



Ready Reckoner for Adoption Regulations 2022

This document provides a summary of changes announced in the Adoption Regulations 2022 with respect to 2017 adoption regulations and a brief commentary on how it impacts the adoption ecosystem in India.

Sec	Adoption Regulations 2022	Adoption Regulations 2017	Impact	Our Viewpoint
2.7	Cluster of States – New definition proposed for the purpose of adoption - means zones or regions as defined by Government of India from time to time;	Not defined		The proposed idea is counterproductive to encouraging adoptions in India. . Refer to our Commentary A at the end of the summary.
2.8	Designated portal definition expanded to include other portals or systems apart from CARINGS	CARINGS was the only designated portal		Progressive step with an intention to integrate with other systems for aiding adoption.
2.13	Hard to place children defined as a child below 5 years of age not adopted within 60 days of referral and a child or Siblings above 5 years of age not adopted within 30 days of referral – and not adopted after been shown to all/foreign PAPs within stipulated timeline	Not defined		Positive step in defining Hard to Place children. However, a more Positive Adoption Language could have been used, for example, Children Available for Immediate Placement.
2.18	Older child defined as a child above five years of age	Not defined		Unnecessary definition. No child is too old to adopt , and CARA should not be encouraging unwarranted stereotypes that may be existing in the community. What purpose does this definition serve?
2.20	Pre-Adoption foster care refers to temporary custody of the child given to PAPs till the District Magistrate issues adoption order	Pre-Adoption foster care refers to temporary custody of the child given to PAPs till the Court issues adoption order		Replacement of Courts by District Magistrates is highly contentious. Refer to our Commentary B at the end of the summary.
2.25	“Special needs child” defined as a child suffering from any disability as provided in the Rights of Persons With Disabilities Act, 2016	“Special need child” defined as a child who is mentally ill or physically challenged or both		Associating special need with “Disability” is derogatory and disrespectful to the child. This was a unique opportunity to define special need just as a unique need of care and protection – without a judgement on the child towards a disability.
2.26	“Step parent” defined as a parent who is married to the father or mother of a child, but who is not that child's biological father or mother;	Not defined		A positive step to accommodate adoption of children by step parents.



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5.1	Eligibility criteria for prospective adoptive parents expanded to exclude persons convicted in criminal act of any nature or accused in any case of child rights violation	Eligibility criteria for prospective adoptive parents was limited to parents' physical, mental, emotional and financial stability		A positive inclusion.
5.3	The condition for couples to have at least two years of stable marital Relationship relaxed for relative or step-parent adoption	All couples had to meet the two year of stable marital relationship requirement		A positive relaxation.
5.4	A new age eligibility requirement defined for a single parent to be below 40 years and composite age of couple to be below 85 years, in order to adopt a child below 2 years of age.	Single parents up to 45 years of age and a couple with composite age up to 90 years of age could adopt a child below 2 years of age		A child centric move, however, is likely to wean more parents away from CARA adoptions, and sadly at risk of them adopting through HAMA, where no such restrictions exist.
5.6	The age criteria for PAP shall not be applicable in case of relative adoptions and adoption by step-parent.	Same as before		Limiting the age relaxation to in-family adoptions is not good enough. Such age relaxation should have been extended to adoption of all siblings, special need children and children in Immediate Placement.
5.7	Couples with TWO or more children can only be considered for special needs or hard to place children	Couples with THREE or more children were to be considered for special needs or hard to place children		Many couples with two children could provide home to children in need. This is not a child-centric provision.
5.9	The seniority of the prospective adoptive parents who have not received a single referral within three years shall be counted from their date of registration except those who have crossed composite years of one hundred ten years.	No such provision earlier		Very confusing provision. It does not state what happens to the seniority of those who cross the composite age of 110 years, and have not received a single referral in three years.
6.6	In case of orphan, abandoned or surrendered older children admitted in Child Care Institutions on the basis of the order from the Child Welfare Committee, the details of such children shall be entered by the District Child Protection Unit concerned on the Designated Portal.	No such provision earlier		A good provision to take care children put into CCI on the order of CWC.
6.13	Once the child's family could not be traced, the CWC will declare the child as legally free for adoption within a period of three days after the expiry of two or four months, from the date of production of the child before the Child Welfare Committee, as applicable.	Once the child's family could not be traced, the CWC will declare the child as legally free for adoption within the expiry of two or four months, from the date of production of the child before the Child Welfare Committee, as applicable.		No sound reason to give an additional 3 days to CWC for declare the child legally free for adoption, beyond the expiry of two/four months, as applicable. Every additional day spent by the child in the Institution is detrimental to the child's well-being.

