



सत्यमेव जयते



केंद्रीय दत्तक-ग्रहण संसाधन प्राधिकरण Central Adoption Resource Authority

(भारत सरकार के महिला एवं बाल विकास मंत्रालय का सांविधिक निकाय)

(A Statutory Body of Ministry of Women & Child Development, Government of India)

CARA-LP07/1/2025-CARA (120789)

सं. / No.

दिनांक / Date 21.03.2025

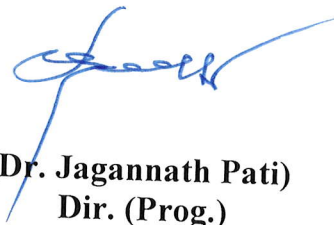
OFFICE MEMORANDUM

Subject: Seeking Views, Opinions, and Feedback on the draft 'SOP' prepared by the Amicus Curiae regarding the issue relating to the collection of DNA samples as per Regulation 39 of the Adoption Regulations, 2022.

The Central Adoption Resource Authority (CARA) has received a report prepared by the Amicus Curiae in connection with Crl. M.C. 5136/2023, as per the directions of the Hon'ble High Court of Kerala. In compliance with the Court's instructions, the report is to be reviewed and inputs to be provided on the proposed Standard Operating Procedure (SOP).

2. In this regard, CARA invites State Adoption Resource Agency (SARAs) to submit their inputs to CARA after due consultations with your Specialised Adoption Agencies, Child Welfare Committees, District Child Protection Units, Chief Medical Officers or other concerned organizations & experts. The inputs on Reports may be submitted on the contents of the report. The report may be seen as attached.
3. All responses may be submitted via email to **dir-cara@gov.in** or **dd.policy-cara@gov.in**. The last date for submission of feedback is **27.03.2025**. Submissions received after this date may not be considered.

This issues with the approval of the Competent Authority.


(Dr. Jagannath Pati)
Dir. (Prog.)

BEFORE THE HONOURABLE HIGH COURT OF KERALA, ERNAKULAM

Crl.M.C. 5136/2023

Court on its own motion

Vs

State of Kerala and others

REPORT NO: 4 BY THE AMICUS CURIAE

Pursuant to the orders of this Honourable Court dated 11.7.24, a workshop was convened on 1.8.24 at the instance of the Women & Child Department, Government of Kerala in which representatives of various stakeholders concerned with the issue relating to collection of DNA samples as per Regulation 39 of the Adoption Regulations, 2022 participated. The Director, Women & Child Department presided over the workshop.

1. REGULATION 39 OF THE ADOPTION REGULATIONS 2022, READS AS FOLLOWS:

Child Welfare Committee. - The Child Welfare Committee shall take actions as provided in regulations 6 and 7 and as provided in rule 18 and 19 of the rules.

Explanation: Further for removal of doubt, it is hereby clarified that, in cases where a child is willingly surrendered by the biological mother, the child being born out of non-consensual sexual relations or where cases have been registered under the Protection of Children from Sexual Offences Act or Indian Penal Code, the Child Welfare Committee is obliged to issue an order clearing the child legally free for adoption within the stipulated period within which the Dioxynucleic Acid (DNA) sample collection should be completed to avoid undue harassment to the families who adopt the children in such cases.

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The Explanation encompasses the following unique aspects to be considered: -

- I. The child is to be surrendered willingly by the biological mother.
 - II. The child should be born out of non-consensual sexual relations or where cases have been registered under POCSO or Indian Penal Code (Present BNS)
 - III. CWC should collect the DNA sample within the stipulated period within which the child will be declared legally free for adoption
 - IV. The objective of the provision is to avoid undue harassment to the families who adopt the children.
2. We commenced our discussion on 'consent' to be obtained from the surrendering mother. Various possible interpretations of Explanation to Regulation 39 including interpretations of intention of the Legislature while phrasing the said provision were deliberated. There was consensus in the discussion that informed consent for purpose of collection of DNA sample should be obtained from the mother who surrenders the child. The Additional Inspector General of Police suggested that the willingness mentioned in the Explanation is intended only for the purpose of surrender and that once the child is surrendered, the CWC has exclusive control over the child and so no separate consent need be elicited from the mother. But moral ethics coupled with trite law laid down in *GouthamKundu v State of West Bengal* (1993 AIR 2295) resulted in the participants deciding that informed consent for collecting the DNA sample is to be obtained from the surrendering mother.
3. The next aspect that was deliberated was as to how the consent was to be obtained. There is a standard form which has to be filled by the surrendering mother at the time of surrender. A clause could be added

