers relevant in the form of an affidavit made by a responsible person belonging to the agency. The local magistrate will then pass an order approving the particulars to be entered in the birth certificate and on the basis of the magisterial order, the requisite certificate will be issued by the local birth certificate issuing authority of the city/town/area where the child has been found. The Chief Medical Officer of the district may be involved in the enquiry for ascertaining age. The Magistrate would ordinarily act on the certificate granted by the Chief Medical Officer. This process would be initiated only after the adoption is finalised, so that the particulars of the adoptive parents are available for inclusion in the certificate. In case the child has attained the age of three, and the adoption has still not been finalised, the agency may obtain a birth certificate, if it is found necessary, after informing the court in the form of an affidavit:

- (a) that to the best of its knowledge the child has attained the age Of three years;
- (b) that his/her adoption has not been finalised and is likely to take some time or may never be finalised in all probability;
- (c) that a certificate is required for educational/medical/legal purposes or any other reasonable purpose which may be specified; and
- (d) that Person/persons would stand in as local parents to the child (this person/these persons should be a responsible person/responsible persons belonging to the placement agency) till such time as he/she attains majority, or is adopted, whichever is earlier.

In such cases a second birth certificate may be issued after adoption to provide for a change in the name/names of the child and the adoptive parent/parents after obtaining an order to that effect from the court which had passed order for issuing the original birth certificate.

Reporting

4.19 A quarterly statement on child available for guardianship/ adoption in the format prescribed by CARA should be furnished to the appropriate authority in the State Government/U.T. Administration and CARA and every month to the VCA concerned.

Procedure for Adoption

4.20 No child should be offered for adoption:

- (a) In the case of abandoned children until the Juvenile Welfare Board/Juvenile Court, the Collector or the District Magistrate or the Department of Social Welfare declares the child legally free for placement.
- (b) In the case of surrendered children, till the two months period for reconsideration by the parent is over.
- (c) In the case of a child who can understand and express without his/her consent.

Role of the Placement Agencies

4.21 In the case of surrendered children, after 2 months time for reconsideration, the placement agencies should make all efforts within 45 days to place the child with Indian parents in the country. But in case of destitute or abandoned child, the placement agency after getting a releasing order declaring the child legally free for adoption from the competent authority, should make all the efforts to place the child within the country within a period not exceeding seven weeks from the date of releasing order which include one week time for reconsideration of the biological parents, if traced.

4.22 If the Recognised Placement Agency is not able to find a suitable Indian family within the country, it will give all the details of the child to the voluntary coordinating agency wherever it exists. The information must include details of admission, medical history, legal status, photograph and efforts made to find families in the country. The officers of the VCA shall be permitted to visit and see the child, as and when necessary.

4.23 Where there is a VCA maintaining a register of children available for adoption as also a register of Indian adoptive parents who want to take a child in adoption. VCA will immediately contact the Indian family which is on its register as prospective adoptive parents and inform them that a particular child is available for adoption. If, within a period of one month, the child is not taken in adoption by an Indian family, it should be regarded as available for inter-country adoption. The possibility of inter-State adoption in India and inter VCA coordination should also be exhausted before a child is offered for inter-country adoption. The first priority in inter-country adoption should be given to Indians residing abroad and, if no such Indian family is available, then to adoptive couples where at least one parent is of Indian origin. However, the children placed with parents or one of the parents having Indian origin would be considered as given in in-country adoption.

4.24 It is only where a VCA does not exist or no Indian family comes forward to take a child in adoption within a maximum period of two months, that the child should be regarded as available for inter-country adoption. However, if the child is handicapped or is a sibling or above 6 years of age, the procedure of obtaining VCA clearance need not be followed and the child should be regarded as available for inter-country adoption without the waiting period of two months. In other cases also, if the child is in bad state of health, needing urgent medical attention which it is not possible for the social or child welfare agency looking after the child to provide within the

country the agency need not wait for the period of two months but after obtaining a medical certificate from a medical specialist in a Government hospital stating the need for urgent treatment and also that the child will be able to withstand the journey, get VCA clearance and process the case for inter-country adoption. However, in the case of surrendered children, the two months time for reconsideration should always be adhered to.

4.25 A child should be offered in inter-country adoption by a recognised Indian agency only on receipt of a no objection certificate from the VCA except in the cases mentioned in paragraphs 4.5 and 4.24 above. If it has not been possible to find suitable Indian parents for taking a child in adoption within the period of two months specified in paragraph 4.23 VCA shall issue a no-objection certificate.

4.26 In completing formalities for adoption guardianship all the procedures as laid down by Central Government/CARA should be followed.

Documentary proof of age, marriage, income, health, property and savings of prospective parents, letter of acceptance accepting a particular child alongwith countersigned child study report, medical report and photograph of the prospective parents/agency consent and power of Attorney in the name of the functionary of the Indian Agency, should be taken. A Home Study Report prepared by or under the supervision of a professionally trained social worker should be taken into account. Photographs of prospective parents should also be kept on record.