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9.1	The resident Indian or non-resident Indian or OCI Cardholder PAP shall be allowed choice of two states based on identity documents proof such as Aadhar Card or Passport or Voter card or Driving License or Birth Certificate or Overseas Citizen of India Card of either spouse, or otherwise they can choose a cluster of States as per their identification.	The PAP shall opt for desired State or States by giving option for those particular States at the time of registration and they would be deemed registered in all SAAs of the State or States they have opted for.		A very counter productive provision as it proposes to limit PAPs to adopt from States / Cluster of States according to their domicile status, as per the underlying document. By this logic more than 75% PAPs will never get a referral, as majority of children in the pool come from 25% of States. Refer to our Commentary A below the Summary – with data proof.
9.3	All PAPs who do not reserve a child, out of all of their referrals, shall be debarred for a period of one year, after which they shall be eligible for fresh registration.	No such provision.		A very punitive proposal, safeguarding only CARA's interests. PAPs cannot be forced to accept any or all of the the referrals made to them. There may be multiple reasons why a referral may not have been accepted. It is wrong to penalize the PAP for a choice they are entitled to make.
9.4	If the adoptive parents are found to be the cause of the disruption or dissolution, they shall be barred from adopting again.	No such provision		Even if the adoptive parents are found to be the cause of disruption or dissolution, they may have legally or socially acceptable grounds. Barring the parents as a blanket provision does not sound reasonable. Such punitive action would encourage them to adopt from gray market.
11.8	At the time of matching, the social worker of Specialised Adoption Agency concerned shall orient the prospective adoptive parents for taking care of the child and also older child or children about their rights and responsibilities.	No such provision		This is a welcome provision in the interest of the child and the PAPs
11.9	The entire process of matching shall be completed within a maximum period of thirty days from the date of reserving the child.	The entire process of matching shall be completed within a maximum period of twenty days from the date of reserving the child.		Relaxing the matching period from 20 days to 30 days is a welcome move.
11.10	The prospective adoptive parents shall raise their grievance to District Child Protection Unit regarding the matching of the child, if any.	No such provision		It is a welcome move to define a procedure for registering a grievance by the PAP at the time of matching.
11.16	The registration of prospective adoptive parents shall continue till the time they have not exceeded the maximum composite age, i.e. fifty five years for single and one hundred ten years for couple and subject to revalidation of the Home Study Report in every three years.	The registration of prospective adoptive parents shall continue till child adoption, with revalidation of the Home Study Report in every three years.		Lapsing the registration of PAPs upon attaining the maximum prescribed age is counter productive, for the single reason of exceeding the age limit is long wait in referral from CARA – and not for any fault of the parent.