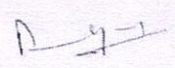
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in the said standard form as "whether case has been registered under POCSO Act and/or BNS". The said query is necessitated since the Explanation specifies those children willingly surrendered by the biological mother should be either born out of non-consensual sex or where cases have been registered under relevant law to come under the purview of Regulation 39. To pose a query to the surrendering mother whether the child was born out of non-consensual sex would primarily be absolutely insensitive and disrespectful to the mother who already would be in distress. Moreover, a reply to the said query will have far reaching legal consequences to the criminal litigations initiated. It would also severely affect the privacy of the surrendering mother. **Hence, we reached a consensus that the SARA under the Women & Child Department would make a request to the CARA seeking relaxation in the provision (Regulation 39) by removing the attributed descriptions for the child who is being willingly surrendered by the biological mother which are enunciated in the Explanation to Regulation 39. The CARA has the power under Regulation 63 of the Adoptions Regulations, 2022 to relax and to grant exception to any provision of the Adoption Regulations, 2022 in respect of a case or class of cases.**

4. Details regarding DNA samples once profiled (The personnel from Rajiv Gandhi Centre for Biotechnology had confirmed that on receiving samples, the lab profiles the same for storing purpose) can form part of Schedule IV of the Adoption Regulations 2022 which includes the medical reports of the child concerned. The Deed of Surrender under Regulation 7 (3) of the Adoption Regulations, 2022 (which is also a part of Schedule IV) can also carry a clause that the surrendering mother has been counseled and informed that the child's blood sample has been collected for medical purposes including DNA profiling.

5. THE STEPS TO BE FOLLOWED ARE CONCLUDED AS FOLLOWS: -

1. After the child is surrendered, the CWC shall hand over the child to the Specialized Adoption Agency (SAA).
2. CWC shall communicate the order to collect the DNA sample of the child as per Regulation 39 of the Adoption Regulations, 2022 to the SAA and District Women and Child Development Officer. Order issued by the CWC concerned shall contain details of the surrendered child (masked wherever necessary), crime number/court case number if any and also details of the person deputed by the District Women and Child Development Office to accompany the child and personnel from SAA for collection of DNA samples of the child.
3. The DNA sample (blood/tissue) of the surrendered child as per Regulation 39 shall be collected within 60 days of the date of surrender before the child is declared free for adoption.
4. The Specialized Adoption Agency(SAA) with the order of the CWC under Regulation 39 shall make arrangements to take the child along with a personnel of SAA and a personnel deputed by District Women & Child Development Officer(DWCDO)(details of the personnel to be provided in the order mentioned in clause 5(2) above) to the Women and Child Hospital/Government Hospital/District Hospital/Government Medical College within the locality and jurisdiction of the SAA and collect the DNA sample of the child which will be certified by the Superintendent or any other Medical Officer deputed by him/her/they of the Hospital concerned.The sample shall be properly sealed. The vials in which the DNA samples(blood/tissue) are collected should be wrapped in brown paper and tied tight with thick thread/twine. Melted wax can be used to tighten/strengthen the wrap. Hospital concerned from where the samples are collected has to



affix its seal on the wrap/cover. The wrap/cover shall also contain details such as sample number, CWC file/case details pertaining to the surrendered child and/or crime number/court case number if any.

5. SAA shall make arrangements for the collection of the DNA sample (blood/tissue) of the child within the statutory period of 60 days from the date of surrender of the child.
6. SAA on collection of the blood sample (blood/tissue) shall reach back the child to the institution.
7. The District Women and Child Development Officer shall depute/authorize an officer not below the rank of a Junior Superintendent to take the sample so collected along with a covering letter from the DWCDO and the certificate issued by the Hospital concerned latest within 48 hours of collection to the Rajiv Gandhi Centre for BioTechnology, Thiruvananthapuram. The sample shall be transported in room temperature within twenty-four hours. Samples can be transported in thermocol boxes in temperature between 2-8 degree Celsius. If there is a delay, samples can be kept in refrigerators (for long time storage- in freezer).
8. Rajiv Gandhi Centre for Bio Technology shall issue an acknowledgement on receipt of the sample along with the covering letter of the DWCDO and the certificate issued by the Hospital from where the sample had been collected after cross checking the details on the sealed cover containing the vials, the covering letter from DWCDO and the certificate issued by the Hospital. The said acknowledgement will be handed over to the personnel from the District Women and Child Development Office who is the carrier of the sample.