4.27 Pending completion of formal adoption/guardianship proceedings, the child may be placed with prospective adoptive parents in foster care in the case of Indian parents living in India.

Placement of Handicapped Children

4.28 The placement of handicapped children and children with deficiencies may be considered as a plus point in evaluating the performance.

Transfer of Children

4.29 All children transferred to the recognised placement agency (recognised by Government of India) from an unrecognised agency, whether within the State or from outside, should be in the physical custody of the recognised agency for a period of not less than one month before any action for the placement of the child abroad is taken.

4.30 Transfer of the child should be accompanied by available documents pertaining to its admission, preliminary case history, documentary evidence to prove that the child is legally free for adoption, and a letter of transfer. The recognised placement agency should verify all the facts before accepting the child, as they are legally responsible for the placement.

4.31 Attempts to find adoptive parents for children who are legally free for placement may be made by the child welfare agency which has first received the child, either directly or through an unrecognised agency or through the VCA.

4.32 In the case of inter-state transfer of children, children may be transferred by the recognised Indian agency to any of its designated branches, provided that it is done with the written consent and permission of the Social Welfare Department/Magistrate/Collector, as is relevant to the case. The nearest VCA should also be informed.

Follow-up

4.33 The follow-up of children placed within the country will be as follows:

- (i) If any pre-placement foster care is effected, there should be regular monitoring and evaluation of the foster care. A professionally trained social worker should visit the family regularly.
- (ii) The follow-up format should be completed and forwarded by the recognised placement agency concerned every six months to VCA, the State Government and the Central Adoption Resource Agency.
- (iii) The agency should see that legal adoption is effected at the earliest, thereby safeguarding the interest of the child.
- (iv) Even after legal adoption, the agency should keep in touch with the family for a period of three years.
- (v) Post-adoptive counselling should be provided by the agency to the adoptive parents.

Records

4.34 The following records and registers should be maintained by every recognised Indian placement agency.

- (i) Admission register.
- (ii) A separate file on each child in the prescribed format, giving full details/history. Relevant, legal documents of every adoption and child's background/history should be maintained at least for a period of 18 years for future reference.
- (iii) Register of prospective adoptive parents with details.
- (iv) Register of children showing their arrival, departure, admittance into hospitals, return to their parents and death, if any.
- (v) Follow-up register of children placed with adoptive family prior to legal placement and after legal placement.
- (vi) Quarterly reports in the prescribed format as forwarded to the State Government, Central Adoption Resource Agency and VCA.
- (vii) The annual report of the organisation together with the necessary details and statistics in the prescribed format as forwarded to the State Government, the Central Adoption Resource Agency and VCA.
- (viii) Audited statement of accounts, together with a copy of FCRA account submitted to the Home Ministry, as forwarded to the State Government and CARA.
- (ix) Other records stipulated under the Societies Registration Act, 1860 or the relevant State Law relating to public trusts.

Recovery of Costs

4.35 The organisation shall pursue only non-profit objectives. Under no circumstances should it derive improper financial gain from any activity related to inter-country or in-country adoption. It may, however, receive reimbursement or other payment for direct or indirect costs and actual expenses.

4.36 For in-country adoption, the following charges may be recovered by the agency from the adoptive parents, if the agency deems it necessary:

- (i) Maintenance cost as fixed by the Court from time to time, from the date the child has been approved and accepted by the Indian parent/parents to the date of departure from the institution.
- (ii) Such out of pocket cost, administrative cost and service charges for preparation of child study, medical and IQ reports, legal expenses and conveyance etc., as may be fixed by the court from time to time.

4.37 The maximum amount to be charged by any agency from Indian parents as reimbursement of maintenance expenses shall be fixed by the court.

4.38 For inter-country adoption the following costs may be recovered by the agency from the foreign adoptive parents:

- (i) Cost of any surgical or medical treatment of the child against production of bills or vouchers duly certified.
- (ii) The Indian placement agency processing the application of a foreigner for being appointed guardian of a child with a view to its eventual adoption, should be entitled to recover from the foreigner, cost incurred in preparing and filing the application and processing it in court including legal expenses, administrative expenses, preparation of child study report, preparation of medical and reports, passport and visa expenses and conveyance expenses and that such expenses may be fixed by the court at a figure not exceeding Rs. 10,000. Any increase in maximum recoverable expenses in this regard would be done only with the approval of the Supreme Court of India. In so far as the maintenance or medical expenses incurred by the recognised placement agencies running homes for children is concerned, they are entitled to receive reimbursement of such maintenance or medical expenses from the foreigner taking the child in adoption at a figure not more than Rs. 100 per day per child from the date of selection of the child by the adoptive parents until the child is taken by the adoptive parents after they are appointed as guardians. This outer limit of recoverable expenses may be reviewed by the Ministry of Welfare, Government of India once in three years depending on escalation of the expenses including cost of living.
- (iii) Cost of travel of the child from India to the receiving country and the cost of an escort, if the foreign recognised agency is unable to provide the escort.
- (iv) In case of disruption or failure of adoption, the cost of repatriating the child to India, if no alternative placement for the child is effected in the foreigner's country by the recognised foreign agency with the concurrence of the Indian agency.