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11.17	The prospective adoptive parents may also get the Medical Examination Report of the child reviewed by a medical practitioner of their choice before giving their acceptance for adoption of the child.	No such provision		The provision for reviewing the medical records of the child by a doctor should be provided for before accepting the referral, and adequate time should be provided for it. The same is often not possible within 48 hrs. Also, mere reviewing medical reports is not sufficient at acceptance stage. Guidelines should provide for medical assessment of the child by a doctor.
13.1	The Specialised Adoption Agency shall file an application with the District Magistrate of the district through District Child Protection Unit where the child is located, along with relevant documents as provided in the Schedule IX within ten days from the date of matching of the child with the prospective adoptive parents.	The Specialised Adoption Agency shall file an application in the court concerned, having jurisdiction over the place where the Specialised Adoption Agency is located, with relevant documents in original as specified in Schedule IX within ten working days from the date of matching of the child with the prospective adoptive parents.		The whole issue of replacing Courts with District Magistrates is debatable. Refer to our Commentary B at the end of the summary.
13.11	In case the recognition of Specialized 1Adoption Agency has not been renewed or not likely to be renewed soon, then the District Child Protection Unit concerned shall directly file the application before the District Magistrate after completing its scrutiny.	No such provision		A very welcome move considering that adoption order process would often get delayed due to expiry of SAA license.
14.4	In case of non-adjustment of both the child and the adoptive family with each other, the Specialised Adoption Agency or the District Child Protection Unit shall arrange the required counselling for such adoptive parents and adoptees or link them to the counselling services available within the district or state within seven days with due intimation to the State Adoption Resource Agency and the District Magistrate: <i>Provided that in case of non-compliance for three consecutive post adoption follow-ups the District Child Protection Unit shall prepare the social investigation report and inform the Child Welfare Committee for further action as may deem fit.</i>	In case the child is having adjustment problem with the adoptive parents, the Specialised Adoption Agency shall arrange the required counseling for such adoptive parents and adoptees or link them to the counseling center set up at the Authority or State Agency, wherever required.		Inclusion of DCPU is a welcome move. Also, defining the timeline of 7 days is a welcome provision.

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14.6.b	No application should be filed until two counselling sessions have been completed by the local Specialized Adoption Agency or District Child Protection Unit before making any decision concerning disruption or dissolution;	No such provision		A very welcoming provision towards counselling of families before filing an application for disruption or dissolution
14.7	Where the Indian adoptive parents move with the child abroad, within two years from the date of pre-adoption foster care, the concerned Indian Diplomatic Mission in the country of arrival in case of non-Hague countries and Authorised Foreign Adoption Agencies or Central Authorities in Hague countries shall be intimated at least fifteen days in advance through a written communication for the purpose of remaining follow up reports by the adoptive parents with their full contact details at the new place.	No such provision		A welcome provision for safeguarding the interest of the family.
14.8	The onus of getting the balance post-adoption follow-up is with the adoptive parents and they have to bear the professional charges on their own, and further the adoptive parents shall give an undertaking to the Authority to that effect.	No such provision		This provision has not been thought through, as many Indian parents may travel abroad for short durations and may not have the financial capability to bear post adoption follow up expenses. Seeking an undertaking from them is unfair and impractical.
18.2	On receipt of the NOC from the Authority, the SAA shall approach the District Child Protection Unit within five days with the adoption application and the District Child Protection Unit shall scrutinise the application for submission of the dossier to the District Magistrate within five days in the format provided in the Schedule XXIX:	Upon receiving the NOC from the Authority, the foreign PAP may take the child in pre-adoption foster care for a temporary period till the court order is obtained. The PAP shall receive final custody of the child from the SAA as soon as the passport and visa are issued to the child after issue of adoption order from the competent court.		The whole issue of replacing Courts with District Magistrates is debatable. Refer to our Commentary B at the end of the summary.
36.1	All the cases pertaining to adoption matters pending before the court shall stand transferred to the District Magistrate from the date of notification of these regulations as provided in rule 45.	All adoption matters were presented before courts.		The whole issue of replacing Courts with District Magistrates is debatable. Refer to our Commentary B at the end of the summary.