9. The acknowledgement issued by the Rajiv Gandhi Centre for Bio Technology will be retained by the District Women and Child Development Office (Original) with a copy served on CWC concerned.
10. The prosecution or the defense counsel as the case may be may file appropriate petition before the Court of law concerned for purpose of obtaining and using the sample for medical tests as per the procedure established by law by making Rajiv Gandhi Centre for Bio Technology and CWC concerned as parties to the proceedings.

6. PROCESS FOLLOWED BY THE RGCB

1. 2-10 ml blood sample can be collected by authorised person in EDTA vials (or FT cards can be provided on request).
2. Sample may be transported to RGCB in room temperature within 24 hrs. If there is a delay, samples can be kept in refrigerators (for long time storage- in freezer).
3. RGCB will accept only sealed samples with authorisation letter and ID proof of the person bringing it. (sealing protocol to be followed as mentioned in clause 5 (4) above.)
4. On receipt of samples, RGCB documents it and processes it for genomic DNA preparation. Remaining samples will be stored in -80 degree C for one year.
5. Prepared genomic DNA after quantification is proceeded for polymerase chain reaction (PCR) using STR markers. The PCR products will be processed for DNA profiling using genetic analyser.
6. Analysed DNA profiles will be stored in the system of the Centre forever and hardcopy also will be preserved.
7. A suggestion was raised at the meeting that the SARA could develop a digital template form consisting of the entire procedure to be complied under Explanation of Regulation 39 of the Adoption Regulations 2022, which will have details of step-by-step procedure along with

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enclosures. Each step mentioned in the form can be endorsed by the respective authority expected to comply that specific step and the CWC can retain the successfully completed form. The details of the surrendered child, the deed of surrender, order handing over the child to a SAA, order directing the SAA to take steps to collect DNA sample of the child, details regarding the collection of the DNA sample (blood/tissue) of the surrendered child, details of sealing of the sample, details of certification made at the hospital concerned, details regarding reaching the child back at the SAA, transportation of the collected, sealed sample within the prescribed time (as per clause 5 (7) above) to the Rajiv Gandhi Centre for Bio Technology, Thiruvananthapuram, details of acknowledgement issued by the RGCB and the receipt of the acknowledgement in original by the DWCDO with a copy to the CWC concerned will form the contents of the digital template form mentioned above. The successfully completed forms can form the data base for the details of compliance of Explanation to Regulation 39 of the Adoption Regulations, 2022 which will help the digitalization of details of the surrendered child respecting his/her/their privacy. RGCB has already informed that they digitally maintain DNA profiling once the procedure is through.

8. It is submitted that this Honourable Court may be pleased to correct clause (iv) under the head 'CONCLUSIONS' in the interim order dated 19.4.24 reading as "The Child Welfare Committee has a statutory duty to collect DNA samples of children given in adoption before the completion of the process of adoption" as "The Child Welfare Committee has a statutory duty to collect DNA samples of children voluntarily surrendered by their biological mothers under Explanation of Regulation 39 of the Adoption Regulations, 2022 within the stipulated, statutory period of declaring them fit for adoption." It is further submitted that the Central Adoption Resource Authority (CARA) may be suomotu impleaded who can address SARA's request


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seeking relaxation in the provision (Regulation 39) by removing the attributed descriptions for the child who is being willingly surrendered by the biological mother which are enunciated in the Explanation to Regulation 39. The CARA has the power under Regulation 63 of the Adoptions Regulations, 2022 to relax and to grant exception to any provision of the Adoption Regulations, 2022 in respect of a case or class of cases which has been discussed in paragraph 3 above. CARA may be impleaded as additional respondent no: 6 as follows: -

Member Secretary and CEO,
Central Adoption Resource Authority,
Ministry of Women and Child Development,
West Block 8, Wing 2
1st floor, R.K.Puram,
New Delhi 110066

This report may be treated as a prelude to the final Standard Operating Procedure (SOP) which shall be placed before this Honourable Court once all the stakeholders approve/confirm the contents of this report.

Dated this the 20th day of August, 2024.


Adv. Parvathi Menon. A
Amicus Curiae