- (v) If it comes to CARA's notice that any recognised Indian agency charges more fees than the prescribed fees or tries to exploit financially the foreign enlisted agency, CARA may after giving an opportunity to such agency to explain its point of view, suspend or revoke its recognition. Similarly, if any foreign enlisted agency induces an Indian recognised agency by giving or offers more money than the prescribed fees for processing a case of inter-country adoption of an Indian child, CARA may after giving an opportunity to such agency to explain its point of view de-enlist the foreign agency.

RECOGNITION OF INDIAN AGENCIES FOR ADOPTION

Proforma for Application

5.1 Any Indian social/child welfare agency desirous of obtaining recognition from the Government of India for undertaking intercountry adoption work shall submit an application in the prescribed form to the CARA through the Department dealing with Social Welfare/Women & Child Development in the State in which the agency is located.

Un-Recognised Agencies Barred

5.2 No agency which does not hold a certificate of recognition from the CARA shall give a child to foreign parents for the purpose of adoption nor submit an application to an Indian court under the Guardians and Wards Act, 1890, for declaring a foreigner as a guardian of an Indian child.

Recognition for Specified period

5.3 Recognition to an Indian agency shall be granted initially for a period of three years, subject to the conditions laid down in these guidelines.

Conditions for Recognition

5.4 Any Indian agency which seeks recognition shall generally fulfil the following conditions:

- (a) It shall be a society registered under the Societies Registration Act, 1860 or a Trust created under the Charitable Trust Act, or an organisation registered under an appropriate law or an organisation which has worked for the welfare of children during the proceeding five years;
- (b) The organisation shall be duly licensed by the State Government under the provisions either of the Women and Children Institutions (Licensing) Act, 1956 or the Orphanages or Charitable Institutions (Supervision and Control) Act, 1960;
- (c) It shall have a duly constituted Executive Committee. The Chief Executive of the organisation as well as the majority of members of the Board/Executive Committee should be Indian citizens;
- (d) It should have appropriate children's home for the protection and up-keep of children including infants;

- (e) It should be able to raise funds through donations or Government grants;
- (f) It should be running on a non-commercial, non-profitable basis;
- (g) It should have at least one qualified Social Worker on its staff to carry out the adoption work;
- (h) The Chief Executive of the organisation should be willing to sign a written undertaking to follow the guidelines laid down by the Supreme Court of India and those prescribed, from time to time, by the Government of India and the Regulations if any, made by CARA.
- (i) Recognition of the agency should be recommended by the State Government concerned. Or, if it is not so recommended, the reason for the refusal should be given. CARA may accept or reject the reasons for refusal. The decision of CARA shall be final.

Renewal of Recognition

5.5 The original application should be sent to the appropriate authority of the State Government and a copy of it should simultaneously be forwarded directly to CARA. The State Government will forward the original application to CARA along with its views within a period of two months from the date of receipt of the application. If the State Government does not send the application to CARA with its view within a period of two months from the date of receipt of the application the concurrence of the State Government will be presumed by CARA and the application will be processed by CARA for grant of recognition within a maximum further period of two months. If there is no response from CARA to the application within such further maximum period of two months or before the expiry of the recognition of the agency, whichever is later, the renewal shall be deemed to have been granted for a period of two years. Recognition would normally be renewable for a period of three years at a time subject to the following conditions:-

- (i) Satisfactory performance in in-country adoption. The Licencing Authority should ensure that the agencies should abundantly exhibit their involvement in the area of Indian adoption. Therefore, it shall be obligatory on the part of every recognised placement agency to make at least 25 per cent placement of children in Indian families out of the total placements effected by it by way of adoption/guardianship in the first year of its recognition. This level of in-country adoption/guardianship shall be raised to 50 per cent by the third year of its recognition. The recognition is liable to be suspended or revoked in cases where the recognised agency fails to arrange in-country adoptions upto the figures stipulated above. However, an opportunity would be given to the placement agency to show cause against such suspension or revocation, as the case may be and such suspension or revocation shall be made by a written order giving reasons for such suspension or revocation.
- (ii) Regular submission of reports and returns.
- (iii) No instance of proved malpractice against the placement agency.
- (iv) Recommendation of the concerned State Government provided that the refusal to recommend is not based on any inadequate, irrelevant or unacceptable reasons.

Agencies to Maintain Accounts

- 5.7(i) Every agency shall maintain proper accounts to be audited by a Chartered Accountant every year.
- (ii) A photostat copy of audited accounts together with audit report shall be furnished by every agency within one month from the date accounts have been audited by the Chartered Accountant, to the Social Welfare Department of the State Government concerned and to the CARA.
- (iii) A photostat copy of the FCRA accounts submitted to the Home Ministry should be furnished to CARA together with the audited accounts, by the agency.