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41.18	CARA will issue No Objection Certificate in cases of adoptions done under Chapter VIII (Inter-country adoptions under Hindu Adoptions and Maintenance Act, 1956)	No such provision		This provision is unconstitutional and cannot be enforced so long as Sec 56(3) and Sec 56(4) of the JJ Act are not amended. Further this provision will encourage international trafficking of children exponentially – as it now allows (even though illegally) touts to place children for international adoptions through HAMA. Refer to our Commentary C at the end of the summary.
	Done away with in new Regulations	37.16 – CARA to set-up counselling Centre in its Head Quarters and support State Adoption Resource Agencies for setting-up of counseling centre at State and District level for: - (a) counselling of the prospective adoptive parents. (b) counseling of older children, wherever required. (c) preparing post-adoption follow-up report, wherever required. (d) post adoption counselling of adopted children and adoptive parents; and (e) assisting and counselling of older adoptees in root search		This was such a critical function that CARA has quietly done away with, in its new regulations. CARA not only needs to revive its counselling center at HQ, but also expand such services throughout India. Refer to our Commentary D at the end of summary.
44.1	The seniority of resident Indian and equivalent PAPS will be based on states specific, and cluster specific choice and they shall be referred children on the basis of that seniority while the foreign PAPS shall be provided referrals on the basis of ‘anywhere in India’.	The prospective adoptive parents shall be referred children on the basis of a single seniority list.		Very impractical provision that will lead to a lot of chaos. See our commentary at the end of the summary.
44.6	Seniority of prospective adoptive parents who registered as single but later got married shall be counted from the date of registration subject to two years of stable marital relationship and receipt of a fresh Home Study Report.	Seniority of prospective adoptive parents registered as single but married later shall be counted from the date of registration as single after receipt of fresh Home Study Report.		The provision is child centric, but the more restrictive requirement may wean more parents away from CARA adoptions.

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44.7	Seniority of prospective adoptive parents who registered as couple but later got divorced, widowed or remarried shall be counted from the date of registration subject to receipt of a new Home Study Report and two years of stable marital relationship in case of remarriage.	No such provision		The provision is child centric, but the more restrictive requirement may wean more parents away from CARA adoptions.
	Done away with	41.4 - Prospective adoptive parents shall be allowed to change the State preference once within sixty days from the date of registration and in case they change the State preference after sixty days from the date of registration, they shall be placed at the bottom of the seniority list in the changed State.		Taking away the flexibility of State preferences and limiting to a cluster of States is regressive. See our Commentary A at the end of the summary.
49	Adoption Fee increased to Rs. 50,000 Home Study Fee Rs. 6,000 Post adoption Follow up Fee: Rs. 2000 per visit (4 visits required in a 2-year period) Revalidation of Home study report – Rs 2000 per visit / report Additional Rs. 10,000 for each additional child in case of Siblings For Intercountry adoptions, Fee is at \$5000 plus \$1000 per additional child for Sibling adoption.	Adoption fee was Rs. 40,000 and Home Study fee was Rs. 6,000 International Adoption Fee was \$5000		Adoption fee should be further raised to invest quality resources and services. Financial Aid must be provided for by Government or Employers to encourage adoption.
51.6	Treatment of children with special needs	No such provision		A welcome section that has been introduced in the new regulations. However, mere providing for guidance is not good enough, CARA needs to ensure that the same is implemented too.
53.1	The Authority with the approval of its Steering Committee, may make additional efforts for adoption of hard to place children, through foster care on the Designated Portal.	No such provision		A welcome section that has been introduced in the new regulations. However, CARA needs to ensure that there is no child abuse through foster care, as children in foster care are more vulnerable to abuse.
62.1	Procedure for Appeal - PAPs are advised to contact SARA within 7 days, and escalate to CARA if SARA does not respond within 15 days.	PAPs could write to CARA directly within 7 days in respect of grievance.		Adding an additional layer of SARA and an extra timeline of 7 days is counterproductive. Most States do not even have a SARA, plus most SARAs are not trained in grievance redressal. Such frictions could wean more people away from CARA adoptions.

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64 - 71	CHAPTER VIII PROCEDURE FOR CHILDREN ADOPTED UNDER THE HINDU ADOPTION AND MAINTENANCE ACT, 1956, BY PARENTS WHO DESIRE TO RELOCATE THE CHILD ABROAD	No such provision		This entire section is Unconstitutional. Please refer to our Commentary C at the end of the summary

