

# **DRAFT GUIDELINES ON ADOPTION OF INDIAN CHILDREN WITHOUT PARENTAL CARE**

*Suggestions submitted by*  
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Being a signatory to United Nations Convention on Rights of the Child (UNCRC) and the Hague Convention on Inter-country Adoption, India is obliged to enact appropriate legislation on adoption, applicable to all societies and communities alike. This draft guideline is an attempt to introduce a Uniform Adoption Law in India, that definitely has to be appreciated. However, we have reservations with respect to certain provisions and legal implications therein, and hence the following suggestions could be considered before approving the final draft of the Act.

1. The present guidelines shall be applicable to recognized Adoption Agencies in the country as provided under the JJ Amendment Act 2006. On implementation of JJ Amendment Act-2006 and its State Rules, all cases of orphan, abandoned and surrendered children have to be processed under the Act so that children have adequate and appropriate safeguards in their placement agency. **The present guideline heavily relies upon the JJ Act, but the Act itself suffers from major technical infirmities that have to be rectified.** Getting children into the adoption stream is one of the key factors that influence the process of adoption in India. Only relinquished children come directly under the care and protection of the Agency. The agency receives its inmates, abandoned or committed by the concerned court in addition to those who are directed by the CWC or JJ Board.

2. It has been noted that many agencies resort to unethical practices in procuring children and giving them in adoption selectively to the highest bidders. These agencies often indulge in coercing the otherwise worried and anguished unwed mothers to give up their babies. They even provide short-stay arrangements for such women in distress until they deliver babies. Some agencies even scout for children, approaching private hospitals, following leads about an expectant mother in a poor family, or encouraging police officials not to trace out parents of a 'lost' child. Hence it is imperative to ascertain the original source of relinquished children and such children should be brought to the notice of the CWC for proper enquiry as per law. Usually it is the counselor of the agency who prepares the **child study report** . So the counselor has the advantage of manipulating the report as per the wishes/needs of concerned agency.

3. The guideline prescribes that adoption charges and donations could be received by the agency. The prescribed fee for an inter-country placement is obviously higher than an internal one. . Many Indian agencies apparently have tie up with agencies abroad and collect huge sums as gifts and donations that go unaccounted. Hence, adoption charges must be prescribed in Rules and appropriate authorities must ensure that mal-practices are not taking place.

4. Further, the guideline indicates that recognition could be **withdrawn** or **suspended** by CARA where-ever found necessary and other suitable action could be taken against erring agencies. However, it does not specify what sort of legal action would be taken against such errant institutions/agencies. Penal provisions and procedures should be spelled out leaving no space for ambiguity and speculation.

5. The guideline further states that the **PFAPs** (Prospective Foreign Adoptive Parents) are eligible and suitable to adopt a child from India as per the law of their countries. It is not clear whether the 'law of their country' means the personal law or the International Guidelines on Adoption. In the circumstances, it is mandatory to have a uniform law applicable to all nationals irrespective of ethnic or cultural variations.

6. Usually the **Child Study report** is prepared once the child is free for adoption. The CSR is obviously prepared by the social worker of the agency who need not be an experienced person. Hence it has to be directed that the CSR must be prepared and signed by a senior staff of the organization who should be held personally responsible for the report.

7. After legal adoption, there should be statutory provisions in law for monitoring and filing progress reports on the well-being of respective children. In situations that are detrimental to the interests of the child in question, there should be provisions to initiate appropriate action for the best interest of the child. The CWC of the concerned district may be empowered to do the needful.

8. In order to promote, implement, supervise and monitor the non-institutional programmes including adoption, foster care and sponsorship at State level, a **State level Adoption Advisory Committee** shall be constituted in every State. Powers and functions of this committee should be clearly spelled out. At least 50% of the membership of the Committee shall necessarily be women of unblemished social image.

9. In the 6th chapter of the guidelines the different stages of adoption procedures are described. One of the clauses states that *-the child can be legally placed with the parents*

*under JJ Act or HAMA.* The fundamental principle behind the introduction of this guideline is to establish a uniform law relating to adoption. But the above stated clause is contrary to this primary objective.

10. As per the provisions of HAMA, adoption is irrevocable and confers full status of a biological child, including the right to inherit. Parents cannot adopt a child of a particular sex, if they already have a biological or adopted child of the same sex. According to Section 5(1) of HAMA, if adoption by a Hindu is not in accordance with its provisions, the same shall be treated as void. Hence, for Hindus, JJA cannot be of any use in the matter of adoption.

11. JJA has not spelt out the effects of adoption whether the Adoption Order under JJA would be acceptable proof for issue of birth certificates and passports. ***It is not clear whether adoption under JJA is irrevocable.*** JJA which itself has deformities cannot be fully relied upon. It is neither possible nor desirable to pack the whole gamut of legalities involved in adoption in two short sections. A comprehensive legislation founded on the secular fabric of our Constitution is very essential. Though in the introduction chapters this aim is well written, the procedural part seems to be odd and awful. The scope of the guidelines should be appropriately expanded so as to enable Hindus also to have recourse under the guidelines, not of course under the HAMA. A choice between the two legislations will invite unending chaos and will defeat the very purpose of uniform law for all citizens.

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