Application to be Processed only by Recognised Agencies

5.8 An application for declaring a foreigner or an Indian to be the guardian of an Indian child as a prelude to adoption in a foreign country shall be processed only by a recognised Indian agency after following the procedure set out in these Guidelines.

Application to be Sponsored by Enlisted Foreign Agencies

5.9 A recognised Indian agency may submit an application of a foreign adoptive parent to an Indian court for awarding the guardianship of an Indian child to a foreigner provided the application of such foreigner has been forwarded by a foreign voluntary agency enlisted by the Government of India and the application is made in accordance with these guidelines. However, if there is an agency owned or operated by the Government in a foreign country, the foreign adoptive parents can approach a recognised Indian agency in India through such agency operated or owned by the foreign Government.

Indian Agencies Recognised to Deal with Enlisted Agencies Abroad

5.10 No recognised Indian agency shall entertain any application directly for adoption of an Indian child from a foreigner or sponsored by a foreign enlisted agency unless the prescribed documents alongwith the application are cleared by CARA.

Inspection of Agencies

5.11 The premises of the recognised Indian agencies including their children homes, and their records shall open to inspection by officials of the CARA and/or official of the State Government at any time.

ROLE OF ENLISTED FOREIGN AGENCIES FOR ADOPTION

Foreign Agencies to Apply to India's Diplomatic Missions

6.1 A foreign social/child welfare agency desirous of sponsoring applications of foreign adoptive parents for adopting an Indian child shall make an application for enlistment with CARA in the office of India's Diplomatic Mission in that country and only such foreign agencies enlisted for this purpose by CARA shall undertake this activity.

Criteria for Enlistment of Foreign Agencies

6.2 The criteria for enlistment of foreign agencies by CARA for the purpose of inter-country adoption are as under:-

- (i) It shall be either a part of the Government of the country or a duly registered voluntary agency registered under the relevant law of the concerned country and should be recognised by the appropriate authority of that country.
- (ii) It shall be a child welfare agency having an established standing in this field and it must be staffed with qualified social workers who have experience in the filed of adoption.
- (iii) The agency in question shall be run on non-commercial and non-profitable basis. The foreign agency should be asked to submit a report and audited statement of accounts of their operations in India.
- (iv) An undertaking by the enlisted foreign agency that in case of disruption of the foreigner's family before adoption effected or in case the child is not properly looked after or is mal-treated or abused in the adoptive family, it will take care of the child under intimation to the Indian Diplomatic Mission, the Central Adoption Resource Agency, Ministry of Welfare and th2 concerned Indian recognised placement agency and try to find suitable alternative placement for the child with the concurrence of the recognised placement agency which processed the case and report such alternative placement to the Indian Court which made the order for guardianship and also to CARA.
- (v) The Head/Chief Executive of the Organisation should be willing to sign a written undertaking to follow the guidelines laid. Brown by the CARA for observance by the enlisted foreign agencies. The enlisted foreign agencies should send to CARA a list of the Indian agencies with whom they have contacts and working relations or with whom they prepare to have working relations or with whom they prepare to have working relationship.

Procedure for Enlistment

- 6.3 (i) A foreign social/child welfare agency desirous of sponsoring applications of foreign adoptive parents for adopting Indian children shall apply for enlistment by CARA, through the office of India's Diplomatic Mission and the Government of the country where it is located.
- (ii) On the recommendation of India's Diplomatic Mission in the country concerned, CARA shall examine the application and consider the agency concerned for recognition provided it fulfils the criteria stated in paragraph 6.2 above,

Renewal of Enlistment

- 6.4 (i) A foreign agency engaged in inter-country adoption would be enlisted by CARA initially for Enlistment would be renewable for five years at a time in case of satisfactory performance subject to conditions laid down in these guidelines.

- (ii) CARA will take the following factors into consideration while granting renewal of enlistment provided an application for renewal is received through the proper channel at least six months before the expiry of the previous recognition.
 - (a) Whether the agency is still recognised by the appropriate authority of the country in which it is based.
 - (b) Whether the agency has been regular in the submission of progress reports of the children placed by them in adoption.
 - (c) Whether the general performance of the agency is satisfactory and whether the children placed by them are making satisfactory progress.
 - (d) Whether Government of India's Diplomatic Mission in the country concerned has recommended the case for renewal.

Renewal of enlistment may, however, be denied at the discretion of CARA for valid or legitimate reasons but CARA shall not be bound to disclose such reasons.

De-enlistment

6.5 The Central Adoption Resource Agency, Ministry of Welfare, Government of India, may at any time de-enlist any enlisted foreign agency for adoption for valid or legitimate reasons shall not be bound to disclose the same. However, if at the time of de-enlistment there is any case under process that would be allowed to be completed.

6.6 When the Court makes an order appointing adoptive parents as the guardians of the child, the order shall contain an undertaking of the adoptive parents that they shall protect and safeguard the best interest of the child and that the child would be legally adopted in the receiving State not later than two years from the date of the order and that on such adoption in the receiving State, subject to the laws of the country the child would have all rights of a natural born child.