Commentaries on various provisions

Commentary A – Introducing a Cluster of States for child referral	
<p>Background:</p> <p>As per previous regulations, PAPs could indicate a preference to adopt from up to 3 States. Further, they could change their preferences up to three times, initially, and later once, within 60 days of registration. PAPs alternatively could indicate a preference to adopt from “anywhere in India”. The latter was particularly useful, as the children availability varied across States, over a period of 2-3 years – typical wait time for getting a referral. The “Anywhere in India” option worked best for the parent as well as the child, as a child being available anywhere in the country could be referred to the next waiting parent – from anywhere in the country.</p> <p>In the AR2022, CARA seems to have done away with the preference of any State – as also the option for “Anywhere in India” for Resident PAPs. They will now be able to indicate their preference of State or Cluster of States based on their domicile, as stated in their Adhar card / Driving License or other related domicile document. Surprisingly, the “Anywhere in India” option has been offered to Foreign PAPs!</p>	<p>Impact</p> 
<p>Our Point of View</p> <p>There is no logic or rationale behind this decision. Looks like CARA has decided on this method without analyzing their own data. As per data from CARINGS, 25% of the 32 States account for 75% of total children legally free for adoption. The remaining 75% States account for a total of 25% of children in CARA pool. Some of the most populous States in India account for thousands of PAPs registered for adoption – such as Uttar Pradesh, Bihar, Jharkhand, Tamil Nādu, Madhya Pradesh, Delhi etc. but many of them have fewer than total of 50 children available for adoption (most of them above 10 years or with special need). The number of healthy infants in many of these States is ZERO. So, what does CARA expect from PAPs registering from these States? PAPs from a select cluster of States would keep waiting endlessly, while those from other States would get their referral, even if they have registered much later.</p>	

Commentary B – Replacing Courts with District Magistrates

Background:

As per previous regulations, all adoption orders were issued by Courts. With effect from Sep 01, 2022, all adoption matters will be presented to District Magistrates, and they shall be passing the adoption orders. The reason behind this move appears to be long delays by courts clearing adoption cases, and CARA's expectation that the DMs will dispose off adoption cases far more expeditiously, within the prescribed time limit of 2 months – that courts seldom adhered to.

Impact



Our Point of View:

Even as adoption matters are non-adversarial, that is there aren't two parties with competing claims – adoption cases were referred to the Courts, primarily as legacy of erstwhile adoption regime, when adoption were done under the Hindu adoptions and Maintenance Act (HAMA), and HAMA being bereft of any checks and balances, it became Court's responsibility to ensure that adoption was in best interest of the child / family. After JJ act defined provisions for adoption, there was hardly any role left for the Courts, as all processes and checks were defined for various stakeholders such as CWC, DCPU, SAA etc. The Court really had to reconfirm that these had been followed. Surprisingly, many Courts still took months to clear adoption cases, and many judges passed adoption orders completely ignorant of extant law or sensitivities – thanks to lack of awareness of procedures, and influenced by their own biases. Despite CARA spending years at their sensitization, the Courts continued to languish adoption cases and pass adoption orders often against prescribed laws.

Changing the stakeholder from Courts to District Magistrates is hardly going to solve the problem. Firstly, Courts are required to deliver on adjudication as their prime responsibility and are also expected to possess relevant skills in discharging the same. On the other hand, the DMs are already overburdened with administrative responsibilities as their prime role and are unlikely to accord priority to adoption cases, within the timeline. Secondly, CARA must prepare itself for another long haul of educating and sensitizing the new actors in the adoption chain – for them to understand and deliver on adoption matters. Lastly, asking the DMs to adjudicate on adoption matters, where they were already responsible for performance of the intermediaries, such as DCPU, CWC, CCI etc. reporting to them as an Executive is a clear conflict of interest. The DM is likely to be influenced by the track record of institutions reporting to them, and seeking directions from them, while disposing off their cases – and therefore hardly remaining neutral in their adjudication.

Introducing a new set of actors who are completely uninitiated into adoption processes and presiding over their own performance measures are some of the most vocal criticisms of this move, where, all that was required was to influence and sensitize the Courts to dispose off adoption matters within prescribed time limits.

Commentary C – CARA to issue No Objection Certificate in cases of Inter-Country adoptions under Hindu Adoptions and Maintenance Act, 1956)

Background:

As per previous regulations, HAMA could only be used for In-Country adoptions. All Inter-country adoptions had to be executed under the JJ Act, as HAMA had no checks and balances, and all countries that were party to the Hague Convention require a strict and transparent process to be followed for Inter Country adoptions. Therefore, no Inter-country adoption under HAMA was legal. The same law still holds, but CARA seems to be oblivious of its own legislations.