Rights of the Child Taken Abroad

6.7 On adoption of the child by the foreign parent according to the law of his/her country, it is presumed that subject to the laws of the land the child would acquire the same status as a natural born child within wedlock with the same rights of inheritance and succession and the same nationality as the foreign parent adopting the child.

6.8 Where the child is not legally adopted by the adoptive parents in the receiving State within two years from the date of order of the Court in India appointing the adoptive parents as guardians either on account of disruption in the family or on account of the adoptive parents failing to get adjusted to the behaviour of the child or otherwise, the foreign agency which has processed the adoption of the child in the receiving State should immediately withdraw the child from the adoptive parents and keep the child in its custody and care and find out new adoptive parents for placement of the child in adoption as soon as possible. The foreign agency shall give an undertaking to this effect to the Court processing the case in India.

6.9 All enlisted foreign agencies shall send a copy of their annual report to CARA every year.

6.10 The foreign agency shall with reference to every child placed by it send follow-up reports through India's Diplomatic Mission abroad with photographs of the child on a quarterly basis for the first two years and on a half-yearly basis for the next three years to CARA and to the Court that awarded the guardianship -in India and to the Indian placement agency concerned. The foreign enlisted agency shall send a photoalbum of the children alongwith their adoptive parents to CARA once in a year.

6.11 The enlisted foreign agency will forward a copy of the legal adoption order of the appropriate authority in that country as soon as it is made to the Central Adoption Resource Agency, the Court which awarded the guardianship and to the Indian agency concerned.

6.12 Even after the adoption is legalised, the enlisted foreign agency should maintain contact with the adoptive family in keeping with the need of privacy of the adoptive family and provide support and counselling services, if necessary and safeguard the interest of the child till such time as he/she attains majority.

6.13 The enlisted foreign agency should help the Indian Diplomatic Mission in its country to arrange get-togethers of adopted children of Indian original and their adoptive, families for exposing them to the culture of India. These get-togethers may be organised at the time of national occasions like 15th August, 14th November, 2nd October and 26th January etc. CARA may on some occasions participate in these get-togethers in order to know the feedback on progress of the adopted child.

6.14 The enlisted foreign agencies cannot employ their representatives in India for any kind of activities relating to intercountry adoption.

Voluntary Coordinating Agencies (VCA)

About VCA

7.1 There shall be a centralised agency namely Voluntary Coordinating Agency (VCA) in the State or even in a large city where there are several recognised placement and child welfare agencies. The principal functions of VCA shall be as follows:-

- (a) It shall actively promote Indian adoption and formulate, develop and execute programmes and activities for generating awareness in this regard;
- (b) It shall ensure that the priority laid down by the Supreme Court on placement/adoption within the country or with Indian abroad is adhered to. All recognised social/child welfare agencies, Juvenile Welfare Boards and Government homes within the country, desirous of placing children in adoption/ placement shall furnish lists of children legally free for adoption to the concerned VCA and also to CARA;
- (c) It shall maintain a register of all prospective adoptive parents;
- (d) It shall maintain a register of all available children who are legally free for adoption;
- (e) It shall coordinate the work of all its member agencies and other child welfare institutions in the field of Indian adoption. Where Indian adoption is difficult within its area of operation it shall coordinate with other VCAs in the State and in the country;

- (f) Where Indian placements is not materialised, it shall issue a no objection certificate within a period of one month from the date of receipt of application for 'No objection' in the VCAs to the recognised placement agency so as to enable the child to be placed in inter-country adoption;
- (g) In the case of a child requiring immediate medical or surgical assistance, the VCA may waive the stipulated waiting period on production of medical certificate as provided in paragraph 4.24 above and issue a no-objection certificate at the earliest;
- (h) It shall call a meeting of member agencies at least once every quarter;
- (i) In cases where these guidelines are not being followed by any recognised placement agency, the concerned VCA will bring it to the notice of CARA with substantive evidence for taking appropriate action.

7.2 The VCA shall be registered under the Societies Registration Act and will comply with all the rules laid down under the Act and also these guidelines.

7.3 Every VCA shall have, on its staff, at least two professionally trained social workers.

7.4 Every VCA shall have to seek recognition from CARA by means of an application which shall be routed through the State Government and the State Government shall offer its comments on such application within a period of 30 days from the date of receipt of such application and if no such comments are forthcoming within the period of 30 days, it shall be presumed that the State Government has no objection.

7.5 All the recognised placement agencies (whether doing only in-country and inter-country adoption) would be entitled to become members of VCA and those child welfare agencies which are not placing children in adoption but are merely running homes for children etc. would also be eligible to be members of VCA. The final decision in case of the later would rest with the executive committee of the VCA. If any agency is de-recognised by CARA on account of malpractice of any other valid reason or any child welfare agency de-licensed by the State Government, then it shall cease to be a member of VCA and it shall not be eligible for membership of VCA unless it is once again recognised or licensed.

7.6 The recognised placement agencies would have the right to vote for electing the executive committee of the VCA. The child welfare agencies would not enjoy any voting right. The VCA should be an independent registered body with a democratic structure. The Chairman should not be connected with either in-country or intercountry placements.

Structure of VCA

7.7 There shall be an executive committee for managing the day-to-day affairs of VCA. The executive committee shall consist of not less than 3 members and not more than one-third the number of members of the VCA.

Executive Committee of VCA

7.8 The executive committee of VCA shall comprise:

- (a) The Chairman of VCA.
- (b) A representative of the State Government of the level of the Deputy Director (Welfare)/ Social Welfare or above.
- (c) One Senior representative of each scrutinising agency working in the jurisdiction of the concerned VCA.
- (d) One representative from the agencies exclusively doing Indian adoption.
- (e) There representatives of the recognised placement agencies out of these at least two shall be from those placement agencies which have placed at least 50 per cent children within the country during last three years to be elected by the recognised placement agencies which are members of VCA. The terms of office of the members of the executive committee of items (c) and (d) shall be two years and they shall not be eligible for re-appointment for the next succeeding period of 2 years.

The executive committee of VCA may appoint staff to carry out the day-to-day functions of the VCA. Such paid staff would be accountable to the executive committee.

7.9 The no-objection certificate issued by the VCA would be signed and issued by two persons-the Chairperson and Member Secretary, both of whom will not be connected with adoption activities whether in-country or inter-country. No recognised placement agency shall process the application for inter-country adoption before obtaining the no-objection certificate save in the case of exceptional and/or exempted categories referred to above at these guidelines.

The following are the broad procedure to be followed by the VCA

- 7.10(a) All member agencies must submit a list of children and prospective adoptive parents on a monthly basis to the VCA.
- (b) When an agency wishes to place a child in foreign adoption it must check with the VCA to ascertain whether there is any Indian parent willing to take the child in adoption.
- (c) The period of 30 days provided for in the Supreme Court Judgment for trying to place a child with Indian parents has been found to be inadequate and this should be extended to to 30 days from the date when VCA assistance is sought to.
- (d) The time-frame for VCA to find a placement in India will be 30 days as provided in clause (c) above and only after that, an. inter-country placement may be processed.
- (e) If there is difference between the placement agency and VCA in regard to the clearance of a child for inter-country adoption, the placement agency concerned may refer the cases to CARA. In such cases, CARA will decide whether to give the clearance of the child or not. The decision of CARA shall be final.

Criteria for Recognition

7. 11 In order to be recognised as VCA, an agency must fulfil the following criteria:-

- (i) It should be a society registered under the Societies Registration Act, 1860.
- (ii) The agency must be recommended by the State Government concerned for recognition by CARA.
- (iii) The agency should run on a non-commercial and non-profitable basis.
- (iv) Its office-bearers at item (d) and (e) in paragraph 7.8 shall be from recognised placement agencies which have given children in in-country adoption to the extent of 50% or more of the total number of children given in the adoption in a year after excluding handicapped children, siblings and children above 6 years of age.
- (v) All the office-bearers should be Indian nationals. The initial recognition of VCA shall be for a period of 3 years.

Renewal of Recognition

7.12 A VCA which seeks renewal of recognition should apply to CARA through the State Government for renewal of recognition six months prior to the date of expiry of the previous recognition. The following would be the main criteria for renewal of recognition.

- (i) Satisfactory performance in the promotion of in-country adoptions.
- (ii) Timely submission of reports and returns as may be specified by CARA,

Withdrawal of Recognition

7.13 Recognition of a VCA may be withdrawn by CARA on receipt of a report from the State Government regarding unsatisfactory performance, after giving the VCA an opportunity to explain its position. The VCAs should play positive role in bringing greater coordination among all the placement agencies working in the area of their operation. Any malpractice, if proved, would immediately invite action in the shape of de-recognition. Delay and non-compliance in the submission of reports/returns asked for by the State Government or CARA may also be a ground for withdrawal of recognition.

7.14 VCA should conduct the quarterly meetings attended by all the members entitled and eligible to attend the meetings and discuss all matters relating to adoption. The minutes of, the meetings should be sent to CARA by the concerned VCA.

Finance of VCA

7.15 The Government of India in the Ministry of Welfare would give grant-in-aid to VCA upto 90% of the cost as per prescribed norms.

Existing VCAs

7.16 The existing VCAs shall stand superseded as soon as VCAs are constituted in accordance with these guidelines for the area of operation of the existing VCAs.

7.17 If in any area there is only one recognised placement agency, it shall be entitled to become a member of VCA operating in the most adjacent area.