In the AR2022, CARA has provided for issuing NOCs for Inter-Country adoptions done under HAMA. This provision is unconstitutional and likely to be rejected by all countries that are signatory to H Hague Convention, for reasons explained below.

Impact



Our Point of View

In providing for issuance of NOC for Inter-Country adoptions, CARA is funnily violating its own laws. As per Sec 56(3) of the JJ Act, nothing in this (JJ) Act would apply to adoption under HAMA. Therefore, the authority of CARA, the DMs, the CWCs, the SAAs, the due diligence process etc. is NOT APPLICABLE TO ADOPTIONS UNDER HAMA. Further, according to Sec 56(4) of the JJ Act, all Inter country adoptions have to be undertaken under the JJ Act. Therefore any Inter-country adoption under HAMA is a direct violation of Sec 56(4), and therefore illegal!

Fact of the matter is, that because of long wait and restrictive adoption regime under the JJ Act, many parents started adopting under HAMA, even for Inter-country cases. They had no choice left. There weren't any children available with CARA under JJ Act. The problem arose when they approached CARA for NOC for these adoptions. As CARA could not legitimately issue NOC for HAMA adoptions, such families approached the Court, and since the child was already placed with these families, on human grounds, and in best interest of the child, the Courts directed CARA to issue NOC. The only issue is that CARA isn't authorized to do so till such time Sec 56(3) and Sec 56(4) remain in force. So, this provision, though seemingly aimed at helping families, is completely illegal and unconstitutional!

Apart from the legality, there are larger ramifications of this provision. So far, there was a flourishing market of touts and intermediaries charging exorbitant sums from hapless parents in proving them (often trafficked) child of their "choice", colour, age and caste! However, it was not possible for them to traffic these children for international adoptions, as the law simply didn't allow them. CARA would not be able to issue an NOC, and this route wasn't available. With this proviso, howsoever illegal, CARA has thrown open a gold mine for these touts to charge the overseas PAPS in "dollars" and expand the gray market for international adoptions. This is the most sinister effect of this provision. Additionally, quite a few AFAAS (foreign adoption agencies) are likely to reject CARA's NOC for HAMA Adoptions as HAMA still lacks checks and balances required for compliance with Hague convention. CARA's NOC won't carry any weight and the families will be more distraught and unsettled, if their papers aren't accepted in foreign jurisdictions. This is an **ILL CONCEIVED AND PERILOUS SHORT CUT BY CARA.**

Commentary D – Counselling in Adoption

Background:

As per previous regulations, CARA included its role of providing counselling services to PAPs. A Counselling center was set up at CARA HQ, with a vision to expand the same to other States.

The new AR2022 have surprisingly and silently wiped off this important mandate from CARA's charter.

Impact



Our Point of View

The new AR2022 have provided for certain penal and more stringent provisions like debarring the PAPs from future adoption in case of dissolution, suspending their registration for one year if they do not accept any of the three referrals, or limiting their choices in adoption. Much of these can be better handled with putting a humane face in the process. Adoption Counselling offered that human touch in the adoption process. Much of CARA's pain points can be traced to lack of empathy, sensitization and awareness of adoption amongst its stakeholders, including PAPs. By excluding Counselling from its mandate, CARA is not only turning a blind eye to the root problem but is also setting itself for further failure in defining more punitive provisions, in place of a human touch to the overall process. Our concern is adoptions under CARA will further reduce, at expense of well-being of children who would become more prone to trafficking and hapless parents who would fall into the trap of unscrupulous social elements aka adoption touts!

SUMMING UP

In defining the new AR2022, there lay a unique opportunity before CARA in filing up the huge chasm between adoption provisions under HAMA and the JJ Act. However, in ignoring the need of the hour, avoiding the plight of parents waiting for several years and in experimenting with introduction of DMs in place of Courts, CARA has taken away more comfort from the parents, than offered any more – and set the adoption community on yet another painful journey in expectation of long overdue adoption reforms, long winding court battles, travails of child trafficking and an endless wait to get a bundle of joy in their home.

Please send us your comments and feedback on this document at mail@familiesofjoy.org