Scrutinising Agency

Scrutinising Agency

8.1 It is open to the Court looking into the matter of appointment of guardian under the Guardians and Wards Act, 1890 in exercise of its powers under Section 11 to appoint any independent, reputed Social or Child Welfare Agency, as a Scrutiny Agency for scrutinising an application from prospective adoptive parents for adoption of a child. The agency must be a body of experts in the field of Child Care and Welfare, not itself involved in any manner in the placement of children in adoption. At present there are two scrutinising agencies, namely, Indian Council for Social Welfare and Indian Council of Child Welfare being appointed by the Court. The Court may be requested to appoint any other eligible child or social welfare agency as scrutinising agency which preferably meets the eligibility criteria as laid down by CARA.

Procedure for Recognition

8.2 CARA shall maintain a panel of agencies which according to it can satisfactorily perform the functions of a scrutinising agency. The procedure to be adopted for recognition of an agency as scrutinising agency other than Indian Council for Child Welfare (ICCW) and Indian Council of Social Welfare (ICSW) will be as follows:-

- (i) the agency should apply to CARA for recognition as a scrutinising agency.
- (ii) The agency should fulfil all the criteria laid down by CARA for recognition as scrutinising agency.
- (iii) CARA may seek such information as may be necessary from the scrutinising agency regarding its bona fides and performance on the basis of such report issue a recognition certificate.
- (iv) A scrutinising agency would be recognised initially for a period of three years, renewable as per the procedure given in these guidelines.

Criteria for Recognition

- 8.3
- (i) The agency should be an independent, reputed social child welfare agency.
 - (ii) The agency must be a body of experts in the field of child care and welfare
 - (iii) The agency should not be involved in the placement of children in adoption.
 - (iv) It should be a society registered under the Societies Registration Act, 1860.
 - (v) All the office bearers should be Indian nationals.
 - (vi) The agency should run on a non-commercial and non-profitable basis.

Renewal of Recognition

8.3 (a) Every recognised scrutinising agency should apply for renewal of recognition, 6 months prior to the date of expiry of the previous recognition. If the performance of the scrutinising agency has been found satisfactory and there are no adverse reports

from any court or the State Government concerned and also if any reports or returns asked for by CARA are submitted by it regularly without delay, recognition may be renewed from time to time but each time only for a period of 3 years.

Saving Clause

8.4 Any scrutinising agency may be de-recognised by CARA at any time following reports of malpractices from and State Government or any Court, after giving the agency an opportunity to place its case before CARA.

Functioning of Scrutinising Agency

8.5 It shall be incumbent upon every scrutinising agency to perform the following functions:-

- (1) To scrutinise the following documents:
 - (i) Application for guardianship/adoption made on behalf of the prospective adoptive foreign parents.
 - (ii) Home Study Report.
 - (iii) Child Study Report.
 - (iv) Any other documents/certificates attached with the application.
- (2) To ensure that the application or copy of the application, as the case may be, has been duly forwarded by a foreign agency to CARA.
- (3) To ensure that before a child is placed in guardianship with a foreign adoptive parents, a no objection certificate has been obtained from the concerned VCA.
- (4) To satisfy itself that the child in question is legally free for adoption.
- (5) To see the child in person and to check that the information given to prospective adoptive parents regarding the child is correct. In case of any change in the medical/physical status of the child, the scrutinising agency should ensure that the information of the change is given to the prospective adoptive parents and their consent obtained before a final order is passed by the court concerned.
- (6) To satisfy itself that the prospective adoptive parents/ guardians are fit persons for adopting the child in question.
- (7) To ensure that the adoption would be in the best interest of the child.
- (8) To assist the court in ascertaining whether the child has been voluntarily surrendered by the biological parents/parent.
- (9) To ensure and satisfy itself that no one, including Indian as well as foreign agencies concerned are making any profit out of the adoption in question.
- (10) To verify, in case of older children, the child's own views regarding the adoption. This may be reported to CARA immediately.

- (11) To ascertain, as far as possible, as to what are the laws regarding adoption of foreign children in the country of the prospective adoptive parents and there is a reasonable assurance that the child would be adopted within the minimum possible period but in any case within a period not exceeding two years.
- (12) To ensure that all the precautionary measures are taken before the handicapped, sibling, older age and other special needs children are placed to a family who are really interested in such children.

8.6 The scrutinising agency will submit the report to CARA once every six months of all the cases it has scrutinised.

8.7 In case of any difference between scrutiny agency and placement agency in regard to placing of a child or matching of the child with the prospective adoptive parents or any other related issues, the scrutiny agency may refer it to CARA for consideration. The decision of CARA on such cases shall be final.

Scrutinising Charges

8.8 Whenever an Indian parent makes an application for appointing himself or herself as guardians of a child or a Hindu parent applies for permission to adopt a child and, if the case is referred to it by the court, the scrutinising agency may charge such amount of expenses upto Rs. 150 as directed by the court unless a higher amount is awarded by the court.

When a foreign agency makes an application for guardianship, the scrutinising agency may charge from the Indian agency an amount as directed by the Court varying between Rs. 450 and Rs. 500, for actual expenditure incurred and the concerned Indian agency shall have the right to recover such amount from the foreign parents whose application for guardianship it has processed. This amount may exceed Rs. 500 if the court concerned specifically orders the actual incremental amount to be paid for the specific work done.

MISCELLANEOUS

Violation of Guidelines

9.1 If it comes to the notice of any State Government or any of India's Diplomatic Missions abroad or CARA that a recognised Indian agency or enlisted foreign agency is not observing all or any of the provisions of these guidelines or is otherwise functioning in a manner which is not in the interests of children generally, it shall inform CARA immediately with details and CARA may, at its discretion suspend or withdraw recognition of such enlisted agency and/or take any other such action as may be deemed necessary.

9.2 It would be desirable for the Government of India to enter into bilateral agreement with countries which are receiving children from India for the purpose of adoption and such bilateral agreements should provide for full coordination between the appropriate authorities of India and the receiving State and also for protection and safeguarding of the welfare of the children taken for adoption in the receiving State.

9.3 Apprehensions have been expressed that unscrupulous elements arrange illegal transfer of babies to adoptive parents at the time of their birth in some hospitals, nursing

homes, maternity homes in the country. Such transfer of babies taking place without observing the appropriate norms and procedure is illegal and thus it is not at all in the interest of the child. If any such complaints are brought to the notice of CARA, it shall cause an enquiry to be done and take up the matter with the appropriate authorities of the Central or State Government including the Medical Council of India.

Amendments to Guidelines

9.4 The Ministry of Welfare, Government of India, reserves to itself the power, at its discretion to make such amendments, additions, deletions or alterations in these guidelines as are deemed necessary from time to time.

CHECKLIST FOR DOCUMENT REQUIRED

List of documents required from foreign adoptive parents and Social or Child Welfare Agency enlisted by Government Of India for consideration of an inter-country application of Indian Child

- (a) Home Study Report of the foreign adoptive parents prepared by a professional worker as per Annexure "A".
- (b) Recent photographs of the adoptive family.
- (c) Marriage certificate of foreign adoptive parents.
- (d) Declaration concerning health of adoptive parents.
- (e) Certificate of medical fitness of adoptive parents duly certified by a medical doctor.
- (f) Declaration regarding financial status of foreign adoptive parents along with supporting documents including employers certificate, where applicable.
- (g) Employment certificate, if applicable of foreign adoptive parents.
- (h) Income Tax Assessment order of foreign adoptive parents.
- (i) Bank references.
- (j) Particulars of the properties owned by the foreign adoptive parents.
- (k) Declaration from foreign adoptive parents stating willingness to be appointed guardian of the child.
- (l) Undertaking from the social or child welfare enlisted agency sponsoring the foreigner to the effect that child would be legally adopted by the foreign adoptive parents according to the law of the country within a period not exceeding two years from the time of arrival of the child and as soon as the adoption is effected. Social or child welfare enlisted agency will send three certified copies of adoption order each to the social or child welfare agency in India through which the application for guardianship is processed for filing in the Court and one copy to Central Adoption Resources Agency, Ministry of Welfare.

- (m) Undertaking from the foreign adoptive parents that adopted child would be provided necessary education and upbringing according to the status of adoptive parents.
- (n) Undertaking from the social and child welfare enlisted agency that report relating to progress of the child along with his/her recent photograph would be sent quarterly during first two years and half yearly for the next three years in the prescribed performa through Indian's Diplomatic Missions abroad.
- (o) Power of Attorney from foreign adoptive parents in favour of offices of the social or child welfare agency in India which will be required to process the case and such Power of Attorney should authorise the Attorney to handle the cases on behalf of the foreigner in case the foreigner is not in a position to come to India.
- (p) Certificate from the enlisted social or child welfare agency sponsoring application of the foreigner to the effect that adoptive parents are permitted to adopt a child according to the law of their country.
- (q) Undertaking from the social or child welfare enlisted agency to the effect that in case of disruption of the family of the foreigner before legal adoption has been affected, it will take care of the child and find a suitable alternative placement for the child with the approval of Central Adoption Resource Agency. After seeking the necessary approval from CARA it will report alternative placement to the concerned court handling guardianship proceeding in the foreign country. And such information shall be passed on by the court to the Central Adoption Resource Agency.
- (r) Undertaking from the social or child welfare enlisted agency that it will reimburse all expenses to the concerned Indian Social or Child Welfare agency as fixed by competent court towards maintenance of the child and processing charge fees.

Important Instructions

- (1) The Home Study Report should broadly include information in regard to the various matters set out in Annexure "A" though it need not strictly adhere to the requirements of the Annexure and it should also contain an assessment by the social or child welfare agency as to whether the foreigner wishing to take a child in adoption is fit and suitable and has the capacity to parent a child coming from a different racial and cultural milieu and whether the child will be able to fit into the environment of the adoptive family and the community in which it lives.
- (2) All the above Certificates and declaration documents must accompany the application of the foreigner for taking a child in adoption should be duly notarised by a Notary Public whose signature should be duly attested either by an officer of the Ministry of External Affairs on Justice or Social Welfare of the country of the foreigner or by an officer of the Indian Embassy or High Commissions or Consulate in that country